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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH FLORIDA  
FORT LAUDERDALE DIVISION**

**Yankiel Martinez Alfonso** )  
 )  
Petitioner, )  
 )  
v. )  
 )  
Current Warden, )  
Miramar ICE Field Office; )  
**GARRETT J. RIPA**, Director of Miami Field )  
Office, U.S. Immigration and Customs; )  
Enforcement; **TODD LYONS**, Acting Director of )  
U.S. Immigration and Customs Enforcement, )  
In his official capacity; **KRISTI NOEM**, )  
Secretary of the U.S. Department of )  
Homeland Security; and **PAM BONDI**, )  
Attorney General of the United States, )  
in their official capacities, )  
 )  
Respondents. )  
\_\_\_\_\_ )

Case No. 0:26-cv-60257

**PETITION FOR WRIT OF  
HABEAS CORPUS**

**ORAL ARGUMENT  
REQUESTED**

**COMES NOW**, Petitioner, Yankiel Martinez Alfonso, through undersigned counsel,  
hereby respectfully petitions this Honorable Court for a writ of habeas corpus under 28 U.S.C. §  
2241 and in furtherance thereof states:

## INTRODUCTION

1. Petitioner, Yankiel Martinez Alfonso, a national of Cuba, is unlawfully detained in the physical and legal custody of Respondents at Miramar, Florida ERO ICE Field Office in Miramar, Florida.

2. Petitioner, Yankiel Martinez Alfonso entered the United States on 03/28/2022 to seek asylum. He was released under terms of supervision, placed in INA § 240 removal proceedings and served with a Notice of Hearing.

3. On 01/27/2026 when he appeared for his scheduled hearing at the Miami Immigration Court Immigration Court, the Department of Homeland Security (“DHS”) moved to dismiss his proceedings, revoked his parole, arrested him at the courthouse, and designated him for expedited removal.

4. Despite full compliance with his terms of supervision, ICE abruptly revoked Petitioner’s parole on 01/27/2026 and re-detained him without notice or an opportunity to be heard, without a warrant, and without any individualized determination of danger or flight risk. Respondents assert that parole termination subjects Petitioner to mandatory detention under 8 U.S.C. § 1225(b) or that he is now subject to expedited removal. This is incorrect.

5. The Petitioner was unlawfully detained by Respondents in violation of the Immigration and Nationality Act and of her Fourth and Fifth Amendment Due Process Rights under the U.S. Constitution. Accordingly, to vindicate Petitioner’s constitutional and statutory rights this court should grant the instant petition for writ of habeas corpus.

6. Additionally, ICE exceeded its statutory authority when it designated Petitioner for expedited removal after revoking his parole. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I).

7. As in *Carmona v. Ripa*, ICE is detaining Petitioner based on the legally erroneous assertion that Petitioner is subject to expedited removal and mandatory detention under 8 U.S.C. § 1225(b), despite having been arrested in the interior of the United States and long after entry. See *Carmona v. Ripa*, No. 2:25-cv-01128, at 4 (M.D. Fla. December 17, 2025).<sup>1</sup>

8. Subsequent to his unlawful detention, Petitioner was transferred by the Respondents to Miramar ERO ICE Field Office.

9. Petitioner has no criminal history in the United States or anywhere else in the world and has participated fully and actively in pursuing relief under the laws of this country. Yet on 01/27/2026, on his parole was revoked. Because Petitioner poses no danger or flight risk, and was pursuing asylum, his continued detention is unlawful.

10. Respondents have detained the Petitioner based not on his personal circumstances or individualized facts but because of Respondent's incorrect categorical determination that the 5th amendment notwithstanding, non-citizens are not entitled to Due Process of law.

11. But Respondents cannot evade the law so easily the U.S. constitution requires the Respondents provide Petitioner at minimum with the rights available to Petitioner when Petitioner filed an application for asylum after releasing him into the United States and instituting all proceedings in immigration court.

12. To the extent that the Respondents intend the subject to the Petitioner to indefinite mandatory detention and placement into expedited removal proceedings, based on the BIA's recent presidential decisions in *Matter of Q.Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (holding that "all non-citizens who fall within this scope of 8 U.S.C. § 1225 (b)(1) (arriving aliens) must be detained

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<sup>1</sup> The facts in *Carmona v. Ripa* are almost identical to the facts in this case. In *Carmona*, the court granted the petition for habeas corpus and ordered that the petitioner be released within 24 hours. No. 2:25-cv-01128, at 13 (M.D. Fla. December 17, 2025)

under that section and are ‘ineligible for any subsequent release on bond’ under § 1226(a)” and to oppose bond before the Immigration Judge (IJ) pursuant to *Matter of Yahure Hurtado*, 29 I & N Dec. 216, 229 (BIA) (holding that IJ's have no jurisdiction to consider bond for persons charged as “arriving aliens” in removal proceedings), Petitioner’s detention is unlawful, in violation of his Due Process rights and the INA.

13. Petitioner seeks immediate release or, in the alternative, a prompt custody redetermination hearing where DHS bears the burden of proving by clear and convincing evidence that detention is necessary.

14. Accordingly, to vindicate Petitioner’s rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner asks this Court: (a) to find that Respondents’ attempts to detain and transfer Petitioner are arbitrary and capricious and in violation of the law; (b) to immediately issue an order preventing Petitioner’s transfer out of this district; and, (c) to order either a bond hearing before an immigration judge or to order the Respondent’s immediate release from detention, or in the alternative to show cause in writing within three (3) days why the writ of habeas corpus and other relief requested in the petition should not be granted.

#### **JURISDICTION**

15. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

16. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101-1537, regulations implementing the INA, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

17. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*

*seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

18. The federal government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C § 702. In addition, sovereign immunity does not bar claims against federal officials that seek to prevent violations of federal law (rather than provide monetary relief).

### VENUE

19. Venue is proper because Petitioner is detained at Miramar Field Office in Miramar, Florida, which is within the jurisdiction of this District. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of the immigration detention. See e.g. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

20. Venue is further proper 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 Southern District of Florida

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

### REQUIREMENTS OF 28 U.S.C. § 2241

22. 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) (emphasis added).

23. There is no statutory exhaustion requirement in 28 U.S.C § 2241. In the absence of a statutory exhaustion requirement prudential exhaustion may be judicially required. Whether or not to require prudential exhaustion falls within the Honorable Courts sound judicial discretion provided that such discretionary requirement complies with statutory schemes and the intent of Congress. See *Leonardo v. Crawford*, 646 F.3d 1157 (9<sup>th</sup> Cir. 2011), citing *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731 (2001); *Puga v. Chertoff*, 488 F.3d 812, 815 (9<sup>th</sup> Cir. 2007).

24. As noted above the presidential decisions issued by the BIA in *Matter of Q. Li* and *Matter of Yajure-Hurtado* stand for the proposition that the Petitioner is subject to indefinite mandatory detention and is ineligible for a bond hearing before an immigration judge.

25. The BIA's presidential decisions serve as precedents in all proceedings involving the same issue or issues. 8 C.F.R. §§ 1003.1(g)(2), (d)(1). Therefore, requiring the Petitioner to seek a bond hearing and when denied, appeal that denial to the BIA will certainly result in a holding that anyone who is deemed "[a]n alien present in the United States without being admitted or paroled" will be subjected to mandatory detention without bond under 8 U.S.C. § 1225(b)(2).

26. Moreover, the fundamental question presented by this petition is whether 8 U.S.C. § 1225 or 8 U.S.C. § 1226 applies to the Petitioner's detention which is a purely legal question of statutory interpretation which would not be impacted by any administrative record developed in immigration or an appeal to the BIA.

27. This Honorable Court is not bound by and is not required to give deference to any agency interpretation of a statute. See *Loper Bright v. Raimondo*, 603 U.S. 369, 413 (2024) (holding that federal judges are not required to, and pursuant to the Administrative Procedure Act

(the “APA”), are not to defer to an agency interpretation of the law simply because a statute is ambiguous as that is the role of the federal courts).

28. Finally, the Petitioner’s constitutional challenge to his detention does not require exhaustion. The Middle District of Florida and the Ninth Circuit has noted that Due Process challenges such as the one raised by Petitioner here generally does not require exhaustion because the BIA cannot review constitutional challenges. See *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) and *Carmona v. Ripa*, No. 2:25-cv-01128-SPC-DNF, at 13 (M.D. Fla. December 17, 2025). Thus, requiring prudential exemption is a futile exercise and will only result in the extended unlawful detention of the Petitioner.

29. The Court must grant the Petition for Writ of Habeas Corpus or issue an Order to Show Cause (OSC) 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.* (emphasis added).

30. The Petitioner is in custody for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

### **PARTIES**

31. Petitioner **Yankiel Martinez Alfonso** was detained at his scheduled immigration court hearing and had a pending applicant for asylum pursuant to 8 U.S.C § 1158. He is a citizen and national of Cuba.

32. Petitioner was transferred from the immigration court to the Miramar ERO Field Office and is present within the Southern District of Florida as of the time of filing of this petition and is currently detained at the Miramar Field Office.

33. Respondent is the Current Warden of Miramar Field Office and has immediate physical custody of the Petitioner pursuant to the facilities contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

34. Respondent, Garrett J. Ripa, is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations Division, a component of the Department of Homeland Security. As such he is Petitioner's immediate custodian for purposes of habeas and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

35. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the federal agency responsible for implementing and enforcing the INA including the detention and removal of non-citizens and a component agency of the Department of Homeland Security.

36. 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.

37. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR") which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

### **STATEMENT OF FACTS**

38. Petitioner is a **citizen and native of Cuba** who entered the U.S. to seek asylum on March 28, 2022. [Exhibit 1, Petitioner's Cuban passport and Exhibit 2, Notice to Appear ("NTA")]

39. He was detained by DHS upon arrival and served with an NTA and placed into INA § 240 removal proceedings on . See NTA.

40. On March 25, 2022, DHS released the Petitioner on recognizance and under terms of supervision. Exhibit 3, Order of Release on Recognizance]

41. On December 5, 2022, Petitioner submitted an Application I-589 application for asylum, withholding of removal, and CAT protection [Exhibit 4, I-797C I-589 Receipt Notice].

42. On March 15, 2024, Petitioner received his employment authorization document [“EAD”]. [Exhibit 5, EAD]. He was employed as a landscaper when he was arrested.

43. The Petitioner complied with everything required of him by the government since his initial entry and parole into the United States.

44. Petitioner has no criminal history and poses no danger to the community.

45. On January 27, 2026, Petitioner was scheduled to appear at the Miami Immigration Court for his preliminary hearing (master calendar hearing). Petitioner appeared for his hearing scheduled as required. When his case was called, DHS moved orally to dismiss his § 240 proceedings. Petitioner, appearing *pro se*, was not given notice or an opportunity to be heard and he was immediately arrested. [Exhibit 6, EOIR Case Status]

46. He has strong ties, including his two children, his eleven (11) year old daughter who arrived in 2024 under a humanitarian parole and who has applied for adjustment of status under the Cuban Adjustment Act, and his one (1) year old infant. He also has a partner, and mother of his children who resides with him and his brother who also lives near him. Further, he has been working as a landscaper since 2024. [Exhibits 7, Children’s Documents]

47. ICE did not issue a warrant, did not identify facts suggesting Petitioner was “likely to escape before a warrant could be obtained,” and did not provide any individualized reason for detention in violation of 8 U.S.C. § 1357(a)(2).

48. ICE asserted that because parole was revoked, Petitioner was now subject to expedited removal and mandatory detention under § 1225(b)—a legal conclusion rejected by federal courts.

49. At the time of arrest, Petitioner was already inside the United States for more than two (2) years, in full removal proceedings, compliant, reachable, and fully cooperative.

50. ICE produced no documentation showing that Petitioner was likely to escape before a warrant could be obtained; or any individualized danger or flight risk factors.

## **LEGAL FRAMEWORK**

### **A. Legal Framework for Expedited Removal**

51. The INA establishes two procedures for removing noncitizens from the country. The first is section 240 proceedings, which commence when an NTA is issued to the noncitizen and requires an evidentiary hearing before an immigration judge and an opportunity to apply for asylum. “Noncitizens seeking asylum are entitled to due process under the Fifth Amendment.”<sup>2</sup> DHS may release a noncitizen into the country if the “release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceedings.” 8 C.F.R. § 1236.1(c)(8).

52. The second process for removing noncitizens is through expedited removal which allows immigration officers to remove noncitizens “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). The INA limits its applicability and when a noncitizen is eligible. Coalition for

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<sup>2</sup> *Carmona v. Ripa*, at 3.

Human Immigrant Rights v. Noem, ---F. Supp. ---, ---, 2025 WL 2192986, at \*5 (D.D.C. 2025)(citing 8 U.S.C. §§ 1225(b)(1)(A)(Ii) and 1182(a)(6)(C), (a)(7)).

53. A noncitizen is eligible for expedited removal if they are arriving in the United States; or, “ha[ve] not been admitted or paroled and 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.’” *Id.* quoting 8 U.S.C. § 1225(b)(1)(A)(i)-(iii)

54. The Supreme Court has made clear that 8 U.S.C. §§ 1225 and 1226 establish distinct detention regimes applicable to different categories of noncitizens. *Jennings v. Rodriguez*, 583 U.S. at 288–89.

55. A noncitizen who has effected entry into the United States—even unlawfully—is not treated as an arriving alien for purposes of detention authority. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

56. On January 24, 2025, DHS, at the instruction of the Acting DHS Secretary Benjamin Huffman, published a notice expanding the application of expedited removal to include any alien DHS is aware of who is amenable to expedited removal but to who expedited removal has not been applied[.]” Office of the Secretary, DHS, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139.

57. Upon implementation of this policy, “the Government began targeting for expedited removal people already in section 240 removal proceedings, many of whom are pursuing asylum and other collateral relief.” *Carmona v. Ripa*, at 4 (citing *Make the Road New York v. Noem*, ---F.Supp. 3d ---, ---, 2025 WL 2494908, at \*5 (D.D.C. 2025), describing a common pattern of DHS orally moving to dismiss 240 removal proceedings then arresting the individual at the courthouse. *Id.*

**B. PETITIONER IS NOT SUBJECT TO § 1225(b)**

58. Section 1225(b) applies only to noncitizens who are “seeking admission.” 8 U.S.C. § 1225(a)(1). Petitioner, who was arrested well inside the United States after entry, was not seeking admission at the time of arrest.

59. The Supreme Court has emphasized that “[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S. at 693.

60. Consistent with this principle, courts have rejected ICE’s attempt to retroactively classify interior arrestees as applicants for admission. See *Carmona v. Ripa*, No. 2:25-cv-01128-SPC-DNF, at 12 (M.D. Fla. December 17, 2025); *Villa v. Norman*, No. 5:25-cv-00089, slip op. (S.D. Ga. Nov. 14, 2025).

**C. DETENTION IS GOVERNED BY § 1226(a)**

61. Because Petitioner was already present in the United States at the time of arrest, detention is governed by 8 U.S.C. § 1226(a), which expressly authorizes bond hearings before an immigration judge. *Jennings v. Rodriguez*, 583 U.S. at 296.

62. ICE may not avoid § 1226(a)’s procedural protections by relabeling Petitioner an arriving alien after arrest. See *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1216–17 (11th Cir. 2016), vacated as moot, 890 F.3d 952 (11th Cir. 2018).

63. The Department of Justice’s Executive Office of Immigration Review has issued precedential decisions of the board of Immigration Appeals that purport to unlawfully subject the Petitioner to indefinite mandatory detention in violation of his Due Process rights under the constitution and in violation of the Immigration and Nationality Act.

64. Federal courts overwhelmingly reject the Government’s theory that revocation of parole converts a paroled arriving alien inside the United States into a person subject to § 1225(b) mandatory detention. Custody of a noncitizen residing inside the U.S. after parole is governed by 8 U.S.C. § 1226(a), which requires an individualized custody determination—not automatic incarceration.

65. Additionally, ICE exceeded its statutory authority when it designated Petitioner for expedited removal after revoking his parole. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I).

#### **D. ASYLUM AND REFUGEE LAW**

66. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

67. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol Relating to the Status of Refugees, “to which the United States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

68. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

69. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if they have experienced past

persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

70. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

71. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, *see* 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

72. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with Due Process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq.*

73. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*,

533 U.S. 678, 690 (2001).

**E. Release and Indefinite, Mandatory Detention**

74. On July 8, 2025, ICE issued interim guidance instructing all ICE employees to consider anyone charged with inadmissibility under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The July 8, 2025, DHS policy memorandum states it was issued “in coordination with the Department of Justice (DOJ).” [Exhibit 8, July 8, 2025, ICE Guidance Regarding Detention Authority for Applications for Admission]

75. Therefore, based on the Respondents’ July 8, 2025, ICE Guidance, the Petitioner is purportedly subject to indefinite, mandatory detention. However, whether or not Respondents are correct turns on what provision of law governs Petitioner’s detention.

76. As this Honorable Court has jurisdiction over this Petition for a Writ of Habeas Corpus, it must next determine whether the Petitioner’s detention is governed by the mandatory detention provisions in 8 U.S.C. § 1225(b)(2) or the discretionary detention provisions in 8 U.S.C. § 1226(a).

77. Noncitizens detained under Section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under Section 1226(a) are entitled release or to a bond hearing before an IJ at any time before entry of a final removal order.” *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025).

78. Since July 8, 2025, Respondents have begun widespread arrests and detentions of persons such as the Petitioner, who entered the U.S. without inspection and have been present for years. Respondents now take the position that persons in Petitioner’s situation are

“applicants for admission” and therefore subject to indefinite, mandatory detention under 8 U.S.C. § 1225(b)(2). To the contrary, the Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

79. 8 U.S.C. § 1225(a)(1) provides that a noncitizen “present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission.” The statute defines an “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who arrives in the United State” 8 U.S.C. § 1225(a)(1).

80. The Respondents have argued to various courts around the United States that persons such as the Petitioner are subject to § 1225(b)(2), which provides that, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A).

81. In other words, § 1225(b)(2)(A) generally requires mandatory detention of certain “applicant[s] for admission” during their removal proceedings. Individuals subject to mandatory detention under § 1225(b)(2)(A) may, however, be “temporarily released on parole ‘for urgent humanitarian reasons or significant public benefit.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1182(d)(5)(A)). This parole “shall not be regarded as an admission” of the noncitizen. 8 U.S.C. § 1182(d)(5)(A).

82. Once the purposes of parole have been served, the noncitizen “shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.”

83. By contrast, § 1226(a) sets forth “the default rule” for detaining noncitizens “already present in the United States.” *Jennings*, 583 U.S. at 303. Section 1226(a) provides that, “[o]n 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.” 8 U.S.C. § 1226(a).

84. The Respondents have taken the position in courts across the country that § 1226(a), and the possibility of release on bond, only applies to individuals who are present in the country with lawful status but are in removal proceedings. However, section 1226(a) does not contain a requirement of lawful status, and “courts are not free to read into the language [of a statute] what is not there.” *See O’Hara v. Nika Techs., Inc.*, 878 F.3d 470, 475 (4th Cir. 2017). *Id.*

85. Presumably, the Respondents will take the position that the Petitioner in this case is detained pursuant to § 1225(b)(2) because he entered this country without inspection, making him inadmissible under 8 U.S.C. § 1182(a). This argument fails for several reasons.

86. First, the Respondents’ treatment of the Petitioner since he arrived in the United States supports the conclusion that he is detained pursuant to § 1226(a). The Petitioner entered the U.S., was detained by DHS upon arrival, and released under an Order of Recognizance. The Respondents have consistently treated the Petitioner as subject to § 1226(a) up to this point.

87. Individuals detained under § 1225(b) may not be released on recognizance; they may only be paroled into the country under § 1182(d)(5)(A) (release on recognizance is a form of “conditional parole” from detention under § 1226 that is distinct from parole under § 1182(d)(5)(A)). *See Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at \*3 (D. Mass. July 24, 2025)). That distinction is significant.

88. The INA allows an individual paroled into the United States to physically enter the country subject to a reservation of rights by the Government that it may continue to treat the non-citizen “as if stopped at the border.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). On the other hand, conditional parole—including release on recognizance—releases a noncitizen already in the country from domestic detention. *Id.*

89. Further, applying § 1225 to all persons who have not been admitted into the United States would conflict with the statute’s broader structure, the Supreme Court’s traditional understanding of the relationship between §§ 1225(b) and 1226(a), and decades of immigration practice. “[O]ne of the most basic canons” of statutory interpretation is that “a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (internal brackets omitted).

90. By contrast, the Respondents’ position that § 1225(b) applies to all persons who have not been admitted into the United States would render multiple provisions of § 1226 superfluous. For instance, § 1226(c)(1)(A), (D), and (E) already require mandatory detention of certain categories of inadmissible noncitizens. Indeed, Congress added § 1226(c)(1)(E)—which requires detention for certain inadmissible noncitizens charged with crimes including burglary, theft, and larceny—just this year through the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). If § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless.

91. The Respondents’ theory also conflicts with the Supreme Court’s previous interpretation of the relationship between §§ 1225(b) and 1225(a). In *Jennings*, the Supreme Court explained that § 1225(b) governs noncitizens “seeking admission into the country,”

whereas § 1226(a) governs noncitizens “already in the country” who are subject to removal proceedings. *Jennings*, 583 U.S. at 289. That interpretation is consistent with the core logic of our immigration system. “[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.

92. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely “on the threshold of initial entry.” *Leng May Ma*, 357 U.S. at 187 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)); accord *Zadvydas*, 533 U.S. 678, 693 (2001) (“The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.”).

93. Given this precedent, it is doubtful that Congress intended § 1225(b)(2) to apply to individuals like the Petitioner who were detained after being present in the U.S. for an extended period of time, who had not committed any crimes, and who were fully compliant with all requirements to attend ICE check-ins and immigration court hearings.

94. Respondents’ position is at odds with DHS’s own historic understanding of the statute’s meaning. DHS’s longstanding interpretation of § 1226 “like any other interpretive aid— can inform a court’s determination of what the law is.” *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255 at \*9 (E.D. Va. Sept. 19, 2025) (quoting *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)). “DHS’s long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended.” *Id.* (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)); see also *Benitez v. Francis*, No. 25-cv-5937, 2025

WL 2371588 at \*8 (S.D.N.Y. Aug. 13, 2025) (observing that DHS’s “novel position would expand § 1225(b) far beyond how it has been enforced historically”). DHS’s historic practice reinforces § 1226(a)’s application to noncitizens in the Petitioner’s position who are arrested well after arriving to this country.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **Violation of Fifth Amendment Right to Due Process**

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

96. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without Due Process of law.” U.S. Const. Amend. V. Due Process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

97. To determine whether a civil detention violates a detainee’s Fifth Amendment procedural Due Process rights, courts apply the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *United States v. Silvestre-Gregorio*, 983 F.3d 848, 852 (6th Cir. 2020) (applying the *Mathews v. Eldridge* test in the context of immigration).

98. *Mathews v. Eldridge* requires a court to consider the following three factors: “(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government’s interest, including the fiscal and administrative burdens that the additional or substitute procedures entail.” *See Lopez-Campos v. Raycraft, et al.*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) at \*9 (citing *Mathews*, 424 U.S. at 335).

99. The Petitioner was detained without a warrant, based on no individualized

circumstances applicable to him and in violation of 8 U.S.C. § 1357(a)(2) and ICE's Broadcast Statement of Policy. Further, the Petitioner was detained based upon the Administration's novel interpretation of existing law, and without notice or any opportunity to contest the redetermination of his custody. All of the foregoing violates his Due Process rights.

100. Subjecting the Petitioner to indefinite, mandatory detention on the flimsy legal pretext of the July 8, 2025, ICE guidance violates her Due Process rights. Detention must be nonpunitive and reasonably related to statutory purposes. Detaining a CAA eligible Cuban asylum seeker with no criminal history violates due process.

101. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

## **COUNT TWO**

### **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), the Immigration and Nationality Act – 8 U.S.C. § 1226, and Federal Regulations Not in Accordance with Law and in Excess of Statutory Authority Unlawful Detention**

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

103. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A). 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 or 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. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

104. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the

choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

105. By categorically detaining the Petitioner and transferring Petitioner away from the district in which he resides or the district in which he lives without consideration of Petitioner’s individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

106. On information and belief, Respondents have made no finding that Petitioner is a danger to the community or a flight risk.

107. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion because, since the agency made its initial determination to release the Petitioner into the United States, on information and belief, there have been no changes to Petitioner’s facts or circumstances that support detention.

108. Respondents have already considered Petitioner’s facts and circumstances and determined that Petitioner was not a flight risk or danger to the community when they initially released him into the United States. On information and belief, there have been no changes to the facts that justify his detention.

109. For these reasons, Petitioner’s detention violates 5 U.S.C. § 706(2)(A).

### **COUNT THREE**

#### **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(c)**

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

111. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §

706(2)(A)-(D).

112. Petitioner does not concede that DHS has the authority to reverse its initial processing choice to parole her pursuant to 1226(a) and re-detain him pursuant to 1225(b)(2). Neither does the Petitioner concede that he is eligible for expedited removal.

113. Under the APA, an agency must provide “reasoned explanation for its action” and “may not depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). *see also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering “particular reliance interests” is arbitrary and capricious in violation of the APA).

#### **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 ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner’s warrantless arrest and detention without an individualized determination violates the INA, his Fourth Amendment rights and the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1357(a)(2) because he is not eligible for expedited removal, and because DHS re-detained him without notice or an opportunity to be heard;
- (4) Declare that the application of the July 8, 2025, ICE Guidance to Petitioner violates the Due Process Clause of the Fifth Amendment;

- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or in the alternative, promptly provide her with bond hearing before an immigration judge;
- (6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (8) Grant any further relief this Court deems just and proper.

Dated: January 30, 2026

Respectfully submitted,

/s/ Michelle M. Reyes\*  
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*Counsel(s) for Petitioner*

**EXHIBIT LIST**

<b><u>Exhibit 1</u></b>	Petitioner's Cuban passport
<b><u>Exhibit 2</u></b>	Notice to Appear ("NTA")
<b><u>Exhibit 3</u></b>	Order of Release on Recognizance
<b><u>Exhibit 4</u></b>	I-797C I-589 Receipt Notice
<b><u>Exhibit 5</u></b>	Employment Authorization Document ("EAD") and Driver's License
<b><u>Exhibit 6</u></b>	EOIR Case Status Screenshot
<b><u>Exhibit 7</u></b>	Children's Documents
<b><u>Exhibit 8</u></b>	July 8, 2025, ICE Guidance Regarding Detention Authority for Applications for Admission

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

I represent Petitioner, **Yankiel Martinez Alfonso**, and submit this verification on his behalf because the Petitioner is currently detained and because of the urgent nature of the relief requested. 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. I am authorized to make this verification as the legal representative of the Petitioner, **Yankiel Martinez Alfonso**.

Dated this 30 January 2026

/s/ Michelle M. Reyes  
Michelle M. Reyes, Esq.