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

**FORT LAUDERDALE / BROWARD DIVISION**

**Case No.: 0:25-cv-62693-RS**

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| **Aldo Rodriguez Lorente** | ) |
| **Petitioner,** | ) |
| **v.** | ) |
| **Zoelle Rivera, *et al.*,** | ) |
| **Respondents.** | ) |

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

This is an amended petition for a writ of habeas corpus challenging the legality of Petitioner Aldo Rodríguez Lorente's arrest and detention based on a purported expedited removal (ER) order that was never lawfully issued and cannot be revived through post-hoc procedures. Nearly four years after Petitioner's entry into the United States—and after releasing him on recognizance (ROR), placing him on supervision, paroling him, and permitting him to live freely in the community—DHS abruptly detained him and attempted to justify that detention through a credible-fear interview conducted years after the statutory deadline. That effort fails as a matter of law.

The timing of Petitioner's arrest further underscores the illegality of DHS's actions. DHS detained Petitioner only after he filed a federal mandamus action seeking adjudication of his long-pending adjustment of status application. Until that point, DHS had consistently treated Petitioner as not subject to ER. DHS's sudden reversal, occurring only after Petitioner sought judicial relief,

confirms that the present detention is reactive and pretextual rather than the continuation of any lawful ER process.

This petition presents narrow legal questions squarely within this Court's habeas jurisdiction: (1) whether DHS ever lawfully issued an ER order; (2) whether DHS therefore has statutory authority to detain Petitioner under 8 U.S.C. § 1225(b); and (3) whether DHS may detain a paroled individual by invoking inconsistent and mutually exclusive theories to avoid both bond eligibility and statutorily guaranteed relief. The answer to each is no.

The record confirms that DHS failed to comply with the mandatory statutory prerequisites to ER. FOIA disclosures show that the purported ER order was unsigned, unexecuted, and issued without a lawful credible-fear referral. DHS's subsequent decisions to release Petitioner on recognizance and later parole him are legally incompatible with the existence of a valid ER order, and a post-hoc credible-fear interview conducted years later cannot cure those defects.

Because Petitioner is detained without lawful authority, and because DHS cannot detain him indefinitely while evading statutory and constitutional constraints, the writ should issue. The Court should declare that no valid expedited removal order exists, order Petitioner's release or a bond hearing under § 1226(a) and grant such further relief as justice requires.

## JURISDICTION

1. This Court has jurisdiction over this habeas corpus action pursuant to 28 U.S.C. § 2241, which authorizes federal courts to grant the writ to individuals held in custody in violation of the Constitution, laws, or treaties of the United States. Petitioner is currently detained by the Department of Homeland Security ("DHS") within the territorial jurisdiction of this Court.

2. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, including the Immigration and Nationality

Act ("INA"), 8 U.S.C. §§ 1101 et seq., and the Due Process Clause of the Fifth Amendment.

3. Although Congress has limited judicial review of expedited removal orders, it has expressly preserved habeas jurisdiction to determine whether a petitioner was in fact ordered removed under the expedited removal statute. See 8 U.S.C. § 1252(e)(2)(B) (authorizing habeas review of "whether the petitioner was ordered removed under section 1225(b)(1)"). This petition falls squarely within that exception because it challenges whether DHS ever lawfully issued an expedited removal order in the first place.

4. This Court therefore has jurisdiction to determine the threshold legal question of whether Petitioner is subject to a valid expedited removal order, and, consequently, whether DHS has statutory authority to detain him under 8 U.S.C. § 1225(b). Resolution of that question does not require review of the merits of any removal decision, but only an assessment of whether the statutory prerequisites to expedited removal were satisfied.

5. This Court further has jurisdiction to determine the legality of Petitioner's continued detention and the statutory basis for that detention, including whether Petitioner is instead subject to detention under 8 U.S.C. § 1226(a), which provides for release or an individualized bond hearing. Federal courts retain habeas jurisdiction to review such pure questions of law concerning the source and scope of detention authority.

6. 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).

7. Accordingly, this Court has subject-matter jurisdiction to adjudicate Petitioner's claims and to grant appropriate habeas relief, including declaratory and injunctive relief necessary to remedy unlawful detention.

**VENUE**

8. 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**

9. 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.

10. 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.

11. 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).

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

13. 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.

14. **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.

15. 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

16. Petitioner Aldo Rodríguez Lorente is a Cuban national who entered the United States near Brackettville, Texas on May 26, 2021.

17. At the time of entry, Petitioner expressed fear of return to Cuba. DHS nevertheless failed to complete the statutory prerequisites for ER, including a lawful referral for a credible-fear

interview and execution of a valid ER order.[1]

18. FOIA disclosures later obtained by counsel confirm that the purported ER paperwork in Petitioner's file is incomplete and unexecuted. The Form I-860 is unsigned and reflects no lawful completion of the expedited removal process. See *Form I-860* attached hereto as Exhibit "A."

19. DHS nonetheless released Petitioner from custody. On June 22, 2021. See *ROR* attached hereto as Exhibit "B."

20. After release, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal on December 10, 2021.

21. On September 5, 2023, ICE-ERO issued Petitioner parole pursuant to INA § 212(d)(5)(A), retroactively effective as of June 22, 2021. DHS's issuance of parole—years after Petitioner's release—was legally incompatible with the existence of a final ER order. See *Parole* attached hereto as Exhibit "C."

22. On December 29, 2023, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, seeking adjustment under the Cuban Adjustment Act. USCIS accepted the application for processing. USCIS subsequently notified Petitioner that previously captured biometrics would be reused, and no new biometrics appointment was required. The adjustment application remains pending and unadjudicated.

23. After prolonged agency inaction on the adjustment application, Petitioner filed a federal mandamus and APA action in the Southern District of Florida on December 2, 2025, seeking to compel USCIS to adjudicate his long-pending application for adjustment of status. See *Rodríguez Lorente v. USCIS et al.*, No. 1:25-cv-25646-BB (S.D. Fla. filed Dec. 2, 2025).

24. On the same date, December 2, 2025, counsel emailed the Miami Asylum Office Director

[1] On information or belief, this was in part due to a COVID-19 breakout, and all detained individuals were quarantined.

and supervisory officials to alert them that FOIA disclosures did not reflect a valid expedited removal order in Petitioner's file and to request clarification regarding jurisdiction, the absence of a completed ER order, and the impact on Petitioner's pending adjustment application. DHS did not respond. See *Correspondence to Miami Asylum Office* attached hereto as Exhibit "D."

25. On December 30, 2025, Petitioner appeared at the Miami Asylum Office for a credible-fear interview, accompanied by undersigned counsel Jose W. Alvarez. Before the interview commenced, counsel asked the front-desk clerk whether it was possible to speak with a supervisor regarding the apparent absence of a valid ER order and Petitioner's pending adjustment application. The clerk stated that no information could be provided and instructed counsel to raise the issues with the asylum officer.

26. Prior to the start of the interview, counsel informed the asylum officer of the defects in the ER record and presented documentary evidence reflecting the incomplete ER paperwork, Petitioner's release on recognizance, subsequent parole, and pending Cuban Adjustment Act application. Officer Castells accepted the documents, stated she was unfamiliar with the situation, and remarked, "well this is why we're doing the credible fear interview now." She indicated the materials would be provided to a supervisor. No clarification was ever given, and the documents were returned to counsel at the conclusion of the interview.

27. Although dated June 16, 2025, USCIS's Notice of Dismissal of Form I-589 was presented and relied upon by Respondents during the December 30, 2025, credible-fear proceedings. The dismissal asserted lack of jurisdiction based on an alleged ER order yet relied on a Form I-860 that FOIA later revealed to be blank, unsigned, and unexecuted, underscoring that the jurisdictional rationale was factually unsupported. See *Notice of Dismissal of Form I-589* attached hereto as Exhibit "E."

28. Immediately after the credible-fear interview was finished, DHS officers entered the room and informed Petitioner that he was being taken into custody and was subject to "mandatory detention." Counsel asked the officers under what statutory provision Petitioner was allegedly subject to mandatory detention. The officers were unable to identify any statutory authority.

29. Counsel further asked whether the detention was pursuant to any written policy and specifically inquired whether it was based on the Todd Lyons policy memorandum. The officers stated they did not know what policy applied. Counsel also asked whether there was an arrest warrant or other arresting document. The officers confirmed that no warrant or arrest documentation existed and provided no paperwork whatsoever.

30. Petitioner was then taken into DHS custody and transported to detention in Miramar, Florida, where he remains detained.

**EXHAUSTION OF REMEDIES**

There is no statutory exhaustion requirement for habeas challenges to the legal basis of immigration detention brought under 28 U.S.C. § 2241. *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–68 (11th Cir. 2006). Where a petitioner challenges whether DHS has any lawful authority to detain at all, rather than discretionary custody determinations, exhaustion is not required.

Even if prudential exhaustion were otherwise applicable, it is excused here because any administrative pursuit of relief would be futile. Until very recently, ICE uniformly took the position—pursuant to DHS's July 8, 2025 "*Interim Guidance Regarding Detention Authority for Applicants for Admission*" (the Lyons Memorandum)—that individuals who entered the United States without inspection were subject to mandatory detention under 8 U.S.C. § 1225 and categorically ineligible for bond hearings. Immigration judges, bound by DHS charging decisions and BIA precedent, consistently declined jurisdiction to conduct bond hearings in such cases.

On December 18, 2025, however, a federal district court vacated the Lyons Memorandum in its entirety, holding that DHS's policy was contrary to law and that affected individuals are detained under 8 U.S.C. § 1226(a), not § 1225(b)(2). *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). The final order confirms that DHS's prior position—under which immigration courts denied bond as a matter of course—was unlawful.

At the time of Petitioner's detention and arrest, DHS nevertheless acted as if the vacated policy still controlled, detaining Petitioner without a warrant, without identifying a statutory detention provision, and without affording access to any custody redetermination process. Under these circumstances, requiring Petitioner to seek relief from the very agency applying an unlawful and now-vacated detention framework would be futile. Exhaustion is excused where the agency has "predetermined the issue" or lacks authority to grant relief. *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000).

Courts within this Circuit have repeatedly held that exhaustion is excused where DHS and the immigration courts categorically deny bond jurisdiction based on agency policy or binding precedent. See *Kemokai v. U.S. Att'y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023); *Boffill v. Field Off. Dir., Miami Field Off.*, No. 25-cv-25179, 2025 U.S. Dist. LEXIS 228852 (S.D. Fla. 2025). Accordingly, Petitioner is not required to exhaust administrative remedies before seeking habeas relief.

## STATUTORY BACKGROUND

### A. Expedited Removal Under 8 U.S.C. § 1225(b)(1)

Congress authorized expedited removal as a narrow and summary procedure applicable to certain noncitizens encountered at or near the border. See 8 U.S.C. § 1225(b)(1). Because

expedited removal bypasses the ordinary removal process and eliminates access to an immigration judge, its use is conditioned on strict compliance with mandatory statutory prerequisites.

If a noncitizen subject to expedited removal indicates an intention to apply for asylum or expresses a fear of persecution, the statute requires that the individual "shall be referred for an interview by an asylum officer" to determine whether the individual has a credible fear of persecution. 8 U.S.C. § 1225(b)(1)(A)(ii). Only if the asylum officer determines that the individual does not have a credible fear may DHS proceed with expedited removal. Id. §§ 1225(b)(1)(B)(ii), (iii).

The credible-fear interview is therefore a condition precedent to the lawful issuance and execution of an expedited removal order whenever fear is expressed. The statute does not authorize DHS to bypass, delay, or retroactively conduct this process after releasing the individual into the interior of the United States.

**B. Limited Immigration Judge Review in the Expedited Removal Framework**

Although ER is a summary process that largely precludes judicial and administrative review, Congress expressly provided a limited safeguard where an individual subject to expedited removal expresses a fear of persecution. In such cases, if an asylum officer determines that the individual does not have a credible fear of persecution, the statute affords the individual the right to prompt review of that negative credible-fear determination by an immigration judge. See 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

This immigration judge review is narrow and circumscribed. The immigration judge may review only whether the asylum officer's negative credible-fear determination was correct. The immigration judge does not adjudicate removability, does not conduct a bond hearing, and does not determine the legality of detention under the INA. If the immigration judge reverses the

negative credible-fear determination, the ER order is vacated and the individual is placed into removal proceedings under 8 U.S.C. § 1229a. If the immigration judge affirms the negative credible-fear determination, the expedited removal order may be executed.

Critically, this limited review presupposes that the individual was lawfully placed into the expedited removal process in the first instance, including that DHS complied with all mandatory statutory prerequisites at the time of encounter. The statute does not authorize DHS to invoke credible-fear review years after release into the interior, nor does it permit DHS to use the credible-fear process to retroactively validate an expedited removal order that was never lawfully issued.

**C. Detention Authority Under the INA**

The INA establishes distinct detention regimes, each tied to a different statutory posture. Noncitizens properly subject to ER are detained pursuant to 8 U.S.C. § 1225(b) pending completion of that summary process. By contrast, once DHS elects to release an individual from expedited removal custody—or where expedited removal was never lawfully completed—detention authority arises, if at all, under 8 U.S.C. § 1226(a). Section 1226(a) provides for arrest and detention pending removal proceedings and expressly contemplates release on bond or conditional parole following an individualized custody determination.

The statute does not authorize DHS to detain an individual under § 1225(b) indefinitely or years later after release into the interior, nor does it permit DHS to invoke § 1225(b) where the statutory predicates to expedited removal were never satisfied.

**D. Detention Must Be Expressly Authorized by Statute**

Immigration detention is a creature of statute. DHS may detain a noncitizen only where Congress has expressly authorized detention, and only under the specific conditions Congress has prescribed. The INA does not confer a general or inherent power to detain; rather, each detention

regime—whether under 8 U.S.C. § 1225(b), § 1226(a), or § 1226(c)—is triggered by defined statutory predicates.

Where DHS cannot identify a valid statutory basis for detention, custody is unlawful. The agency may not impose detention by policy, practice, or assertion alone, nor may it rely on ambiguous or post-hoc rationales to justify custody. Detention must rest on an existing, lawfully invoked statutory provision, and the burden remains on DHS to establish that authority.

**E. Parole Under 8 U.S.C. § 1182(d)(5)**

Parole is a discretionary mechanism that permits DHS to allow a noncitizen to physically enter and remain in the United States notwithstanding inadmissibility. See 8 U.S.C. § 1182(d)(5)(A). Parole is legally significant: while it does not constitute an "admission," it authorizes presence in the United States and places the individual outside the expedited removal framework as a practical and legal matter.

DHS's decision to parole an individual—particularly after prior release on recognizance—reflects an exercise of discretion incompatible with the existence of a final, executable expedited removal order.

**F. Adjustment of Status and the Cuban Adjustment Act**

Congress has separately provided statutory mechanisms permitting certain noncitizens physically present in the United States to seek lawful permanent residence through adjustment of status. See 8 U.S.C. § 1255(a). Adjustment of status is a statutory benefit for which eligibility is defined by Congress, and the right to apply may not be eliminated by regulatory or procedural maneuvering.

The Cuban Adjustment Act (CAA) provides an even more specific pathway. Under the CAA, a Cuban national who has been inspected and admitted or paroled, has been physically present in

the United States for at least one year, and is otherwise admissible, may apply for adjustment of status. Pub. L. No. 89-732, 80 Stat. 1161 (1966).

Congress enacted the CAA as a remedial statute, reflecting a deliberate policy choice to afford Cuban nationals a distinct and favorable adjustment mechanism. General enforcement or detention provisions of the INA may not be construed to nullify this specific statutory pathway or to leave an eligible applicant without any forum to seek relief.

## LEGAL ARGUMENT

### A. DHS Never Lawfully Issued an Expedited Removal Order

DHS's authority to detain Petitioner rests entirely on the premise that he is subject to a valid expedited removal ("ER") order under 8 U.S.C. § 1225(b)(1). The record demonstrates that no such order was ever lawfully issued. Because DHS failed to comply with the mandatory statutory prerequisites to expedited removal at the time of Petitioner's encounter, it cannot rely on expedited removal now, nor can it retroactively cure those defects through post-hoc procedures.

Expedited removal is an extraordinary, summary process that bypasses ordinary removal proceedings and eliminates access to an immigration judge. Congress therefore conditioned its use on strict adherence to specific statutory requirements. Where a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, DHS must refer the individual for a credible-fear interview before an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii). Only after a negative credible-fear determination may DHS lawfully issue and execute an expedited removal order. Id. § 1225(b)(1)(B).

Here, DHS did not lawfully complete that process. FOIA disclosures reveal that the purported expedited removal paperwork in Petitioner's A-file—including the Form I-860—was unsigned, unexecuted, and incomplete, and does not reflect the lawful issuance of an expedited

removal order. Rather than executing expedited removal, DHS released Petitioner on recognizance in June 2021, later placed him on an order of supervision, and ultimately paroled him into the United States. Those actions are legally incompatible with the existence of a final, executable ER order.

DHS's attempt to resurrect expedited removal nearly four years later—by conducting a credible-fear interview in December 2025—does not cure these defects. The credible-fear interview is a condition precedent to the lawful issuance and execution of expedited removal whenever fear is expressed; it is not a remedial step that may be performed years later after DHS has released an individual into the interior of the United States. The statute does not authorize DHS to bypass the credible-fear process at the time of encounter, abandon expedited removal by releasing the individual, and then retroactively invoke expedited removal through post-hoc procedures.

Moreover, the limited immigration-judge review available following a negative credible-fear determination presupposes that the individual was lawfully placed into the expedited removal process in the first instance. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). Where, as here, DHS never lawfully issued an ER order, the credible-fear framework cannot be used to retroactively validate an ER order that never existed.

Because DHS failed to satisfy the mandatory statutory prerequisites to ER and affirmatively treated Petitioner as not subject to ER for years, Petitioner was never lawfully ordered removed under 8 U.S.C. § 1225(b)(1). DHS therefore lacks authority to rely on expedited removal as the basis for Petitioner's detention.

**B. Because No Valid Expedited Removal Order Exists, DHS Lacks Authority to Detain Petitioner Under 8 U.S.C. § 1225(b)**

DHS asserts that Petitioner is subject to "mandatory detention," yet that assertion depends entirely on the existence of a valid expedited removal order under 8 U.S.C. § 1225(b). As demonstrated above, no such order was ever lawfully issued. Absent a valid expedited removal order, DHS lacks statutory authority to detain Petitioner under § 1225(b).

The INA establishes distinct detention regimes, each triggered by specific statutory predicates. Section 1225(b) authorizes detention only for noncitizens who are properly subject to inspection or expedited removal proceedings, typically at or near the time of entry. Where expedited removal was never lawfully completed—or where DHS elects to release an individual from expedited-removal custody—§ 1225(b) no longer applies. In that circumstance, detention authority arises, if at all, under 8 U.S.C. § 1226(a). 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.[2]

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[2] 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 (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,

That distinction is critical here. DHS arrested Petitioner nearly four years after his entry, not at the border or during inspection, but in the interior of the United States, at the conclusion of a credible-fear interview conducted in December 2025. By that time, DHS had long since released Petitioner on recognizance, placed him on an order of supervision, paroled him into the United States, and permitted him to live freely in the community for years. Section 1225(b) does not authorize DHS to effectuate "mandatory detention" under expedited removal years later in the interior, after DHS has abandoned expedited removal custody and treated the individual as at liberty.

Section 1226(a), by contrast, governs detention pending removal proceedings in the interior and expressly contemplates release on bond or conditional parole following an individualized custody determination. DHS may not invoke § 1225(b) to impose mandatory detention long after release into the interior, nor may it transform § 1226(a) detention into mandatory detention by policy or assertion alone.

Here, when DHS detained Petitioner on December 30, 2025, officers asserted that he was subject to "mandatory detention," yet were unable to identify any statutory provision authorizing such detention, produce an arrest warrant, or provide any written arrest authority. Detention that cannot be anchored to an express statutory grant of authority is unlawful.

Because Petitioner was never lawfully ordered removed under § 1225(b)(1), and because DHS arrested him years later in the interior of the United States after repeatedly releasing him

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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).

from custody, DHS lacks authority to detain him under § 1225(b). His detention therefore falls, at most, under § 1226(a), entitling him to immediate release or, at a minimum, an individualized bond hearing.

**C. Petitioner's Continued Detention Is Unlawful, Arbitrary, and Violates Due Process**

Even apart from the absence of statutory authority under § 1225(b), Petitioner's detention is unlawful because it is arbitrary, procedurally deficient, and unsupported by any identified legal basis. DHS detained Petitioner nearly four years after his entry, in the interior of the United States, without a warrant, without arrest documentation, and without properly identifying any statute authorizing his custody. Such detention cannot be reconciled with the INA or the Due Process Clause.

The circumstances of Petitioner's arrest underscore its arbitrariness. Petitioner appeared voluntarily for a credible-fear interview on December 30, 2025, accompanied by counsel, after years of compliance with DHS supervision and parole. At the conclusion of the interview, DHS officers entered the room and informed Petitioner—without advance notice—that he was being taken into custody and was subject to "mandatory detention." When counsel requested the statutory basis for that assertion, DHS officers were unable to identify one. When counsel asked whether the detention was pursuant to any written policy, officers stated they did not know. When counsel asked for an arrest warrant or written arrest authority, none was produced.

Detention imposed by executive officers who cannot identify the statute authorizing it is the very definition of arbitrary custody. Immigration detention is not inherent or discretionary in the abstract; it must be expressly authorized by Congress and lawfully invoked. Where DHS cannot articulate the statutory source of its authority, detention exceeds the bounds of the INA and violates fundamental principles of due process.

The arbitrariness of Petitioner's detention is further highlighted by DHS's reliance on post-hoc procedures to justify custody. DHS conducted a credible-fear interview years after Petitioner's release into the interior, despite the fact that credible-fear screening is designed to occur at the outset of expedited removal. The statute does not permit DHS to use a delayed credible-fear interview as a mechanism to manufacture detention authority long after the expedited-removal framework has been abandoned.

Nor can DHS justify detention by reference to internal policy. At the time of Petitioner's arrest, DHS officers acted as if categorical mandatory detention applied, yet the policy framework on which ICE had previously relied to assert such authority has since been vacated as unlawful. Detention imposed pursuant to a vacated or unidentified policy—rather than a statute—cannot satisfy due process.

Finally, the timing of Petitioner's detention reinforces its arbitrary nature. DHS detained Petitioner only after he sought judicial relief by filing a federal mandamus action to compel adjudication of his long-pending adjustment application. For years prior, DHS treated Petitioner as not subject to expedited removal or mandatory detention. The sudden reversal, without new conduct or changed circumstances, confirms that detention here is not the execution of lawful removal authority, but a reactive enforcement measure untethered from statutory limits.

Because Petitioner is detained without a valid ER order and without statutory authority under 8 U.S.C. § 1225(b), DHS may continue custody only, if at all, pursuant to 8 U.S.C. § 1226(a). Accordingly, Petitioner is entitled to immediate release, or, in the alternative, to an individualized bond hearing under § 1226(a) should DHS seek to maintain custody.

## CLAIM FOR RELIEF

### Count One

### Denial of Custody Redetermination Based on Legal Error

Petitioner is unlawfully detained without a bond hearing despite having lived at liberty in the United States community for nearly four years. Petitioner was released from DHS custody shortly after his entry, placed on supervision, and later paroled. He has resided in the interior of the United States for years, complied with all DHS reporting requirements, and maintained a stable presence in the community. He is therefore not properly subject to mandatory detention.

Petitioner has a pending application for permanent residence and a statutory right to have that application adjudicated. His detention is governed, if at all, by the discretionary detention framework set forth in 8 U.S.C. § 1226(a), which authorizes release on bond and assigns Immigration Judges authority to conduct individualized custody redeterminations.

To the extent Respondents contend that Petitioner is subject to expedited removal and mandatory detention under 8 U.S.C. § 1225(b), that contention is contradicted by the administrative record and FOIA disclosures. The documentation does not reflect a lawfully issued expedited removal order, and DHS's decision to release Petitioner into the interior of the United States for four years is incompatible with continued reliance on expedited removal detention authority. Even assuming arguendo that Petitioner were once placed in expedited removal, Respondents lack authority to impose mandatory detention years later after releasing him into the community.

Where continued detention is based on a misapplication of the governing detention statute, habeas corpus is the appropriate mechanism to correct the legal classification and require the agency to conduct a custody redetermination or release the detainee. Because Petitioner's detention falls under § 1226(a), he is entitled to an individualized bond hearing.

Moreover, Petitioner is a class member in *Maldonado Bautista v. Santacruz*, and Respondents are bound by that decision. Respondents are therefore legally obligated to provide Petitioner with a bond hearing and may not impose categorical mandatory detention.

**Count Two**

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

**(Substantive Due Process)**

Petitioner repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

Respondents' arrest and continued detention of Petitioner are unjustified and arbitrary. Petitioner was taken into custody nearly four years after his release into the community, without a warrant, without notice, and without any new conduct or changed circumstances. Continued detention without an individualized custody determination serves no legitimate governmental purpose and is not reasonably related to any lawful objective under the INA.

The Due Process Clause of the Fifth Amendment forbids arbitrary deprivation of liberty. Detention imposed without statutory authorization, and without a rational relationship to a legitimate governmental purpose, violates substantive due process. Petitioner's continued detention without a bond hearing therefore violates 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 prohibits the government from depriving any person of liberty without due process of law. *See U.S. Const. amend. V; 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 procedural due process. When DHS released Petitioner on recognizance four years ago, it necessarily determined that he did not pose a danger to the community or a flight risk. Since that time, Petitioner has complied with all DHS requirements, applied for asylum, obtained employment authorization, and appeared for all scheduled appointments. There has been no change in circumstances warranting a different custody determination.

Nonetheless, Petitioner was arrested and detained on December 29, 2025, without notice, without an opportunity to be heard, and without any individualized determination of dangerousness or flight risk. Respondents afforded Petitioner no procedural safeguards at the time of arrest or detention.

It is a foregone conclusion that Respondents will attempt to invoke internal agency policy and precedent—including the July 8, 2025, which has since been vacated, and mandatory detention guidance and *Matter of Hurtado*—to justify categorical detention.[3] Reliance on such policy to deny a bond hearing, without statutory authorization or individualized process, violates procedural due process.

## PRAYER FOR RELIEF

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

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[3] *Matter of Hurtado Hurtado* was not vacated because it was not specifically named in the amended complaint because the movant had filed for summary judgment before the *Hurtado* decision was published). However, the district court in *Maldonado Bautista* went on to clarify: "Although the MSJ Order does not grant vacatur of Yajure Hurtado under the APA, Yajure Hurtado is no longer controlling; the legal conclusion underlying the decision is no longer tenable." See *Maldonado Bautista et al. v. Santa Cruz*, No. 5:25-cv-01873-SSS-BFM, Dkt. 93 (C.D. Cal. Dec. 18, 2025).

a. **Assume** jurisdiction over this matter;

b. **Enjoin** Respondents from moving Petitioner from the Southern District of Florida pending resolution of this matter;

c. **Issue** an order to show cause under 28 U.S.C. § 2243 ordering Respondents to answer within 3 days;

d. **Issue** a writ of habeas corpus directing Respondents to provide Petitioner with an immediate custody redetermination before an Immigration Judge under 8 U.S.C. § 1226(a), or, in the alternative, order Petitioner's release from custody;

e. **Declare** that Petitioner is detained under Section 1226(a) and is not subject to mandatory detention under 8 U.S.C. § 1225(b);

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

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

Respectfully submitted on this day 30th day of December, 2025.

***Aldo Rodriguez Lorente***

**By his attorneys,**

*/s/ Jose W. Alvarez*
**Jose W. Alvarez**
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