

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No.:**

**LUIS ALFREDO MARTINEZ-CRUZ,**  
**(Luis Alfredo Martinez Guardado),**  
A# **Petitioner,**

**v.**

**PAM BONDI**, *in her official capacity as  
Attorney General of the United States,*  
**KRISTI NOEM**, *in her official capacity as  
Secretary of the U.S. Department of  
Homeland Security;*  
**KELEI WALKER**, *Acting Field Office Director,  
U.S. Immigration and Customs Enforcement and  
Removal Operations, Miami Field Office  
(custodian of detainees at the Krome North Service  
Processing Center;*  
**NELSON PEREZ**, *Office of the Principal Legal  
Advisor (Krome);*  
**DAVID L. NEAL**, *Director, Executive  
Office for Immigration Review (EOIR),  
Washington, D.C. ;*  
**TODD M. LYONS**, *in his official capacity  
as Acting Director, U.S. Immigration and  
Customs Enforcement;*  
**JASON REDING QUIÑONES**, *U.S. Attorney  
For the Southern District of Florida;*  
**And**  
**ELISA M. SUKKAR**, *Assistant Chief Immigration  
Judge.*  
**Respondents.**

---

**PETITION FOR WRIT OF HABEAS CORPUS  
(28 U.S.C. § 2241(c)(3))  
AND REQUEST FOR IMMEDIATE CUSTODY HEARING**

Petitioner, LUIS ALFREDO MARTINEZ-CRUZ<sup>1</sup>, by and through undersigned counsel, petitions this Honorable Court for issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2241(c)(3), and states as follows:

### I. INTRODUCTION AND PROCEDURAL HISTORY

Petitioner, Luis Alfredo Martinez-Cruz (“Petitioner” and/or “Mr. Martinez”), A# 097-318-064, is a native and citizen of Honduras who entered the United States by crossing the border at or near Brownsville, Texas, on September 23, 2003. A warrant was issued and Mr. Martinez was taken into custody pursuant to 8 U.S.C. § 1226 (INA § 236). *See Exh. A*, Warrant issued against Mr. Martinez. The Department of Homeland Security (“DHS”) issued a Notice to Appear, commencing removal proceedings against Mr. Martinez under 8 U.S.C. § 1229a (INA § 240) and classifying Mr. Martinez as an “alien present in the United States who has not been admitted or paroled.” He was charged as having been removable under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection. *See Exh. A*, Notice to Appear. On September 25, 2003, Mr. Martinez was issued a bond pursuant to 8 U.S.C. § 1226 (INA § 236) and after two months in detention, Mr. Martinez was able to post the bond and be released. *See Exh. A*, Notice of Custody Determination.

Despite having a scheduled court hearing for June 30, 2026, at the Miami Immigration Court, in front of Immigration Judge Scott Alexander, Mr. Martinez was unlawfully detained during his regularly scheduled reporting to Immigration and Customs Enforcement – Enforcement and Removal Operations (“ICE-ERO”) on November 18, 2025, and taken to Florida Soft Side South Detention Center.

---

<sup>1</sup> Petitioner’s legal name is Luis Alfredo Martinez Guardado. However, due to an inadvertent error by ICE, Petitioner’s name appears as Luis Alfredo Martinez Cruz. Petitioner attempted to correct this matter; however, his name appears in all immigration proceedings as Luis Martinez Cruz.

Despite DHS's initial determination that Petitioner posed no danger to the community or risk of flight, over twenty-two (22) years ago, on December 5, 2003, the Immigration Judge at Krome North Service Processing Center, denied bond solely on lack of jurisdiction. *See Exh. B, Bond Denial*. Because the Immigration Judge concluded he lacked jurisdiction, he did not consider DHS's earlier custody determination and Mr. Martinez' copious long-term factors, including his substantial ties to the United States: his U.S. citizen wife and parents, his eligibility for relief through an adjustment of status from his U.S. citizen wife and through Cancellation of Removal for Nonpermanent Residents under 8 U.S.C. § 1229b(b) (INA § 240A(b)), his lack of violent criminal history, his compliance with his regular reporting requirements, his long term employment, and his and his family's severe medical condition. Mr. Martinez remains in custody without any meaningful opportunity for review.

## II. JURISDICTION & VENUE

This action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

This Court has jurisdiction pursuant to:

- 28 U.S.C. § 2241(c)(3) (unlawful custody in violation of federal law)
- 28 U.S.C. § 1331 (federal question)
- 28 U.S.C. § 1651(a) (All Writs Act)
- 28 U.S.C. § 2201 (Declaratory Judgment Act)

Venue is proper under 28 U.S.C. §§ 1391(e) in the Southern District of Florida because a substantial portion of the events giving rise to this action occurred here and one or more of the Respondents reside in this District. Petitioner was originally detained at Florida Soft Side South Detention Center, where bond and custody proceedings occurred at the Krome Immigration Court

in Miami, Florida. It was Immigration Judge Rene Mateo at Krome Immigration Court that denied Mr. Martinez's bond request due to lack of jurisdiction, and it is where his unlawful detention commenced. Furthermore, prior to his unlawful detention, Mr. Martinez was already in removal proceedings in the non-detained docket in front of Immigration Judge Scott Alexander. *See Exh. C, EOIR Automated Case Information Printout.*

Moreover, multiple Respondents reside within the Southern District of Florida. Specifically, Immigration Judge Elisa M. Sukkar, who oversees all Immigration Judges at the Krome Immigration Court and the Miami Immigration Court, including Immigration Judge Rene Mateo and Scott Alexander, resides in Miami, Florida. Additionally, Kelei Walker, Nelson Perez, and Jason Reding Quiñones reside in Miami, Florida. Therefore, venue is proper in this District.

### **III. REQUIREMENT OF 28 U.S.C. § 2243**

Under 28 U.S.C. § 2243, the Court must "forthwith" grant the writ or issue an Order to Show Cause unless it appears that the Petitioner is not entitled to relief. If an Order to Show Cause is issued, the Court must require a response within three (3) days, unless good cause is shown for additional time not to exceed twenty (20) days. The habeas statute guarantees a swift remedy for unlawful detention, particularly where, as here, the Government asserts detention authority without a statutory basis.

### **IV. PARTIES**

- **Petitioner**, Luis Alfred Martinez-Cruz (A# XXXXXXXXXX), is a citizen of Honduras who was initially detained at Florida Soft Side South Detention Center and is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Adams County Correctional Center.

- **Respondent**, Pam Bondi, Attorney General of the United States, oversees the Executive Office for Immigration Review (EOIR), which administers Petitioner's ongoing removal proceedings.
- **Respondent**, Kristi Noem, Secretary of the U.S. Department of Homeland Security, oversees ICE and the detention authority asserted in this case.
- **Respondent**, Kelei Walker, Field Office Director of ICE in Miami, exercises custody and control over Petitioner's detention and has the legal authority to release him. *See Exh. D*, Printout of the Immigration Detainee Locator, confirming the Krome, Miami, FL Docket Control Office retains control over Petitioner's detention.
- **Respondent**, Nelson Perez, Chief Counsel for the Office of the Principal Legal Advisor (OPLA) at the Krome Service Processing Center, is responsible for prosecutorial functions in Petitioner's removal proceedings and exercises legal authority relevant to Petitioner's continued detention.
- **Respondent**, David L. Neal, Director of the Executive Office for Immigration Review (EOIR) in Washington, D.C., oversees the immigration court system, including adjudication delays and case management that directly affect Petitioner's removal proceedings and custody posture.
- **Respondent**, Todd M. Lyons (Acting Director), U.S. Immigration and Customs Enforcement, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement (ICE), is responsible for overseeing the agency's national detention and enforcement operations, including those carried out by the Miami Field Office.
- **Respondent**, Jason Reding Quiñones, U.S. Attorney for the Southern District of Florida, is responsible for representing the United States in federal civil actions arising in this

District, including habeas corpus matters, and is therefore a proper respondent in this proceeding.

- **Respondent**, Elisa M. Sukkar, Assistant Chief Immigration Judge (ACIJ) for the Krome Immigration Court, exercises administrative oversight over the Immigration Judges handling Petitioner's removal proceedings and detention-related matters, and therefore holds authority relevant to Petitioner's continued custody. Specifically, Elisa Sukkar oversees Immigration Judge Rene Mateo, who denied Petitioner's request for a custody redetermination hearing, and Immigration Judge Scott Alexander, who was randomly assigned and has presided over Mr. Martinez's removal proceedings for years, prior to his detention.

#### V. STATEMENT OF FACTS

1. Petitioner, Luis Alfredo Martinez-Cruz, A# , is a native and citizen of Honduras who entered the United States at or near Brownsville, Texas, on or about September 23, 2003. He has resided in the United States now for over twenty-two (22) years. Upon his entry, a warrant was issued and Mr. Martinez was taken into custody pursuant to 8 U.S.C. § 1226 (INA § 236). *See Exh. A*, Warrant issued against Mr. Martinez. DHS concurrently issued a Notice to Appear ("NTA"), commencing removal proceedings against Mr. Martinez under 8 U.S.C. § 1229a (INA § 240) and classifying Mr. Martinez as an "alien present in the United States who has not been admitted or paroled." Mr. Martinez was charged as removable under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection. *See Exh. A*, Notice to Appear.
2. On September 25, 2003, Mr. Martinez was issued a bond pursuant to 8 U.S.C. § 1226(a) and after two months in detention, Mr. Martinez was able to post the bond and be

released. *See Exh. A*, Notice of Custody Determination. Mr. Martinez was subsequently issued an in-absentia order of removal. However, Mr. Martinez's removal proceedings were reopened due to lack of notice and the defective NTA. *See Exh. C*, EOIR Automated Case Information Printout, indicating Mr. Martinez's removal proceedings remain pending before the Miami Immigration Court and Mr. Martinez is scheduled for a master hearing on June 30, 2026, and Order Reopening Proceedings. Notably, the Notice to Appear issued against Mr. Martinez failed to include a date and time for a hearing as required under 8 U.S.C. § 1229(a)(1)(G) (INA § 239(a)(1)(G)). *See generally Pereira v. Sessions*, 585 U.S. \_\_\_\_ (2018). *See Exh. A*, Notice to Appear.

3. On June 15, 2024, Mr. Martinez married the love of his life, U.S. citizen, Suzanne Adele Dibartolo ("Mrs. Dibartolo"). *See Exh. E*, Mr. Martinez and Mrs. Dibartolo's Marriage Certificate. On July 26, 2024, Mrs. Dibartolo filed Form I-130, *Petition for Alien Relative*, before U.S. Citizen and Immigration Services ("USCIS"). *See Exhibit F*, I-130 Receipt Notice. This petition remains pending; however, it is likely to be approved given the bona fide nature of Mrs. Dibartolo and Mr. Martinez's relationship. *See Exh. E*, evidence of Mr. Martinez and Mrs. Dibartolo's relationship. Upon its approval Mr. Martinez will be eligible to apply for Form I-601A, *Application for Provisional Unlawful Presence Waiver*, given the extreme hardship Mrs. Dibartolo will suffer if Mr. Martinez is removed.
4. Additionally, Mr. Martinez is eligible for and in fact applied for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents under 8 U.S.C. § 1229b(b) on February 8, 2019. *See Exh. G*, EOIR 42B Receipt Notice. This application remains pending before the Immigration Court.

5. Despite Mr. Martinez's clear eligibility for relief and his compliance with all requests by ICE, on November 18, 2025, Mr. Martinez was detained by ICE-ERO. Mr. Martinez was transferred to Florida Soft Side South Detention Center. On December 5, 2025, the Immigration Judge at Krome North Service Processing Center denied Mr. Martinez's request for bond solely on lack of jurisdiction. *See Exh. B*, Bond Denial. Petitioner remains in 8 U.S.C. § 1229a (INA § 240) removal proceedings, where detention is governed by 8 U.S.C. § 1226(a). He is not subject to expedited or administrative removal under 8 U.S.C. § 1225(b).
6. For over five years, Mr. Martinez has been battling a series of debilitating medical conditions. In 2020, Mr. Martinez had emergency open heart surgery and as a result has a pacemaker and defibrillator, which requires regular check-ups to prevent sudden death. He suffers from coronary artery disease, cardiomyopathy, stent surgery, metabolic syndrome, gout, kidney stones, and diabetes. As a result, Mr. Martinez requires regular medical visits and a series of medical prescriptions which must be taken at specific hours throughout the day. Given the conditions in the detention centers, Mr. Martinez is unable to take his medication as required, placing his life at significant risk. In Mr. Martinez's three (3) weeks in detention, he has had limited access to medical doctors and has already gotten sick, with his blood pressure and glucose levels consistently varying. *See Exh. H*, Mr. Martinez's Medical Records. In fact, throughout his detention, Mr. Martinez has already had to be taken to a hospital to receive treatment for his heart due to the inadequate care he is receiving and his severe medical conditions. Mr. Martinez is actively suffering from nose bleeds and debilitating knee pain.

7. Furthermore, Mrs. Dibartolo suffers from additional medical conditions which require Mr. Martinez's constant care and attention, including lack of hearing and facial numbness. Pursuant to Mrs. Dibartolo's most recent MRI scan, the veins are arteries in her brain are pressing on the left and right side of her brain on the trigeminal nerves which control hearing and facial sensation. As a result, Mrs. Dibartolo requires consultation with a neurosurgeon. Given her fleeing feeling in her body, Mrs. Dibartolo is dependent of Mr. Martinez's care and assistance. Additionally, Mrs. Dibartolo has had spinal fusion, failed right shoulder surgery, a total knee replacement, and shingles. *See Exh. I*, Mrs. Dibartolo's Medical Records.
8. Moreover, Mr. Martinez's U.S. citizen father and step-mother, Angel Martinez and Martha Martinez, are over eighty (80) years old and suffer from serious medical conditions for which they depend on Mr. Martinez's care and assistance, including, cardiomyopathy, senile degeneration of the brain, gastroesophageal reflux disease with esophagitis, depression, thrombocytopenia, prostatic hyperplasia, hypertension, and hypothyroidism. *See Exh. I*, Mr. Martinez's Parent's Medical Records.
9. Mr. Martinez has been in the United States now for over twenty-two (22) years. He is an exemplary member of his community and his heavily involved in his church. *See Exh. J*, Letters from Mr. Martinez's community and evidence of Mr. Martinez's Donations. Mr. Martinez is a hard-working handyman with a strong work ethic. He is kind, trustworthy, pleasant, honest, dependable, and a respectful individual. He is always willing to lend a helping hand to those in need, such as painting a friend's home, putting up and taking down shutters in storms, and doing yard work for those in need of assistance. Mr. Martinez's entire community is eager to see him return home so that

he can continue to provide for his wife and family and continue to receive the medical treatment he so desperately needs.

10. His unconstitutional detention is harming citizens of the United States and depriving him of availing himself of his due process right given by the Immigration and Naturalization Act found in Title 8 of the U.S. Code.

## **VI. LEGAL FRAMEWORK**

### **A. Petitioner's Detention is Governed by 8 U.S.C. § 1226(a) and Not § 1225(b)(2).**

For decades individuals, like Mr. Martinez, who entered the United States and were arrested within the United States and placed in removal proceedings pursuant to Title 8, specifically 8 U.S.C. § 1229a (INA § 240), have been subject to discretionary detention under 8 U.S.C. § 1226(a), as implemented by 8 C.F.R. §§ 236.1(a)–(d). These regulations authorize DHS to detain or release individuals pending proceedings and provide, at § 236.1(d)(1), a right to request individualized custody redetermination before an Immigration Judge. Petitioner's eligibility for a custody redetermination hearing has been established by statute and jurisprudence. Mr. Martinez had been living in Florida for over twenty-two (22) years prior to his detention on November 18, 2025. Thus, his detention clearly falls under 8 U.S.C. § 1226(a), and he is entitled to a bond hearing based on individualized findings relating to risk of flight and danger to the community. Moreover, Mr. Martinez was served with a warrant indicating his detention was pursuant to 8 U.S.C. § 1226(a); to determine otherwise now is erroneous.

Legislative history and statutory interpretation confirm Mr. Martinez is not considered an "arriving alien" or an alien "seeking admission" and is thus subject to §1226 and not §1225 of Title 8 of the U.S. code. Section 1225 governs arriving aliens who are in the process of entering

the United States at a port of entry, whereas section 1226 is a catchall provision that applies to all other individuals, who like Mr. Martinez, are already in the United States. *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at \*5 (E.D. Mich. Sept. 9, 2025) (finding that the purpose of including section 1226, following the very specific provisions of section 1225 is not a coincidence but rather a mechanism of capturing all noncitizens who are not included in section 1225, such as those who have already entered the United States).

DHS asserts, in a July 8, 2025 memorandum, that all individuals not formally admitted—even those who have been living in the United States for years—should be treated as “arriving aliens” and subjected to mandatory detention under 8 U.S.C. (b) (INA § 235(b)) and its implementing regulation, 8 C.F.R. § 235.3(b)(2)(iii), which governs applicants for admission encountered at or near the border. This is erroneous. Federal courts have rejected this interpretation as inconsistent with the text and structure of the INA and its implementing framework, which distinguishes between mandatory detention under 8 U.S.C. § 1225(b) for those seeking admission and discretionary detention under 8 U.S.C. § 1226(a) (INA § 236(a)) for individuals apprehended within the United States. The latter category, as set out in 8 C.F.R. § 236.1(a)–(d), expressly authorizes discretionary custody determinations and bond hearings before an Immigration Judge for noncitizens already present in the United States.

As the Southern District of Florida held: “Petitioner... apprehended while already within the United States... falls under § 1226(a), not § 1225(b)(2), and is therefore subject to discretionary bond determination.” *Aguilar-Merino v. Ripa*, No. 25-23845-CIV, at 7 (S.D. Fla. Oct. 15, 2025). *See also Trump v. Garcia*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at 4 (W.D. La. Aug. 27, 2025). Having lived in the United States since 2003, Mr. Martinez is evidently not an applicant

seeking admission, but rather an individual who has entered the United States without being admitted and inspected.

Moreover, 8 U.S.C. § 1226(a) clearly calls for the detention of noncitizens through the issuance of a warrant, while § 1225 requires no such procedure. Here, Mr. Martinez's detention has always been subject to a warrant and 8 U.S.C. § 1226. *See Exh. A*, expressly indicating Mr. Martinez's detention was pursuant to a warrant and 8 U.S.C. § 1226 (INA § 236). For Respondents to find otherwise now, despite the clear documentation is contradictory and a violation of Mr. Martinez's constitutional right to liberty and due process. *See Alvarez-Puga v. Acting Field Office Director*, No. 25-24535-CIV, at 8 (S.D. Fla. Oct. 15, 2025) ("Certainly, the circumstances surrounding Petitioner's arrest by warrant align with section 1226(a), not section 1225(b)(2)(A)").

Additionally, the recent amendment to 8 U.S.C. § 1226 through the publication of the Laken Riley Act, Pub. L. No. 119-1, section 2, 139 statute 3, 3 (2025) further emphasize that the detention of individuals who have been in the United States without having been admitted and inspected is governed by 8 U.S.C. § 1226 and not § 1225. In particular, the Laken Riley Act, through the amendment and addition of § 1226(c)(1)(E) to 8 U.S.C. § 1226, mandates detention for noncitizens who are inadmissible under 8 U.S.C. § 1182(a)(6)(A) for having entered without being admitted or paroled, if they have been arrested, charged with, or convicted of certain crimes. If 8 U.S.C. § 1225 were to apply to all individuals who have not been admitted and inspected, then the recent legislation and statutory amendment would be considered meaningless. This would be erroneous and contrary to congressional intent.

Furthermore, Congress has expressly distinguished between noncitizens already living in the United States and those who recently arrived at the border by recognizing the more substantial due process rights of individuals who have established ties in the U.S. *See* H.R. Rep. No. 104-

469, pt. 1, at 163–66 (1996) (“an alien present in the U.S. has a constitutional liberty interest to remain in the U.S.”), citing *Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

Given the decades of jurisprudence, legislative history, and principles of statutory interpretation, it is evident that the Immigration Judge’s reliance on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) and DHS’ proposition that Mr. Martinez, who has been in the United States now for over twenty-two (22) years and issued a warrant under 8 U.S.C. § 1226, is “seeking admission” or an “arriving alien” is erroneous and directly contravenes the Immigration and Nationality Act and decades of settled precedent. As addressed below, nearly all Federal courts across the nation that have been faced with this issue, have ruled in favor of Petitioner, recognizing that once a noncitizen residing in the United States is placed in 8 U.S.C. § 1229a (INA § 240), removal proceedings, detention must proceed under 8 U.S.C. § 1226(a), affording the individual the right to a custody redetermination hearing before an Immigration Judge.

**B. Federal Courts Have Ordered Bond Hearings for Similarly Situated Detainees.**

This District and federal courts across the nation have repeatedly held that detainees in 8 U.S.C. § 1229a (INA § 240) proceedings and individuals who entered the United States without being admitted and inspected, are entitled to a custody redetermination hearing under 8 U.S.C. § 1226(a), and have granted habeas relief where bond review is denied as in Petitioner’s case.<sup>1</sup> See *Alvarez-Puga v. AFOD*, No. 25-24535 (S.D. Fla. Oct. 15, 2025) (granting habeas and requiring bond hearing based on 8 U.S.C. § 1226(a) statutory protections, where the noncitizen was arrested, like Petitioner, pursuant to the issuance of a warrant under § 1226).

These decisions all confirm that the detention of individuals who have not been admitted and inspected and are apprehended within the United States is subject to a bond and custody redetermination hearing under 8 U.S.C. § 1226. In Mr. Martinez’s case, the Immigration Judge

erroneously ruled he had no jurisdiction to consider bond, leaving Petitioner without any administrative mechanism to obtain the individualized custody determination required by 8 U.S.C. § 1226(a). See **Exh. B**, Bond Denial pursuant to *Matter of Yajure Hurtado*.

However, *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) as discussed above is inapplicable, not binding on this Court, and in complete opposition to decades of settled jurisprudence and statutory interpretation. After having been detained and released pursuant to an arrest warrant issued under § 1226(a), Mr. Martinez was placed in proceedings under 8 U.S.C. § 1229a (INA § 240). For over twenty-two (22) years he has remained in the United States. It is clear, just as it was in 2003, that Mr. Martinez is subject to a bond and custody redetermination hearing under 8 U.S.C. § 1226(a) (INA § 236(a)) and not §1225. The Immigration Judge's reliance on *Matter of Yajure-Hurtado* was misplaced, as Petitioner's detention falls squarely under 8 U.S.C. § 1226(a) and its procedural safeguards.

**C. Due Process Requires a Meaningful Opportunity to Contest Detention.**

The Due Process Clause of the U.S. Constitution protects all persons in the United States, including noncitizens, from unlawful deprivation of liberty. *U.S. CONST.* amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts assess the adequacy of procedures by weighing:

1. the private interest at stake—here, Petitioner's physical liberty;
2. the risk of erroneous deprivation through existing procedures—which is extreme where no custody review exists; and
3. the Government's interest—which is fully satisfied when an Immigration Judge evaluates danger or flight risk under 8 U.S.C. § 1226(a).

Detention that continues without a mechanism for custody review fails to satisfy due process because it allows the most severe deprivation of liberty with no opportunity to challenge it. Federal courts in this District have recognized that once an individual is placed into 8 U.S.C. § 1229a (INA § 240), removal proceedings under 8 C.F.R. § 1240.1(a)(1), custody determinations must proceed under INA § 236(a)[8 U.S.C. § 1226] and its implementing regulation, 8 C.F.R. § 236.1(d)(1), which provides for individualized bond hearings before an Immigration Judge. The Petitioner's prolonged confinement without any finding of danger or flight risk, cannot be reconciled with these statutory and constitutional protections. Absent such a review, the Petitioner's detention becomes punitive rather than administrative, contravening the Fifth Amendment.

## **VII. CLAIMS FOR RELIEF**

### **COUNT I – Due Process Violation (Fifth Amendment)**

1. Petitioner realleges and incorporates the foregoing paragraphs as though fully stated herein.
2. The Due Process Clause of the Fifth Amendment protects all persons in the United States from unlawful deprivation of liberty. U.S. CONST. amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
3. Petitioner's continued civil detention constitutes a severe deprivation of physical liberty, triggering heightened procedural protections.
4. Because the Immigration Judge declined jurisdiction to conduct a custody hearing, Petitioner has been left with no mechanism to challenge whether he is a danger to the community or flight risk.
5. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), due process requires:
  - (a) protection of the Petitioner's significant liberty interest,

(b) mitigation of the extraordinarily high risk of erroneous detention created by no review, and

(c) minimal burden on the Government to provide an individualized custody redetermination under § 1226(a).

6. As the Southern District of Florida recently held:

“Detention without a mechanism for custody review fails to satisfy due process, because it permits the most severe deprivation of liberty without a process to challenge such deprivation.”

*Aguilar-Merino v. Ripa*, No. 25-23845-CIV, at 7–8 (S.D. Fla. Oct. 15, 2025).

7. Respondents’ refusal to provide Petitioner a custody hearing violates the Due Process Clause of the Fifth Amendment.

**COUNT II – Statutory Violation (8 U.S.C. § 1226(a))**

1. Petitioner realleges and incorporates the foregoing paragraphs as though fully stated herein.

2. Individuals detained under 8 U.S.C. § 1226(a) are entitled to a discretionary custody redetermination based on individualized findings of danger and flight risk.

3. Mr. Martinez has been placed in removal proceedings under 8 U.S.C. § 1229a (INA § 240) and his ongoing detention is governed by 8 U.S.C. § 1226(a) (INA § 236(a)). His continued detention without an individualized custody redetermination hearing violates 8 U.S.C. § 1226(a).

4. This District has granted habeas relief for similarly situated detainees:

- *Aguilar-Merino v. Ripa*, No. 25-23845-CIV (S.D. Fla. Oct. 15, 2025).
- *Alvarez-Puga v. Acting Field Office Director*, No. 25-24535-CIV (S.D. Fla. Oct. 15, 2025).

5. Respondents' misclassification of Petitioner as an "arriving alien" and an alien "seeking admission" under 8 U.S.C. § 1225(b) is unlawful and contrary to judicial precedent in this District.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause requiring Respondents to justify Petitioner's continued detention under 8 U.S.C. § 1226(a);
3. Declare that Petitioner is detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), and that detention without an individualized custody redetermination violates the Immigration and Nationality Act and the Fifth Amendment;
4. Issue a Writ of Habeas Corpus directing Respondents to:
  - a. Provide Petitioner an immediate custody redetermination hearing before a neutral adjudicator; or, in the alternative,
  - b. Release Petitioner forthwith under reasonable supervision and conditions set by this Court or ICE as previously done for twenty-two (22) years;
5. Award such further relief as this Court deems just and proper.

Respectfully submitted,

/s/Linda Osberg-Braun, Esq.  
Fla. Bar No. 827282  
OSBERG-BRAUN IMMIGRATION  
Tel: (305) 350-0707  
Email: [osberg@osberglaw.com](mailto:osberg@osberglaw.com)  
Address: 10800 Biscayne Blvd.  
Ste 925, Miami, FL 33161

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of December 2025, I served a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all supporting documents by electronic filing and by mail upon the following individuals:

**Pamela Bondi**

United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Kristi Noem**

Secretary  
United States Department of Homeland Security  
245 Murray Lane SW  
Washington, DC 20528

**Kelei Walker**

Acting Executive Associate Field Officer Director  
ICE Miami Office of Enforcement and Removal Operations  
865 SW 78th Avenue, Suite 101  
Plantation, FL 33144

**Nelson Perez**

Office of the Principal Legal Advisor (Krome)  
18201 SW 12th Street, Suite 300  
Miami, FL 33194

**David L. Neal**

Director, Executive Office for Immigration Review (EOIR)  
EOIR Headquarters  
5107 Leesburg Pike, Suite 2600  
Falls Church, VA 22041

**Todd Lyons**

Acting Director  
U.S. Immigration and Customs Enforcement  
500 12th Street SW  
Washington, DC 20536

**JASON REDING QUIÑONES**

U.S. Attorney - Southern District of Florida

99 N.E. 4<sup>th</sup> Street,  
Miami, FL 33132

**ELISA M. SUKKAR**

Assistant Chief Immigration Judge  
Executive Office for Immigration Review  
U.S. Department of Justice  
5107 Leesburg Pike, Falls Church, Virginia 22041

/s/ Linda Osberg-Braun

Fla. Bar No. 827282  
OSBERG-BRAUN IMMIGRATION  
Tel: (305) 350-0707  
Email: [osberg@osberglaw.com](mailto:osberg@osberglaw.com)  
Address: 10800 Biscayne Blvd. Ste 925  
Miami, FL 33161

**EXHIBITS**

<b>Exhibit</b>	<b>Title</b>
A	Warrant; Notice to Appear; and Notice of Custody Determination
B	Bond Denial
C	EOIR Automated Case Information Printout
D	Printout of the Immigration Detainee Locator
E	Mr. Martinez and Mrs. Dibartolo's Marriage Certificate and evidence of their relationship
F	I-130 Receipt Notice
G	EOIR 42B Receipt Notice
H	Mr. Martinez's Medical Records
I	Mrs. Dibartolo's Medical Records and Mr. Martinez's Parent's Medical Records
J	Letters from Mr. Martinez's community and evidence of Mr. Martinez's Donations

---

<sup>1</sup> Recently cited authority includes *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-cv-24292 (S.D. Fla. Oct. 10, 2025), *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at \*7 (E.D. Mich. Sep. 9, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at \*2 (M.D. Fla. Sep. 25, 2025); *Harsh Patel v. Crowley*, No. 25-11180, 2025 U.S. Dist. LEXIS 209958, at \*9-12 (N.D. Ill. Oct. 24, 2025); *Esquivel-Ipina v. Larose*, No. 25-cv-2672, 2025 U.S. Dist. LEXIS 210275, at \*9-12 (C.D. Cal. Oct. 24, 2025); *Carmona v. Noem*, No. 25-cv-1131, 2025 U.S. Dist. LEXIS 209629, at \*14-17 (W.D. Mich. Oct. 24, 2025); *Lopez v. Hyde*, 25-12680, 2025 U.S. Dist. LEXIS 209916, at \*4-5 (D. Mass. Oct. 24, 2025); *Guerra v. Joyce*, No. 25-cv00534, 2025 WL 2986316, at \*3 (D. Me. Oct. 23, 2025); *Lomeu v. Soto*, 25-cv-16589, 2025 WL 2981296, at \*7-8 (D.N.J. Oct. 23, 2025); *Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at \*4 (D.N.J. Oct. 23, 2025); *Aparicio v. Noem*, 2025 U.S. Dist. LEXIS 208898, at \*12-13 (D. Nev. Oct. 23, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120, 2025 WL 2977650, at \*5-6 (D. Colo. Oct. 22, 2025); *Soto v. Soto*, No. 25-cv-16200, 2025 U.S. Dist. LEXIS 207818, at \*16-19 (D.N.J. Oct. 22, 2025); *Garcia v. Noem*, 25-cv-02771, 2025 U.S. Dist. LEXIS 209286, at \*10-15 (C.D. Cal. Oct. 22, 2025); *Aguiar v. Moniz*, No. 25-

cv-12706, 2025 WL 2987656, at \*3 (D. Mass. Oct. 22, 2025); *Rivera v. Moniz*, 25-cv12833, 2025 WL 2977900, at \*1–2 (D. Mass. Oct. 22, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539, at \*5–7 (D. Minn. Oct. 21, 2025); *Contreras-Lomeli v. Raycraft*, No. 25-cv-12826, 2025 U.S. Dist. LEXIS 207162, at \*22 (E.D. Mich. Oct. 21, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042, at \*7 (D. Md. Oct. 21, 2025); *Casio-Mejia v. Raycraft*, No. 25-cv-13032, 2025 U.S. Dist. LEXIS 207165, at \*12, 16–17 (E.D. Mich. Oct. 21, 2025); *Miguel v. Noem*, 25-11137, 2025 WL 2976480, at \*6 (N.D. Ill. Oct. 21, 2025); *Pineda v. Simon*, No. 25-cv-01616, 2025 WL 2980729, at \*2 (E.D. Va. Oct. 21, 2025); *Matheus Araujo DA Silva v. Bondi*, No. 25-cv-12672, 2025 WL 2969163, at \*2 (D. Mass. Oct. 21, 2025); *Barahona v. Hyde*, No. 25-cv-12551, 2025 U.S. Dist. LEXIS 205964, at \*4–5 (D. Mass. Oct. 20, 2025); *H.G.V.U. v. Smith*, No. 25-cv10931, 2025 WL 2962610, at \*4–6 (N.D. Ill. Oct. 20, 2025); *Gonzalez v. Hyde*, No. 25- 8250, 2025 U.S. Dist. LEXIS 208578, at \*10–11 (S.D.N.Y. Oct. 19, 2025); *Polo v. Chestnut*, No. 25-cv-01342, 2025 WL 2959346, at \*11 (E.D. Cal. Oct. 17, 2025); *Gutierrez v. Juan Baltasar, Warden, Denver Cont. Det. Facility*, No. 25-cv-2720, 2025 U.S. Dist. LEXIS 208448, at \*12–27 (D. Colo. Oct. 17, 2025); *Alvarez v. Noem*, No. 25-cv-1090, 2025 WL 2942648, at \*4–6 (W.D. Mich. Oct. 17, 2025); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879, at \*1 (D. Mass. Oct. 17, 2025); *Pacheco Mayen v. Raycraft*, 25-cv-13056, 2025 WL 2978529, at \*6–9 (E.D. Mich. Oct. 17, 2025); *Diaz Sandoval v. Raycraft*, No. 25-cv-12987, 2025 WL 2977517, at \*6–9 (E.D. Mich. Oct. 17, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-cv-13073, 2025 WL 2952796, at \*6–8 (E.D. Mich. Oct. 17, 2025); *Ochoa v. Noem*, No. 25-10865, 2025 WL 2938779, at \*4–6 (N.D. Ill. Oct. 16, 2025); *Ramirez v. Crawford*, No. 25-cv-01565, 2025 WL 2940702, at \*2 (E.D. Va. Oct. 16, 2025); *Piña v. Stamper*, No. 25-cv-00509, 2025 WL 2939298, at \*3 (D. Me. Oct. 16, 2025); *Tut v. Noem*, No. 25-cv-02701, 2025 U.S. Dist. LEXIS 204616, at \*9 (C.D. Cal. Oct. 16, 2025); *Sequen v. Albarran*, No. 25-cv-06487, 2025 WL 2935630, at \*8 (N.D. Cal. Oct. 15, 2025); *Teyim v. Perry*, No. 25-cv-01615, 2025 WL 2950184, at \*2–3 (E.D. Va. Oct. 15, 2025); *Singh v. Lyons*, 25-cv-01606, 2025 WL 2932635, at \*2–3 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, 25-cv-02027, 2025 WL 2896348, at \*7–9 (S.D. Ind. Oct. 11, 2025); *Rico-Tapia v. Smith*, No. 25-00379, 2025 U.S. Dist. LEXIS 206547, at \*21 (D. Haw. Oct. 10, 2025); *Chavez v. Kaiser*, No. 25-cv-06984, 2025 WL 2909526, at \*5 (N.D. Cal. Oct. 9, 2025); *Donis v. Chestnut*, No. 25-01228, 2025 WL 287514, at \*11 (E.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729, at \*2–4 (D. Minn. Oct. 8, 2025); *Covarrubias v. Vergara*, No. 25-cv-112, 2025 WL 2950097, at \*3 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. 25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025); *S.D.B.B. v. Johnson*, No. 25-cv-882, 2025 WL 2845170, at \*5 (M.D.N.C. Oct. 7, 2025); *Gonzalez v. Bostock*, 25-cv-01404, 2025 WL 2841574, at \*3–4 (W.D. Wash. Oct. 7, 2025); *Hyppolite v. Noem*, No. 25-4304, 2025 WL 2829511, \*12 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-5208, 2025 WL 2829434, at \*7 (E.D.N.Y. Oct. 5, 2025); *Cordero Pelico v. Kaiser*, No. 25-cv-07826, 2025 WL 2822876, at \*15 (N.D. Cal. Oct. 3, 2025); *Orellana v. Moniz*, 25-cv-12664, 2025 WL 2809996, at \*5 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at \*3 (D. Mass. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at \*5–6 (D. Minn. Oct. 1, 2025); *Silva v. United States Immigr. & Customs Enf't*, No. 25-cv-284, 2025 U.S. Dist. LEXIS 191101, at \*6–7 (D.N.H. Sep. 29, 2025); *Barrios v. Shepley*, No. 25-cv-00406, 2025 WL 2772579, at \*10 (D. Me. Sep. 29, 2025); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910, at \*4 (E.D. Cal. Sep. 23, 2025); *Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565, at \*5 (W.D. Ky. Sep. 19, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at \*6–8 (N.D. Cal. Sep. 16, 2025); *Salcedo Aceros v. Kaiser*, No. 25-cv06924, 2025 WL 2637503, at \*8–12 (N.D. Cal. Sep. 12, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278, at \*3–5 (W.D. La. Sep. 11, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326, 2025 WL 2639390, at \*5–10 (D.N.H. Sep. 8, 2025); *Doe v. Moniz*, 25-cv-12094, 2025 WL 2576819, at \*5 (D. Mass. Sep. 5, 2025); *Garcia v. Noem*, No. 25- cv-01180, 2025 WL 2549431, at \*5–7 (S.D. Cal. Sep. 3, 2025); *Francisco v. Bondi*, No. 25-cv-03219, 2025 WL 2629839, at \*2–4 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, No. 25-cv-12486, 2025 WL 2496379, at \*5–8 (E.D. Mich. Aug. 29, 2025); *Diaz v. Mattivelo*, No. 25-cv-12226, 2025 WL 2457610, at \*3 (D. Mass. Aug. 27, 2025); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136, at \*2–3 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 25-cv-02190, 2025 U.S. Dist. LEXIS 171945, at \*8–12 (C.D. Cal. Aug. 25, 2025); *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at \*11–13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at \*11–12 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, 25-cv-12052, 2025 WL 2370988, at \*6–8 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at \*4–9 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-12157, 2025 WL 2337099, at \*6–11 (D. Ariz. Aug. 11, 2025); *Bautista v. Santacruz*, No. 25-cv-01873, 2025 U.S. Dist. LEXIS 171364, at \*13–16 (C.D. Cal. July 28, 2025); *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at \*5–9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at \*5–8 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–61 (W.D. Wash. 2025).