

lawful employment authorization, maintained steady employment, attended all immigration court hearings, and never incurred any criminal history or violations of supervision.

2. On November 21, 2025, without warning and without any intervening misconduct, ICE took Petitioner back into custody and has since detained him without bond. As of the filing of this Petition, Petitioner has been detained for 32 days, notwithstanding the fact that he has a pending asylum application, a pending I-130 petition filed by his lawful permanent resident spouse, and an individual merits hearing scheduled for November 3, 2028, nearly three years away. ICE has offered no individualized justification for Petitioner's detention, and Petitioner has been denied any meaningful opportunity to seek release.

3. Petitioner's continued detention is unlawful and unconstitutional. Although Petitioner is properly subject to discretionary detention under 8 U.S.C. § 1226(a) (INA § 236(a)), the government is unlawfully treating him as if he were subject to mandatory detention under 8 U.S.C. § 1225(b) based solely on his manner of entry, despite years of residence in the United States, ongoing removal proceedings, prior release on bond, and full compliance with all court and ICE requirements. This misclassification has resulted in Petitioner's indefinite detention without an individualized bond hearing, in direct violation of the statute, its implementing regulations, and the Fifth Amendment's Due Process Clause.

4. Petitioner sought a custody redetermination hearing before the Immigration Court, but on December 15, 2025, the Immigration Judge denied jurisdiction based on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that Petitioner was categorically ineligible for bond. As a result, Petitioner is trapped in detention without any administrative mechanism to challenge the legality of his confinement, rendering habeas corpus relief not only appropriate, but necessary to vindicate his statutory and constitutional rights.

5. Absent intervention by this Court, Petitioner will remain indefinitely detained without a bond hearing, despite presenting no danger to the community, no flight risk, and no threat to national security, and despite having substantial avenues of relief from removal. His detention serves no legitimate governmental purpose and instead reflects a wholesale deprivation of liberty based on an erroneous interpretation of the detention statutes.

6. Accordingly, Petitioner respectfully asks this Court to find that his detention is governed by 8 U.S.C. § 1226(a), that the government's continued detention of Petitioner without a bond hearing violates INA § 236(a), its implementing regulations, and the Fifth Amendment, and to order the government to provide Petitioner with a prompt, constitutionally adequate bond hearing before an Immigration Judge, or, in the alternative, to order his immediate release under appropriate conditions.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. The U.S. District Court for the Southern District of Florida is a proper venue for this action under 28 U.S.C. §1391(e) because Petitioner is detained at the Krome North Service Processing Center Detention Facility in Miami-Dade County, Florida, which is within the jurisdiction of this

District.

11. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

12. 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 order to show cause 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.* (emphasis added).

13. 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) (emphasis added).

PARTIES

14. Petitioner is a native and citizen of Cuba. Petitioner is currently detained at the Krome North Service Processing Center Detention Facility. He is in the custody of, and under the direct control of, Respondents and their agents.

15. Respondent Warden is the main custodian of the Krome North Service Processing Center Detention Facility, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens. Respondent Warden is a legal custodian of Petitioner.

16. Respondent Kelei Walker is sued in her official capacity as the Field Office Director of the Miami Field Office of U.S. Immigration and Customs Enforcement. Respondent Walker is a legal custodian of Petitioner and has authority to release him.

17. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

18. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

19. Petitioner Yansier Nodarse Pereira is a 43-year-old native and citizen of Cuba. He is married to a lawful permanent resident of the United States, is steadily employed, has strong community ties, has never been arrested in Cuba or in the United States, and has fully complied with all immigration and court requirements since his arrival. Petitioner also has a pending family-based immigrant visa petition (Form I-130) filed by his lawful permanent resident spouse. Exh. 1, Pending I-130 Receipt Notice & Marriage License.

20. Petitioner entered the United States without inspection on or about February 20, 2022. Exh. 2, Notice to Appear.

21. On or about February 24, 2022, the Department of Homeland Security (“DHS”) issued Petitioner a Notice to Appear (“NTA”), alleging that he is removable pursuant to INA § 212(a)(6)(A)(i) as a noncitizen present in the United States without having been admitted or paroled. *Id.*

22. In March 2022, DHS released Petitioner from custody on bond. Petitioner timely paid the bond and was released from ICE custody. Exh. 3, DHS ICE Bond.

23. Following his release, Petitioner complied with all conditions of release imposed by DHS and appeared for all required immigration proceedings.

24. Petitioner timely filed his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”) within one year of his entry into the United States.

25. Petitioner obtained lawful employment authorization and has remained steadily employed since that time. Exh. 4, Approval of Employment Authorization & Employment Letter.

26. Petitioner has no criminal history, has never been arrested or charged with any offense in the United States or in Cuba, and has never been accused of posing a danger to the community or a threat to national security.

27. Petitioner has been in non-detained removal proceedings before the Miami Immigration Court since 2022.

28. Petitioner appeared for his Master Calendar Hearing on November 5, 2025, represented by counsel.

29. At that hearing, the Immigration Court scheduled Petitioner’s individual merits hearing for November 3, 2028.

30. On November 21, 2025, ICE officers unexpectedly took Petitioner into custody.

31. At the time of his arrest, ICE officers informed Petitioner that he was being detained because his new hearing date did not appear in the system.

32. Petitioner had no prior failures to appear, had complied with all immigration court and ICE requirements, and had not violated any conditions of release.

33. From November 21, 2025, to December 15, 2025 (the date of his bond and custody redetermination hearing), Petitioner was detained at the ICE Florida Soft Side South Detention Facility in Ochopee, Florida.

34. Since December 15, 2025, Petitioner has been detained at the Krome North Service Processing Center Detention Facility in Miami-Dade County, Florida

35. As of the filing of this Petition, Petitioner has been detained for 32 days without bond.

36. Petitioner remains detained despite having a pending application for asylum, withholding of removal, and protection under CAT before the Miami Immigration Court.

37. Petitioner also remains detained despite having a pending Form I-130 immigrant visa petition filed by his lawful permanent resident spouse.

38. On December 15, 2025, Petitioner appeared for a bond and custody redetermination hearing before Immigration Judge Christina Martyak at the Miami Krome Immigration Court. Exh. 5, Custody Redetermination Order of the Immigration Judge.

39. At that hearing, the Immigration Judge denied Petitioner's request for a change in custody status, concluding that the court lacked jurisdiction to consider bond based on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *Id.*

40. The Immigration Judge further found that the district court's decision in *Lazaro Maldonado Bautista et al. v. Santacruz et al.*, 5:25-cv-01873 (C.D. Cal.), did not constitute a final judgment and therefore did not alter the Immigration Court's lack of jurisdiction. *Id.*

41. As a result of the Immigration Judge's decision, Petitioner has been denied any meaningful opportunity for an individualized bond hearing on the merits.

42. DHS has not provided Petitioner with any individualized determination that he poses a flight risk or danger to the community.

43. DHS has not alleged that Petitioner is subject to mandatory detention based on criminal activity or national security concerns.

44. Petitioner remains detained solely based on DHS's position that individuals who entered without inspection are categorically subject to mandatory detention and ineligible for bond.

45. Petitioner's continued detention has no definite end date, as his individual merits hearing is scheduled nearly three years in the future.

46. Petitioner continues to be detained without any meaningful opportunity to challenge the legality of his confinement through the administrative immigration court system.

LEGAL FRAMEWORK

47. The Immigration and Nationality Act ("INA") establishes different statutory schemes governing the detention of noncitizens depending on their procedural posture in removal proceedings.

48. Two provisions of the INA are relevant here: INA § 235(b) (8 U.S.C. § 1225(b)) which governs detention of certain applicants for admission at or near the time of entry, and INA § 236(a) (8 U.S.C. § 1226(a)) which governs detention of noncitizens who have been arrested and placed into removal proceedings under INA § 240.

49. Detention under INA § 235(b) applies to noncitizens who are "applicants for admission" and are seeking entry into the United States. Under 8 U.S.C. § 1225(b)(2)(A), certain applicants for admission may be subject to mandatory detention pending a determination of admissibility.

50. Individuals detained under § 1225(b) are generally not eligible for release on bond before an Immigration Judge, although the Department of Homeland Security (“DHS”) retains limited authority to grant humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A).

51. In contrast, INA § 236(a), 8 U.S.C. § 1226(a), governs the detention of noncitizens who have been arrested and placed in removal proceedings. Under § 1226(a), DHS has discretionary authority to detain or release such individuals on bond or conditional parole while removal proceedings are pending.

52. Noncitizens detained under § 1226(a) are entitled to an individualized custody determination, including the opportunity to request release on bond before an Immigration Judge pursuant to 8 C.F.R. § 1236.1(d).

53. For decades, noncitizens who entered the United States without inspection, were released from initial custody, and were placed into standard removal proceedings under INA § 240, have been treated as subject to discretionary detention under § 1226(a) and eligible for bond hearings.

54. In 2025, DHS adopted a new interpretation of the detention statutes, asserting that individuals who entered without inspection remain “applicants for admission” indefinitely and are therefore subject to mandatory detention under § 1225(b)(2)(A).

55. On September 5, 2025, the Board of Immigration Appeals issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that Immigration Judges lack jurisdiction to conduct bond hearings for individuals who entered without inspection because such individuals are allegedly subject to mandatory detention under § 1225(b).

56. As a result of this interpretation, many noncitizens in prolonged detention have been denied access to any bond hearing, regardless of their length of residence in the United States, compliance with prior release conditions, lack of criminal history, or the pendency of relief from removal.

57. Numerous federal courts have rejected the government's interpretation that § 1225(b) applies indefinitely to individuals who have entered without inspection and have instead held that such individuals are properly detained under INA § 236(a) and entitled to bond hearings.

58. In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court held that federal courts must independently interpret statutes using traditional tools of statutory construction and are not required to defer to agency interpretations of ambiguous statutory provisions.

59. Accordingly, federal habeas courts must independently determine whether DHS is lawfully detaining a noncitizen under § 1225(b) or § 1226(a), notwithstanding agency interpretations or administrative precedent.

60. Where DHS applies mandatory detention under § 1225(b) to individuals who are properly subject to discretionary detention under § 1226(a), continued detention without a bond hearing violates the INA and its implementing regulations.

61. The Fifth Amendment's Due Process Clause applies to all persons within the United States, including noncitizens, and protects against arbitrary deprivation of liberty.

62. Civil immigration detention must bear a reasonable relation to its purpose and must be accompanied by adequate procedural safeguards.

63. Prolonged detention without an individualized determination of necessity, and without any opportunity to seek release, raises serious due process concerns.

64. Courts have consistently recognized that detention under § 1226(a) must include a meaningful opportunity to seek release on bond and that detention without any bond hearing at all presents grave constitutional concerns.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

65. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

66. The Fifth Amendment's Due Process Clause protects all persons within the United States, including noncitizens, from arbitrary and unjustified deprivation of liberty.

67. Petitioner is currently subjected to civil immigration detention without any meaningful opportunity to seek release, despite having no criminal history, no history of flight or noncompliance, and multiple pending forms of relief from removal.

68. Petitioner has been detained without an individualized determination that his continued detention is necessary to serve a legitimate governmental purpose, such as preventing flight or protecting public safety.

69. The government has provided no meaningful and individualized bond hearing at all, and has instead adopted a categorical rule that the Immigration Court lacks jurisdiction and Petitioner is ineligible for bond based solely on his manner of entry, regardless of his individual circumstances.

70. Petitioner's detention has no definite end date, as his individual merits hearing is scheduled for November 3, 2028, nearly three years in the future.

71. Prolonged civil detention without any opportunity to seek release, and without individualized procedural safeguards, violates fundamental principles of due process.

72. The Immigration Judge's denial of jurisdiction to consider Petitioner's custody request has effectively foreclosed all administrative avenues for Petitioner to challenge the legality of his continued detention.

73. As applied to Petitioner, the government's interpretation and implementation of the immigration detention statutes results in indefinite detention without process, in violation of the Fifth Amendment.

74. Petitioner's continued detention is not reasonably related to the government's asserted purposes of ensuring appearance at future proceedings or protecting the community.

75. Petitioner's detention therefore constitutes an arbitrary deprivation of liberty that violates the Due Process Clause of the Fifth Amendment.

76. For these reasons, Petitioner's continued detention without an individualized bond hearing violates the Fifth Amendment to the United States Constitution.

COUNT TWO
Violation of 8 U.S.C. § 1226(a) and Implementing Regulations

77. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

78. Petitioner is properly subject to discretionary detention under 8 U.S.C. § 1226(a) because he was arrested and placed into removal proceedings under INA § 240 and is not subject to any statutory provision mandating detention.

79. Section 1226(a) authorizes the Department of Homeland Security ("DHS") to detain or release a noncitizen pending removal proceedings and guarantees an opportunity for an individualized custody determination, including the ability to seek release on bond or conditional parole.

80. The implementing regulations for § 1226(a), including 8 C.F.R. § 1236.1(d), expressly provide that a noncitizen detained under this provision may request a custody redetermination hearing before an Immigration Judge.

81. Notwithstanding the statute and its implementing regulations, DHS is detaining Petitioner without affording him an individualized bond hearing, based on the erroneous position that Petitioner is categorically subject to mandatory detention under 8 U.S.C. § 1225(b).

82. DHS's application of § 1225(b) to Petitioner is improper as a matter of law because Petitioner was released from initial custody, placed into standard removal proceedings, and has been residing in the United States for several years while fully complying with all immigration requirements.

83. By treating Petitioner as ineligible for bond and preventing any custody redetermination, DHS has effectively nullified the protections afforded by 8 U.S.C. § 1226(a).

84. The Immigration Judge's refusal to exercise custody jurisdiction pursuant to *Matter of Yajure Hurtado* does not alter the statutory requirements imposed by Congress in § 1226(a) or the regulations promulgated thereunder.

85. DHS's continued detention of Petitioner without an opportunity for a bond hearing therefore exceeds its statutory authority and contravenes 8 U.S.C. § 1226(a).

86. DHS's actions also violate the implementing regulations governing discretionary detention, including 8 C.F.R. § 1236.1(d), which guarantee access to an individualized custody determination before an Immigration Judge.

87. For these reasons, Petitioner's detention violates 8 U.S.C. § 1226(a) and 8 C.F.R. § 1236.1(d).

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;

- (2) Issue an Order to Show Cause ordering Respondents to show cause within three (3) days why the Petition should not be granted;
- (3) Declare that Petitioner's continued detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226(a), and 8 C.F.R. § 1236.1(d);
- (4) Issue a Writ of Habeas Corpus ordering Respondents to:
 - a. Promptly provide Petitioner with an individualized bond hearing before an Immigration Judge with jurisdiction under 8 U.S.C. § 1226(a) (INA § 236(a)); or, in the alternative,
 - b. Immediately release Petitioner from custody under appropriate conditions of supervision as this Court deems reasonable;
- (5) Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Dated: December 22, 2025

Respectfully submitted,

/s/Alessandro Diaz-Barandiaran
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Yansier Nodarse Pereira, and submit this verification on his behalf.

I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 22 day of December 2025.

/s/Alessandro Diaz-Barandiaran
Alessandro E. Diaz-Barandiaran, Esq.