

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 after federal agents effectuated an unconstitutional stop unsupported by reasonable suspicion and further detained him despite being legally present in the United States.
4. This Petition seeks an immediate bond hearing or release from detention, as required by law.


### JURISDICTION AND VENUE

5. 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.
6. 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.

7. 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 proceedings, adjudicate cases, or execute removal orders. Petitioner challenges the constitutionality of his stop, arrest, and continued detention.
8. Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA because Petitioner is not asking for review of "any action taken or proceeding brought to remove an alien." 8 U.S.C. § 1252(b)(9). Petitioner challenges the constitutionality of his detention given his authorization to remain in the United States pending an application for asylum as authorized by Congress. *See* 8 U.S.C. § 1159.
9. 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

10. Petitioner, Elmer Ramiro Cartagena Bonilla, is a native and citizen of Guatemala, born on .
11. 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.

12. 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.
13. 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.
14. 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.
15. 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**

16. 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.<sup>1</sup> 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.<sup>2</sup> 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.

17. 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 any danger to the community, but rather, forming themselves as an essential part of communities around the country.<sup>3</sup> Most of these individuals are physically present in the United States because they are seeking what they cannot find in their countries:

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<sup>1</sup> U.S. Department of Homeland Security, “Worst of the Worst”, (last updated Nov. 13, 2025), <https://www.dhs.gov/keywords/worst-worst>.

<sup>2</sup> 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>.

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

safety and security, and an opportunity to earn a living with dignity and hard work.<sup>4</sup> 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<sup>5</sup>, an assertion that becomes increasingly difficult to reconcile with the lived reality of those affected.

18. 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 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,”<sup>6</sup> echoing the racist “replacement theory.” The “replacement

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<sup>4</sup> 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](https://www.pewresearch.org/politics/wp-content/uploads/sites/4/2024/02/PP_2024.2.15_US-Mexico-border_REPORT.pdf).

<sup>5</sup> 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>.

<sup>6</sup> 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/>.

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.<sup>7</sup>

- 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.”<sup>8</sup>
- c. “Invasion” is a “code word” often used to “express[] that Racial/Ethnic Minorities spread something harmful within communities, institutions, or other societal domains.”<sup>9</sup>
- d. Secretary Noem has repeatedly described non-white, non-European immigrants as “dirt bags.”<sup>10</sup>

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<sup>7</sup> See *The ‘Great Replacement’ Theory, Explained*, NATIONAL IMMIGRATION FORUM, <https://immigrationforum.org/wp-content/uploads/2021/12/Replacement-Theory-Explainer-1122.pdf>.

<sup>8</sup> 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/>.

<sup>9</sup> 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>.

<sup>10</sup> @Sec\_Noem, X (Jan. 28, 2025, 7:35 AM), available at [https://x.com/Sec\\_Noem/status/1884264039158800547](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.

- e. President Trump has repeatedly described immigrants in the United States as an “invasion,” repeatedly conflating migrants with “criminals, gang members and terrorist.”<sup>11</sup>
- f. President Trump, while campaigning in 2023, repeatedly accused non-white, non-European immigrants of “poisoning the blood of our country.”<sup>12</sup>
- 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 predominantly white crowd at a campaign rally, he told them that they have “good genes.”<sup>13</sup>

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<sup>11</sup> 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.”).

<sup>12</sup> *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>.

<sup>13</sup> 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>.

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.’”<sup>14</sup>

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.<sup>15</sup>

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.”<sup>16</sup>

19. “[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).

20. 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*

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<sup>14</sup> 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>.

<sup>15</sup> 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>.

<sup>16</sup> 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>.

*v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16-19 (1968). "[W]henver 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);

21. 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.

22. 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 where 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).

23. 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. Fourth Amendment Requirements for Searches and Seizures in the Immigration Context**

24. The Constitution of the United States enshrines liberty as a foundational principle, and any governmental deprivation of liberty must be justified by law and accompanied by procedural safeguards. This principle applies equally to noncitizens, regardless of how they entered the country or whether they have legal status. As the Supreme Court has long recognized, “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

25. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving “any person of life, liberty, or property without due process of law.” U.S. Const. Amend. V. That constitutional protection applies to all persons physically present within the United States, including noncitizens “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).
26. These due process protections are especially critical where the government seeks to detain individuals in civil immigration custody, often for prolonged periods and without the protections that would accompany criminal detention. The Supreme Court has consistently emphasized that civil detention constitutes a significant deprivation of liberty that triggers constitutional scrutiny. *See Addington v. Texas*, 441 U.S. 418, 425 (1979); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 356–57 (1997).
27. In the immigration context, the Supreme Court stated that, just as in the criminal context, an immigration officer “must have a reasonable suspicion” to justify briefly stopping individuals to question them “about their citizenship and immigration status . . . but any further detention . . . must be based on . . . probable cause.” *Brignoni-Ponce*, 422 U. S. at 881-82; *see, e.g., United States v. Place*, 462 U.S. 696, 709 (1983) (emphasizing that the Supreme Court had “never approved a seizure of the person for the prolonged 90-minute period involved here” based solely on reasonable suspicion, and “cannot

do so on the facts presented by this case"); *Manzanares v. Higdon*, 575 F.3d 1135, 1148 (10th Cir. 2009) (explaining that it was unable to find any case in any circuit upholding a detention of longer than 90 minutes based on reasonable suspicion); *see also Au Yi Lau v. Immigration & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971) (whether an immigration stop of "several minutes" could be justified based solely on reasonable suspicion was a "difficult[]" question, but upholding the stop as it was "minutes rather than hours").

28. Without a warrant, immigration officers are authorized to arrest an alien only if they have "reason to believe that the alien so arrested is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

29. Courts have consistently held that the "reason to believe" phrase in § 1357 "must be read in light of constitutional standards, so that reason to believe must be considered the equivalent of probable cause." *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015).

### **C. Authorization to Remain in the United States Pending an Asylum Application Determination**

30. 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.


31. 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. *See* 8 C.F.R. § 208.2(a)-(b) (delineating exclusive USCIS jurisdiction unless and until an asylum officer refers the case to EOIR, which did not occur here).
32. 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.
33. 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).

34. 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.


35. Therefore, an individual who is an affirmative applicant for asylum, like the Petitioner, cannot be considered to not be present in the United States without authorization.

#### FACTUAL ALLEGATIONS

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



37. 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.

38. 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.

39. Petitioner's mother,  (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 Asylum Application remains pending as he is protected by the Child Status Protection Act (CSPA) as codified in the INA.<sup>17</sup>

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

41. Mr. Diaz filed a Form I-130, Petition for Alien Relative naming Petitioner as the beneficiary. *See* Exhibit D. 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).

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

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<sup>17</sup> "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).

43. 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.
44. On that day, at around 1:30 p.m., Petitioner on 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.
45. 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 E.*
46. 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.
47. The federal agents blatantly ignored Petitioner's valid EAD issued by DHS as evidence of his pending asylum application with USCIS.

48. 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.
49. 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.
50. On October 10, 2025, Petitioner was served with a Notice to Appear by DHS, placing him in 8 U.S.C. § 1229a removal proceedings.
51. On October 29, 2025, Petitioner attended his initial Master Hearing with EOIR Judge Stuart A. Siegel.
52. 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. *See* Exhibit F.
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.

**CAUSES OF ACTION**

COUNT I

**Violation of the Fourth Amendment  
(Unlawful Stop Based on Racial Profiling)**

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 to the United States Constitution guarantees the right of the people to be secure in their persons against unreasonable searches and seizures. This protection applies to all individuals in the United States, regardless of citizenship or immigration status. *See I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1041 (1984); *Terry v. Ohio*, 392 U.S. 1, 8 (1968).
56. An immigration officer may not stop or detain a person absent reasonable suspicion, based on specific, articulable facts, that the individual is unlawfully present in the United States. *See Brignoni-Ponce*, 422 U.S. at 881-82; *United States v. Cortez*, 449 U.S. 411, 417-18 (1981). The mere appearance of race, ethnicity, language ability, or accent is not a sufficient basis for a stop. *Brignoni-Ponce*, 422 U.S. at 886-87.
57. In this case, the stop of Petitioner was not based on any articulable suspicion of unlawful conduct, but rather on impermissible factors: his perceived race, Latino ethnicity, and apparent national origin, coupled with generalized assumptions made by DHS agents about individuals of Central American descent.
58. On September 15, 2025, Petitioner was followed by a black unmarked vehicle as he drove from his residence in Marathon, Florida, to a local grocery store. Upon

returning to his apartment complex, the same vehicle activated police lights and initiated a stop in the parking lot. Agents exited the vehicle, approached him without a warrant or lawful cause, and immediately questioned his identity and immigration status.

59. At no point did the agents articulate any traffic violation, suspicion of criminal activity, or observed behavior warranting investigatory detention. Their actions clearly violated DHS's own regulations, which prohibit field officers from detaining individuals based solely on race or ethnicity and require reasonable suspicion grounded in articulable facts. *See* 8 C.F.R. § 287.8(b)(2).

60. Instead, Petitioner was targeted as part of an immigration enforcement operation shaped by racially discriminatory intent and xenophobic rhetoric emanating from DHS leadership and high-ranking federal officials. These policies and statements, such as labeling immigrants as "invaders" and promoting the so-called "replacement theory," reflect a pattern of animus and institutional encouragement of race-based enforcement.

61. The Supreme Court has made clear that policies or actions motivated by racial discrimination, even when facially neutral, are unconstitutional. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); *Batson v. Kentucky*, 476 U.S. 79, 85-86 (1986). In the immigration context, racial profiling during stops and detentions is flatly barred under the Fourth Amendment. *Brignoni-Ponce*, 422 U.S. at 886-87.

62. The stop of Petitioner, carried out without any factual basis, and solely on the basis of his perceived ethnicity, was unlawful from its inception. As such, any evidence or detention arising from the stop, including Petitioner's identification and his physical presence in custody, must be considered the fruit of an unconstitutional seizure. See *Wong Sun v. United States*, 371 U.S. 471, 485-86 (1963); *Elkins v. United States*, 364 U.S. 206, 217 (1960).
63. Moreover, this unconstitutional stop was not an isolated error but was carried out in a systemic enforcement regime that implicitly and explicitly encouraged immigration officers to stop individuals based on their racial or ethnic appearance, particularly in areas like Florida with heightened DHS enforcement activity under § 287(g) agreements.
64. Because Petitioner's seizure arose directly from a racially motivated and unsupported investigatory stop in violation of the Fourth Amendment, and because he remains in DHS custody solely as a result of that seizure, he is entitled to relief under 28 U.S.C. § 2241.
65. Petitioner respectfully requests that this Court (a) declare the stop unconstitutional under the Fourth Amendment; (b) find that the Government lacks lawful custody of Petitioner where the initial seizure was invalid; And grant appropriate relief, including immediate release or suppression of all evidence obtained as a result of the unlawful stop.

COUNT II

**Violation of the Fourth Amendment**

**(Unlawful Seizure and Arrest Without Probable Cause)**

66. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through fifty-three (53) as though fully set forth herein.
67. The Fourth Amendment to the United States Constitution protects all persons within the United States from unreasonable seizures. A “seizure” occurs when an officer, by means of physical force or a show of authority, restrains the liberty of a person. *See Terry v. Ohio*, 392 U.S. 1, 16 (1968); *California v. Hodari D.*, 499 U.S. 621, 626 (1991).
68. An arrest, or any equivalent seizure of the person, must be supported by probable cause, and in the immigration context, even brief detentions require reasonable suspicion based on specific and articulable facts that a person is unlawfully present. *See Brignoni-Ponce*, 422 U.S. at 884–85 (1975); *Dunaway v. New York*, 442 U.S. 200, 213 (1979).
69. In this case, Petitioner was not merely stopped: he was seized, removed from the scene, and taken into immigration custody without a warrant, without probable cause, and in violation of his clearly established Fourth Amendment rights.
70. Petitioner was not engaged in any criminal conduct at the time of the stop. He was driving legally in his own community, carrying a valid Florida Driver’s License and a federally issued Employment Authorization Document (EAD) under category (c)(08), confirming his derivative asylum status and lawful presence for work and residence in the United States.

71. Despite the presentation of these valid documents, DHS agents informed Petitioner that he was being detained for not having valid identification and status in this country, a statement factually and legally incorrect under immigration law, and evidencing the lack of any legitimate basis for the seizure.
72. The officers made no effort to verify the validity of his EAD or pending immigration status, nor did they articulate any suspicion of fraud or removal order. Petitioner had no criminal record, no history of prior immigration violations, and no prior enforcement contact.
73. In the absence of a prior removal order, a warrant, or any reasonable suspicion of unlawful presence or criminal activity, the agents lacked any basis whatsoever to effectuate a seizure or arrest.
74. As described in Count I, the agents' actions occurred in a policy environment infected by racial and ethnic bias, including publicly documented directives and statements by DHS leadership and federal officials that encouraged agents to target "illegal aliens" based on their race, perceived national origin, or appearance. These policies encouraged officers to "just go out there and arrest illegal aliens" and to operate in locations like "Home Depot" or "7-Eleven" where Latinx and immigrant communities gather.
75. The Supreme Court has long held that seizures based on race or ethnicity, even when conducted under immigration authority, violate the Fourth Amendment. *Brignoni-Ponce*, 422 U.S. at 886-87 ("Mexican appearance" alone cannot establish reasonable

suspicion); *Whren v. United States*, 517 U.S. 806, 813 (1996) (“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.”).

76. Here, Petitioner was seized by officers who had followed him solely because he "looked like" a noncitizen. No other factors were presented to justify the seizure.

77. Petitioner is currently in civil immigration detention at the Broward Transitional Center solely because of the seizure that occurred on September 15, 2025. His identity, immigration documents, and subsequent placement into custody were all obtained as a direct and immediate result of the unlawful arrest.

78. Where an initial seizure is unconstitutional, all evidence and consequences flowing from it are tainted under the “fruit of the poisonous tree” doctrine. *Wong Sun*, 371 U.S. at 488.

79. The Government of the United States bears an obligation to obey the Constitution, that obligation is not lifted simply because the law enforcement officers were agents of DHS, nor because the evidence obtained by those officers was to be used in civil deportation proceedings. *Lopez-Mendoza*, 468 U.S. at 1052 (Brennan, J., dissenting).

80. The seizure in this case was not an isolated instance of unlawful conduct; it was the gateway to continued constitutional injury. Petitioner has been held ever since, denied access to a bond hearing, and treated as a mandatory detainee under a misapplied statutory framework, all flowing directly from an arrest that was invalid *ab initio*.

81. Because the initial seizure of Petitioner violated the Fourth Amendment and directly led to his continued detention, this Court has jurisdiction under 28 U.S.C. § 2241 to

remedy that unlawful seizure by ordering release or such relief as may be just and proper.

82. Petitioner respectfully requests that this Court (a) declare the seizure and arrest unlawful under the Fourth Amendment; (b) find that Petitioner's detention is constitutionally tainted by the unlawful seizure; (c) find that Petitioner's arrest and continued detention is unsupported by any probable cause that he is present in the United States without authorization; and (d) issue relief, including habeas corpus, to remedy the ongoing constitutional violation.

### COUNT III

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

##### **(Deprivation of Liberty Without Due Process)**

83. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through eighty-one (81) as though fully set forth herein.

84. The Fifth Amendment to the United States Constitution guarantees that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

85. It is well established that civil immigration detention constitutes a significant deprivation of liberty and therefore triggers constitutional due process protections, particularly when that detention is prolonged and occurs within the interior of the United States. *See Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80; *Addington*, 441 U.S. at 425.

86. Petitioner is lawfully present in the United States as an individual pending an affirmative asylum application with USCIS.

87. At the time of the arrest, Petitioner presented evidence of his lawful authorization to remain in the United States in the form of an Employment Authorization Document (EAD) issued by the DHS.

88. Federal agents blatantly ignored Petitioner's authorization to remain in the United States pending his asylum application and arrested the Petitioner.

89. Despite being authorized by Respondents themselves to remain in the United States, Respondents continued detaining Petitioner, who remains under their custody until the time of this Petition.

90. Respondents' decision to arrest and detain Petitioner despite his demonstrated lawful authorization to remain in the United States constitutes an arbitrary and unwarranted deprivation of liberty proscribed by the Due Process Clause of the Fifth Amendment.

91. Petitioner's continued confinement—despite possessing valid authorization to remain in the United States, pending adjudication of his asylum application, is not supported by any legitimate or non-arbitrary governmental interest and therefore violates substantive due process.

92. Because Respondents lack any lawful basis to continue detaining Petitioner, his ongoing custody is constitutionally impermissible and exceeds Respondents' statutory and constitutional authority.

93. The deprivation of Petitioner's liberty is ongoing, and no adequate remedy exists other than immediate judicial intervention through the writ of habeas corpus. Petitioner therefore seeks an order from this Court declaring his continued detention unconstitutional and directing Respondents to immediately release him from custody under appropriate conditions.

**PRAYER FOR RELIEF**

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

94. 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);
95. 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.
96. Order that Petitioner shall not be transferred outside the Southern District of Florida.
97. Issue a writ of habeas corpus under 28 U.S.C. § 2241 directing Respondents to immediately release Petitioner from custody as his continued detention is unconstitutional;
98. In the alternative, order Respondents to provide Petitioner with a prompt and constitutionally adequate bond hearing before an impartial immigration judge, at which the Government must bear the burden of proving by clear and convincing evidence that continued detention is justified based on flight risk or danger to the community;

99. Declare that Petitioner's arrest, stop, and initial seizure violated the Fourth Amendment of the United States Constitution and that the Government may not continue to detain him based on the fruits of that unlawful seizure;
100. Declare that Petitioner's continued detention violates his substantive due process rights under the Fifth Amendment to the United States Constitution;
101. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/Eduardo R. Soto

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 08, 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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**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