

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

DANIEL ALEJANDRO ESCOBAR RODRIGUEZ)

Petitioner,

V.

MATTHEW MORDANT, in his official capacity as) Warden of Florida Soft Side South; GARRET RIPA,) in his Official capacity as Miami Field Office) Director, Immigration and Customs Enforcement's) Enforcement and Removal Operations; TODD) LYONS, in his official capacity as Acting Director) of Immigration and Customs Enforcement; KRISTI) NOEM, in her official capacity as Secretary of the) Department of Homeland Security; PAMELA) BONDI, in her official capacity as Attorney General,)

### Respondents.

Case No. \_\_\_\_\_

Agency File

**PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**  
**AND REQUEST FOR ORDER TO SHOW CAUSE**

Daniel Alejandro Escobar Rodriguez, hereinafter “Mr. Escobar” or “Petitioner,” by and through undersigned counsel, files this Petition for Writ of Habeas Corpus, and in support thereof, alleges as follows:

### **INTRODUCTION**

1. Petitioner, Daniel Alejandro Escobar Rodriguez, has been in detention since December 4, 2025, and remains in custody currently at the Florida Soft Side South, also known as Alligator Alcatraz, located at 54575 Tamiami Trl E, Ochopee, Florida, 34141.
2. The Department of Homeland Security (“DHS”) moved to dismiss his INA § 240, 8 U.S.C. §1229a removal proceedings with the goal of placing him in expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225.
3. Petitioner was arrested and detained on December 4, 2025, when he exited the courtroom following the dismissal of his case.
4. Absent an order from this Court, Petitioner will continue to suffer irreparable harm caused by his unlawful detention and violation of his constitutional rights.
5. To this date, Petitioner is yet to be placed on expedited removal proceedings.
6. Moreover, new DHS policy and precedent from the Board of Immigration Appeals (BIA or Board) hold that any person who entered the United States without admission is subject to mandatory detention.

7. Petitioner was charged with, inter alia, having entered the United States without admission or parole. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
8. Based on this allegation, it is DHS' position that, 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.
9. Similarly, on May 15, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that “an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018).” *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).
10. On September 5, 2025, the Board issued another decision, 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.

11. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who were detained upon their entry, processed and released pursuant to 8 U.S.C. § 1226(a), and are re-arrested years later. Instead, such individuals are subject to § 1226(a), which 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 being admitted or paroled.

12. 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.

13. To remedy this, Mr. Escobar asks this Court to, under 28 U.S.C. § 2241, issue a writ of habeas corpus directing Respondents to release Petitioner because his continued confinement violates procedural due process, and substantive due process.

14. Alternatively, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

15. Mr. Escobar requests this Court to order Respondents to show cause demonstrating why he should not be released within three days. 28 U.S.C. § 2243.

### **JURISDICTION**

16. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Florida Soft Side South, aka “Alligator Alcatraz”.

17. Jurisdiction of the Court is predicated upon 28 U.S.C. §§ 1331 and 1346(a)(2) in that the matter in controversy arises under the Constitution and laws of the United States, and the United States is a Defendant.

18. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

19. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

20. 8 U.S.C. § 1252(g) does not bar jurisdiction given that this is a challenge of the Government’s applied implementation of expedited removal under the

INA, not the constitutionality of it. *See E.V., v. Raycraft*, No. 4:25-CV-2069, 2025 WL 2938594, at \*6 (N.D. Ohio Oct. 16, 2025); *see Munoz Materano*, 2025 WL 2630826, at \*10; *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at \*7 (W.D.N.Y. July 16, 2025) (holding that § 1252(e)(3) cannot bar jurisdiction when the petitioner argued the Government did not have the lawful authority to initiate the expedited removal process against him at that time, rather than arguing the constitutionality of expedited removal generally).

21. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner has adversely and severely affected Petitioner’s liberty and freedom.

## **VENUE**

22. Venue is proper in this district pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because Mr. Escobar is detained at the Florida Soft Side South aka “Alligator Alcatraz”, within the Middle District of Florida, and Petitioner’s immediate physical custodian is in this District.

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

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

24. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

## **PARTIES**

25. Petitioner, Daniel Alejandro Escobar Rodriguez is a 25-year-old native and citizen of Cuba, with no criminal record. He is currently detained at the Alligator Alcatraz in Ochopee, Florida. He has been in custody since

December 4, 2025. Mr. Escobar is in the custody and under the direct control of Respondents and their agents.

26. Respondent, Matthew Mordant, is named in his official capacity as the Warden of Florida Soft Side South. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner. Respondent Mordant's address is 54575 Tamiami Trl E, Ochopee, Florida, 34141.

27. Respondent, Garret Ripa, is named in his official capacity as Miami Field Office Director of the ICE Enforcement & Removal Operations ("ERO"). In this capacity, he is responsible for the administration of immigration laws and the execution of immigration confinement and the institution of removal proceedings in Florida, which is the jurisdiction where Petitioner is confined. As such, he is a custodian of Petitioner. Respondent Ripa's address is 865 SW 78th Avenue, Suite 101, Plantation, FL 33324.

28. Respondent, Todd Lyons, is named in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and is legally responsible for pursuing any effort to remove Mr. Escobar and confine him pending removal. As such, he is a custodian of Mr. Escobar.

His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

29. Respondent, Kristi Noem, is named in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); is legally responsible for pursuing any effort to confine and remove the Petitioner; and as such is a custodian of Mr. Escobar. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.
30. Respondent, Pamela Bondi, is named in her official capacity as Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g); and as such is a custodian of Mr. Escobar. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

### **STATEMENT OF FACTS**

31. Petitioner is a native and citizen of Cuba, born on 
32. Petitioner has no criminal history.
33. On or about February 13, 2022, Petitioner entered the United States.

34. After being detained by immigration, on February 17, 2022, Petitioner was issued an Order of Release on Recognizance, indicating that “in accordance with section 236 of the Immigration and Nationality Act... you are being released on your own recognizance.”

35. After being detained by immigration, Mr. Escobar was released and was given a Notice to Appear (“NTA”).

36. Mr. Escobar attended his scheduled hearings with the EOIR.

37. On January 23, 2025, Acting Secretary of the Department of Homeland Security, Benamine C. Huffman, issued a memorandum for ICE, Customs and Border Protection (“CBP”), and USCIS instructing officers to “take all steps necessary to review” cases of anyone “amendable to expedited removal but to whom expedited removal has not been applied”. Benamine C. Huffman, Acting DHS Secretary, *Guidance Regarding How to Exercise Enforcement Discretion*, (Jan. 23, 2025) (“Huffman Memo”). These necessary steps include “terminat[ing] any ongoing removal proceedings”. *Id.*

38. On January 24, 2025, DHS published a Notice that expanded the application of expedited removal. Office of the Secretary, Dep’t of Homeland Security, *Designating Aliens for Expedited Removal*, 15 Fed. Reg. 8139 (“January 2025 Designation”). The designation was “effective on” January 21, 2025.

39. On December 4, 2025, Mr. Escobar attended his scheduled hearing before the Immigration Judge at the Miami Immigration Court located at 333 S. Miami Avenue, Suite 700, Miami, Florida 33130. However, instead of proceeding with Mr. Escobar's EOIR proceedings to adjudicate his I-589, the Department of Homeland Security ("DHS") moved to dismiss the proceedings.

40. After exiting the courtroom, Petitioner was arrested by ICE agents. The ICE agents did not provide Petitioner with any process or access to counsel. The ICE agents did not offer him any opportunity to be heard prior to arresting and detaining him. Petitioner is currently detained at the Florida Soft Side South, aka "Alligator Alcatraz" located at 54575 Tamiami Trl E, Ochopee, Florida.

41. There are no future hearings for Mr. Escobar's case.

42. On January 7, 2026, Mr. Escobar requested a custody redetermination with the Immigration Court, however, the Court denied Petitioner's request reasoning it lacked jurisdiction.

### **LEGAL FRAMEWORK**

43. When a noncitizen is deemed inadmissible under 8 U.S.C. § 1182(a)(7), the immigration officer must order the noncitizen's removal, unless the noncitizen indicates an intention to apply for asylum or fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(A)(i). The noncitizen may be placed in "expedited removal" proceedings, which contain a condensed asylum process and require

that the noncitizen remain detained throughout the process. See 8 U.S.C. § 1225(b)(1).

44. The noncitizen also may be placed in 8 U.S.C. § 1229a removal proceedings, which have more robust due process protections. Section 1182, however, has a subsection, which allows noncitizens, even those in mandatory detention, to be “paroled” into the United States. 8 U.S.C. § 1182(d)(5)(A). A noncitizen detained at the border may be formally paroled into the United States only “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

45. Noncitizens are eligible for expedited removal if they are: (1) “arriving in the United States,” that is, appearing at a port of entry; or (2) have “not been admitted or paroled into the United States” and they cannot affirmatively show that they have been “physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” *Espinoza v. Kaiser*, No. 25-cv-01101, 2025 WL 2675785, at \*5 (E.D. Cal. Sept. 18, 2025) (citing *Coalition For Humane Immigrant Rights, v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at \*5 (D.D.C. Aug. 1, 2025)); see also *Pedro Yimi Cardin Alvarez v. David Rivas*, No. CV 25-02943-PHX GMS, 2025 WL 2898389, at \* 12 (D. Ariz. Oct. 7,

2025); *see also* *E.V. v. Kevin Raycraft*, No. 4:25-cv-2069, 2025 WL 2938594, at \* 2 (N.D. Ohio Oct. 16, 2025)

46. “[U]nder 8 U.S.C. § 1225(b)(1)(A)(iii)(II), a person who has been paroled without first having been placed in expedited removal cannot be designated for expedited removal.” *Espinoza v. Kaiser*, 2025 WL 2675785, at \*5 (E.D. Cal. Sept. 18, 2025) (emphasis in original; citing *Coalition*, 2025 WL 2192986, at \*3 (D.D.C. Aug. 1, 2025)); *see also* *Munoz Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at \*11 (S.D.N.Y. Sept. 12, 2025) (adopting the holding in *Coalition*); *see also* *Pedro Yimi Cardin Alvarez*, WL 2898389, at \* 13 (D. Ariz. Oct. 7, 2025).

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

48. First, 8 U.S.C. § 1226 authorizes that “on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 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).

49. 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).

50. 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).

51. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

52. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104--208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

53. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

54. Thus, in the decades that followed, most people who were apprehended within the borders of the United States 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 IJ 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)).

55. In *Jennings v. Rodriguez*, the Department of Homeland Security (“DHS”) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). *Jennings v. Rodriguez*, 583 U.S. 281 (2018). During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn stated: “If they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not 1226(c).” In response to a question regarding “an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border,” the Government confirmed, “The answer is they are held under 1226(a) and that they get a bond hearing...” Transcript of Oral

Argument at 7–8. DHS further reiterated that such individuals “would be held under 1226(a)” and cited the administrative record to support that position. *Id.* These statements reflect DHS’s prior litigation position that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States—a position directly contrary to the agency’s current interpretation extending § 1225(b)(2)(A) to those same individuals. Having prevailed in *Jennings* after taking this position, they should be now estopped from reversing course simply due to a shift in political or litigation strategy. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to uphold the integrity of the judicial system.

56. 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 normative agency practice.

57. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

person is apprehended and affects those who have resided in the United States for months, years, and even decades.

58. 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 detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

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

60. Even before ICE or the BIA introduced these nationwide policies, IJs 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 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

61. Subsequently, several courts have adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-

EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same); *Santana-Rivas v. Warden of Clinton County Correctional Facility*, No. 3:25-cv-01896-JPW, 2025 (M.D. Pa. Nov. 13, 2025) (same).

62. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it contradicts the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
63. “Courts have noted that Respondents’ interpretation of the phrase ‘seeking admission’ ‘violates the rule against surplusage and negates the plain meaning

of the text.” *Santana-Rivas*, No. 3:25-cv-01896-JPW, at \*27-28 (citing *Soto v. Soto, et. al.*, No. 25-16200, 2025 U.S. Dist. LEXIS 207818, at \*9 (D.N.J. Oct. 22; *Martinez v. Hyde*, No. 25-11613, 2025 U.S. Dist. LEXIS 141724, at \*6 (D. Mass. July 24, 2025); *Zumba v. Bondi*, No. 25-14626, 2025 U.S. Dist. LEXIS 190052, at \*8; *Benitez v. Francis*, No.25-5937, 2025 U.S. Dist. LEXIS 157214, at \*16 (S.D.N.Y. Aug. 8, 2025). “The phrase ‘seeking admission’ in § 1225(b)(2)(A) necessarily connotes some affirmative, present-tense action.” *Santana-Rivas*, No. 3:25-cv-01896-JPW, at \*28. “The verb ‘seeking’ is a present participle, and the ‘present participle is used to signal present and continuing action.’” *Id.* (quoting *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022); *D.L. Markham DDS, MSD, Inc. 401(K) Plan v. Variable Annuity Life Ins. Co.*, 88 F.4th 602, 610 (5th Cir. 2023) (“The word ‘providing,’ used here as a present participle, most commonly describes a person who is currently providing services.”) (*emphasis in original*); *United States v. Hull*, 456 F.3d 133, 145 (3d Cir. 2006) (Ackerman, Sr. Dist. J., sitting by designation, concurring) (“Congress’s use of the present participle ‘committing’ connotes present, continuing action.”)).

64. “The INA defines the term ‘admission’ as, ‘with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.’” *Santana-Rivas*, No. 3:25-cv-01896-JPW, at \*28-29

(quoting 8 U.S.C. § 1101(a)(13)(A)). “Thus, the INA’s own definition of the term ‘admission’ supports the limited application of § 1225 to encounters with aliens along the borders and at ports of entry.” *Id.* at \*29.

65. Here, Petitioner cannot be said to be “seeking admission” as defined in § 1101(a)(13)(A). Petitioner “‘has already ‘entered’ the country’— [he] is no longer seeking to enter the United States (lawfully or otherwise).” *Santana-Rivas*, No. 3:25-cv-01896-JPW, at \*29 (quoting *Jimenez*, 2025 U.S. Dist. LEXIS 176165, at \*22, citing *Benitez*, 2025 U.S. Dist. LEXIS 157214, at \*19). Like the Middle District of Pennsylvania found in *Santana-Rivas*, “while Petitioner “has applied for asylum, that application does not seek “lawful entry” to the United States, but [rather] a lawful means to remain here.”” *Id.*

66. Indeed, according to the Warrant for Arrest of Alien and document I-220A, Order of Release on Recognizance, issued to Petitioner on February 17, 2022, upon his initial encounter with ICE, as well as the DHS’s own factual allegations contained in the Notice to Appear, the DHS itself determined that Petitioner is an alien present in the United States without being admitted or paroled, and thus falls under § 1226(a), not § 1225(b).

67. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These

removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

68.The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection or admission. *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.

69.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.

70.By contrast, § 1225(b) applies to people arriving at U.S. ports of entry. 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) (reversing the lower court's judgement because it adopted an implausible construction of §§1225(b)(1), (b)(2) and 1226(c).

71. In *Jennings*, the Supreme Court describes section 1226 as governing “the process of arresting and detaining” noncitizens who are living “inside the United States” but “may still be removed,” including noncitizens “who were inadmissible at the time of entry.” *Jennings*, 583 U.S. at 288. In harmonizing sections 1225 and 1226, the Supreme Court explains “in sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking* admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Id.* at 289 (emphasis added).

72. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered, were processed and released previously under 8 U.S.C. § 1226, and were already residing in the United States at the time they were re-apprehended. Petitioner was previously released after a quasi-judicial determination by an immigration official on a form I-220A that he falls under the discretionary arrest provision of § 1226(a). The Government’s own issuance of an I-220A, releasing him pursuant to §

1226, reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This is significant because mere days after his entry to the U.S., the Government had already recognized that Petitioner was no longer “seeking admission” as described in § 1225, and itself applied the provisions of § 1226 and released Petitioner. This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner’s own admissions. This legal determination squarely contradicts the Government’s current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR.

73. Therefore, 8 U.S.C. § 1226 is the appropriate governing framework in this case.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violation of the Procedural Due Process Clause of the Fifth Amendment to the U.S. Constitution.**

74. The allegations in the above paragraphs are realleged and incorporated herein.

75. In expedited removal, individuals receive no meaningful opportunity to challenge key issues such as admissibility, parole, or continuous physical presence. *See* 8 U.S.C. § 1225(b)(1)(A); 8 C.F.R. § 235.3. The burden rests

entirely on the noncitizen to prove these facts to the satisfaction of an immigration officer, without guaranteed time to prepare, access to counsel, or ability to gather or present evidence. *Id.* Unlike in § 240 removal proceedings, there are no procedural safeguards such as judicial review, evidentiary hearings, or neutral adjudication. Instead, a low-level DHS officer acts as both prosecutor and decision-maker. *Id.*

76. When the Government interferes with a liberty interest, “the procedures attendant upon that deprivation [must be] constitutionally sufficient.” *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). 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. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

77. Freedom from imprisonment, including government detention, is central to the liberty protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Mr. Escobar’s has a substantial personal interest given that his interest is his freedom from arbitrary government detention, the liberty that “lies at the heart of the [Due Process] Clause protects”. *See Id.*

78. The risk of an erroneous deprivation of Mr. Escobar's liberty under the current procedures is extraordinarily high. At the time DHS sought dismissal of his §240 removal proceedings, Mr. Escobar was actively pursuing claims for asylum, withholding of removal, and protection under the CAT, which are claims that implicate serious statutory and constitutional protections. By pursuing the dismissal of § 240 proceedings, and expressing an intent to pursue expedited removal, Respondents have effectively stripped Mr. Escobar of both procedural safeguards and a forum to adjudicate his claims. The absence of any meaningful review mechanism, combined with the limited avenues for judicial oversight under the expedited removal framework, significantly increases the likelihood that Mr. Escobar's liberty has been erroneously and unlawfully restricted. Outside of this Petition for Writ of Habeas Corpus, Mr. Escobar has no access to a court with jurisdiction to review the legality of his detention.

79. The Government's interest in Mr. Escobar's continued detention is minimal under the current circumstances. While the Government generally has a legitimate interest in enforcing immigration laws and effectuating removal for individuals with final orders, that interest does not extend to detaining individuals indefinitely without any active proceedings or legal basis. Mr. Escobar was previously released after his entry into the United States and

complied fully with all reporting and court appearance obligations during the pendency of his §240 removal proceedings. He also affirmatively sought immigration relief in the form of asylum, withholding of removal, and CAT protection.

80. Thus, Petitioner's detention violates procedural due process.

**COUNT TWO**  
**Violation of the Substantive Due Process Clause of the Fifth Amendment to the U.S. Constitution**

81. The allegations in the above paragraphs are realleged and incorporated herein.

82. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

83. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (2001).

84. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See Id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). With respect to immigration confinement, the Supreme Court has recognized two special justifications: (1) preventing flight and (2) preventing danger to the community. *See Id.* at 690.

85.Preventing flight, which is meant to ensure compliance with court appearances, is not a legitimate concern in Mr. Escobar's case. He has never demonstrated any indication of being a flight risk, as shown by his consistent compliance with all reporting requirements and court appearances throughout the duration of his § 240 removal proceedings. In fact, Mr. Escobar was detained by ICE while he was attending his scheduled immigration court hearing, further demonstrating his full compliance and intent to follow the legal process. Mr. Escobar was actively pursuing legal avenues to regularize his immigration status when Respondents abruptly terminated his removal proceedings, disrupting a lawful process in which he was fully engaged. Under these circumstances, continued detention cannot be justified on the basis of flight prevention.

86.Petitioner is no danger to society, as evidenced by the fact that he has had NO contact with law enforcement.

87.Mr. Escobar's detention appears to be purely punitive as it bears no "reasonable relation" to any legitimate government purpose. *See Zadvydas*, 533 U.S. at 690. (finding immigration detention is civil and thus assumed to be "nonpunitive in purpose and effect"); *see also Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the

Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.”).

88. Thus, Petitioner’s detention violates substantive due process.

**COUNT THREE**  
**Violation of the INA**

89. The allegations in the above paragraphs are realleged and incorporated herein.

90. 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 were previously apprehended by ICE, released under § 1226, and have been residing in the United States prior to being re-detained by Respondents. Once ICE exercised its discretion to release Petitioner under § 1226(a), his legal posture was fixed within § 1229a removal proceedings and governed by § 1226(a)’s custody framework. Therefore, such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

**COUNT FOUR**  
**Violation of the Bond Regulations**

92. The allegations in the above paragraphs are realleged and incorporated herein.

93. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who were present without having been admitted or paroled were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

94. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

95. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

**COUNT FIVE**  
**Violation of the Administrative Procedure Act**

96. The allegations in the above paragraphs are realleged and incorporated herein.

97. Under the APA, a court shall “hold unlawful and set aside agency action” that is arbitrary, capricious, abuse of discretion or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

98. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view of the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)).
99. To withstand an APA challenge, an agency must provide a satisfactory explanation for its decision, demonstrating a rational link between the facts it identified and the action it took. *See Dep’t of Commerce v. New York*, 588 U.S. 752, 773 (2019).
100. By categorically revoking Petitioner’s release/parole, without considering his individualized facts and circumstances, Respondents have violated the APA.
101. Respondents have already evaluated Petitioner’s individual facts and circumstances and concluded that he does not pose a flight risk or a danger to the community. There have been no changes in those circumstances that would justify revoking his release on his own recognizance. The prior decision by Respondents to grant him release under the same conditions demonstrates that, based on an individualized assessment, they do not view him as a threat or likely to flee. Additionally, Petitioner complied with the

requirement to appear at his immigration court hearing, which cannot reasonably be used to claim he is a flight risk.

### **PRAYER FOR RELIEF**

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for a writ of habeas corpus filed by Mr. Escobar pursuant to 28 U.S.C. § 2241 should not be granted within three days;
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (4) In the alternative, issue a Writ of Habeas corpus ordering Respondents to immediately release Petitioner from custody under reasonable conditions of supervision;
- (5) In the alternative, issue a Writ of Habeas corpus ordering Respondents to provide Mr. Escobar with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- (6) Declare that Petitioner's detention violates the Procedural Due Process Clause of the Fifth Amendment;

- (7) Declare that Petitioner's detention violates the Substantial Due Process Clause of the Fifth Amendment;
- (8) Issue an Order prohibiting the Respondents from transferring Petitioner from the State of Florida without the court's approval and
- (9) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Gladys Carredegua Mayor

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*Counsel for Petitioner*

Dated: January 28, 2026

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

I represent Petitioner, Daniel Alejandro Escobar Rodriguez, and submit this verification on his behalf. 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.

Dated this 28th day of January 2026.

/s/Gladys Carredegua Mayor  
Gladys Carredegua Mayor  
Florida Bar No. 1050046