UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FORT LAUDERDALE / BROWARD DIVISION

Case No.:

Aldo Rodriguez Lorente

Petitioner,

v.

Zoelle Rivera, in his official capacity as Supervisor over the Miramar Enforcement and Removal Office,

Todd Lyons, in his official capacity as Acting Director, Immigration and Customs Enforcement;

Kristi Noem, in her official capacity as U.S. Secretary of Homeland Security;

Keili Walker, in her official capacity as Field Office Director, Miami Field Office;

U.S. Immigration and Customs Enforcement;

Department of Homeland Security

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241
and APPLICATION FOR ORDER TO SHOW CAUSE

Petitioner, Aldo Rodriguez Lorente ([redacted]), petitions for a writ of habeas corpus under 28 U.S.C. § 2241. Officers of Enforcement and Removal Operations (ERO) Immigration and Customs Enforcement (ICE) detained Petitioner as he reported to the Asylum Office, with counsel, for a credible fear pre-screening. He is believed to be detained at this time at the Miramar Field Office, in Miramar Florida.

The Petitioner is 32 years old. He is a citizen of Cuba and lives with his spouse of eleven years. Fleeing persecution in Cuba, Petitioner entered the United States on May 24, 2021. Although initially detained, ICE released Petitioner on June 22, 2021, on an order of recognizance, form I-220A. He left custody and has been at liberty in the community for four and a half years. During this time, he has worked with employment authorization. He has no criminal record. He works in light construction and remodeling.

On September 5, 2023, ICE-ERO issued a parole to Petitioner under INA § 212(d)(5)(A). parole was retroactive to June 22, 2021.

On December 29, 2023, Petitioner filed form I-485 application for adjustment of status to permanent residency under the Cuban Adjustment Act.

As of December 2, 2025, the permanent residency application was still pending without reason or interview. Petitioner is clearly eligible for Cuban Adjustment of Status. Petitioner through counsel filed a Petitioner for Writ of Mandamus and Injunctive Relief with this Court on December 2, 2025. Case No. 25-cv-25646 is assigned to Judge Bloom (Magistrate Elfenbein).

Around the time the Petition for Writ of Mandamus was filed, the Asylum Office scheduled Petitioner for a credible fear interview. ICE officers were waiting at the Asylum Unit, and Petitioner was arrested and detained.

This case presents a purely legal question appropriate for habeas review: whether a noncitizen encountered inside of the United States following release on recognizance, and parole, with adjustment of status pending, is detained under 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b). Petitioner does not challenge the initiation of removal proceedings, nor any discretionary custody determination. See *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367–68 (11th Cir. 2006). Multiple decisions in this District have held that long-term residents encountered in the interior

under these circumstances are detained under § 1226(a), not § 1225(b). See, e.g., *Patel v. Hardin,* No. 2:25-cv-870-JES-NPM, 2025 WL 3442706 (M.D. Fla. Dec. 1, 2025).; *Vasquez Carcamo v. Noem*, No. 2:25-cv-922, 2025 WL 3041895 (M.D. Fla. Nov. 7, 2025). Petitioner respectfully requests an order directing Respondents to provide a custody redetermination hearing under § 1226(a) within seven days, or in the alternative, to release Petitioner from custody subject to appropriate supervision.

JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's continued detention. Habeas jurisdiction is available to noncitizens challenging the statutory basis of immigration detention. See *Madu*, 470 F.3d at 1366–68 (11th Cir. 2006). Petitioner is not challenging the initiation of removal proceedings, the issuance or validity of any removal order, or any discretionary decision regarding custody. Instead, he challenges only the government's legal conclusion that his detention is governed by 8 U.S.C. § 1225(b) rather than 8 U.S.C. § 1226(a). Such a "pure question of statutory interpretation" falls squarely within habeas jurisdiction. Id. at 1367.

2. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar review. Section 1252(a)(5) and § 1252(b)(9) apply only to challenges to removal orders and claims arising from removal proceedings. Petitioner raises neither. See *Id.* at 1367–68 ("Section 1252 does not preclude habeas review of claims that are independent of challenges to removal orders."). Section 1252(g) does not apply because Petitioner does not challenge the Attorney General's decision to commence proceedings, adjudicate proceedings, or execute any removal order. See *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(e) is inapplicable. Although Petitioner anticipates Respondents' argument that he is subject to

expedited removal, a review of the A-file through FOIA reflects that the ER procedure was never fully completed. ICE-ERO released Petitioner on recognizance (a process reserved for persons whose cases are open and pending, under 8 U.S.C. § 1236(a)). He was later paroled and has been at liberty, with work authorization, a drivers license, employment and all the indicia of community life. *Cf., Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

3. Finally, Section 1252(a)(2)(B)(ii) does not apply because Petitioner is not seeking review of a discretionary custody determination; the immigration court has made no such determination. Officers advised counsel Petitioner will be mandatorily detained, and this is consistent with their policy. 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).

VENUE

4. Venue lies in this District under 28 U.S.C. § 2241(a) and (d), because Petitioner is detained as of this writing at the Miramar ERO Office. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (proper respondent in a habeas petition is the immediate custodian in the district of confinement). The Supervisor there is a proper respondent, as the official with immediate physical custody over Petitioner. See *Id.* at 435. The additional federal officials are included in their official capacities because they possess legal authority over Petitioner's detention under the Immigration and Nationality Act.

PARTIES

5. Petitioner, **Aldo Rodriguez**, is a native and citizen of Cuba, detained by ICE after four years of liberty in the community pursuant to release on recognizance and a parole. He brings this petition pursuant to 28 U.S.C. § 2241 to challenge the legality of his continued detention.

6. Respondent, **Todd Lyons**, in his official capacity as Senior Official Performing the Duties of the Director of ICE. ICE exercises authority over the detention, custody, and supervision of noncitizens pursuant to the Immigration and Nationality Act.

7. Respondent, **Kristi Noem,** in her official capacity as U.S. Secretary of Homeland Security. The Secretary is the highest official within the DHS, which is charged with administering and enforcing federal immigration laws, including detention authority under the Immigration and Nationality Act (INA).

8. Respondent, **Zoelle Rivera**, in his capacity as supervisor of the Miramar ERO Office where Petitioner is currently being processed.

9. Respondent, **Keili Walker**, in her official capacity as Field Office Director (FOD), Miami Field Office, U.S. Immigration and Customs Enforcement. The FOD for ICE's Miami Field Office is responsible for the custody, detention, and removal operations for individuals detained within the geographic area encompassing Petitioner's place of confinement.

10. **U.S. Immigration and Customs Enforcement** is an agency within the Department of Homeland Security charged with the enforcement of immigration laws, including the detention and removal of noncitizens.

11. The **Department of Homeland Security** is the federal department responsible for administering and enforcing the Immigration and Nationality Act, including statutory authority governing the detention of certain noncitizens.

UNDISPUTED FACTS

12. Petitioner is a native and citizen of Cuba. He is eligible for permanent residency and has an application pending for the last two years. He was released on recognizance, then paroled. Petitioner has resided continuously in the United States for four years.

13. Petitioner was encountered by U.S. Immigration and Customs Enforcement while reporting to the Asylum Office, with counsel, for an asylum pre-screening, called "credible fear."

14. Petitioner has no criminal record.

15. ICE officers informed counsel Jose William Alvarez at the Asylum Office on today's date (December 29, 2025) that petitioner was "mandatory detention" and not eligible for release.

16. In similar circumstances, the Immigration Judges conclude that they have no jurisdiction to redetermine custody based on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and unless under judicial order, do not make any discretionary determination regarding custody.

17. As discussed below, requesting bond redetermination before an immigration court is a futile exercise because of *Matter of Hurtado.*

18. Petitioner remains detained by Respondents as of the filing of this action.

EXHAUSTION OF REMEDIES

There is no statutory exhaustion requirement for habeas challenges to the legal basis of immigration detention under 28 U.S.C. § 2241. See *Madu v. United States A.G.*, 470 F.3d 1362, 1366–68 (11th Cir. 2006). ICE takes the position pursuant to the Todd Lyons Memorandum of July 8, 2025, that all individuals who entered the United States by crossing the border are subject to mandatory detention and these are the agency's "marching orders." *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025) (the "Notice"). Immigration judges, vis a vis Board of Immigration Appeals precedent, comply with that legal interpretation and do not hold bond hearings.

Even if an exhaustion requirement generally applied, on this issue it would be futile to first seek a bond hearing before an immigration judge where it is a foregone conclusion that ICE and the immigration court will refuse to consider bond. As the Supreme Court has held, exhaustion is

excused where "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Courts within this District have already held in identical circumstances that an administrative appeal would be futile because the result is predetermined by binding agency precedent. See *Patel v. Hardin*, Case No. 2:25-cv-870, 2025 LX 544378, 2025 WL 3442706 at 3 (M.D. Fla 2025); *Carcamo v. Noem*, 2:25-cv-00922, 2025 WL 3041895 (M.D. Fla 2025). Because the agency lacks authority to provide a custody redetermination under 8 U.S.C. § 1226(a), exhaustion would be futile. *Boffill v. Field Off. Dir., Miami Field Off., No. 25-cv-25179,* 2025 U.S. Dist. LEXIS 228852 (S.D. Fla. 2025) citing *Kemokai v. United States AG*, 83 F.4th 886, 891 (11th Cir. 2023). As the Supreme Court has held, exhaustion is excused where "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000).

STATUTORY BACKGROUND

Eight U.S.C. § 1226(a) provides that, "[o]n a warrant issued by the Attorney General," a noncitizen arrested and detained pending a decision on removal "may continue to be detained" or "may be released on bond" or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). The statute authorizes the Attorney General to make both the initial custody determination and subsequent custody redeterminations. Implementing regulations assign authority for custody redeterminations to Immigration Judges. See 8 C.F.R. § 1003.19(a).

Section 1225(b) governs the inspection and processing of applicants for admission. Under section 1225(b)(1) and (b)(2), certain applicants for admission who are determined to be inadmissible "shall be detained" pending further consideration of their application or removal.

These provisions apply only to "applicants for admission" as defined by the Immigration and Nationality Act.

The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). A noncitizen who has entered the United States without inspection is not considered an "applicant for admission." Customs and Border Protection, and Immigration and Customs Enforcement, may have commenced an expedited removal process, but that process was not completed and Petitioner was released on recognizance, a procedure authorized under 8 U.S.C. § 1226(a). *Boffill v. Field Off. Dir. Mia. Field Off.*, at 15.

Section 1182(a)(6)(A)(i) renders an individual inadmissible if they are "present in the United States without being admitted or paroled." Section 1182(a)(7)(A)(i)(I) applies to "an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa" or other entry documents. The two grounds serve distinct statutory functions: § 1182(a)(6)(A)(i) describes unlawful presence after entry without inspection, while § 1182(a)(7) presumes an ongoing or contemporaneous "application for admission."

LEGAL ARGUMENT

The statutory scheme governing immigration detention distinguishes between individuals detained as applicants for admission and those detained after entry. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). For individuals arrested within the country who have already entered without inspection, detention is governed by Section 1226(a). That provision authorizes the Attorney General to determine custody status during removal proceedings and permits release on bond or conditional parole.

Here, Petitioner through counsel notes that there are contradictions in the A-file. Counsel obtained a copy through the Freedom of Information Act (FOIA). Counsel believes Respondents are operating under the assumption that Petitioner was processed for expedited removal. However, based on a review of documentation both in the A-file, and what Petitioner was given upon release from custody, the expedited removal process was left incomplete: the expedited removal order was left blank. Upon release, Petitioner was not informed that he had been ordered removed, nor was he provided any such order. Instead, he was released on form I-220A, release on recognizance, which is preserved for persons being processed for full removal proceedings under 8 U.S.C. § 1229a. Custody in such cases is determined under 8 U.S.C. § 1226(a). And then, on September 5, 2023, Petitioner received parole effective as of June 22, 2021.

Petitioner is clearly eligible for adjustment of status and the Respondents' sister agency, United States Citizenship and Immigration Services (USCIS) has stalled in adjudicating that application.

Where an agency declines to exercise statutory authority based on a legal error, habeas jurisdiction is appropriate to correct the misclassification. As aforementioned, this Court, as well as others around the nation have repeatedly held that interior arrests of long-term residents who entered without inspection fall under Section 1226(a) and that detention under Section 1225(b) is not authorized in such circumstances.[1] These decisions reflect the statutory structure enacted by

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[1] See, e.g., *Vincens-Marquez v. Soto*, No. 25-16906 (KSH), 2025 WL 3097496 (D. N.J. Nov. 6, 2025); *Beltran, et. al 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*, No. 4:25-CV-112-RGJ, 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

Congress and the longstanding regulatory distinction between applicants for admission and individuals arrested within the United States. Petitioner's continued detention without access to a custody redetermination is unlawful.

Finally, Petitioner asserts his detention without opportunity for a bond hearing is unlawful based on the District Court's decision in *Bautista v. Santa Cruz*, 5:25-cv-01873, 2025 LX 563862 | __ F.Supp.3d __ | 2025 WL 3288403 (C.D. Calif. 2025). There, the District Court held that "individuals who have not been inspected and authorized by an immigration officer lack the trait to be categorized as 'applicants for admission'" and their detention is governed by 8 U.S.C. § 1226(a). On December 18, 2025, the Court issued a decision certifying the class of protected persons as:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

The District Court vacated the *July 8 Lyons Memo* and declared all class members to be detained under 8 U.S.C. § 1226(a), and eligible for bond hearings.

(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); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. 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 Clavijov v. Kaiser* , No. 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); *Romero v. Hyde* , No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. 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).

CLAIM FOR RELIEF

Count One
Denial of Custody Redetermination Based on Legal Error

Petitioner is unlawfully detained without a bond hearing because he has been at liberty in the community for four years. He entered the United States and was not apprehended at the border: he is not an "arriving alien." He has an application for permanent residency pending and he has a right to have that application heard. The Court should order a bond hearing because Petitioner is detained under the statutory framework set forth in Section 1226(a), which authorizes discretionary release on bond and assigns Immigration Judges authority to conduct custody redeterminations.

To the extent Respondents may argue that Petitioner is in the expedited removal process, this is not consistent with the documentation provided Respondent and obtained through FOIA. Even if he is in the expedited removal process, Petitioner has been at liberty for four years in the United States community, and should not now be subject to mandatory detention.

Where continued detention is based solely on misapplication of the governing statute, habeas corpus is the appropriate means to correct the classification and require the agency to conduct a custody redetermination or release Petitioner from custody.

As Petitioner is a class member, the Respondents are bound by the Central District of California's ruling in *Bautista v. Santa Cruz* and are legally obligated to provide a bond hearing.

Count Two

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

(Substantive Due Process)

Petitioner repeats and re-alleges the allegations contained in preceding paragraphs of this Petition-Complaint as if fully set forth herein. Respondents' arrest of Petitioner was unjustified.[2] Continued detention without a bond hearing is unlawful. Accordingly, he is detained in violation of his Constitutional right to due process under the Fifth Amendment.

Count Three

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

(Procedural Due Process)

Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition-Complaint as if fully set forth herein.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V; *see generally*, *Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v.Kim*, 538 U.S. 510 (2003).

Petitioner's detention violates the Due Process Clause, as he was determined not to pose a danger or flight risk when released from custody on recognizance four years ago. He has since

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[2] Not only does Petitioner's custody status fall under 8 U.S.C. § 1226(a), but it is in violation of the "Re-detention" instructions of the July 8 Todd Lyons Memo. The memo specifically instructs that "this interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to § 235 detention. Rather, the custody provisions at INA § 235(b) (1)(B)(ii), (iii) (IV) , and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

applied for asylum, received a work permit, and attended all DHS appointments. There is no reason to change the analysis that he merits her liberty. Moreover, he was not accorded any due process at the time of arrest and detention by ICE on December 29, 2025. There was no opportunity to be heard. It is a foregone conclusion that now Respondents will invoke the July 8, 2025 mandatory detention policy, and the *Hurtado* precedent, to justify mandatory detention.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from moving Petitioner outside of South Florida;

c. Issue a writ of habeas corpus directing Respondents to provide Petitioner with an immediate custody redetermination before an Immigration Judge under Section 1226(a), or, in the alternative, order Petitioner's release from custody.

d. Declare that Petitioner is detained under Section 1226(a) and is not subject to mandatory detention under Section 1225(b).

e. Enjoin Respondents from continuing to detain Petitioner without providing a custody redetermination consistent with Section 1226(a) and the Immigration Judge's factual findings.

f. Award such further relief as the Court deems just and proper.

Respectfully submitted on this day 29th day of December, 2025.

Aldo Rodriguez Lorente

By his attorney,

/s/ Mary Kramer
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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December, 2025 I electronically filed the foregoing Petition for Habeas Corpus with the Clerk of Court using the CM/ECF system which will send a notice of electronic filing to the United States Attorneys Office, counsel for Respondents.

/s/ Mary Kramer
_____/
Mary Kramer