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Counsel for Petitioner

ON BEHALF OF:
Nildo De Almeida
Alien Reg. No. A: 205-051-213
Detained at the Broward Transitional Center
3900 N Powerline Rd, Pompano Beach, FL 33073

INTRODUCTION

- 1) The Petitioner, Nildo Carlos De Almeida, a Brazilian citizen who has been residing in the United States since 2002, is defending removal proceedings, which are currently pending before the Board of Immigration Appeals (BIA or Board). He is currently detained by the Respondents at the Broward Transitional Center in Pompano Beach, Florida.
- 2) On or about August 3, 2020, he was initially detained by the Department of Homeland Security (DHS) for removal proceedings, commenced under INA § 240 [8 USC § 1229a]. During proceedings before an Immigration Judge (IJ), he was released from detention by the DHS, and provided with a Form I-286 “Notice of Custody Determination,” dated December 10, 2020, which indicates that this action was “pursuant to section 236 [8 USC § 1226] of the Immigration and Nationality Act ... pending a final administrative determination in your case.”

- 3) The Petitioner's removal proceedings remain pending and are before the Board of Immigration Appeals (BIA). Proceedings at the BIA have been pending since February 10, 2021. Until the BIA renders its decision, there is no "final" administrative determination of the Petitioner's removal proceedings, and, as noted above, the BIA has not yet decided the Petitioner's appeal.
- 4) Notwithstanding the fact that the Petitioner's removal proceedings remain pending and are not final, the Respondents abruptly and arbitrarily re-detained the Petitioner on September 26, 2025 at his home, without any justification, given that there have been no intervening changed circumstances relative to the issues of flight risk or danger to the community, nor had the Petitioner committed any criminal acts whatsoever that brought him within the purview of the Respondents or local law enforcement.
- 5) The Respondent's actions are in contravention of the Petitioner's statutory and constitutional due process rights and are arbitrary and capricious under the Administrative Procedures Act (APA). Accordingly, the Petitioner beseeches this Honorable Court to grant this habeas corpus petition, and to issue a Temporary Restraining Order in the interim, mandating his immediate release, in furtherance of preserving the status quo pending a decision on the instant petition.

JURISDICTION

- 6) This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA) § 1101 et seq.
- 7) This Honorable Court has subject matter jurisdiction under 28 USC § 2241 (habeas corpus), 28 USC § 1331 (federal question), and Article 1 § 9, cl. 2 of the United States Constitution (Suspension Clause).
- 8) This Court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, 28 USC § 2201, et seq., and the All Writs Act, 28 USC § 1651.

VENUE

- 9) Venue is proper in this Southern District of Florida because the petitioner is detained at the Broward Transitional Center in Pompano Beach, Florida, which is located within this District.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

- 10) The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
- 11) Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been

referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

- 12) The Petitioner is “in custody” for the purpose of § 2241 because the Petitioner has been arbitrarily arrested and detained by the Respondents.

PARTIES

- 13) The Petitioner is a 54-year-old citizen of Brazil. The Petitioner is present within the state of Florida as of the time of the filing of this petition.
- 14) Respondent Garrett J. Ripa is the Field Office Director for the Miami Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). That Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. The Miami Office’s area of responsibility includes Pompano Beach, Florida, with supervisory authority over the Broward Transitional Center (Cynthia Lawson-Slain, Facility Administrator), the “immediate” legal custodian of Petitioner.
- 15) Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Garrett J. Ripa, and ICE in general. Respondent Lyons is a legal custodian of the Petitioner.

- 16) Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of the Petitioner and is charged with faithfully administering the immigration laws of the United States.
- 17) Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.
- 18) Respondent U.S. Immigration Customs Enforcement (ICE) is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.
- 19) Respondent U.S. Department of Homeland Security (DHS) is the federal agency that has authority over the actions of ICE and all other DHS Respondents.
- 20) This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

- 21) Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk

because they are unlikely to appear for immigration court, or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

- 22) Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).
- 23) The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).
- 24) Removal proceedings described in section 240 of the INA [8 USC § 1229a] are used to determine whether individuals, such as Petitioner, should be removed from the United States.
- 25) Custody determinations for individuals in § 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
- 26) Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

FACTUAL BACKGROUND

- 27) The Petitioner is a citizen and national of Brazil.
- 28) On or about August 3, 2020, the Respondents initiated removal proceedings against the Petitioner under 8 U.S.C. § 1229a.
- 29) The Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. § 1182(a)(6)(A)(i) [entry into the U.S. without admission or parole] and commanded that Petitioner appear for a hearing in the immigration court. As noted, Petitioner was detained from August 2020 until December 2020, pursuant to INA § 236 [8 USC § 1226], according to the documents provided by the DHS to the petitioner.
- 30) The Petitioner applied for cancellation of removal, under 8 USC 1229b(b) before the Immigration Court and attended all of his hearings, culminating in a final hearing on January 11, 2021. The Immigration Judge (IJ) denied this discretionary relief, so petitioner appealed the IJ's Order to the BIA, thus meaning that there is no final removal order. As a matter of law, the Petitioner is permitted to remain in the United States pending a decision by the BIA.
- 31) Notably, the Petitioner also has a pending I-130 Petition for Alien Relative (filed by his U.S. citizen spouse) as well as a pending I-918 Petition for U Non-Immigrant Status, both awaiting adjudication by U.S. Citizenship and Immigration Services (USCIS).

- 32) On information and belief, the Petitioner has no significant criminal history, such as to render him inadmissible or deportable under the INA. In his Immigration Court proceedings, he acknowledged that he has had vehicle-related infractions [e.g. driving without a valid license], as well as a single instance of failure to appear at a state court proceeding. There has been no claim that the petitioner is a flight risk or danger to the community.
- 33) Notwithstanding the fact that the Petitioner's removal proceedings remain pending and are not final, the Respondents abruptly and arbitrarily re-detained the Petitioner on September 26, 2025 at his home, without any justification, given that there have been no intervening changed circumstances relative to the issues of flight risk or danger to the community, nor had the Petitioner committed any criminal acts whatsoever that brought him within the purview of the Respondent or local law enforcement.

COUNT ONE

Violation of Fifth Amendment Rights to Substantive Due Process and Procedural Due Process

- 34) The Petitioner restates and re-alleges all paragraphs above, as if fully set forth here.
- 35) The Due Process Clause of the Fifth Amendment to the U.S. Constitution

prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including non-citizens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas, supra*, 533 U.S. at 693; accord *Flores, supra*, 507 U.S. at 306.

- 36) Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
- 37) While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not “unlimited” and must comport with constitutional due process. *See Zadvydas, supra*, 533 U.S. at 698.
- 38) Here, the Respondents have chosen to revoke the Petitioner’s release in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make the Petitioner a flight risk or a danger to the community, Respondents’ revocation of the Petitioner’s release violates his right to procedural due process.

39) In recent months, several District Courts have invalidated re-detentions of non-U.S. citizens in similar situations on Constitutional grounds, and have ordered immediate release and/or prohibited any further re-detention without a pre-deprivation hearing before a neutral decision maker. E.g. *Pinchi v. Noem*, 792 F.Supp.3d 1025 (ND Cal 7/24/25), in which Judge P. Casey Pitts declared: “Thus, even when ICE has the initial discretion to detain or release a non-citizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.” As of November 19, 2025, *Pinchi* is mentioned in 88 subsequent decisions, according to Westlaw’s Citing References.

40) In *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931 (SDNY 7/13/25), District Judge Analisa Torres ordered the immediate release of a young woman detained at the Immigration Court, notwithstanding DHS’s prior determination that it was appropriate to release her on her own recognizance. Judge Torres declared: “In light of the deprivation of [her] liberty formerly granted and approved by Respondents, the absence of any deliberative process prior to, or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only vehicle for relief, it is, in essence the most appropriate remedy,” quoting from *Lopez v. Sessions*, 2018 WL 2932726 (SDNY 6/12/18).

- 41) Numerous other federal District Courts in recent months have concluded that re-detention by ICE without valid justification and/or provision of fundamental procedural due process [including advance notice and opportunity to be heard before a neutral decision maker] mandates immediate release from detention. E.g. *Rodriguez Cabrera v. Mattos*, 2025 WL 3072687 (D Nev. 11/3/25), determining that the re-detention of the petitioner violated his substantive and procedural due process rights, regardless of which section of the INA governs his detention. District Judge Richard Boulware cited to *Pinchi v. Noem, supra*, and other decisions. See also: *Tumba Huamani v. Francis*, 2025 WL 3079014 (SDNY 11/4/25) (immediate release ordered on account of violation of the petitioner's procedural due process rights); *Mirzoev v. Olson*, 2025 WL 3101969 (ND Ill. 11/6/25); *Gomes Vilela v. Robbins*, 2025 WL 3101334 (ED Cal. 11/6/25); *Diaz Garcia v. Noem*, 2025 WL 3111223 (ED VA 11/6/25).
- 42) In a recent decision, ordering the petitioner's immediate release – *O.P.A.M. v. Wofford*, 2025 WL 3120552 (ED Cal. 11/7/25), the court emphasized that the prior release of the noncitizen petitioner “reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk, citing to *Saravia v. Sessions*, 280 F.Supp.3d 1168 (N.D. Cal. 2017), *aff'd sub nom Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

Thus, the court in *O.P.A.M.* considered that this prior release constituted an “implied promise that [the individual’s] liberty would not be revoked unless [the individual] failed to live up to the conditions of [the] release.” The petitioner in *O.P.A.M.* had spent two years out of custody, which the court considered only heightened her liberty interest in remaining of detention. See also: *Luna Sanchez v. Bondi*, 2025 WL 3191922 (ED VA 11/14/25), in which the court ordered immediate release, citing to *Seravia v. Sessions, supra*. Your petitioner, Nildo De Almeida, has been residing in the community for over 5 years since his release in 2020, thus enhancing his liberty interests.

- 43) In *Y.M.M. v. Wamsley*, 2025 WL 3101782 (W.D. Wash. 11/6/25), the court ordered the immediate release of a woman who was initially released on her own recognizance upon unlawfully crossing the border in 2023, but was re-detained by ICE in August 2025. The court credited the government respondents with acknowledging that “it has long been recognized by the BIA that the discretion to revoke release is limited to situations in which there has been a change of circumstances since the non-citizen was initially released, citing to *Matter of Sugay*, 17 I & N Dec. 637, 640 (BIA 1981), and that the relevant circumstances involve whether the noncitizen poses a danger to the community or an unreasonable risk of flight. In her “Conclusion,” Judge Tiffany Cartwright expressed her appreciation for the candor and

professionalism of the U.S. attorney's office in not making an argument in favor of Ms. Y.M.M.'s detention where none exists.

COUNT TWO

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority; Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

- 44) The Petitioner restates and re-alleges all paragraphs above, as if fully set forth here.
- 45) Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).
- 46) Dozens of District Court decisions have held that INA § 1226 [INA § 236], not 8 USC 1225 [INA § 235] governs detention for individuals similarly situated to petitioner De Almeida. These include recent decisions out of Florida and Georgia, within the Eleventh Circuit Court of Appeals: *Puga v. Assnt. Field Office Director, Krome*, 2025 WL 2938369 (SD FL. 10/15/25); *Aguilar-Merino v. Ripa*, 2025 WL 2941609 (SD FL 10/15/25) [Judge Jose Martinez cited to numerous decisions from federal Districts throughout the country]; *Hernandez Lopez v. Hardin*, 2025 WL 3022245 (MD FL 10/29/25);

Vasquez Carcamo v. Noem, 2025 WL 3119283 (MD FL 11/7/25); *J.A.M. v. Streeval*, 2025 WL 3050094 (MD Ga. 11/1/25). See also: *Tumba Huamani v. Francis*, *supra*; *Mirzoev v. Olson*, *supra*; *Diaz Garcia v. Noem*, *supra*.

- 47) Any request by the petitioner for a bond hearing before an IJ would be summarily denied, as IJ's are mandated to adhere to precedential decisions issued by the BIA, including *Yajure Hurtado*, *supra*.
- 48) As dozens of District Court decisions have uniformly held, exhaustion of administrative remedies in this context would be an entirely futile exercise. E.g. *Chipantiza-Sisalema v. Francis*, *supra*; *Puga v. Assnt Field Office Director*, *supra* [citing similar decisions from Massachusetts and Nevada]; *Tumba Huamani*, *supra* (IJ bond hearing could not cure the constitutional violations in regard to the petitioner's re-detention); *Mirzoev v. Olson*, *supra*; *Molina Ochoa v. Noem*, 2025 WL 3125846 (D. N.M. 11/7/25)
- 49) Accordingly, the Respondents' re-detention of the Petitioner is not in accordance with law and in excess of statutory authority, and entitles him to habeas relief.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner respectfully requests this Court to grant the following:

PETITION FOR WRIT OF HABEAS CORPUS, with the following relief as has been authorized by dozens of federal District Courts throughout the country in recent months:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering the Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that the Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Declare that the Petitioner's revocation of release from custody was made in violation of statute and regulation;
- (5) Declare that the Petitioner's detention is governed by 8 USC §1226(a);
- (6) Issue a Writ of Habeas Corpus ordering the Respondents to release the Petitioner from custody;
- (7) Issue an Order, enjoining the respondents from re-detaining the Petitioner without provision of a pre-deprivation hearing before a neutral decision maker in which the respondents must demonstrate, by clear and convincing evidence, that the Petitioner's detention is necessitated due to flight risk or danger to the community
- (8) Issue an Order prohibiting the Respondents from transferring the Petitioner from the district without the court's approval;

- (9) Award the Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (10) Grant any further relief this Court deems just and proper.

RESPECTFULLY SUBMITTED on December 9, 2025.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2025, I electronically filed the foregoing Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 with the Clerk of Court using the CM/ECF system (if applicable), and that a true and correct copy was served by U.S. Mail upon the following parties:

PAMELA BONDI
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

KRISTI NOEM
Secretary of the U.S. Department of Homeland Security
Nebraska Avenue Complex
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December 10, 2025

Civil Process Clerk
United States Attorney's Office
Southern District of Florida
299 East Broward Boulevard #108
Fort Lauderdale, FL 33301

Re: Service of Petition for Writ of Habeas Corpus

To Whom It May Concern,

Enclosed please find a copy of the Petition for Writ of Habeas Corpus filed on behalf of Mr. Nildo De Almeida, served upon you pursuant to Fed. R. Civ. P. 4(i)(1)(B).

Thank you for your attention in this matter.

Respectfully,

LAW OFFICE OF
ARTURO R. RIOS, P.A.

Arturo R. Rios, Esq.