IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

JUAN DAVID HERNANDEZ GIRON, 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); **DAREN K. MARGOLIN**, Acting Director, Executive Office For Immigration Review Respondents.	CASE NO.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner, Juan David Hernandez Giron, 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 Colombia 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 petition for a writ of habeas corpus brought by Juan David Hernandez Giron, a native and citizen of Colombia, who has been unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") in Florida since November 19, 2025, following an interior enforcement arrest in Miami by ICE and local law enforcement officers in Miami.

2. Mr. Hernandez Giron has resided continuously and peacefully in the United States since March 11, 2023. He has no criminal history and no prior immigration encounters.

3. Upon his apprehension on November 19, 2025, Petitioner was taken into Department of Homeland Security ("DHS") custody. DHS did not conduct a credible fear interview pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii) or 8 C.F.R. §§ 208.30 and 235.3(b)(4), nor did it issue a Form I-860 or any other expedited removal order.

4. DHS placed the petitioner into removal proceedings under 8 U.S.C. § 1229a by issuing a Notice to Appear charging him under INA § 212(a)(6)(A)(i). DHS subsequently moved to dismiss those proceedings pursuant to 8 C.F.R. § 1239.2(c), and the Immigration Judge granted the motion to dismiss without prejudice.

5. DHS affirmatively elected to proceed under 8 U.S.C. § 1229a, and because the petitioner was arrested more than 2 years and 8 months after his entry and well

within the interior of the United States, if DHS must process the Petitioner for removal it must continue to be under 8 U.S.C. § 1229a as he is not subject to expedited removal proceedings or mandatory detention under 8 U.S.C. § 1225. Any attempt to treat the petitioner as an expedited removal respondent is therefore contrary to statute and renders his continued ultra vires and void ab initio.

6. DHS is currently detaining the petitioner without statutory authority, in violation of the INA, the Administrative Procedure Act ("APA"), and the Due Process Clause of the Fifth Amendment. Any purported expedited removal order would be invalid due to DHS's failure to comply with mandatory procedural requirements.

7. Petitioner respectfully seeks relief because his liberty is at stake and DHS has flouted mandatory statutory and constitutional protections. Petitioner requests that this Court declare that he is not subject to expedited removal and order his immediate release from custody, as DHS lacks lawful authority to detain him.

JURISDICTION AND VENUE

8. 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.

9. 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.

10. Petitioner's claim is also not barred from review by 8 U.S.C. § 1252(g) as Petitioner does not challenge the Respondent's decision to commence removal proceedings against him, the decision to arrest and detain him, or the methods by which he is detained. Petitioner challenges the Attorney General's treatment of him as an "alien seeking admission," whose detention is governed by 8 U.S.C. § 1225(a)(2) rather than 8 U.S.C. § 1226(a). *Cf. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

11. Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA, *see* 8 U.S.C. § 1252(b)(9), because Petitioner is "not asking for review of an order of removal;" and he is "not even challenging any part of the process by which [his] removability will be determined." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *see also Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

12. To the extent applicable, this Court further has jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq., which authorizes judicial review of final agency actions where no adequate alternative remedy exists. *See* 5 U.S.C. §§ 702, 704, and 706(2)(A); *see also Califano v. Sanders*, 430 U.S. 99, 105–07 (1977).

13. This Court may issue declaratory relief under 28 U.S.C. § 2201 and may compel agency action unlawfully withheld or unreasonably delayed under 28 U.S.C. § 1361 where appropriate.

14. Venue is proper in the Middle 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

15. Petitioner, Juan David Hernandez Giron, is a native and citizen of Colombia, born on [redacted].

16. 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.

17. 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 the enforcement of immigration detention and removal. He is sued in his official capacity.

18. 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.

19. 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.

20. Defendant, Daren K. Margolin, 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.

LEGAL BACKGROUND

21. 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).

22. 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).

23. 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).

24. Congress has implemented these constitutional principles in the immigration system through a statutory framework that governs when and how noncitizens may be detained. This framework, established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), codifies three distinct statutory detention authorities depending on the context and stage of removal proceedings.

a. Expedited Removal

25. The expedited removal process is codified in INA ¬ß 235(b)(1), 8 U.S.C. ¬ß 1225(b)(1). This statute permits DHS to summarily remove aliens arriving at a designated U.S. port of entry (arriving aliens) "without further hearing or review" if they are inadmissible either because they (1) lack valid entry documents, or (2) tried

to procure their admission into the United States through fraud or misrepresentation. *See* 8 U.S.C. § 1225(b)(1).

26. Section 1225 generally governs individuals apprehended at or near the border or at a port of entry, and certain individuals placed into expedited removal. It also authorizes mandatory detention without a bond for noncitizens treated as applicants for admission under this provision.

27. Where a noncitizen is referred to the immigration courts, it must be through lawful means. If DHS attempts to short-circuit this process by invoking expedited removal in situations where it does not apply, it effectively strips the applicant of the rights Congress has conferred and places the agency's decision-making outside the bounds of its statutory authority.

28. The regulations implementing expedited removal confirm this distinction. They provide that individuals subject to expedited removal are afforded first a "credible fear" screening interview under 8 C.F.R. § 208.30; 8 U.S.C. § 1225(b)(1)(A)(ii). By contrast, those who are not subject to expedited removal retain the right to pursue asylum directly through USCIS under 8 C.F.R. § 208.2(a)(1)(i). The presence or absence of a credible fear interview, therefore, reflects whether DHS has lawfully invoked expedited removal authority.

29. Section 1225(b)(1) also authorize, but does not require, DHS to extend application of expedited removal to "certain other aliens" inadmissible on the same grounds if they (1) were not admitted or paroled into the United States by immigration authorities

and (2) cannot establish at least two years' continuous physical presence in the United States at the time of apprehension.

30. Section 1225 applies in two distinct scenarios:

    a. Subsection (b)(1) governs expedited removal for certain noncitizens who are inadmissible based on fraud, misrepresentation, or lack of valid entry documents and are apprehended soon after entering the country, typically within two years, under DHS's extended implementation of expedited removal authority.

    b. Subsection (b)(2) governs non-expedited removal for those who are seeking admission but are not clearly admissible and must be placed into formal removal proceedings under 8 U.S.C. ¬ß 1229a. However, the individuals detained at the border under this subsection are still classified as "applicants for admission" and subject to mandatory detention without bond while their case is pending, unless DHS grants parole under 8 U.S.C. ¬ß 1182(d)(5)(A).

31. The Supreme Court has confirmed that detention under § 1225 is tightly linked to border enforcement. In *Jennings*, the Court described § 1225 as applying to aliens who are stopped at the border seeking entry and emphasized that this provision was crafted to give the government discretion and authority over individuals who had not yet been admitted into the country. 583 U.S. at 287.

32. The statutory language in § 1225 reinforces that it governs only those who are applicants for admission. The term "applicant for admission" is defined to include any noncitizen "who seeks admission into the United States." 8 U.S.C. §

1101(a)(13)(A). This definition does not naturally encompass individuals who have already entered and resided in the United States for a prolonged period and are later apprehended in the interior.

33. Federal regulations and policy further clarify this limitation. Expedited removal under § 1225(b)(1) was initially applied only to noncitizens apprehended within 14 days and within 100 miles of the border. In 2019, DHS expanded this authority via policy memorandum to apply to those present in the U.S. for less than two years, but only where DHS establishes that they meet the criteria. *See Make the Road New York v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019), vacated as moot, 962 F.3d 612 (D.C. Cir. 2020). The implementing regulation, 8 C.F.R. ¬ß 235.3(b)(1)(ii), codifies these restrictions.

34. The statute, however, expressly limits who may be subjected to expedited removal. Section § 1225(b)(1) makes clear that expedited removal does not apply to individuals who can affirmatively demonstrate continuous physical presence in the United States for the two-year period immediately preceding the inadmissibility determination. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). This safeguard ensures that individuals with an established presence in the United States are not deprived of full removal proceedings and the opportunity to have their claims heard before an immigration judge.

b. Detention Within the United States

35. Mandatory detention under § 1225(b)(2)(A) applies to a noncitizen who meets three criteria: (1) one who is an "applicant for admission," as well as those already

"present in the United States who ha[ve] not been admitted," 8 U.S.C. § 1225(a)(1)); (2) who is actively "seeking admission" to the country, and (3) whom an examining immigration officer determines "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). If § 1225(b)(2)(A) were intended to apply to all applicants for admission, there would be no need to include the phrase "seeking admission" in the statute. That is, rather than stating that mandatory detention is required for any "applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," § 1225(b)(2)(A) (emphasis added), the statute would instead provide for mandatory detention for any "applicant for admission, if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." By reading a phrase out of the statute, DHS's interpretation would clearly "violate[] the rule against surplusage." *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

36. DHS's interpretation of section § 1225(b)(2) mandating detention would nullify the recent amendment to the immigration statutes through the Laken Riley Act. This amendment codified in 8 U.S.C. § 1226(c)(1)(E) the mandatory detention of noncitizens who meet certain criminal and inadmissibility criteria. But if, as DHS suggests, a noncitizen's inadmissibility was alone already sufficient to mandate detention under section 235, then the 2025 amendment would have no effect. *See*

Marx v. Gen. Revenue Corp., 568 U.S. 371, 386 (2013); *Gundy v. United States*, 588 U.S. 128, 141 (2019).

37. In contrast to § 1225, which governs individuals seeking admission at the border, 8 U.S.C. § 1226 applies to noncitizens who are arrested within the interior of the United States and placed into removal proceedings under § 1229a. Section § 1226 provides the framework for immigration detention during the pendency of those proceedings, and it includes explicit provisions for release on bond.

38. The statute provides, in relevant part, that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

39. Thus, individuals detained under § 1226(a) are generally eligible for release during the pendency of their removal proceedings unless they fall into a narrow category subject to mandatory detention under § 1226(c), namely, those with certain criminal convictions or terrorism-related charges.

40. Individuals detained under § 1226(a) must be provided with an individualized bond hearing to assess whether detention is justified based on flight risk or danger to the community. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); Doe v. Tompkins, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256–57 (1st Cir. 2021).

41. The longstanding interpretation of § 1226 has always included individuals who entered without inspection but were later apprehended in the interior, often years after arrival. As early as 1997, the Immigration and Naturalization Service (INS)

confirmed this understanding in its interim rule implementing IIRIRA. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

42. DHS followed this interpretation for nearly three decades, and courts consistently applied § 1226 for individuals apprehended within the United States and placed in removal proceedings under § 1229a.

43. These courts have emphasized that the place and timing of arrest, not merely the manner of entry, determine the applicable detention statute.

44. 8 U.S.C. § 1226 governs the detention of individuals arrested within the interior of the United States, including those who entered unlawfully but were not immediately apprehended.

45. These statutes are intended to be mutually exclusive, and the government's authority to detain a person must be grounded in the correct statute based on the individual's procedural posture and where and when they were apprehended.

46. In particular, individuals who entered the United States unlawfully but were not apprehended near the border and have lived in the country for an extended period are not subject to § 1225, even if they initially lacked lawful status.

c. New Policy in *Matter of Yajure Hurtado*

47. DHS announced a change to its policies in a memo to ICE employees dated July 8, 2025:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be

> released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings, absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.

ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA Doc. No. 25071607 (July 8, 2025) (emphasis in original); see also Merino v. Ripa, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025) (discussing the memo).

48. DHS's interpretation of section § 1225(b)(2) mandating detention would nullify the recent amendment to the immigration statutes through the Laken Riley Act. This amendment codified in 8 U.S.C. § 1226(c)(1)(E) the mandatory detention of noncitizens who meet certain criminal and inadmissibility criteria. But if, as DHS suggests, a noncitizen's inadmissibility were alone already sufficient to mandate detention under section 235, then the 2025 amendment would have no effect. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation," such as this one, "would render superfluous another part of the same statutory scheme."); *Gundy v. United States*, 588 U.S. 128, 141 (2019) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.")). Ample Supreme Court statutory construction canons would be blatantly ignored and misconstrued in reading sections 1225 and 12265 as not applying to different classes of noncitizens.

49. Following ICE's change in police, the Board of Immigration Appeals in *Matter of Yajure Hurtado* issued a precedential decision that broadly redefined the term "applicant for admission" to include noncitizens arrested anywhere in the country, regardless of how long they have resided in the United States or where they were apprehended, if they were never lawfully admitted. 29 I. & N. Dec. 216 (BIA 2025).

50. This new interpretation has been widely rejected as contrary to the law. Courts have found that it upends decades of settled practice and disregards statutory limitations placed on the use of expedited and border-related detention. *See, e.g. Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *7-8 (D. Mass. Aug. 19, 2025) (rejecting *Matter of Hurtado* and affirming § 1226 governs interior arrests); *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025) (granting habeas and ordering bond hearing); *Reyes v. Raycraft*, No. 25-cv-12546, 2025 LX 332553, at *19 (E.D. Mich. Sep. 9, 2025) ("BIA's decision is at odds with every district court that has been confronted with the same question").[1]

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[1] *See also Vincens-Marquez v. Soto*, No. 25-16906 (KSH), 2025 WL 3097496 (D. N.J. Nov. 6, 2025); *Beltran v. Noem*, No. 25-cv-2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025); *Flores v. Olson*, 25 C 12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *J.A.M. v. Streeval*, No. 4:25- cv-342 (CDL), 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Orellana v. Noem*, --- F.3d ---, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025); *Tomas Elias v. Hyde*, No. 25-cv-540-JJM-AEM,2025 WL 3004437 (D. R.I. Oct. 27, 2025); *Aguilar Guerra v. Joyce*, 2:25-cv-534-SDN, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-cv-13004, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem*, No. 5:25-cv-02771-ODW (PDx), 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650 (D.Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); N.A. v. Larose, No. 25-cv-2384-RSH-BLM, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser*, No.

FACTUAL ALLEGATIONS

51. Petitioner, Juan David Hernandez Giron, is a 34-year-old citizen and native of Colombia, born on [redacted], who entered the United States without inspection on or around March 11, 2023. He remained continuously present in the United States since that date, residing peacefully and without any interaction with immigration enforcement or the criminal justice system until his arrest on November 19, 2025. *See* Exhibit A.

52. Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal, which was accepted as pending by the Executive Office for Immigration Review. *See* Exhibit D.

53. On November 19, 2025, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE") officers in Miami, Florida, immediately after exiting the Miami Immigration Court. Petitioner had appeared that day for a scheduled Master Calendar Hearing related to his pending asylum application. *See* Exhibit C.

54. Petitioner's arrest occurred well within the interior of the United States, more than two years after his entry, and not at or near the border or port of entry.

25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. 25-CV-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. 25-CV-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

55. DHS did not initiate expedited removal proceedings against Petitioner. Instead, DHS placed Petitioner into removal proceedings under 8 U.S.C. 1229a, the standard removal process under the INA.

56. Additionally, DHS did not conduct a credible fear interview under 8 C.F.R. 208.30 at any point during Petitioner's entry or subsequent detention as noted on Form I-862, Notice to Appear issued by Defendants themselves. *See* Exhibit B.

57. Since his arrest on November 19, 2025, Petitioner has remained in ICE custody without being provided any custody redetermination or bond before an Immigration Judge.

58. Since his arrival, Petitioner has resided continuously in Miramar, Florida. He has worked, complied with all immigration requirements, and has had no contact with law enforcement or immigration authorities prior to his arrest.

59. On November 19, 2025, Petitioner appeared for his first Master Calendar Hearing at the Miami Immigration Court before Immigration Judge Thomas Ayse. At that hearing, DHS submitted a Motion to Dismiss removal proceedings, which the Immigration Judge granted without prejudice. *See* Exhibit C.

60. Immediately upon exiting the courthouse, Petitioner was taken into custody by ICE officers.

61. Petitioner is detained at the Glades County Detention Center in the Middle District of Florida, a civil immigration detention center. He has been detained since November 19, 2025, without any opportunity to seek release or appear before an immigration judge to challenge his detention.

CAUSES OF ACTION

COUNT I

Violation of 8 U.S.C. § 1225(b) and Associated Regulations

62. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through sixty-one (61) as though fully set forth herein.

63. In order to be subject to expedited removal proceedings, the noncitizen must have "has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

64. If the noncitizen subject to expedited removal "indicates either an intention to apply for asylum under section 1158. . . or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

65. "Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

66. Because Respondents did not conduct a credible fear interview at the time of apprehension of Petitioner, they did not serve the Petitioner with the Order of Expedited Removal, and they did not indicate in the Notice of Appear that proceedings under Section 1225 had been commenced and vacated, the order of expedited removal and any proceedings thereafter were defective, abandoned, and void *ab initio*.

COUNT II

Violation of 8 U.S.C. § 1226(a) and Associated Regulations

67. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through sixty-one (61) as though fully set forth herein.

68. Petitioner is a noncitizen who entered the United States without inspection on or about March 11, 2023, and who has resided continuously in the interior of the country, specifically in Miramar, Florida, for more than two years prior to his arrest on November 19, 2025.

69. Petitioner was arrested inside the United States and placed into § 1229a removal proceedings via service of a Notice to Appear (NTA). He was not apprehended near the border, not placed in expedited removal under § 1225(b)(1), and was not charged as an arriving alien.

70. Under these circumstances, federal law provides that the exclusive statutory authority governing his detention is 8 U.S.C. § 1226(a). That provision applies to all noncitizens who are present in the United States and who are detained pending a decision on their removal.

71. Accordingly, Mr. Hernandez Giron is not an "arriving alien" and is not eligible for expedited removal under § 1225(b). To the extent the government is treating him as if he were subject to § 1225(b)(2), such treatment lacks any statutory or regulatory basis and is contrary to the structure and requirements of the INA.

72. Section 1226(a) authorizes discretionary detention and permits the Attorney General (or DHS) to detain or release a noncitizen "on bond ... or conditional parole." *See also* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d), 1003.19(a) (governing procedures for bond redeterminations by Immigration Judges).

73. Petitioner is not subject to mandatory detention under § 1226(c), as he has no disqualifying criminal convictions, nor is he subject to final removal and post-order custody under § 1231.

74. Nonetheless, Respondents have not provided Petitioner with a bond hearing under § 1226(a), since Petitioner is not an arriving alien; he should be provided one under regular removal proceedings.

75. Petitioner is not eligible for expedited removal under 8 U.S.C. § 1225(b) because he is not an arriving alien and was not apprehended at the border. Individuals in his circumstances are properly detained under § 1226(a) and are entitled to bond hearings. See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (recognizing such individuals as "eligible for bond and bond redetermination.").

76. Petitioner's classification of being subject to expedited removal under INA § 235(b)(1) would be legally impermissible because expedited removal is statutorily limited to individuals encountered within two years of entry. See INA § 235(b)(1). As reflected in the record, Petitioner falls well outside that statutory two-year window.

77. Respondents' current interpretation, and their reliance on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to support § 1225(b) detention of interior arrestees, represents an unlawful reversal of prior agency practice and a violation of Petitioner's statutory rights.

78. Here, DHS itself confirmed that Petitioner was not placed in expedited removal. The Notice to Appear charges Petitioner solely under INA § 212(a)(6)(A)(i), does not check § 235(b)(1), does not reference 8 C.F.R. § 208.30 or § 235.3(b)(5)(iv), and classifies him as an "alien present in the United States who has not been admitted ot paroled." These unchecked boxes are dispositive.

79. Because Petitioner is lawfully detainable, if at all, only under § 1226(a), and because Respondents have failed to provide him with a bond hearing as required by statute and regulation, his continued detention is in violation of federal law.

80. Petitioner respectfully requests that this Court declare his detention under § 1225(b) unlawful, find that he is detainable only under § 1226(a), and order that he be provided with an individualized bond hearing before an Immigration Judge without delay.

COUNT II

Violation of Fifth Amendment Right to Due Process

(Failure to Provide Bond Hearing Under 8 U.S.C. § 1226(a))

81. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through sixty-one (61) as though fully set forth herein.

82. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

83. These due process protections extend to all persons within the United States, including noncitizens who entered the country without inspection and are subject to removal proceedings. *See Zadvydas*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

84. Petitioner has been detained since November 19, 2025, by U.S. Immigration and Customs Enforcement (ICE), following his arrest in Miami, Florida, an interior location far from any border or port of entry, and more than two years and eight months after his entry into the United States.

85. Following his arrest, Petitioner was placed in removal proceedings under 8 U.S.C. § 1229a but has not been afforded a bond hearing before an Immigration Judge. While his detention appears to be treated as if he were subject to mandatory detention under 8 U.S.C. § 1225(b)(1), all evidence indicates he is not an applicant for admission and is therefore entitled to bond under 8 U.S.C. § 1226(a).

86. To the extent ICE is treating him as if he were detained under § 1225(b) and therefore ineligible for a bond hearing, such treatment violates the governing

statute, controlling regulations, and the Due Process Clause of the Fifth Amendment.

87. Detention under § 1226(a) is discretionary, and due process requires that an individual detained under this provision be provided with an individualized bond hearing before an Immigration Judge, in which the government must demonstrate, at a minimum, that continued detention is necessary to prevent flight or danger to the community. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256–57 (1st Cir. 2021).

88. Prolonged civil detention without an individualized custody hearing constitutes a serious deprivation of liberty that must be accompanied by robust procedural protections under the Constitution. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979).

89. Petitioner has now been detained without any opportunity to contest his custody or present evidence of his community ties, lack of criminal history, and stable residence in the United States.

90. At such a bond hearing, Petitioner would be entitled to present evidence regarding his lack of criminal history, long-term residence in Miramar, Florida, compliance with all immigration requirements, and lack of flight risk or danger to the community, and the government would bear the burden of justifying Petitioner's continued detention.

91. The government's failure to provide Petitioner a bond hearing, despite the applicability of § 1226(a), violates his procedural and substantive due process rights under the Fifth Amendment.

92. Accordingly, Petitioner respectfully requests that this Court declare that Respondents' failure to provide a bond hearing violates the Due Process Clause of the Fifth Amendment, and order that Petitioner be immediately provided with an individualized bond hearing before an Immigration Judge with appropriate procedural protections.

COUNT III

Violation of Fifth Amendment Right to Due Process

(Substantive Due Process)

93. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through sixty-one (61) as though fully set forth herein.

94. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

95. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT IV

Violation of Administrative Procedure Act (5 U.S.C. § 706)

96. Plaintiff re-alleges and incorporates by reference preceding paragraphs one (1) through sixty-one (61) as though fully set forth herein.

97. The Administrative Procedure Act (APA) provides that a reviewing court shall "compel agency action unlawfully withheld or unreasonably delayed; and hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

98. DHS's issuance of a Form I-862 declaring that Petitioner was not subject to proceedings under Section 1225 and dismissal of Petitioner's immigration court case constitutes final agency action within the meaning of the APA. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (an action is final if it marks the consummation of the agency's decision-making process and determines rights or obligations). The dismissal was final in that it closed Petitioner's asylum case and deprived him of the statutory right to pursue protection.

99. DHS acted arbitrarily and capriciously by applying expedited removal to Petitioner despite his continuous presence in the United States for more than two years at the time of the inadmissibility determination. The INA limits expedited removal to individuals who cannot show two years of continuous presence. 8 U.S.C. § 1225(B)(1)(A)(iii). By ignoring this statutory limitation, DHS acted arbitrarily, capriciously, and not in accordance with law. *Motor Vehicle Manufacturers Association*

v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983) (holding that agency action is arbitrary and capricious where the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation that runs counter to the evidence before the agency).

100. DHS also failed to provide any reasoned explanation for its decision. The dismissal notice did not acknowledge Petitioner's established continuous residence, did not explain why expedited removal would apply despite that fact, and did not reference any legal authority that could support such a decision. The absence of a rational explanation further demonstrates arbitrariness. *See Judulang v. Holder*, 565 U.S. 42, 53 (2011) (agency action must be based on reasoned decision-making and cannot be arbitrary or capricious).

101. By applying expedited removal to Petitioner, who is statutorily excluded from that process, DHS's action was not merely a discretionary choice but an unlawful departure from Congress's clear command. Courts have repeatedly held that agencies may not ignore statutory boundaries when exercising delegated authority. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987) (agency must give effect to the unambiguously expressed intent of Congress).

102. Because DHS's dismissal of Petitioner's asylum application was arbitrary, capricious, and contrary to law, it must be vacated under the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Court will:

103. 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);

104. Order that Petitioner shall not be transferred outside the Middle District of Florida.

105. Declare that Petitioner is not subject to detention under 8 U.S.C. § 1225(b), and that he is lawfully detainable, if at all, only under 8 U.S.C. § 1226(a);

106. Declare that any order or proceedings under 8 U.S.C. § 1225(b)(1) were abandoned, defective, and void *ab initio*;

107. Declare that Petitioner's continued detention without an individualized bond hearing violates the INA and the Due Process Clause of the Fifth Amendment, and that Respondent's detention decisions violate the Administrative Procedure Act, 5 U.S.C. § 706;

108. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, order Respondents to provide Petitioner with an individualized bond hearing within seven (7) days of the court's order;

109. Enjoin Respondents from treating Petitioner as subject to expedited removal under 8 U.S.C. § 1225(b);

110. Award attorney's fees and costs as appropriate under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

111. Grant such other and further relief as the Court deems just and proper in the interest of justice and consistent with law.

Respectfully submitted,

s/Eduardo R. Soto
Eduardo R. Soto, Esq.
Florida Bar No. 0858609
Eduardo Soto & Associates, P.A.
999 Ponce de Leon Blvd., Suite 1040
Coral Gables, Florida 33134
Office: (305) 446-8686
Fax: (305) 529-0445

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 22, 2025, I electronically filed the foregoing 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
Eduardo R. Soto, Esq.

EXHIBIT LIST

Exhibit A	Copy of Petitioner's Passport.
Exhibit B	Copy of Petitioner's Notice to Appear.
Exhibit C	Copy of Petitioner's Order on Motion to Dismiss.
Exhibit D	Copy of Petitioner's I-589, Application for Asylum and for Withholding of Removal, Receipt.
Exhibit E	Copy of Petitioner's EOIR - Automated Case Information.