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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

ARLY ALFREDO MARTINEZ LOPEZ, Petitioner, v. Jason Streeval, in his official capacity as Warden of Stewart Detention Center; LaDeon FRANCIS, in his official capacity as Field Office Director of Enforcement and Removal Operations, Atlanta Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; Pamela BONDI, in her official capacity as U.S. Attorney General, Respondents.	Case No. 4:26-cv-37 **PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

1. Petitioner Arly Alfredo Martinez Lopez is in the physical custody of Respondents at the Stewart Detention Center located in Lumpkin, Georgia. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such

individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a new custody redetermination hearing under § 1226(a) within seven days whereby the Immigration Judge does have jurisdiction over Petitioner's custody redetermination request.

II. JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Stewart Detention Center in Lumpkin, Georgia.

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(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).

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies with the district court having jurisdiction over the custodian of the detainee. In the case at hand, venue is proper with the United States District Court for the Middle District of Georgia, the judicial district encompassing the Stewart Detention Center in Lumpkin, Georgia in Stewart County, Georgia.

12. 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 Georgia.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith", unless 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.*

14. Habeas corpus 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).

V. PARTIES

15. Petitioner Arly Alfredo Martinez Lopez is alleged to be a citizen of Nicaragua who entered the United States without admission, inspection, or parole. Petitioner is currently detained at the Stewart Detention Center in the custody, and under the direct control, of Respondents and their agents. Petitioner has been in immigration detention since December 2025. After arresting Petitioner, ICE did not set bond.

16. Respondent Jason Streeval is employed by CoreCivic as Warden of the Stewart Detention Center where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

17. Respondent LaDeon Francis is the Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, LaDeon

Francis is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

18. 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.

19. 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.

VI. LEGAL FRAMEWORK

20. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals detained pursuant to § 1226(a) 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).

1 22. Second, the INA provides for mandatory detention of noncitizens
2 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
3 arrivals seeking admission referred to under § 1225(b)(2).
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5 23. Last, the INA also provides for detention of noncitizens who have
6 been ordered removed, including individuals in withholding-only proceedings, *see*
7 8 U.S.C. § 1231(a)–(b).
8 24. This case concerns the detention provisions at §§ 1226(a) and
9 1225(b)(2).
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11 25. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted
12 as part of the Illegal Immigration Reform and Immigrant Responsibility Act
13 (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546,
14 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended
15 earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
16 26. Following the enactment of the IIRIRA, EOIR drafted new
17 regulations explaining that, in general, people who entered the country without
18 inspection were not considered detained under § 1225 and that they were instead
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20 detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens;
21 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
22 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
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27. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

28. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

29. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,".[1] claims that all persons who entered the United States without inspection shall now be subject to a mandatory detention provision under § 1225(b)(2)(A). This interpretation of the statute applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

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[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

30. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) and are therefore ineligible for bond hearings.

31. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. [2] Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

32. Even before ICE or the BIA introduced these nationwide policies, Immigration Judges in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not

[2] Petitioner is a class member of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In *Maldoncdo Bautista* the court certified the Bond Eligible Class, defined as: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldoncdo Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).
Courts are obligated to apply the law to all class members, as determined in the binding, final judgment issued in *Maldoncdo Bautista* on December 18, 2025. The Executive Office for Immigration Review is a Defendant in *Maldoncdo Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, immigration judges continue to find that they do not have jurisdiction pursuant to *Yajure Hurtado* when respondents request custody redetermination hearings pursuant to class membership

1 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779
2 F. Supp. 3d 1239 (W.D. Wash. 2025).
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4 33. Subsequently, several courts have adopted the same reading of the
5 INA's detention authorities and rejected ICE and EOIR's new interpretation. *See,*
6 *e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July
7 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----,
8 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-
9 02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*
10 *recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
11 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937
12 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No.
13 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-*
14 *Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D.
15 Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D.
16 Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL
17 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
18 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No.
19 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*,
20 No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose*
21 *J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL
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1 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-
2 BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v.*
3 *Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025);
4 *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL
5 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546,
6 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-
7 11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma*
8 *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025)
9 (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2)
10 authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
11 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-
12 03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).
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15 34. Courts have uniformly rejected DHS's and EOIR's new interpretation
16 because it defies the INA. As the *Rodriguez Vazquez* court and others have
17 explained, the plain text of the statutory provisions demonstrates that § 1226(a),
18 not § 1225(b), applies to people like Petitioner.
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20 35. Section 1226(a) applies by default to all persons "pending a decision
21 on whether the [noncitizen] is to be removed from the United States." These
22 removal hearings are held under § 1229a, to "decid[e] the inadmissibility or
23 deportability of a[] [noncitizen]."
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36. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

37. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

38. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

39. Accordingly, the detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

FACTS

40. Petitioner has resided in the United States since approximately 2012 and lives in Doraville, Georgia.

41. Petitioner previously filed Form I-589, Application for Asylum and for Withholding of Removal before United States Citizenship and Immigration Services ("USCIS") on or around June 20, 2018. That application was referred to the Immigration Court for further adjudication and Petitioner was placed into removal proceedings on or around August 13, 2018.

42. Petitioner filed Form I-914, Application for T Nonimmigrant Status before USCIS in or around 2025. That application is currently pending.

43. Petitioner was arrested for minor traffic infractions in Tifton, Georgia in December 2025; after paying the bond, a DHS ICE hold was placed on him. DHS took Petitioner into custody and Petitioner is now detained by DHS at the Stewart Detention Center in Lumpkin, Georgia.

44. Petitioner's Alien File was transferred to the Stewart Immigration Court. DHS has charged Petitioner with, *inter alia*, being inadmissible under 8

U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

45. Petitioner has significant ties to the community as he is married and has two children, the youngest of which being a U.S. citizen – a seventeen (17) year-old daughter and a three (3) year-old daughter. The Petitioner and his wife maintain a fixed address as they own their home, which is located in Doraville, Georgia. Petitioner maintains gainful employment as he owns two companies (AM Flipping, LLC and AG Remodeling Solutions, LLC) which he has successfully run since approximately 2019. As such, Petitioner is not a flight risk.

46. In 2024, the Petitioner was convicted of one count of Reckless Driving in Dekalb County, Georgia. He was sentenced to less than a year of probation which he promptly completed. Apart from this conviction and the aforementioned arrest for minor traffic offenses, to the knowledge of undersigned counsel Petitioner has not been arrested for any other reason. As such, Petitioner is not a danger to the community.

47. Following Petitioner's arrest and transfer to the Stewart Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

48. In the experience of undersigned firm, the immigration judge will not consider Petitioner's bond request pursuant to *Matter of Yajure Hurtado* despite the final judgment issued in the *Maladonado Bautista* class action.

49. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act

50. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

52. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

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COUNT II
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Violation of the Bond Regulations
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53. Petitioner incorporates by reference the allegations of fact set forth in
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preceding paragraphs.
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54. In 1997, after Congress amended the INA through IIRIRA, EOIR and
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the then-Immigration and Naturalization Service issued an interim rule to interpret
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and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and
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Detention of [Noncitizens]," the agencies explained that "[d]espite being
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applicants for admission, [noncitizens] who are present without having been
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admitted or paroled (formerly referred to as [noncitizens] who entered without
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inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at
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10323 (emphasis added). The agencies thus made clear that individuals who had
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entered without inspection were eligible for consideration for bond and bond
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hearings before Immigration Judges under 8 U.S.C. § 1226 and its implementing
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regulations.
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55. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy
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and practice of applying § 1225(b)(2) to individuals like Petitioner.
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56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
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continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
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COUNT III

Violation of Fifth Amendment Right to Due Process

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

58. 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).

59. Petitioner has a fundamental interest in liberty and being free from official restraint.

60. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Middle District Court of Georgia while this habeas petition is pending;

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

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

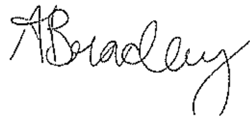
e. Declare that Petitioner's detention is unlawful.

f. 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

g. Grant any other and further relief that this Court deems just and proper.

DATED this 9th day of January, 2026.

Respectfully Submitted,
The Kennedy Immigration Firm, LLC



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