

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_

**VICTOR RUBIO ORTEGA**

Agency File 

Petitioner

V.

**PAM BONDI**, in his official capacity as the Attorney General of the United States;  
**GARRET J. RIPA**, in his official capacity as Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office;  
**TODD LYONS**, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement and Officer-in-Charge, Krome Detention Center, Miami, Florida;  
**KRISTI NOEM**, in her official capacity as the Secretary of the U.S. Department of Homeland Security; **DAREN K. MARGOLIN**, in his official capacity as Director of the Executive Office for Immigration Review (EOIR), United States Department of Justice.

Respondents

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**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**  
**Pursuant to 28 U.S.C. 28 U. S. C. § 2241 (Expedite Review Requested)**

Petitioner, VICTOR RUBIO-ORTEGA, by and through undersigned Counsel, submits this Verified Petitioner for Writ of Habeas Corpus, and alleges as follows:

**INTRODUCTION**

Petitioner Victor Rubio-Ortega, a 45-year-old native and citizen of Mexico, has lived continuously in the United States for the past 37 years since entering at age eight. He has no criminal convictions, maintains a fixed address, and is deeply rooted in this country through long-standing family ties and employment.

On September 18, 2025, agents of the Department of Homeland Security and Customs and Border Protection intercepted Mr. Rubio-Ortega in Marathon Key, Florida, near his workplace, and took him into immigration custody. He has remained detained without bond ever since—more than two months—at the Krome Detention Center.

On October 14, 2025, counsel for Mr. Rubio-Ortega timely requested a bond redetermination hearing pursuant to 8 C.F.R. §§ 1003.19(a) and 1236.1(a). The Immigration Court scheduled a combined master calendar and bond hearing for October 23, 2025. However, at that hearing, the Honorable Immigration Judge Romy Lerner denied release on bond without evaluating whether Mr. Rubio-Ortega poses any danger to the community or risk of flight. The sole basis for the denial was a purported lack of jurisdiction under the Board of Immigration Appeals' recent precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

*Matter of Yajure Hurtado* holds that immigration judges categorically lack jurisdiction to conduct individualized bond hearings for any noncitizen who is present in the United States without having been admitted or paroled—including individuals like Mr. Rubio-Ortega who entered without inspection decades ago. By imposing mandatory, indefinite detention without any meaningful opportunity to contest custody, this categorical bar violates the Due Process Clause of the Fifth Amendment.

As a direct result of this unconstitutional rule, Mr. Rubio-Ortega—an individual with no criminal history and demonstrable community ties—remains imprisoned indefinitely while his removal proceedings slowly advance. Each day of continued detention inflicts irreparable harm: prolonged separation from his family, mounting lost wages, deteriorating prospects for relief from removal, and the severe psychological and physical toll of prolonged immigration detention.

Mr. Rubio-Ortega respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, an immediate order directing Respondents to release him on his own

recognizance or reasonable conditions of supervision, or, in the alternative, an order requiring an individualized bond hearing before the immigration judge who possesses jurisdiction to consider danger to the community and flight risk on the merits. Absent immediate relief regarding his detention, Mr. Rubio-Ortega will continue to suffer unlawful and unconstitutional detention in violation of his fundamental right to due process of law.

### **JURISDICTION**

1. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 et seq., Title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U. S. C. §§ 555(b), 701, et seq.
2. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).
3. This Court has jurisdiction because petitioner challenges the legality of this civil detention without bond redetermination, not the decision by the Department of Homeland Security (or the Attorney General) to commence proceedings. Jurisdictional stripping under 8 U.S.C. § 1252(g) is *narrowly construed* and covers only the Attorney General's discretionary decisions to *commence proceedings, adjudicate cases, or execute removal orders*. Thus, § 1252(g) does not bar federal courts from entertaining constitutional or statutory challenges to the fact or conditions of immigration detention itself. See *Reno v. American Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999).
4. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), 28 U. S. C. § 2241 (habeas corpus), and 5 U. S. C. §§ 701 et seq. (Administrative Procedure Act).

### VENUE

5. Venue is proper in this district under 28 U.S.C. §§ 1391(e)(1) and & 2241 because (1) “a substantial part of the events or omissions giving rise to the claim occurred” and (2) this is the district where “the custodian can be reached by service of process.” *Rasul v. Bush*, 542 U.S. 466, 478-79 (2004).

### PARTIES

6. The petitioner, **VICTOR RUBIO-ORTEGA** (A# ) is a 45-year-old Mexican national currently detained by ICE at the Krome Detention Center, South Florida, since September 18, 2025—over 2 months with no individualized bond hearing and no removal order.
7. The respondent, **PAM BONDI** is sued in his official capacity as the Attorney General of the United States, which encompasses the BIA and the Immigration Judges as sub-agencies of the Executive Office of Immigration Review (EOIR). Attorney General Sessions shares responsibility for the implementation and enforcement of the immigration laws, and is a legal custodian of the petitioner.
8. The respondent, **GARRET J. RIPA** is sued in his official capacity as the Field Office Director for the U.S. Immigration and Customs Enforcement (ICE) Miami Field Office, and as the Officer-in-Charge of the Krome Detention Center. In this capacity, he has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.
9. The respondent, **TODD LYONS** is sued in his official capacity as the Acting Director of ICE. In this capacity, he has responsibility for the enforcement of the immigration laws. As such, he is a legal custodian of the petitioner.
10. The respondent, **KRISTI NOEM** is sued in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security (DHS), the arm of the U.S. government

responsible for the enforcement of the immigration laws. Because ICE is a sub-agency of the DHS, Secretary Noem is a legal custodian of the petitioner.

11. The respondent, **DAREN K. MARGOLIN**, in his official capacity as Director of the Executive Office for Immigration Review (EOIR), United States Department of Justice, is the federal official responsible for the administration of immigration courts and for the scheduling and adjudication of bond proceedings under 8 U.S.C. § 1226 and related authorities. He is named in his official capacity because the petition challenges, inter alia, EOIR's failure to provide Petitioner with a constitutionally adequate bond hearing or to timely schedule such a hearing.

#### **EXHAUSTION OF REMEDIES**

12. No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F. 3d 467, 474 (CA11 2015)," and because "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz v. United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).

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

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*
14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). "The application

for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F. 3d 1116, 1120 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990).

#### FACTUAL ALLEGATIONS

15. The petitioner is a native and citizen of Mexico.
16. On or around October 1988, the petitioner was brought into the United States as an 8-year-old via San Diego, California.
17. Petitioner has been residing in the United States for 37 years and was never apprehended by any immigration official at the time of his entry.
18. Petitioner was arrested in 2019 for having a driver license in his possession which was not his own. The State of Florida dismissed the charges against the petitioner.
19. An ICE detainer was issued while the petitioner was in state custody and a Notice to Appear (NTA) charging document was filed in the immigration court.
20. Respondents never took custody of the petitioner at the time of his release from the 2019 arrest.
21. Petitioner’s first removal proceedings were administratively closed by an immigration judge on January 7, 2020.
22. A second removal proceedings via NTA charges were filed by the respondents on September 18, 2025, and the case was closed on October 2, 2025, for failure to prosecute.
23. On October 7, 2025, the respondents filed immigration charges (NTA) again in the immigration court. **Exhibit A.**
24. On October 15, 2025, in a bond proceeding the immigration judge declined to hear a case for bond citing that the court lacked jurisdiction pursuant to a Board of Immigration

Appeals (BIA) case named *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

**Exhibit B.**

25. The immigration judge stated that because the petitioner was “deemed” an applicant for admission under 8 U.S.C. § 1225(a), pursuant to matter of *Matter of Yajure Hurtado*, and that she did not have jurisdiction to determine bond. *Id.*
26. As of Nov. 18, 2025, Respondent’s removal proceedings is still undecided as the Petitioner filed a motion to terminate proceedings which is still pending, said removal proceedings are founded on an egregiously defective, fraudulently altered, and improperly served Notice to Appear (NTA) that vests no jurisdiction in the immigration court, perpetrates a deliberate fraud upon the tribunal, and inflicts profound due process violations under the Fifth Amendment and INA § 239(a). **Exhibits A and C.**

**STATUTORY AND REGULATORY FRAMEWORK**

**A. Sections 1225(b) and 1226**

27. Two statutes principally govern the detention of non-citizens pending removal proceedings: 8 U.S.C. §§1225 and 1226.
28. Section 1225 applies to “applicants for admission” who are, as relevant here, non-citizens “present in the United States who [have] not been admitted” 8 U.S.C. § 1225(a)(1).
29. All applicants for admission must be inspected by an immigration officer. *Id.* § 1225(a)(3).  
Certain applicants for admission are then subject to expedited removal proceedings. *See id.* § 1225(b)(1); *Dep’t. of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 108-09 (2020).

30. In other cases, if the examining officer determines that an applicant for admission is not “clearly and beyond a doubt entitled to be admitted,” Section 1225(b)(2) provides that the applicant for admission “shall be detained for” standard removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *see Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018).
31. A non-citizen detained under Section 1225(b)(2) may only be released if he is paroled “for urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 300 ( “That express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released” ).
32. 8 U.S.C. § 1225(a)(3) provides that “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” This provision, which follows immediately after the deeming clause in § 1225(a)(1), confirms that “application for admission” is treated as **an event — not a status**.
33. The statute does not say that all those who are “deemed” applicants for admission shall be inspected. It refers to those who are actually seeking admission — those who know they are applying. This language presumes a conscious, affirmative act. It is consistent with the definition in § 101(a)(4), which defines “application for admission” as the act of applying to enter the United States, not a continuing legal condition imposed by the government.
34. Whereas Section 1225(b) “authorizes the Government to detain certain aliens *seeking admission into the country*,” Section 1226 “authorizes the Government to detain

certain aliens *already in the country* pending the outcome of removal proceedings. *Id.* at 289 (emphasis added).

35. Section 1226(a) establishes a discretionary detention framework for non-citizens who have long-resided in the United States and gives them a right to request a bond hearing before an immigration judge in which he bears the burden to show that he is not a danger to the community nor a flight risk.
36. Section 1226(c) is the sole exception to Section 1226(a)'s discretionary detention framework. See 8 U.S.C. § 1226(a) (except as provided in subsection (c) ...the Attorney General ...may...) *id.* § 1226(c)(1) ("The Attorney General *shall* take into custody any alien who..." (emphasis added).
37. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.
38. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention 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.
39. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings.
40. Dozens of federal courts have rejected Respondents' new interpretation of the INA's detention authorities.

41. Notably, long before ICE or the BIA changed its position nationwide, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without admission or parole and who have since resided here. The Honorable Court in Washington held 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).
42. Since the *Rodriguez Vazquez* preliminary injunction decision, court after court has adopted the same reading of the INA's detention authorities and rejected ICE's new policy 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).

43. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies 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 the petitioner.
44. Subsection 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].”
45. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. 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)).

46. 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.
47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. 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).
48. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended; to wit: over three decades.

**B. Matter Of Yajure Hurtado Contravenes Circuit Law**

49. In *Matter of Yajure Hurtado*, the Board of Immigration Appeals (BIA) held that the Immigration Judge was correct in determining that the Court did not have jurisdiction over a respondent detained under INA §235(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025).
50. There are two key groups defined in *Yajure Hurtado* that are ineligible for a bond hearing: 1) persons arriving in the United States placed in expedited removal proceedings under Section 235(b)(1) and 2) those arriving in and seeking admission into the United States who are placed directly into proceedings under INA § 240. *Id.* at 218.
51. *Yajure Hurtado* attempts to define the second group as including those not actually "requesting permission to enter the United States in the ordinary sense" as "nevertheless deemed to be 'seeking admission' under the immigration laws". *Id.* However, it is

important to remember the key words “arriving in and seeking admission”.

52. Moreover, to be accurate in the determination of the terms thrown around in the above cases, the INA and regulations are the reigning definitions. Pursuant to 8 U.S.C. § 1101(a)(4) an “applicant for admission” is defined as “application for admission to the United States and not to the application for the issuance of an immigrant or nonimmigrant visa”.
53. This is also supported by the case law in the 5th Circuit under *Marques v. Lynch*, 834 F.3d 549, 555 (5th Cir. 2016), (“Section 1182(a)(7) is applicable only when an alien is making an application for admission, which the INA defines as “the application for admission into the United States....”)(emphasis added.) Additionally, there is guidance also in the 11th Circuit under *Ortiz-Bouchet v. U.S. Attorney General*, 714 F.3d 1353 (11th Cir. 2013). There, the court held that 8 U.S.C. § 1182(a)(7)(A)(i)(I) applies only to individuals who are “applicants for admission” at the time they seek entry into the United States. The petitioners in *Ortiz-Bouchet* were already present in the United States and sought adjustment of status. The court emphasized that they were not seeking entry and therefore could not be treated as applicants for admission. *Id.* at 1356.
54. Additionally, Applicant for Admission is an event and not a permanent status. The *Ortiz-Bouchet* court’s reasoning did not turn on the procedural posture of adjustment of status but on the fact of entry. The phrase “post-entry” appears repeatedly in the opinion and is central to the court’s holding. *Id.* The court further held that the definition of “admission” in 8 U.S.C. § 1182(h) is unambiguous and “does not encompass a post-entry adjustment of status.” *Id.* (citing *Lanier v. U.S. Att’y Gen.*, 631 F.3d 1363, 1366 (11th Cir. 2011)).
55. Section § 1225(a)(3) provides that “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” This provision,

which follows immediately after the deeming clause in § 235(a)(1), confirms that “application for admission” is treated as an event — not a status.

56. The statute does not say that all those who are “deemed” applicants for admission shall be inspected. It refers to those who are actually seeking admission — those who know they are applying. This language presumes a conscious, affirmative act. It is consistent with the definition in § 101(a)(4), which defines “application for admission” as the act of applying to enter the United States, not a continuing legal condition imposed by the government. Thus, in the provision respondents have adopted to erase the distinction between unlawful entrants and applicants for admission, their reading fails by producing absurd results and several nullities – all in the same provision.

57. Indeed, the INA resumes its use of “application for admission” as an event immediately after the procedural fiction in § 1225(a)(1). This confirms that the fiction is limited and transitional — a patch to bridge the exclusion/deportation dichotomy — not a permanent reclassification. To interpret “applicant for admission” as a status that attaches indefinitely to any noncitizen present without admission would render § 235(a)(3) meaningless and the term itself constitutionally unsound. Sections 1225(a) and 1225(b) are two separate and distinct issues of law.

58. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, “[e]xcept as provided in subsection (c) of this section.” *Jennings v. Rodriguez*, 138 S.Ct. 830, 846, 583 U.S. 281, 303 (U.S., 2018) As noted, especially § 1226 applies to aliens already present in the United States. *Jennings v. Rodriguez*, 138 S.Ct. 830, 846, 583 U.S. 281, 303 (U.S., 2018).

59. is not supported by the case law in the 11<sup>th</sup> Circuit under *Ortiz-Bouchet v. U.S. Attorney*

*General*, 714 F.3d 1353 (11th Cir. 2013). There, the court held that 8 U.S.C. § 1182(a)(7)(A)(i)(I) applies only to individuals who are “applicants for admission” **at the time** they seek entry into the United States. The petitioners in *Ortiz-Bouchet* were already present in the United States and sought adjustment of status.

60. The *Ortiz-Bouchet* court emphasized that they were not seeking entry and therefore could not be treated as applicants for admission. *Id.* at 1356.

61. Additionally, Applicant for Admission is an event and not a permanent status. The *Ortiz-Bouchet* court’s reasoning did not turn on the procedural posture of adjustment of status but on the fact of entry. The phrase “post-entry” appears repeatedly in the opinion and is central to the court’s holding. *Id.* The court further held that the definition of “admission” in 8 U.S.C. § 1182(h) is unambiguous and “does not encompass a post-entry adjustment of status.” *Id.* (citing *Lanier v. U.S. Att’y Gen.*, 631 F.3d 1363, 1366 (11th Cir. 2011)).

**FIRST CAUSE OF ACTION  
VIOLATION OF DUE PROCESS OF THE FIFTH AMENDMENT**

62. The allegations in paragraphs 1-61 are realleged and incorporated herein.

63. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

64. Petitioners have a fundamental interest in liberty and being free from official restraint.

65. The government’s detention of Petitioners without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates their right to due process.

66. The petitioner's continued civil immigration detention, without an individualized determination by a neutral decisionmaker as to whether that detention should continue, has become prolonged in violation of constitutional due process.
67. Therefore, the petitioner is entitled to a writ of habeas corpus granting him a bond hearing conducted either by the Court, or by the Immigration Judge, with the burden of proof upon the government to demonstrate by clear and convincing evidence that the petitioner is a danger or a flight risk.

**SECOND CAUSE OF ACTION  
VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

68. The allegations in paragraphs 1-61 are realleged and incorporated herein.
69. The purpose of the Administrative Procedures Act ("APA") is to prevent abuse of discretion by federal agencies by granting federal judiciary authority to review the actions of such agencies.
70. The APA also empowers Federal Courts to review federal agencies to "compel agency action unlawfully withheld or *unreasonably* delayed". 5 U.S.C. § 706(1) (emphasis added).
71. The Court may also hold unlawful and set aside agency action that, inter alia, is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law". 5 U.S.C. § 706(2)(A); or "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or *failure to act*." 5 U.S.C. §551(13)(emphasis added).
72. The absolute about-face by the Board of Immigration Appeals, raises legal issues under the APA in the following way: respondents are required to provide a bond hearing to the petitioner as required by law.

73. The APA, therefore, grants this Court authority to review that agency action (i.e. arbitrary and capricious departure from agency norms) to determine whether such agency action constitutes an “abuse of discretion” in violation of the APA.

**THIRD COUNT  
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

74. The allegations in paragraphs 1-61 are realleged and incorporated herein.

75. 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 previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

76. The application of § 1225(b)(2) to the petitioner unlawfully mandates their continued detention and violates the INA.

**PRAYER FOR RELIEF**

The petitioner’s release would impose no meaningful burden on the Government and would not expose it to irreparable harm. He has a pending application for relief before DHS, and the proper forum for assessing any risk of flight or danger to the community is before an immigration judge—not continued civil detention without judicial oversight. By contrast, denying relief here would signal to the respondents that they may disregard their own regulations and long-standing statutory mandates with impunity. Such a result would not only perpetuate the unlawful detention of the petitioner but would also undermine the rule of law and the integrity of the immigration system itself.

**WHEREFORE**, and in light of the foregoing, Petitioner prays that the Court:

a) Assume jurisdiction over this matter;

- b) Set this matter for expedite consideration pursuant to 28 U.S.C. §1657;
- c) Enter an Order to Show Cause against Respondents;
- d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;
- e) Issue a writ of habeas corpus ordering Petitioner's immediate release from immigration custody;
- f) Alternatively, order that Petitioner be brought before an immigration judge for a constitutionally adequate bond hearing under 8 U.S.C. § 1226, within 7 days.
- g) Declare that Respondents' detention of the Petitioner while failing to serve a non-altered Notice to Appear (NTA) to initiate removal proceedings exceeds their statutory authority under the Immigration and Nationality Act;
- h) Declare that Respondents' conduct constitutes arbitrary and capricious agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A);
- i) Award Plaintiff attorneys' fees and costs pursuant to the Equal Access to Justice Act as amended, 28 U.S.C. § 2412, and any other basis justified under any other applicable statutory, common law, or Constitutional provision; and
- j) Grant Petitioner any other relief that this Court deems just and proper at law and in equity.

Respectfully submitted,

Dated: November 24, 2025

s/ Regilucia Smith  
Regilucia "Reggie" Smith  
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*Counsel for Petitioner*

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

I, Regilucia Smith, Esq., am submitting this verification on behalf of the petitioner because along with attorney Bonnie Smerdon, we are the petitioner's attorney. I am acting on behalf of the petitioner, Victor Rubio-Ortega, based on discussions with him and the handling of his administrative case. On the basis of these discussions and the handling of his case, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 24, 2025

s/ Regilucia Smith  
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