**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

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| **JORDAN KEIHDANO GARDINER,**<br><br>*Petitioner*,<br><br>v.<br><br>**GARRETT RIPA** , Field Office Director of Enforcement and Removal Operations, Miami Field Office, Immigration and Customs Enforcement;<br>**KRISTI NOEM**, Secretary, U.S. Department of Homeland Security;<br>**PAMELA BONDI**, U.S. Attorney General;<br>**RONNIE WOODALL**, Warden, Florida Baker Correctional Institute;<br>**JOHN W. MINA**, Sheriff, Orange County Sheriff's Office;<br><br>*Defendants.* | **Case No.: 3:26-cv-00033** |

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, by and through undersigned counsel, states as follows:

## I. INTRODUCTION

1. Petitioner, Jordan Keihdano Gardiner, is currently in the custody of Respondents at the FLORIDA BAKER CORRECTIONAL INSTITUTE in SANDERSON, FLORIDA. He now faces unlawful detention because the Department of Homeland Security (DHS) has concluded that he is subject to removal without a bond hearing.
2. Petitioner was lawfully admitted into the USA with inspection in 2019 under the Visa Waiver Program ("VWP"). Since that time he has formed a life in the United States, including marriage to his U.S. citizen wife.

3. Mr. Gardiner has been in detention since approximately November 22, 2025.
4. He was originally arrested by the Orlando Police Department and held in the Orange County Jail based on charges related to the validity of the dealer tag of a car he was driving. That case is still pending.
5. ICE put an immigration detainer on Mr. Gardiner, which should have only been effective for 48-hours.Mr. Gardiner should have been released on Friday December 19, 2025 at 4pm—48 hours after he paid his bail—but the Orange County Jail illegally held him into the weekend.
6. ICE took custody of Mr. Gardiner on Sunday December 21, 2025. He was shortly moved to the Florida Baker Correctional Institute in Sanderson, Florida on December 24, 2025 where he is currently being held.
7. ICE seeks to administratively deport Mr. Gardiner without a hearing before an immigration judge and without the bond hearing to which he is legally entitled.
8. To date, ICE has not given Mr. Gardiner a fair chance to contest his placement into administrative removal proceedings or express his credible fear of return to his home country.
9. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released, or in the alternative that Respondents provide a bond hearing under § 1226(a) within seven days.
10. Petitioner is also seeking injunctive relief including that he not be moved out of this judicial district, and that his removal proceedings be stayed during this litigation.

## II. JURISDICTION

11. Petitioner is in the custody of Respondents. Petitioner is detained at the FLORIDA BAKER CORRECTIONAL INSTITUTE ("FBCI") in SANDERSON, FLORIDA.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) and (5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Administrative Procedure Act at 5 U.S.C. § 704.

14. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not apply to this claim. The claim does not challenge a final order of removal, does not arise from removal proceedings, and does not implicate a discretionary decision. It is a collateral legal challenge to the legality of Petitioner's arrest and detention, reviewable under 28 U.S.C. §§ 1331 and 2241. See *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020).

15. The availability of declaratory relief in this context is well established. In *Nielsen v. Preap*, 139 S. Ct. 954, 962 (2019), the Supreme Court affirmed that district courts retain jurisdiction to entertain requests for declaratory relief even where injunctive relief may be limited under 8 U.S.C. § 1252(f)(1).

16. Courts can also "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. This includes staying removal efforts against an alien during pendency of litigation to preserve the status quo and prevent petitioners from being improperly deported while federal litigation is pending.

## III. VENUE

17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF FLORIDA, the judicial district in which Petitioner currently is detained.

18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT OF FLORIDA.

## IV. REQUIREMENTS OF 28 U.S.C. § 2243

19. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith" why the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

20. Habeas corpus, aka *the Great Writ*, is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

## V. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS FUTILE

21. Although courts generally require administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus, exhaustion is a prudential,

not statutory, requirement. There are "a number of exceptions" to the application of discretionary exhaustion requirements, including when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003). Three of the exceptions to exhaustion apply here: Petitioner can be excused from administrative exhaustion because he has no genuine opportunity for adequate relief, a DHS bond hearing would be futile, and he has raised a substantial constitutional question.

22. First, EOIR will deny his bond motion as a matter of flawed policy due to the Board of Immigration Appeals ("BIA") case of *Matter of Werner*, in which the BIA erroneously found that immigration judges lack jurisdiction to hold bond determination hearings for VWP holders. 25 I&N Dec. 45, 48 (BIA 2009). Section VII below discusses why that case is incorrect and how Federal courts have refused to follow that bad BIA precedent, but nonetheless it makes a bond hearing to the EOIR futile without the compelling order of a Federal judge. Petitioners need not exhaust administrative remedies if "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. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Immigration courts have made a blanket determination that noncitizens who entered on VWP, such as Petitioner, are not eligible for bond hearings. Thus, requiring Petitioner to make an administrative request for a bond hearing would be futile because the result is predetermined.

23. Second, a custody re-determination pursuant to 8 C.F.R. § 236.1(d) is an inadequate remedy because there is no initial DHS decision to review. DHS did not *abuse its discretion* in detaining Petitioner; it exercised *no discretion at all*. Due to the disputed BIA precedent in *Matter of Werner*, DHS afforded him no process in terms of custody determination.

24. Third, this Petition raises a substantial constitutional question that cannot properly be adjudicated administratively. *See, e.g.*, *Kelly*, 2025 WL 2381591, at *3. Here, Petitioner does not merely seek an opportunity to contest his detention. Instead, he argues that his detention under § 1226 absent an individualized assessment is a violation of his due process rights. Neither an immigration judge nor the BIA has jurisdiction to adjudicate constitutional issues. *See Quintanilla*, 2021 WL 707062, at *2. They are therefore not "positioned to properly adjudicate [Petitioner's] claim." *Lopez Benitez*, 795 F. Supp. 3d at 497.

## VI. PARTIES

25. Petitioner, JORDAN KEIHDANO GARDINER, is a national of Turks and Caicos and a citizen of the United Kingdom who was lawfully admitted to the United States in June 2019 under the Visa Waiver Program. He is now the beneficiary of an approved I-130 filed by his U.S. citizen wife, and he has a pending adjustment of status application. Mr. Gardiner comes from a [redacted] Mr. Gardiner is currently being unlawfully detained by DHS in the Florida Baker Correctional Institute in Sanderson, Florida.

26. Respondent GARRETT RIPA is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations division; As such, he is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or his acting counterpart is named in his or her official capacity.
27. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
28. Respondent PAMELA BONDI is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.
29. Respondent, Warden RONNIE WOODALL is employed by the Florida Department of Corrections and is in charge of the Florida Baker Correctional Institute in Sanderson, Florida, where Petitioner is detained. His organization and facility have been contracted by the Government as an agent to confine immigrants under a 287(g) Memorandum of Agreement entered into in 2020. He has immediate physical custody of Petitioner. He is sued in his official capacity.
30. Respondent, Sheriff JOHN W. MINA is employed by the State of Florida and is in charge of the Orange County Jail in Orlando, Florida, where Petitioner was initially detained by local police before being transferred to ICE custody after the expiration of the 48-hour ICE hold. He is sued in his official capacity.

## VII. LEGAL FRAMEWORK

Local Law Enforcement and 48-Hour ICE Holds

31. Immigration detainers—commonly called ICE holds—are administrative instruments used by U.S. Immigration and Customs Enforcement (ICE) to request that a state or local law enforcement agency (LEA) maintain custody of an individual in the LEA's custody so that ICE can assume custody for civil immigration enforcement.

32. The regulatory basis for detainers is found in 8 C.F.R. § 287.7, which provides that an immigration officer may issue an *Immigration Detainer-Notice of Action* (Form I-247) to advise another law enforcement agency that the Department of Homeland Security (DHS) "seeks custody of an alien … for the purpose of arresting and removing the alien" and to request that the agency *hold the alien for up to 48 hours* beyond the time the alien would otherwise be released.

33. Critically, ICE's own guidance makes clear that: Detainers are only requests, not mandatory commands; and that if ICE does not assume custody within the 48-hour window, the local agency may not lawfully continue to detain the person. *See* https://www.ice.gov/immigration-detainers (last visited Jan. 6, 2026).

34. The *48-hour rule* associated with ICE detainers stems from the regulatory text of 8 C.F.R. § 287.7(d) and reflects a narrow temporal window in which ICE may take custody. If ICE fails to act within this period, the detainer request lapses and the custodial authority of the local jail ends.

35. This rule interacts with Fourth Amendment principles governing seizures. Courts have held that continuing to detain a person once he or she is otherwise entitled to release—whether on bail or at the end of a criminal sentence—on the basis of an administrative detainer

constitutes a *new seizure* requiring independent legal authority (e.g., probable cause and lawful arrest authority). Holding someone beyond their release date based solely on an ICE detainer raises Fourth Amendment concerns because an administrative detainer is not a warrant and does not provide independent probable cause.

36. Agencies found in violation of this 48-hour rule can be found liable for constitutional violations. E.g., *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

INA Detention Authorities

37. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

38. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

39. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). As a lawfully admitted VWP entrant, Mr. Gardiner does not fall under either of these categories.

40. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

41. As a noncriminal, lawful entrant under the Visa Waiver Program without a final order of removal, Mr. Gardiner is subject only to ICE's discretionary detention authority under 8 U.S.C. § 1226(a). As such, he is entitled to a bond motion.

Visa Waiver Program

42. Under the Visa Waiver Program ("VWP"), nationals of eligible countries are able to enter the United States without a visa. Forty-two countries are in the Visa Waiver Program, predominately European countries. The Visa Waiver Program is authorized by 8 U.S.C. § 1187. The Visa Waiver Program allows eligible travelers to enter the United States visa free, typically for up to 90 days. Although such travelers need not obtain visas, they must register online using the Electronic System for Travel Authorization.

43. Visa Waiver Program travelers must waive the right to seek most forms of relief from removal, such as cancellation of removal, aka the "no-contest" clause. 8 U.S.C. § 1187(b). But they are eligible for asylum and withholding of removal (see 8 U.S.C. § 1187(b)(2))

44. Importantly, VWP entrants are expressly eligible for adjustment of status to lawful permanent resident as the immediate relative of a U.S. citizen. See 8 U.S.C. § 1255(c)(4); *see also* USCIS Policy Manual Vol. 7, Pt. B(7)(C).

45. Some federal courts have determined that the "no-contest" clause of 8 U.S.C. § 1187(b) is no longer active in cases where the VWP entrant has a pending green card application based on marriage to a U.S. citizen due to the "procedural guarantees" of 8 U.S.C. § 1255(c) and 8 C.F.R. § 245.1. *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006).

46. A Visa Waiver Program entrant who expresses a fear of persecution is referred to an immigration judge for asylum-only proceedings. 8 C.F.R. § 1208.2(c)(1)(iii). However, bond proceedings before an immigration judge are separate from removal proceedings or asylum only proceedings. See *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804 (BIA 2020).

47. Congress has not expressly granted ICE the authority to detain VWP entrants who overstay the 90-day admission period. The only possible authority available is the agency's general detention powers applicable to noncitizens facing removal. *Compare* 8 U.S.C. § 1187 (visa waiver provisions containing no mention of detention) with *id.* § 1226(a) (authorizing discretionary detention "pending a decision on whether the alien is to be removed from the United States.").

48. Federal courts agree that VWP entrants with pending removal proceedings are detained under § 1226(a), and therefore entitled to bond hearings. *See e.g., O'connor v. Warden*, 0:25-cv-61338 (FLSD); *Amm v. Thompson*, 5:25-cv-01210 (WDT); *Pestana v. DHS*, 0:25-cv-61492 (FLSD); *Gjergj v Edwards,* 19-5059 (SDW).

VWP Entrants are Entitled to Bond Hearings Despite Matter of Werner

49. In a decision that has been rejected by Federal courts, the Board of Immigration Appeals ("BIA") case of *Matter of Werner* found that immigration judges lack jurisdiction to hold bond determination hearings for VWP holders. 25 I&N Dec. 45, 48 (BIA 2009).

50. Specifically, *Matter of Werner* found that the statutory authority to detain VWP holders is 8 U.S.C. § 1187(c)(2)(E), the general VWP provision, and not 8 U.S.C. § 1226, the provision for detaining most noncitizens. *Jd.* at 47-48. Critically, 8 U.S.C. § 1226(a) allows the Attorney General to release noncitizens on bond if they do not fall under the circumstances outlined in 8 U.S.C. § 1226(c). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (citing 8 U.S.C. § 1226(a)).

51. The BIA justified their holding that VWP holders are ineligible for bond hearings by noting that the Attorney General no longer retains authority to grant bonds to noncitizens detained

under § 1187. Werner, 25 I. & N. Dec. at 47-48. Under that reasoning, the Immigration Judges, who derive their authority from delegation by the Attorney General, do not have authority to grant bonds to noncitizens detained under § 1187. Jd. at 48.

52. Because *Matter of Werner* held that VWP holders are detained under § 1187, the BIA thus held that VWP holders are ineligible for bond hearings by an Immigration Judge. Jd. at 47-48.

53. Since *Matter of Werner*, United States District Courts across the country have criticized the BIA decision and found that VWP holders are entitled to bond hearings by an Immigration Judge. See *Szentkiralyi v. Ahrendt*, No. CV 17-1889 (SDW), 2017 WL 3477739, at *3—4, *6 (D.N.J. Aug. 14, 2017) (rejecting *Matter of Werner* and finding VWP habeas petitioner eligible for bond); *Emila N. v. Ahrendt*, No. CV 19-5060 (SDW), 2019 WL 1123227, at *3 (D.N.J. Mar. 12, 2019) (same); *Gjergj G. v. Edwards*, No. CV 19-5059 (SDW), 2019 WL 1254561, at *3 (D.N.J. Mar. 18, 2019) (same); *Sutaj v. Rodriguez*, No. CV 16-5092 (JMV), 2017 WL 66386, at *5 (D.N.J. Jan. 5, 2017) (same); *Neziri v. Johnson*, 187 F. Supp. 3d 211, 216, 213 (D. Mass. 2016) (ordering bond hearing for VWP habeas petitioner and noting that *Matter of Werner* offers "no explanation" as to "where in 8 U.S.C. § 1187(c)(2)(E), the BIA finds the Secretary of Homeland Security's authority to detain aliens"); *Romance v. Warden York Cnty. Prison*, No. 3:20-CV-00760, 2020 WL 6054933, at *4 (M.D. Pa. July 28, 2020), report and recommendation adopted, No. 3:20-CV-760, 2020 WL 6047594 (M.D. Pa. Oct. 13, 2020) (ordering bond hearing for VWP habeas petitioner because § 1187 "does not itself provide for detention of VWP aliens'); *Malets v. Horton*, No. 420CV0104 1 MHHSGC, 2021 WL 4197594, at *2, *2 n.6, and *6 (N.D. Ala. Sept. 15, 2021) (ordering bond hearing for VWP holder and noting that

"the biggest roadblock to the government's claim that § 1187(c)(2)(E) provides detention authority is the code section's failure to mention detention at 42. all").

54. District Courts that reject *Matter of Werner* and find VWP holders eligible for a bond hearing by an Immigration Judge do so for three reasons. First, courts note that Congress spoke clearly that § 1226 is the statutory authority for detaining individual immigrants—so much so that even during the Chevron era, courts were unwilling to give deference to the BIA on *Matter of Werner.* Second, courts find that § 1187 only limits the substantive relief from removal for which VWP entrants are eligible (i.e. applicants are restricted to applying for asylum only). Consequently, allowing alleged VWP violators to request a bond determination hearing does not frustrate the intent of the VWP program to limit the types of substantive relief available because a bond determination is a procedural, not substantive, function. Third, courts note that nowhere in § 1187 does the statute set out its detention authority for VWP holders and thus § 1226 governs.

55. Regarding the first reason, District Courts find that *Matter of Werner* is not entitled to Chevron deference because Congress already established that § 1226 is the statutory authority for detaining immigrants. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 overruled by *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."). See, e.g., *Neziri*, 187 F. Supp. 3d at 213 (finding *Matter of Werner* not entitled to Chevron deference because Congress "directly spoke[] to the precise question at issue, giving the Secretary of Homeland Security the authority to detain and release aliens under 8 U.S.C. § 1226"); *Sutaj*, 2017 WL 66386, at *5 (same); *Szentkiralyi*, 2017 WL 3477739, at *4 (same). Here,

Congress clearly outlines the detention authority in § 1226 to detain individuals. *Id.* Thus, even during the Chevron era, courts were mandated by statute to find that such detainees are detained under § 1226. In our post-Chevron era, the conclusion that § 1226 governs here is even clearer. Given that the Attorney General has delegated authority to Immigration Judges to decide custody determinations under that statute, people who entered on a visa waiver are entitled to a bond hearing. See 8 C.F.R. §§ 1003.19, 1236.1; see also 28 U.S.C. § 510 (permitting the Attorney General to delegate her function to officers or employees within the Department of Justice).

56. Regarding the second reason, District Courts reject *Matter of Werner* and find VWP holders eligible for a bond hearing under § 1226 because § 1187 only limits the substantive relief from removal for which VWP entrants qualify (i.e. applicants are restricted to applying for asylum only). Thus, allowing VWP violators to request a bond determination hearing does not frustrate the intent of the VWP program to limit the types of substantive relief available because a bond determination is a procedural, not substantive, function. See, e.g., *Sutaj*, 2017 WL 66386, at *5 (stating that VWP holders are entitled to a bond hearing because a bond hearing "does not frustrate the intent of the VWP program to limit the types of substantive relief available" since a "bond determination is a procedural, not substantive, function"); *Szentkiralyi*, 2017 WL 3477739, at *4 (same).

57. Regarding the third reason, District Courts reject *Matter of Werner* and find VWP holders eligible for a bond hearing under § 1226 because nowhere in § 1187 does the statute set out its detention authority for VWP holders. See *Neziri*, 187 F. Supp. 3d at 213 (noting that *Matter of Werner* offers "no explanation" as to "where in 8 U.S.C. § 1187(c)(2)(E), the BIA finds the Secretary of Homeland Security's authority to detain aliens"); *Romance*,

2020 WL 6054933, at *4 (ordering bond hearing for VWP habeas petitioner because § 1187 "does not itself provide for detention of VWP aliens"); *Malets*, 2021 WL 4197594, at *6, *2 & n.6 (N.D. Ala. Sept. 15, 2021) (ordering bond hearing for VWP holder and noting that "the biggest roadblock to the government's claim that § 1187(c)(2)(E) provides detention authority is the code section's failure to mention detention at all'). Put simply, the BIA cannot find detention authority where Congress has not provided for it.

58. In sum, because Congress established that § 1226 is the statutory authority for detaining immigrants, allowing bond hearings does not frustrate the substantive limitations of the VWP program, and § 1187 contains no authority to detain VWP holders, Petitioner respectfully requests that the Court find Petitioner eligible for a bond hearing before an Immigration Judge.

§ 1226(a) Discretionary Detention and Bond Hearings

59. Detention authority for noncitizens being subjected to removal proceedings, including VWP entrants, is governed by 8 U.S.C. 1226. Immigration judges have discretionary authority to release a noncitizen on bond "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. 1226(a). However, noncitizens with certain criminal convictions or who have engaged in terrorist activities are ineligible for bond. 8 U.S.C. 1226(c).

60. Moreover, § 1226(a)'s implementing regulations mandate that DHS officers base their individualized determination on two factors: (1) whether the noncitizen is a "danger to property or persons" and (2) whether the noncitizen is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

61. If, after conducting such an assessment, DHS ultimately decides to detain the noncitizen, that noncitizen has a right to appeal that decision before an immigration judge, who must consider the same two factors. *See* 8 C.F.R. §§ 1003.19(d),(e) (allowing immigration judges to review bond and custody determinations); *Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018) ("[A noncitizen] in a custody determination under [§ 1226], must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.").

62. Despite the typical policy of placing the burden of proof on the alien at bond hearings, which violates due process and the APA, federal courts have made clear that due process requires the Government to prove at bond hearings an alien's dangerousness by clear and convincing evidence or risk of flight by a preponderance of the evidence. See, e.g., *Brito v. Barr*, 415 F. Supp. 3d 258 (D. Mass. 2019); *Roberto M.D. v. Garland*, No. 21-cv-1343, 2021 WL 7161831, at 10 (D. Minnesota Dec. 29, 2021) ("In conclusion, the Court finds…that there was constitutional error in placing the burden of proof on Petitioner at his bond hearing before the [immigration judge], and that due process requires the Government prove by clear and convincing evidence that his detention is necessary to justify his confinement under Section 1226(a)."; *Quintanilla v. Decker*, No. 21 CIV. 417 (GBD), 2021 WL 707062, at 3-4 (S.D.N.Y. Feb. 22, 2021).

Mandatory Detention

63. The second category, established by Section 1226(c), provides that DHS "shall take into custody any [noncitizen]" who falls under certain enumerated categories related to criminal

and terrorist activity. 8 U.S.C. § 1226(c)(1). This "mandatory detention framework . . . 'carves out a statutory category of [noncitizens] who may *not* be released' from detention pending the conclusion of their removal proceedings.'" *Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3314420, at *10 (E.D.N.Y. Nov. 28, 2025) (emphasis in original) (quoting *Jennings*, 583 U.S. at 289).

64. By default, the § 1226(c) mandatory detention provisions only apply to those with convictions for certain serious crimes, such as those that involve moral turpitude, controlled substances, firearm offenses. espionage, terrorism, etc. See 8 U.S.C. § 1226(c)(1).

65. The 2025 Laken Riley Act added other specific offenses that could trigger mandatory detention on the basis of a mere arrest or charge, without needing a final conviction. These include "burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E)(ii).

Administrative Procedure Act

66. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A-D), provides that courts shall set aside agency action that is arbitrary, capricious, an abuse of discretion, in excess of statutory authority, or taken without observance of procedure required by law.

67. Courts have consistently invalidated immigration enforcement actions that disregard statutory and regulatory limits. See: *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d 1, 41–43 (D.D.C. 2018).

68. Where regulations create novel requirements that go beyond those provided in the statutes, courts have invalidated agency action as *ultra vires*. E.g., *Shalom Pentecostal Church V. Beers*, 1:11-cv-04491, (D.N.J. Jan 15, 2013).

69. Courts have also invalidated immigration enforcement actions that violate an agency's own policies or directives. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

70. The APA requires that substantive agency rules be promulgated through notice-and-comment rulemaking unless a statutory exception applies. 5 U.S.C. § 553(b), (c). An agency action that imposes new rights, obligations, or eligibility criteria rather than merely interpreting existing law is a legislative rule and must undergo notice and comment.

71. Where an agency fails to follow these procedural requirements, courts must "hold unlawful and set aside" the resulting regulation or policy. 5 U.S.C. § 706(2)(D); Accordingly, immigration regulations or policies adopted without compliance with the APA's notice-and-comment mandate are subject to judicial invalidation.

## VIII. FACTS

72. Petitioner, Mr. Gardiner, is currently being detained by Respondents, specifically U.S. Immigration and Customs Enforcement (ICE) at the Florida Baker Correctional Institute in Sanderson, Florida. **Exhibit 1**.

73. Mr. Gardiner was admitted into the United States on June 9, 2019 under the Visa Waiver Program ("VWP"). He was inspected granted lawful admission for a 78-day period. **Exhibit 2**.

74. Since that time, Mr. Gardiner has established a life in the United States. Of key importance, he married a U.S. citizen and his I-130 was approved on August 20, 2024. **Exhibit 3**.

75. Counsel mailed Mr. Gardiner's I-485 to USCIS in mid-November 2025, and it was receipted by USCIS on November 26, 2025. **Exhibit 4**

Mr. Gardiner's Fear of Return

76. While Mr. Gardiner is admittedly a VWP overstay, it should be noted that he has a clear and legitimate fear of return to his home country. He comes from a well-known and influential [redacted]

77. Mr. Gardiner himself has been subjected to targeted violence in his home country, informing counsel that he was once ran off the road and threatened and robbed with a knife while being told that [redacted] This was approximately Fall 2017. These same people later shot at Mr. Gardiner and [redacted] on January 1, 2018.

Arrest and ICE Detention

78. On November 22, 2025 Mr. Gardiner was arrested by the Orlando Police Department in connection with eventual charges of attaching a registration sticker to an unauthorized vehicle and counterfeit registration. In short, Petitioner was driving owned by a friend and insists that any mistake in the tag, if any, was on the part of the friend or dealer, and not his own mistake or known to him at the time of the incident. He is currently defending against those charges. Mr. Gardiner was also initially alleged to have a firearm in the vehicle but it belonged to the vehicle's owner. That allegation never rose to the level of a

formal charge and was "no actioned" by the State of Florida on December 15, 2025. **Exhibit 6**. In short, Petitioner is not a violent criminal and his record reflects as much.

79. Mr. Gardiner was being detained in the Orange County Jail for this arrest. He paid bail to the State of Florida on Wednesday December 17, 2025 at approximately 4pm. He was not released immediately because he had an immigration hold.

80. Mr. Gardiner's 48-hour immigration hold should have ended by Friday December 19, 2025 at 4pm, but the Orange County Jail failed to release him. They kept him past the 48-hour deadline and into the weekend in anticipation of ICE taking the Petitioner.

81. Mr. Gardiner was transferred to ICE custody on Sunday December 21, 2025. He was moved temporarily to a Social Security Office in Orlando on Consulate Drive where he was given his intake by ICE officers (discussed below) before he was returned to a different part of the Orange County jail.

82. On or about December 21, 2025 ICE presented Mr. Gardiner with multiple forms including a 71-058 Notice of Intent to Issue Final Administrative Removal Order. The ICE officer, named F. Camejo, insisted that Mr. Gardiner sign them without any explanation. Mr. Gardiner naturally asked to review them and consult his attorney before signing. In response, Officer Camejo informed Mr. Gardiner that he "refused to sign" and then found a second ICE officer co-sign the forms as a witness—falsely indicating in the forms that they explained everything to Mr. Gardiner.

83. On December 24, 2025 he was transferred back to the same Social Security office where he requested to talk to his Deportation Officer about the forms he was handed, but no officer was made available. He was moved from there to his current location at the Florida Baker Correctional Institute in Sanderson, Florida.

84. Since that time, Mr. Gardiner has consulted with counsel and seeks to contest his custody determination and express his fear of being returned to his home country, but he has not since had the opportunity to speak with an ICE deportation officer and submit his forms to anybody despite requests by himself with multiple request forms and counsel.

85. To date, and despite exhaustive effort, Mr. Gardiner's counsel has been unable to ascertain who the Deportation Officer ("DO") assigned to him is. Counsel has tried to contact the DO in order to negotiate parole, dispute administrative removal, and convey Mr. Gardiner's fear of return to his home country.

86. Counsel has called the ICE ERO docket control office on numerous days to ask for the DO's contact information, specifically the number indicated in the ICE detainee locator website in **Exhibit 1**. Either it goes straight to busy and rejects the call, or the phone line rings until it automatically hangs up. Counsel's most recent attempt was January 5, 2025 and the number did not even ring before being rejected as "busy."

87. Counsel has emailed the Orlando OPLA duty attorney and asked. Only once, on December 23, 2025 did that email respond—only to say no Deportation Officer was yet assigned. **Exhibit 7**.

88. Counsel emailed the duty attorney again on December 26, 2025 and January 2, 2026, with no response from either. *Id.*

89. On January 5, 2026 counsel emailed the ICE ERO office at miami.outreach@ice.dhs.gov and CCed the Miami duty attorney. In that message, counsel informed them of the client's right to a credible fear interview, asked for his release, and requested the name and email of the DO assigned to Mr. Gardiner's case. That office responded on January 6, 2026 that the request "was forwarded to the officer in charge of this case for action" and that "[i]f a

response is required, they will respond to you directly." This response was not helpful because it failed to provide the DO's name or email address.

Conditions of Confinement

90. Mr. Gardiner has complained to counsel about harsh conditions of confinement such as overly tightened shackles, overcrowded cells, prolonged periods without access to phones, and being comingled with violent offenders. He knew they were violent him and, in doing so, let him know that they had criminal histories.

91. Further, Mr. Gardiner as a product of his upbringing speaks with a proper, educated and Americanized accent. He reports to counsel that as a result he is called "gay" and threatened by other inmates on a near-daily basis due to his very proper accent, vocabulary, and speech patterns.

92. Regarding medical treatment, Mr. Gardiner has put in numerous requests for medical care for his severe migraines and a respiratory infection (common cold). To date he has received no responses to these requests and zero medication.

93. This harsh confinement would not be happening to Mr. Gardiner but for the fact that ICE is unfairly detaining him without a bond hearing or opportunity to express his fear of return to his country, let alone access to his deportation officer.

## IX. CLAIMS FOR RELIEF

**COUNT I**
**Violation of the INA**

94. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

95. DHS is violating the INA by denying Petitioner a bond hearing even though the only permissible authority that he is properly detained under is located at § 1226, which permits his release on bond.

96. However, under a BIA case, *Matter of Werner*, it would be futile for Mr. Gardiner to seek a bond hearing. The BIA held in that case that immigrants who enter on the Visa Waiver Program are ineligible for bond, and Mr. Gardiner entered on that program.

97. Consistent with the ruling of various courts, this decision is incorrect. Congress has clearly set out the authority under which Mr. Gardiner is detained, and that is located at 8 U.S.C. § 1226.

98. Further, acknowledging this correct reading of the statute does not undermine the purposes in limiting the relief available for people who initially entered under the Visa Waiver Program.

99. Finally, the BIA's conclusion, that immigrants like Mr. Gardiner are detained under 8 U.S.C. § 1187(c)(2)(B), is incorrect because there is simply no authority to detain contained in that section of the Immigration code. Accordingly, Mr. Gardiner is properly detained under § 1226, and the Attorney General has designated authority for him to receive a bond hearing. He is therefore entitled to a hearing. This court should order him released until such a hearing can be conducted, or, in the alternative, an immediate bond hearing.

**COUNT II**
**Violation of Fifth Amendment (Substantive)**

100. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

101. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

102. Petitioner, who legally entered the United States, has a fundamental interest in liberty and being free from official restraint.

103. Courts across the nation are recognizing that noncitizens who are not at the threshold of entry, like Petitioner, have "*a due process right to an individualized bond hearing, and neither the legislature nor the executive can strip him of that right....*" *Destino v. Tatum*, 1:25-cv-374 (New Hampshire District Court). Accord, *Merino v. Ripa*, no. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *4 (S.D. Fla. Oct. 15, 2025); *Hernandez-Fernandez v. Lyons*, no. 5:25-cv-773, 2025 WL 2976923, at *8 n.2 (W.D. Tex. Oct. 21, 2025); *Ochoa Ochoa v. Noem*, no. 25-CV-10865, 2025 WL 2938779, at *7 (N.D. Ill. Oct. 16, 2025); *Escobar-Ruiz v. Raycraft*, no. 1:25-CV-1232, 2025 WL 3039255, at *6 (W.D. Mich. Oct. 31, 2025)); see also, e.g., *Ordonez-Lopez*, 2025 WL 3123828, at *3; Rojas, 2025 WL 3038262, at *2–3; *Espinoza v. Kaiser*, no. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *10–11 (E.D. Cal. Sept. 5, 2025); *Rosado v. Figueroa*, no. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019); *Carillo Fernandez v. Knight*, no. 2:25-CV-02221-RFB-BNW, 2025 WL 3485800, at *6 (D. Nev. Dec. 4, 2025); *Garcia-Arauz v. Noem*, no. 2:25-CV-02117-RFB-EJY, 2025 WL 3470902, at *6–7 (D. Nev. Dec. 3, 2025); *Silva Hernandez v. Noem*, no. 2:25-CV-02304-RFBEJY, 2025 WL 3470903, at *8 (D. Nev. Dec. 3, 2025); *Avila Aranda v. Olson*, no. 4:25-CV-00156-GNS, 2025 WL

3499061, at *6–8 (W.D. Ky. Dec. 5, 2025); *Doe v. Moniz*, 2025 WL 2576819, at *11; *Rincon*, 2025 WL 3122784, at *5–7; *Fils-Aime v. FCI Berlin, Warden*, No. 1:25-CV-287-JL-TSM, 2025 WL 3063164, at *3 (D.N.H. Oct. 31, 2025); *Tenemasa-Lema v. Hyde*, No. CV 25-13029-BEM, 2025 WL 3280555, at *4 (D. Mass. Nov. 25, 2025).

104. Petitioner is and has been inside the United States since 2019, freely living his life. He is not currently seeking admission as he was already admitted. In non-admission contexts such as this, which do not directly implicate the executive's sovereign prerogative, the Due Process Clause protects liberty interests that may accrue regardless of statutory allowances. Liberty interests may spring from lives lived, connections fostered, and promises made or implied. "Thus, even without disturbing the metaphysical 'entry fiction' that may obstruct, in some senses, our ability to admit that a non-citizen is really 'here,' one can still constitutionally recognize [a petitioner's] actual life in this country—his years as part of our community—not so easily set aside." *Id.* quoting *Tenemasa-Lema*, 2025 WL 3280555, at *4.

105. DHS has violated Petitioner's substantive due process rights by unfairly and unlawfully categorizing him in a way that denies him a bond hearing.

106. Regardless of how Petitioner is categorized by the DHS, his detention without a bond hearing is an "as applied" violation of the Fifth Amendment based on the fact that he has accrued a liberty interest by way of his lawful entry into the United States in 2019.

**COUNT III**
**Violation of Fifth Amendment (Procedural)**

107. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

108. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. Amend. V.

109. Mr. Gardiner's detention without a bond hearing violates his procedural due process rights.

110. Mr. Gardiner's procedural due process rights were also violated when ICE officers refused to allow him time to confer with an attorney regarding multiple forms handed to him at once, and then summarily claimed that he "refused to sign" before they executed the forms without his signature and falsely indicated that they explained everything to him.

111. Related to the above paragraph, ICE's failure to give Mr. Gardiner a fair chance to voice his fear of return to his home country pursuant to 8 C.F.R. § 1208.2(c)(1)(iii) violates Mr. Gardiner's procedural due process rights.

112. The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Detention without Bond

113. Mr. Gardiner has a weighty liberty interest as his freedom "from government... detention... lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 USS. 678, 693 (2001).

114. The risk of erroneous deprivation without such procedures is high. Without additional oversight, the government is free to make decisions to arrest an individual

without a strong showing that the individual is a flight risk or a danger, thus, denying individuals of due process without any meaningful opportunity to contest the government's reasons to detain them. See *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018). A bond hearing ultimately alleviates these concerns by giving an immigrant an opportunity to contest their detention before an immigration judge.

115. Finally, the government does not have a strong interest in detaining Mr. Gardiner without a bond hearing before a neutral arbitrator. Bond hearings are not an extensive process, and immigration judges are already equipped to handle such hearings efficiently and easily. Nor does the government have a strong interest in detaining an individual who can demonstrate they are not a flight risk or a danger.

116. Given the importance of the liberty interest at stake, the absence of any meaningfully existing process, and Respondents' minimal interest in detaining Mr. Gardiner, a pre-deprivation hearing at which Respondents bear the burden of proof of showing that Mr. Gardiner isa security or flight risk is required. Accordingly, this court should hold that Petitioner is entitled to a bond hearing, and order such a hearing immediately.

Forced Execution of Forms / Failure to Provide Forum to Express Fear of Return

117. Mr. Gardiner has a weighty liberty interest in understanding forms and conferring with legal counsel before signing anything. Even the forms themselves state as much. For example, one of the forms he was handed was Form 71-058 VWP Notice of Intent to Issue a Fianl Administrative Removal Order. It states that aliens have 48 hours to contest, and

that aliens may request extensions to "obtain supporting evidence, or to consult an attorney." But despite what the form said, he was not given any extension to call his attorney. Rather, the ICE officer(s) falsely claimed that they explained everything to him and never returned to accept his paperwork within the 48-hour period despite Mr. Gardiner's multiple attempts to contact ICE through multiple request forms to speak with ICE submitted in the detention facility, plus his counsel's multiple attempts to contact ICE.

118. The risk of erroneous deprivation in this situation is high. Without following the instructions on the form related to aliens contacting counsel, the government is free to railroad aliens into signing away their rights without being fully informed of the legal consequences, thus, denying individuals of due process. Plus their failure to return and accept the paperwork prevents Mr. Gardiner from expressing his legitimate fear of returning to his home country.

119. Finally, the government does not have a strong interest in deporting Mr. Gardiner without giving him a chance to confer with counsel and express his fear of return to his home country. Rather, it is in the government's interest that its rules and regulations be followed by federal officers, including the rules regarding VWP entrants entitlement to asylum/withholding of removal proceedings, plus the form's instructions regarding time to confer with counsel.

120. Given the importance of the liberty interest at stake, the absence of any meaningfully existing process, and Respondents' minimal interest in depriving Mr. Gardiner of legal counsel or his asylum/withholding of removal proceedings, a new opportunity for Mr. Gardiner's concerns to be heard by ICE is required. Accordingly, this

court should hold that Petitioner is entitled to a credible fear interview that should be conducted immediately.

**COUNT IV**
**Fourth Amendment—Violation of 48-hour Deadline in § 287**

121. Petitioner incorporates by reference the allegations of fact and legal standards set forth in the preceding paragraphs.

122. It is undisputed that the Fourth Amendment to the U.S. Constitution prohibits seizures by any governmental agency without a warrant. *U.S. Const. amend. IV.*

123. Section 287 and its implementing regulations at 8 C.F.R. § 287.7(d) give local law enforcement agencies a strict 48-hour time limit to detain persons subject to an immigration detainer until ICE can take custody of them. Any seizure or detention beyond this 48-hour limit without independent warrant has been held to be a violation of the fourth amendment's prohibition against warrantless detention. . E.g., *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

124. The Orange County Jail held Petitioner beyond the 48-hour period allotted in 8 C.F.R. § 287.7 without a warrant or independent probable cause, thereby violating Mr. Gardiner's constitutional rights.

125. The Orange County Jail can be held liable for civil damages for this unconstitutional detention.

126. Further, this unconstitutional imprisonment was done at the behest of DHS, who failed to make an action to detain Petitioner within the 48-hour period. Therefore, DHS induced and requested the violation of Mr. Gardiner's constitutional rights.

127. For those reasons, DHS did not properly arrest Mr. Gardiner and his current detention was not properly executed. As such, he is currently not being detained in accordance with law and should be immediately released so ICE is forced to undergo proper procedures in regards to Mr. Gardiner's immigration process.

## X. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order a STAY OF REMOVAL enjoining Respondents from issuing a final administrative order of removal or effectuating Petitioner's physical removal while this litigation is pending;

c. Order that Petitioner shall not be transferred outside the MIDDLE DISTRICT OF FLORIDA while this habeas petition is pending;

d. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

e. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

f. Order that DHS must carry the burden of proof at the bond hearing to demonstrate if the Petitioner is a flight risk or a danger to the community;

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Any further relief the Court deems proper.

DATED: January 7, 2026

**Respectfully Submitted,**

/s/ Taymoor M. Pilehvar
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Jordan Keihdano Gardiner, and submit this verification on his behalf. I have conducted an appropriate inquiry into the circumstances of this case, and I believe that all factual allegations contained in the Petition for Writ of Habeas Corpus are true. 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. Further, I verify that I read the facts of the case to the Petitioner over the telephone and he expressly confirmed to me that they are accurate to the best of his belief and knowledge.

/s/ Taymoor M. Pilehvar

**CERTIFICATE OF SERVICE**

I certify that on the 7th day of January, 2026 I electronically filed the foregoing document and attachments with the Clerk of the Court using CM/ECF. I also certify that the foregoing document

is/are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Taymoor M. Pilehvar