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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

CRUZ I. RODRIGUEZ-HERNANDEZ,



Petitioner,

v.

JASON STREEVAL, WARDEN,
STEWART DETENTION CENTER;
KRISTI NOEM, DHS SECRETARY

Respondent.

Case No.

PETITION FOR WRIT OF
HABEAS CORPUS

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2 **INTRODUCTION**

3 1. Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging
4 the constitutionality and statutory legality of his current immigration detention. Petitioner was
5 paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), lived freely in the community
6 for nearly three years, complied with all conditions of release, maintained lawful employment
7 pursuant to employment authorization, and established deep family and community ties. Without
8 notice, without a hearing, and without any individualized determination as required by law,
9 immigration authorities abruptly re-detained Petitioner during a routine check-in.

10 2. Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment.
11 Petitioner possessed a protected liberty interest arising from his conditional release under 8 U.S.C.
12 § 1182(d)(5)(A), and the Government extinguished that liberty without notice, without a hearing,
13 and without any opportunity to be heard. Because the deprivation of liberty occurred in the
14 complete absence of constitutionally required procedures, Petitioner's detention is unlawful, and
15 immediate release is the only adequate remedy.

16 3. In the alternative, should the Court decline to order immediate release based on the
17 due process violation, Petitioner is entitled to a bond hearing because he is not subject to any
18 mandatory detention provision of the Immigration and Nationality Act, including 8 U.S.C. §
19 1225(b)(1) or § 1225(b)(2). Petitioner was paroled into the United States and arrested in the interior
20 years after entry; accordingly, detention under § 1225 is statutorily inapplicable. Instead, any
21 detention authority arises, if at all, under 8 U.S.C. § 1226(a), which authorizes only discretionary
22 detention and entitles Petitioner to an individualized bond hearing.

23 4. Absent judicial intervention, Petitioner will continue to suffer irreparable harm
24 from an unlawful deprivation of liberty imposed through executive action unsupported by

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2 individualized findings of danger or flight risk. Petitioner therefore respectfully requests that this
3 Court order his immediate release from custody. In the alternative, Petitioner requests a prompt
4 bond hearing before an impartial immigration judge under 8 U.S.C. § 1226(a). *Should the Court*
5 *order such a hearing, Petitioner respectfully requests that the Government be directed to file a*
6 *written status report with this Court explaining whether bond was granted or denied and setting*
7 *forth the reasons for the custody determination, so that this Court may ensure compliance with*
8 *statutory and constitutional due process requirements.*

9
10 **JURISDICTION**

11 5. Petitioner is in the physical custody of Respondent. Petitioner is detained at the
12 Stewart Detention Center located in Lumpkin, Georgia.

13 6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), and 28
14 U.S.C. § 1331 (federal question).

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

17 **VENUE**

18 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
19 500 (1973), venue lies in the United States District Court for the Middle District of Georgia, the
20 judicial district in which Petitioner currently is detained.

21 9. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
22 Respondents are employees, officers, and agencies of the United States, and because a substantial
23 part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia.
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2 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

7 11. Habeas corpus is “perhaps the most important writ known to the constitutional
8 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
9 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
10 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
11 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
12 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

13 **PARTIES**

14 12. Petitioner, Mr. Cruz Ivan Rodriguez Hernandez, is a native and citizen of El
15 Salvador who is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the
16 Stewart Detention Center in Lumpkin, Georgia, where he has been held since December 11, 2025.

17 13. Respondent Jason Streeval is the Warden of the Stewart Detention Center, which
18 is operated by CoreCivic. As Warden, he exercises immediate physical custody over Petitioner.
19 He is sued in his official capacity.

20 14. Respondent Kristi Noem is the Secretary of the United States Department of
21 Homeland Security (“DHS”). In that capacity, she has legal custody and ultimate authority over
22 Petitioner’s detention through DHS and its component agency, ICE. She is sued in her official
23 capacity.
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2 **DUE PROCESS FRAMEWORK**

3 **A. The Fifth Amendment and Protected Liberty Interests**

4 15. The Due Process Clause of the Fifth Amendment provides that no person shall be
5 deprived of liberty without due process of law. This protection applies to all “persons” within the
6 United States, including noncitizens, and safeguards freedom from physical restraint as a core
7 constitutional interest.

8 16. A protected liberty interest may arise not only from freedom from initial
9 confinement, but also from conditional release from physical custody. The Supreme Court has
10 recognized that when the government grants an individual conditional liberty—allowing the
11 individual to live in the community subject to specified terms—that liberty interest is protected by
12 the Due Process Clause. *See Young v. Harper*, 520 U.S. 143, 147–49 (1997).

13 17. Importantly, the existence of statutory authority to arrest or detain an individual
14 does not eliminate constitutional constraints. Even where a statute permits detention, the Due
15 Process Clause may independently require procedural protections beyond those expressly provided
16 by statute. *Id.*; *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
17 482 (1972).

18 **B. Conditional Liberty and the Parole Analogy**

19 18. In determining whether a particular form of conditional release gives rise to a
20 protected liberty interest, courts look to the nature of the release and compare it to parole as
21 described in *Morrissey v. Brewer*. In *Morrissey*, the Supreme Court explained that parole permits
22 an individual “to do a wide range of things open to persons who have never been in custody or
23 convicted of any crime,” including living at home, working, associating with family and friends,
24 and forming the “enduring attachments of normal life.” 408 U.S. at 482.

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2 19. Although parolees remain subject to conditions and supervision, the Court
3 emphasized that their status “is very different from that of confinement in a prison.” *Id.* Because
4 parole allows the individual to structure his life around continued freedom, the Court held that
5 revocation of parole inflicts a “grievous loss” and therefore implicates a protected liberty interest.
6 *Id.* at 482–84.

7 20. The Court further recognized that conditional release carries an implicit promise
8 that liberty will be revoked only upon failure to comply with release conditions. *Id.* This reliance
9 interest is a key feature distinguishing conditional liberty from temporary or transitory release.

10 **C. Procedural Protections Required Before Revocation of Conditional Liberty**

11 21. Where a protected liberty interest exists, due process requires notice and an
12 opportunity to be heard before that liberty may be terminated. The Supreme Court has consistently
13 applied this principle across multiple contexts involving conditional release, including parole,
14 probation, and parole programs. See *Morrissey*, 408 U.S. at 482; *Gagnon*, 411 U.S. at 782; *Young*,
15 520 U.S. at 147–49.

16 22. These decisions reflect a common constitutional principle: summary revocation of
17 conditional liberty, without procedural safeguards, creates a substantial risk of erroneous
18 deprivation. As a result, the Constitution requires at least minimal procedures—such as notice of
19 the grounds for revocation and an opportunity to contest those grounds before a neutral
20 decisionmaker—before liberty may be withdrawn.

21 23. Courts addressing immigration detention have similarly recognized that once a
22 noncitizen is released from custody and permitted to live in the community, a protected liberty
23 interest in remaining free may arise, triggering due process protections before re-detention.
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2 **D. The Mathews v. Eldridge Framework**

3 24. When evaluating whether the procedures used to deprive an individual of liberty
4 satisfy due process, courts apply the three-factor balancing test articulated in *Mathews v. Eldridge*,
5 424 U.S. 319, 335 (1976). That test requires consideration of:

- 6 1) the private interest affected by the official action;
7 2) the risk of erroneous deprivation under the procedures used, and the probable value
8 of additional or substitute safeguards; and
9 3) the government's interest, including the fiscal and administrative burdens that
10 additional procedures would entail.

11 25. This framework governs the constitutional analysis where, as here, the government
12 seeks to terminate conditional liberty through detention.

13 **STATUTORY FRAMEWORK**

14 **A. Inspection, Parole, and Applicants for Admission**

15 26. The Immigration and Nationality Act (“INA”) establishes distinct statutory
16 frameworks governing inspection, parole, and detention of noncitizens. Under 8 U.S.C. § 1225(a),
17 a noncitizen who presents himself for inspection is treated as an “applicant for admission.”
18 Applicants for admission may be inspected by immigration officers to determine admissibility to
19 the United States.

20 27. Separately, Congress authorized the Secretary of Homeland Security to parole
21 certain noncitizens into the United States on a discretionary basis. Under 8 U.S.C. § 1182(d)(5)(A),
22 DHS may parole a noncitizen “into the United States temporarily under such conditions as [it] may
23 prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public
24 benefit.” Parole does not constitute an admission, but it permits the noncitizen to physically enter
and reside in the United States subject to conditions imposed by DHS.

28. When parole is granted, the statute provides that upon termination of parole, the
noncitizen “shall return or be returned to the custody from which he was paroled and thereafter his

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2 case shall continue to be dealt with in the same manner as that of any other applicant for admission.’

3 8 U.S.C. § 1182(d)(5)(A).

4 **B. Mandatory Detention and Expedited Removal Under 8 U.S.C. § 1225**

5 29. Section 1225(b) governs the inspection and initial processing of certain applicants
6 for admission. Under § 1225(b)(1), DHS may subject certain noncitizens to expedited removal and
7 mandatory detention. That provision applies only to specific categories of individuals, including
8 noncitizens who have not been admitted or paroled into the United States and who cannot establish
9 a requisite period of continuous physical presence. See 8 U.S.C. § 1225(b)(1)(A)(iii).

10 30. Section 1225(b)(2) governs detention of other applicants for admission pending a
11 determination of admissibility. Both provisions operate in the context of inspection and processing
12 at or near the point of entry and are tied to an applicant’s initial encounter with immigration
13 authorities.

14 **C. Discretionary Detention Pending Removal Proceedings Under 8 U.S.C. § 1226**

15 31. Once a noncitizen is placed into removal proceedings, detention authority is
16 governed by 8 U.S.C. § 1226. Section 1226(a) provides the general rule for detention pending a
17 decision on removability. Under that provision, DHS may arrest and detain a noncitizen, or release
18 the noncitizen on bond or conditional parole, pending the outcome of removal proceedings.

19 32. Detention under § 1226(a) is discretionary and contemplates individualized custody
20 determinations. Noncitizens detained under § 1226(a) are entitled to a bond hearing before an
21 immigration judge to determine whether continued detention is warranted.

22 33. By contrast, § 1226(c) mandates detention of a narrow category of noncitizens with
23 specified criminal convictions. Mandatory detention under § 1226(c) applies only when the
24 statutory criteria are satisfied.

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2 **FACTUAL BACKGROUND**

3 34. Petitioner is a native and citizen of El Salvador. He entered the United States on or
4 about March 8, 2022, after presenting himself for inspection and applying for admission through
5 the CBP One mobile application. Upon entry, Petitioner was immediately issued a Notice to
6 Appear (“NTA”) and placed into removal proceedings. He was charged with inadmissibility under
7 § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”) as an immigrant not in
8 possession of valid entry or travel documents at the time of application for admission. Immigration
9 officials subsequently exercised their discretionary authority to parole Petitioner into the United
10 States pursuant to 8 U.S.C. § 1182(d)(5).

11 35. Immigration officials may parole a noncitizen under 8 U.S.C. § 1182(d)(5)(A) for
12 “urgent humanitarian reasons” or “significant public benefit,” provided the noncitizen presents
13 neither a security risk nor a risk of absconding. See 8 C.F.R. § 212.5(b). A grant of parole therefore
14 reflects a determination by the government that the noncitizen is not a danger to the community
15 and does not pose a flight risk.

16 36. Following his release, Petitioner established residence in the State of Georgia. Prior
17 to his re-detention, he resided with his wife and his two U.S. citizen children, ages thirteen and
18 seventeen. Petitioners have been employed in the landscaping industry and has continuously
19 supported his household. In 2024, Petitioner filed a Form I-589, Application for Asylum and for
20 Withholding of Removal, which remains pending in his removal proceedings. During this period,
21 Petitioner was granted a five-year employment authorization document valid through April 22,
22 2030, and he has maintained a clean criminal record.

23 37. As a condition of his release, Petitioner was enrolled in the Intensive Supervision
24 Appearance Program (“ISAP”), which required periodic in-person reporting and virtual check-ins

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2 through a mobile phone application. Petitioner complied with all reporting requirements. On one
3 occasion, he submitted a required photograph a few hours late due to technical issues with the
4 application and promptly notified his assigned ISAP officer of the issue. Petitioner never received
5 any warning, notice of noncompliance, or indication that he was at risk of arrest or detention based
6 on this minor delay.

7 38. On December 11, 2025, Petitioner appeared in person for his regularly scheduled
8 check-in as instructed. Without prior notice or explanation, ICE agents detained him. Petitioner
9 was transported to the Stewart Detention Center, where he remains detained. His next immigration
10 court hearing is scheduled for June 12, 2026.

11 39. Petitioner's parole into the United States under 8 U.S.C. § 1182(d)(5)(A) was
12 premised on a determination that he did not pose a risk to public safety or a risk of flight. Nothing
13 in the record before this Court demonstrates any change in circumstances since that determination
14 was made. Prior to his sudden arrest and detention on December 11, 2025, no DHS or ICE official
15 conducted any individualized assessment finding that Petitioner posed either a flight risk or a
16 danger to the community.

17 40. Petitioner's continued detention constitutes a profound infringement on his
18 fundamental liberty interest in freedom from physical restraint—an interest that lies at the core of
19 the procedural due process protections guaranteed by the Fifth Amendment. The hallmark of due
20 process is notice and an opportunity to be heard. Here, Petitioner was deprived of his liberty
21 without either safeguard, creating a substantial risk of erroneous deprivation that cannot withstand
22 constitutional scrutiny.

MEMORANDUM OF LAW

I. Petitioner Possessed a Protected Liberty Interest in His Continued Release

41. Petitioner incorporates by reference the preceding paragraphs.

42. Petitioner was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) after presenting himself for inspection through the CBP One process. He then lived in the community for nearly three years—residing with his wife and two U.S. citizen children, working lawfully pursuant to employment authorization valid through April 22, 2030, complying with ISAP supervision, filing an asylum application that remains pending, and maintaining a clean criminal record. (See Facts ¶¶ 33–37.)

43. That long-term, supervised community release is materially comparable to the conditional liberty described in *Morrissey*: Petitioner lived at home, worked, supported his family, and formed enduring attachments of normal life. (Facts ¶¶ 35–37.) His liberty therefore rose well above a transitory or fleeting release and created a protected liberty interest in remaining free absent constitutionally adequate revocation procedures. *Young*, 520 U.S. at 147–49; *Morrissey*, 408 U.S. at 482–84.

44. Petitioner’s compliance history underscores that this liberty interest was not theoretical. He complied with ISAP reporting, and the only issue in the record is a minor, technical delay in submitting a photograph, which he promptly reported and which resulted in no notice of noncompliance and no warning that detention was contemplated. (Facts ¶ 36.)

45. Courts confronting similar post-release immigration re-detention circumstances have likewise recognized that once a noncitizen is released and permitted to live in the community, a protected liberty interest may arise. *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025); *Ortega v. Kaiser*, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025).

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2 **II. Under *Mathews v. Eldridge*, Re-Detention Without Notice, Hearing, or Individualized Findings Violated Due Process**

3 **A. The Private Interest Affected Is Profound**

4 46. The private interest affected—freedom from physical restraint—is at the apex of
5 due process protection. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner’s liberty interest
6 is particularly weighty because it followed nearly three years of stable, compliant community
7 release, during which Petitioner lawfully worked, supported his family, and pursued relief in
8 removal proceedings. (Facts ¶¶ 35–37.)

9 47. Re-detention did not merely adjust conditions of supervision; it extinguished
10 Petitioner’s liberty entirely. (Facts ¶ 37.) Under *Morrissey*, that loss is “grievous” and
11 constitutionally significant. 408 U.S. at 482–84.

12 **B. The Risk of Erroneous Deprivation Was Exceptionally High, and Minimal Safeguards Would Have Significant Value**

13 48. The procedures used here created an unacceptably high risk of erroneous
14 deprivation. Petitioner was arrested at a routine, scheduled check-in without prior notice, without
15 explanation, and without any opportunity to contest the basis for detention. (Facts ¶ 37.)

16 49. The record reflects no individualized assessment finding Petitioner posed a flight
17 risk or danger, and no change in circumstances undermining the Government’s original release
18 determination. (Facts ¶ 38.) The absence of notice and a neutral, individualized process is precisely
19 what drives the risk of error in conditional-liberty revocation. *Young*, 520 U.S. at 147–49;
20 *Morrissey*, 408 U.S. at 482–84.

21 50. Minimal safeguards—notice of the asserted basis for re-detention and a prompt
22 hearing before a neutral decisionmaker—would materially reduce the risk of erroneous deprivation
23 by requiring the Government to articulate and support its reasons and permitting Petitioner to
24 respond. Those protections are modest, familiar, and administrable.

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2 **C. The Government’s Interest Does Not Justify Summary Re-Detention**

3 51. The Government has an interest in administering the immigration system and
4 ensuring appearance and community safety. But Petitioner’s extended compliance under ISAP and
5 stable residence and employment demonstrate that less restrictive measures were effective. (Facts
6 ¶¶ 35–36.)

7 52. Requiring basic procedural safeguards before extinguishing conditional liberty
8 imposes a minimal burden compared to the severe deprivation imposed. *Morrissey*, 408 U.S. at
9 482; *Gagnon*, 411 U.S. at 782.

10 **D. Balancing the Mathews Factors Confirms a Due Process Violation and Warrants Immediate Release**

11 53. Balancing the profound private interest, the substantial risk of erroneous
12 deprivation created by summary re-detention, and the minimal burden of basic safeguards, the
13 *Mathews* factors overwhelmingly favor Petitioner.

14 54. Because Petitioner’s conditional liberty was terminated without notice, without a
15 hearing, and without individualized findings, his detention violates the Due Process Clause of the
16 Fifth Amendment. (Facts ¶¶ 37–39.)

17 55. Where detention is the product of a constitutional violation in the process of
18 revoking conditional liberty, habeas relief is warranted. Petitioner respectfully requests immediate
19 release as the commensurate remedy to halt the ongoing unlawful deprivation of liberty.

20 **III. Petitioner Is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225, and His Continued Detention Is Governed by 8 U.S.C. § 1226(a)**

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22 56. Respondents cannot lawfully justify Petitioner’s detention under the mandatory
23 detention provisions of 8 U.S.C. § 1225. Although Petitioner initially presented himself for
24 inspection at the border in March 2022, immigration officials exercised their discretionary

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2 authority to parole him into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). Following that
3 parole, Petitioner resided openly in the interior of the United States for nearly three years prior to
4 his arrest on December 11, 2025.

5 57. The plain text of § 1225(b)(1) forecloses its application here. Section
6 1225(b)(1)(A)(iii) governs only those noncitizens “who ha[ve] not been admitted or paroled into
7 the United States” and who cannot affirmatively demonstrate two years of continuous physical
8 presence. Congress’s use of the present-perfect tense—“has not been admitted or paroled”—
9 captures whether parole occurred at any point in the past. Because Petitioner was paroled into the
10 United States in March 2022, § 1225(b)(1) cannot serve as the statutory basis for his detention.

11 58. Nor does the revocation or expiration of parole return Petitioner to the legal fiction
12 of standing at the threshold of entry. The parole statute does not provide that a parolee “reverts”
13 to pre-parole status or is retroactively transformed into an arriving alien for purposes of mandatory
14 detention. Instead, 8 U.S.C. § 1182(d)(5)(A) states only that, upon termination of parole, the
15 individual “shall return to the custody from which he was paroled” and that his case “shall continue
16 to be dealt with in the same manner as that of any other applicant for admission.” An “applicant
17 for admission” includes any noncitizen physically present in the United States without having been
18 admitted—precisely the posture governed by § 1226, not § 1225.

19 59. Petitioner’s arrest further confirms that § 1225 is inapplicable. He was not detained
20 at the border or during inspection, but instead was arrested in the interior of the United States after
21 years of continuous residence, during a routine ICE check-in. Courts have repeatedly rejected the
22 Government’s attempt to stretch § 1225 to cover long-resident parolees arrested years after entry,
23 recognizing that such an interpretation would erase the statutory distinction between arriving
24 noncitizens and those who have been living within the United States.

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2 60. Because § 1225 does not authorize Petitioner’s detention, the only possible
3 statutory framework is 8 U.S.C. § 1226(a), which governs discretionary detention of noncitizens
4 pending removal proceedings. Detention under § 1226(a) requires an individualized determination
5 and entitles the noncitizen to a bond hearing before an impartial immigration judge.

6 **IV Immediate Issuance of a Notice to Appear Confirms That § 1226(a)—Not § 1225—
Governs Petitioner’s Detention**

7 61. Upon presenting himself for inspection on March 8, 2022, Petitioner was
8 immediately issued a Notice to Appear (“NTA”) and placed into removal proceedings. The
9 issuance of an NTA marks the commencement of proceedings under INA § 240 and reflects the
10 Government’s decision to adjudicate removability through the ordinary removal process rather
11 than through expedited removal or other inspection-stage procedures governed by 8 U.S.C. § 1225.

12 62. Once removal proceedings are initiated by the service of an NTA, detention
13 authority is governed by 8 U.S.C. § 1226, which applies to noncitizens “pending a decision on
14 whether the alien is to be removed from the United States.” Detention under § 1226 is therefore
15 distinct from—and mutually exclusive of—the mandatory detention and inspection provisions set
16 forth in § 1225, which operate at the threshold of entry and prior to the initiation of formal removal
17 proceedings.

18 63. Here, the Government’s own actions confirm that § 1226 governs Petitioner’s
19 custody. Rather than subjecting Petitioner to expedited removal or continued inspection-stage
20 detention, immigration officials issued an NTA, paroled Petitioner into the United States under 8
21 U.S.C. § 1182(d)(5)(A), and permitted him to reside in the community for nearly three years while
22 his removal proceedings remained pending. This procedural posture squarely places Petitioner
23 within the statutory framework of § 1226, not § 1225.
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2 64. The Government may not now disregard the legal consequences of its decision to
3 initiate removal proceedings and retroactively recharacterize Petitioner as an “arriving alien”
4 subject to mandatory detention under § 1225. Having elected to proceed under § 240 through the
5 issuance of an NTA, the Government is bound by the detention framework Congress prescribed
6 for such cases—8 U.S.C. § 1226(a)—which authorizes only discretionary detention and entitles
7 Petitioner to an individualized bond hearing.

8 **V. The Government May Not Salvage an Unlawful Detention Through Post Hoc**
9 **Recharacterization**

10 65. Respondents may not cure an unlawful detention by retroactively re-labeling its
11 statutory basis during litigation. Petitioner was arrested and detained without notice, without a
12 hearing, and without any contemporaneous determination that § 1225 applied. Allowing the
13 Government to now invoke mandatory detention as an after-the-fact justification would improperly
14 reward statutory and constitutional violations and permit detention first, authority later.

15 66. Federal courts routinely reject such post hoc rationalizations, recognizing that
16 habeas review must examine the legality of detention as imposed, not as later reconstructed by
17 government counsel. Because Petitioner’s detention was unlawful from its inception, immediate
18 release—not remand for a belated bond hearing—is the appropriate remedy.

19 **CLAIMS FOR RELIEF**

20 **COUNT I**

21 **Violation of the Fifth Amendment Due Process Clause**
22 ***(Unlawful Revocation of Conditional Liberty Without Notice, Hearing, or Individualized***
23 ***Findings)***

24 67. Petitioner incorporates by reference all preceding paragraphs.

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2 68. The Due Process Clause of the Fifth Amendment prohibits the Government from
3 depriving any person of liberty without constitutionally adequate procedures. Freedom from
4 physical restraint lies at the core of the liberty protected by the Constitution.

5 69. Petitioner possessed a protected liberty interest arising from his humanitarian
6 parole and nearly three years of continuous, compliant release into the community, during which
7 he lived with his family, worked lawfully pursuant to employment authorization, complied with
8 all conditions of supervision, and pursued relief in removal proceedings.

9 70. Once the Government granted Petitioner conditional release, it created an implicit
10 promise that his liberty would not be revoked absent noncompliance with release conditions or a
11 constitutionally adequate, individualized determination justifying re-detention.

12 71. Respondents revoked Petitioner's conditional liberty by arresting and detaining him
13 during a routine check-in without prior notice, without identifying any violation of release
14 conditions, and without affording him an opportunity to be heard before a neutral decisionmaker.

15 72. Respondents further failed to conduct any individualized assessment finding that
16 Petitioner posed a danger to the community or a risk of flight prior to re-detaining him.

17 73. As demonstrated under the Mathews v. Eldridge balancing test, the absence of
18 notice, a hearing, and individualized findings created an intolerably high risk of erroneous
19 deprivation that far outweighs any governmental interest in summary re-detention.

20 74. Respondents' actions therefore violate the Due Process Clause of the Fifth
21 Amendment, rendering Petitioner's detention unconstitutional and unlawful.

22 **COUNT II**

23 **Detention Without Statutory Authority Under the Immigration and Nationality Act**
(Misclassification Under 8 U.S.C. § 1225 Instead of § 1226(a))

24 75. Petitioner incorporates by reference all preceding paragraphs.

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2 76. The Immigration and Nationality Act establishes distinct statutory frameworks
3 governing immigration detention. Mandatory detention under 8 U.S.C. § 1225 applies only to
4 limited categories of noncitizens who have not been admitted or paroled into the United States and
5 who are encountered during inspection or expedited removal processing.

6 77. Petitioner does not fall within any category subject to mandatory detention under §
7 1225. He was affirmatively paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A),
8 resided openly in the interior of the United States for nearly three years, and was arrested during a
9 routine ICE check-in rather than during inspection or at the border.

10 78. The plain language of § 1225(b)(1)(A)(iii) applies only to individuals who “ha[ve]
11 not been admitted or paroled into the United States.” Because Petitioner was paroled into the
12 United States, § 1225 cannot serve as the statutory basis for his detention.

13 79. Nor does the termination or revocation of parole retroactively transform Petitioner
14 into an arriving alien or return him to the legal fiction of standing at the threshold of entry. Under
15 8 U.S.C. § 1182(d)(5)(A), a parolee’s case “shall continue to be dealt with in the same manner as
16 that of any other applicant for admission,” which includes noncitizens physically present in the
17 United States without admission.

18 80. Detention of such individuals is governed by 8 U.S.C. § 1226(a), which authorizes
19 discretionary detention pending removal proceedings and requires individualized custody
20 determinations, including the opportunity for release on bond.

21 81. Because § 1225 does not authorize Petitioner’s detention, Respondents lack
22 statutory authority to detain him without a bond hearing. Petitioner’s continued detention therefore
23 violates the INA and exceeds the authority conferred by Congress.
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COUNT III

Ultra Vires and Unlawful Post Hoc Recharacterization of Detention Authority
(Detention First, Legal Justification Later)

82. Petitioner incorporates by reference all preceding paragraphs.

83. Petitioner was arrested and detained without any contemporaneous determination that his custody was authorized under 8 U.S.C. § 1225 or any other mandatory detention provision of the INA.

84. Respondents may not cure an unlawful detention by retroactively invoking a different statutory basis during litigation. Habeas review examines whether detention was lawful at the time it was imposed, not whether the Government can later identify a post hoc justification.

85. Allowing Respondents to recharacterize the statutory basis for detention after the fact would impermissibly sanction detention first and legal authority later, undermining both the structure of the INA and fundamental principles of due process.

86. Because Petitioner's detention was unlawful from its inception and cannot be salvaged through retrospective statutory reclassification, continued detention is ultra vires and unlawful.

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 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. Declare that Petitioner's detention is unlawful;
- e. Order Petitioner's immediate release from custody;

- 1
- 2 f. In the alternative, order that any continued detention proceed solely under 8 U.S.C.
- 3 § 1226(a) and require a prompt bond hearing before an impartial immigration judge,
- 4 at which the Government bears the burden of justifying continued detention;
- 5
- 6 g. If a bond hearing is ordered, direct Respondents to file a written status report with
- 7 this Court within a time set by the Court, stating whether bond was granted or
- 8 denied, the bond amount and conditions if granted, and a summary of the reasons
- 9 stated on the record for the custody determination, so as to ensure compliance with
- 10 statutory and constitutional due process requirements;
- 11
- 12 h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 13 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 14 law; and
- 15
- 16 i. Grant any other and further relief that this Court deems just and proper.

17 DATED this 18th day of January, 2026.

18 ZAMBRANO LAW,

19 /s/ Shirley C. Zambrano

20 Shirley C. Zambrano

21 GA Bar Number: 741429

22 1995 North Park Place, Suite 360

23 Atlanta, GA 30339

24 Phone: 770-769-5821

Fax: 770-769-5810

szambrano@zambranolaw.com

Counsel for Petitioner

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2 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

3 I represent Petitioner, Mr. Cruz Ivan Rodriguez Hernandez, and submit this verification on
4 his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of
5 Habeas Corpus are true and correct to the best of my knowledge.

6 DATED this 18th day of January, 2026.

7 ZAMBRANO LAW,

8 /s/ Shirley C. Zambrano

9 Shirley C. Zambrano

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12 Atlanta, GA 30339

13 Phone: 770-769-5821

14 Fax: 770-769-5810

15 szambrano@zambranolaw.com

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Counsel for Petitioner