IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ROBERTO PAVON RAMIREZ,

Petitioner,

v CASE NO. 1:26-CIV-20804-DIMITROULEAS

DIRECTOR, U.S. Department of Homeland Security ("**DHS**") Immigration and Customs Enforcement ("**ICE**") Enforcement and Removal Operations ("**ERO**") **Miami Field Office**; **ACTING DIRECTOR, U.S. DHS ICE**; **SECRETARY, DHS**; and **U.S. ATTORNEY GENERAL**;

Respondents.
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RESPONDENT'S TRAVERSE IN SUPPORT OF PETITION FOR HABEAS CORPUS

Petitioner, ROBERTO PAVON RAMIREZ, files this Traverse in support of his Petition for Writ of Habeas Corpus and Replies to the government's Return to the Petition for Habeas Petition as follows:

In his Writ of Habeas Corpus (ECF 1), Petitioner challenges his designation and subjection to continued mandatory detention under 8 U.S.C. § 1225(b)(2). While he may be statutorily defined as an "applicant for admission" under 8 U.S.C. § 1225(a)(1), he was not "seeking admission" at the time of his arrest by ICE on January 15, 2026. Although the Petitioner was initially paroled in the United States, his parole was terminated or expired[1] at the

[1] The parole issued to the petitioner indicates it was valid through November 7, 2025 (ECF 1, Exh 3). Respondents allege Petitioner's parole was terminated on June 12, 2025, although they do not specify through what mechanism it was terminated. *See* ECF 7, p. 2; ECF 7-1, p. 2; ECF 7-3, ¶ 8; ECF 7-5, ¶ 5. Moreover, other than Deportation

time of his detention. As a result, he falls outside of the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). Instead, he maintains his detention is controlled by 8 U.S.C. § 1226, such that he is entitled to either immediate release or a bond hearing before an Immigration Judge. In addition, or in the alternative, the Petitioner challenges his detention as a violation of the Due Process Clause of the United States Constitution.

In its Return, the government alleges the Petitioner named several improper parties in addition to responding to the merits of the Petitioner's claims. The Petitioner addresses the Respondents' argument in turn.

A. **Proper Respondents**

Respondents begin by alleging that the Petitioner has named several improper parties to this action. They claim that solely Carlos R. Nunez, the Acting Assistant Field Office Director,[2] is the proper party because he is the Petitioner's immediate custodian. Therefore, the government claims that the rest of the remaining Respondents should be dismissed.

Federal habeas corpus law requires that a petition, "allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known." 28 U.S.C. § 2242. The traditional immediate custodian rule, as applied in cases involving physical detention, generally requires naming the person with immediate physical custody over the Petitioner. However, the Supreme Court has recognized that while the immediate custodian rule applies to habeas petitions challenging physical custody, the determination of who constitutes the proper custodian depends on the

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Officer Delgado's declaration (ECF 7-3), there is no independent documentary evidence establishing the Petitioner's parole was terminated on June 12, 2025, or that he was given notice of the same.

[2] The Respondents fail to explain why the Acting ***Assistant*** Field Office Director, rather than the Field Office Director, who the Petitioner has charged as a respondent, is the proper party.

specific circumstances and nature of the detention. *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S. Ct. 2711 (2004).

The statutory framework governing immigration enforcement establishes that "the Secretary of Homeland Security shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens." 8 USCS § 1103. This broad mandate demonstrates that the DHS Secretary exercises ultimate authority over immigration detention and enforcement decisions. The comprehensive nature of the Secretary's responsibilities extends beyond mere physical custody to encompass policy decisions, enforcement priorities, and administrative determinations that directly affect the liberty interests of immigration detainees. Accordingly, the Secretary of the Department of Homeland Security is a properly named Respondent in this action. *See Jarpa v Mumford*, 211 F. Supp. 3d 706 (D. Md. Sept. 30, 2016).

The Secretary's oversight of immigration detention matters transfers through the chain of command to the headquarters component of ICE, which exercises significant operational control over immigration detention through policy directives, resource allocation, and oversight of field operations. ICE headquarters possesses the institutional authority to address the underlying issues raised in immigration habeas petitions. Moreover, noncitizens are often-times transferred between different ICE facilities, sometimes out of a court's jurisdiction, and naming one local official would interrupt adjudication of the petition. *See generally Roman v. Ashcroft,* 340 F.3d 314 (6th Cir. 2003). To the extent that the ICE Acting Director has general oversight of the local ICE Field Office Director as well as ICE operations nationwide, the Petitioner maintains the ICE Acting Director is a properly named Respondent herein.

Finally, despite the transfer of most immigration enforcement functions to DHS, the Attorney General retains significant authority over immigration matters. *See generally* 8 U.S.C. § 1103. This retained authority over legal determinations makes the DOJ a proper respondent in cases where the relief sought implications questions of law or policy interpretation. Indeed, should the Court order the Petitioner is entitled to a bond hearing by a neutral decision maker as requested by the Petitioner, the authority to oversee and enforce this relief entails oversight of the immigration judge as part of the Executive Office for Immigration Review (EOIR), part of the DOJ. *See* 8 CFR § 1003.0. Accordingly, Petitioner maintains that the Attorney General was properly named as a Respondent herein.

B. **Because the Petitioner's parole expired, he was not "seeking admission" at the time of his arrest such that his detention is controlled by 8 U.S.C. § 1226**

The government asserts that the Petitioner is both an "applicant for admission" as defined in 8 U.S.C. § 1225(a)(1) and an alien seeking admission, and is therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Respondents contend that the statutory text supports its position.

However, the courts in *Cabrera Martinez v Marich, et al.*, 25-cv-1110-LJV, 2025 WL 3771228 (W.D.N.Y. Dec. 31, 2025) *Qasemi v Francis, et al.*, 25-cv-10029 (S.D.N.Y. Dec. 17, 2025) likewise looked to the statutory text at issue and reached the opposite conclusion, which analysis the Petitioner adopts as if fully set forth herein. The court in *Qasemi* looked at the plain meaning of the relevant terms and read the words of the statute "in their context with a view to their place in the overall statutory scheme," concluding that a noncitizen like the Petitioner, was not "arriving in the United States." As was noted by the Court in *Qasemi*, while the noncitizen may be an "applicant for admission" it does not follow that he is "arriving in the United States." "He has already arrived, was paroled, entered, and has now been present in the United States."

Qasemi, slip op at 12. *See also Cabrera Martinez v Marich, et al.,* 25-cv-1110-JLV, slip op at 6, noting that, "the 'entry fiction' ends once a person has been living in the country after parole expires. Following its analysis of the statutory scheme, the court in *Qasemi* concluded:

> Putting these pieces together, the termination by expiration of Qasemi's parole returned him to the "custody" of DHS pursuant to the INA. Because he was paroled, and because he is not an arriving alien, he is no longer subject to the mandatory detention provision of Section 1225(b)(1). The outcome of this textual analysis is ultimately simple: absent ongoing parole status, Section 1182 mandates that Qasemi be treated just as the INA would treat any noncitizen previously granted parole and living in the United States. Every court that this Court is aware of that has considered the question has determined the same. (Citations omitted).
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> Therefore, any determination as to Qasemi's detention must be conducted under the discretionary framework of Section 1226(a), which "governs the process of arresting and detaining noncitizens who have already entered the United States pending their removal." *Tumba*, 2025 WL 3079014, at *3 (quoting *Jennings*, 583 U.S. at 288). That describes Qasemi, who is undoubtably within the United States pending the adjudication of his asylum claim.

Qasemi, slip op. at 24-25. *See also Campbell v Almodovar*, 1:25-cv-09509 (JLR), 2025 WL 3538351 (S.D.N.Y. Dec. 10, 2025).

As applied herein, because the Petitioner's parole ended, either because it was unilaterally terminated by the Respondents or because it expired by its own terms, he is not an "arriving alien" subject to mandatory detention under § 1225. Rather, he is an alien who is present in the United States. Accordingly, his detention is governed by § 1226, and he is entitled to release or to a full custody redetermination hearing on the merits before an immigration judge, at minimum. *See also Puga v Assistant Field Office Director Krome, et al.*, 25-cv-24535-civ-Altonaga, 2025 WL 2938369 (S.D. Fla. Oct 16, 2025)

As was noted by the court in *Qasemi*, treating a noncitizen like the Petitioner under Section 1226(a) rather than § 1225(b)(1) avoids potentially absurd results. "Under the Government's view, a person who was paroled into the United States…would upon its automatic

termination be forever at risk of being arrested at any time, in any place, and for any reason, with no notice and no recourse. It is 'quite impossible that Congress would have intended' this result particularly because greater protections are afforded to noncitizens who entered the country without inspection. Under Section 1226(a) a noncitizen who has bypassed the border entirely and is encountered within the interior of the country is evaluated by DHS for potential release on their own recognizance, and if detained is provided with the opportunity for a bail hearing. 8 CFR § 1236.1(d)(1) (citations omitted)." *Id. See also Cabrera Martinez v Marich, et al.*, 25-cv-1110-LJV, 2025 WL 3771228 *13 (W.D.N.Y. Dec. 31, 2025) (noting that it makes little sense to treat those who present themselves at the border and are paroled and then overstay their welcome more harshly than those who sneak into the country without having had authority or permission to be here).

Finally, the documents issued to the Petitioner confirm his detention is governed by 8 U.S.C. § 1226. The warrant of arrest issued to the Petitioner indicates he was being taken into custody **"as authorized by section 236 of the Immigration & Nationality Act."** (Emphasis added). *See* ECF 1, Exh. 7. Section 236 of the Immigration & Nationality Act (INA) is codified at 8 U.S.C. § 1226, which clearly provides that an immigration judge may consider releasing a detainee during the pendency of removal proceedings. Further, while subsequent to the filing of the Petition for Writ of Habeas Corpus the Respondents have sought to amend the Notice To Appear (NTA) filed against the Petitioner, he is still being charged under INA 212(a)(6)(A)(i)[3] as **"an alien present in the United States without being admitted or paroled."** (Emphasis added). (ECF 7-6).

[3] Codified at 8 U.S.C. § 1182(a)(6)(A)(i).

The vast majority of Judges in this District have reached the conclusion that noncitizens present in the United States are not subject to mandatory detention under 8 U.S.C. § 1225(b) but are entitled to a bond hearing under § 1226. *See e.g., Aguilar Merino v Ripa*, No. 25-23845-civ-Martinez, 2025 WL 2941609 (S.D. Fla. Oct 15, 2025); *Gil Paulino v Sec'y of the U.S. Dep't of Homeland Security*, 25-24292-civ-Williams (S.D. Fla. Oct. 10, 2025); *Hernandez Alvarez v Acting Warden Roger Morris, et al.*, Case No. 25-24806-civ-Williams (S.D. Fla. Oct. 27, 2025); *Cerro Perez v Parra, et al.*, Case No. 25-24820-civ-Williams (S.D. Fla. Oct 27, 2025); *Alvarez Puga v Assistant Field Office Director Krome, et al.*, 25-24535-civ-Altonaga, 2025 WL 2938369 (S.D. Fla. Oct 16, 2025); *Zamora Policarpo v Parra*, 25-25236-civ-Cohen (S.D. Fla. Dec. 22, 2025); *Duvallon Bofill, et al.*, 25-25179-civ-Becerra, (S.D. Fla. Nov. 20, 2025); *Ocampo Fernandez v Ripa*, No. 25-24981-civ-Liebowitz, (S.D. Fla. Nov. 25, 2025); *Espinal Encarnacion v ICE Field Office Director, et al.*, 25-61898-civ-Damian (S.D. Fla. Dec. 23, 2025); *Ocegueda Gonzalez v Noem, et al.*, 25-62261 civ-Middlebrooks/Agustin-Birxch, (S.D. Fla. Dec. 23, 2025); *Acosta v Ripa, et al.*, 25-62360-civ-Dimitrouleas (S.D. Fla. Dec. 26, 2025); *Fuentes Granados v Secretary of Homeland Security*, 26-60020-civ-Smith, (S.D. Fla. Jan 27, 2026).

However, Petitioner is also aware that since the decision in *Buenrostro-Mendez v Bondi*, --- F. 4th ---, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), this Court found persuasive the majority opinion of the Fifth Circuit's decision which held that individuals present in the United States without lawful admission are "applicants for admission" under 8 U.S.C. § 1225(b)(2)(A), such that such individuals are subject to mandatory detention without eligibility for bond hearings during removal proceedings. *See Perez-Morales v Noem*, 26-60251-civ-Dimitrouleas (S.D. Fla. Feb. 9, 2026). Nevertheless, Petitioner respectfully asks this Court to reconsider its decision since the opinion in *Buenrostro-Mendez* is not binding on this Court, the

decision is not yet final, *see i.e.* Fed.R.App.P. 40, and the decision sits in stark contrast to the vast majority of district courts to have considered the issue, including in this District, as pointed out above. Indeed, the decision in *Buenrostro-Mendez* does not appear to have had any impact on at least one judge in this District. *See Herrera-Arauz v. Director, U.S. Department of Homeland Security et al*, Case No. 1:26-civ-20656-CMA (Feb. 12, 2026).

C. <u>Petitioner's Continued Detention Violates His Due Process Rights</u>

Even if the Court finds the Petitioner is subject to mandatory detention pursuant to the Immigration & Nationality Act, the Court may still grant his Petition on a finding that his continued detention violates his procedural and/or substantive due process rights. Noncitizen detainees charged with being in the U.S. illegally are entitled to procedural due process, meaning "notice and opportunity to be heard appropriate to the nature of the case." *See Trump v J.G.G.*, 604 U.S. 670, 145 S. Ct. 1003, 1006 (2025); *see also* A. A. R. P. v. Trump, 605 U.S. 91 (2025). "'Procedural due process rules are meant to protect' against 'the mistaken or unjustified deprivation of life, liberty, or property.'" *Id.* (quoting *Carey v. Piphus*, 435 U.S. 247, 259 (1978)). Due process "is a flexible concept that varies with the particular situation." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Those factors are: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens

that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

Petitioner has a significant private interest in remaining free from detention. "The interest in being free from physical detention…is the most elemental of liberty interests." *Hamdi v Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens, like the Petitioner, "who have 'established connections' in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law. *Hassen v Noem et al.*, EP-26-cv-00048-DB (W.D. TX Feb. 9, 2026).

In the instant case, the Petitioner relied on the government's invitation to come the United States more than two years ago with a valid parole, with the expectation that he would be able to "seek humanitarian relief or other immigration benefits, including adjustment of status pursuant to the Cuban Adjustment Act." *See* 88 Fed. Reg. 1266, 1268 (January 9, 2023). In the more than two years he has been in the United States up until the time of his detention, he resided with friends and family here, worked, and made a life for himself. Further, Petitioner has a pending application for adjustment of status, for which is he prima facie eligible.[4] *See Pinchi v Noem*, Case No. 792 F. Supp. 3d 1025 (N.D. Ca. July 4, 2025) (recognizing Pinchi's protected liberty interest in remaining out of custody where, during the more than two years since she entered the United States she found a job, provided for her family, built a community at work and church

[4]Paragraph 6 of the amended NTA alleges that, "you have not adjusted your status to that of a Lawful Permanent Resident." *See* ECF 7-5. However, the reality is that the Petitioner has not adjusted his status through no fault of his own. Although the Petitioner timely filed for adjustment of status, the DHS has not adjudicated the application in a timely manner (see ECF 1, n. 2). Rather, the Government has unilaterally stopped adjudicating all such applications pursuant to USCIS Policy Memorandum Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries, December 2, 2025 *available at* PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf. *See also* Termination of Family Reunification Parole Processes for Colombians, Cubans, Ecuadorians, Guatemalans, Haitians, Hondurans, and Salvadorans, 90 Fed. Reg 58032 (Dec. 15, 2025).

and has undertaken treatment for serious health conditions). Therefore, he has a substantial interest that is being impacted by his detention and possible removal.

The inability to request a bond hearing creates a high risk of erroneous deprivation since the process afforded in removal proceedings does "not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed." *See Rojas v. Noem*, 3:25-cv-00443-KC, 2025 WL 3038262 at *3-*4 (W.D. TX Oct. 30, 2025). Bond hearings that "conduct individualized custody determinations considering flight risk and dangerousness" are the precise "type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond." *Id.* at *4.

Regardless of the government's purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner's "constitutional interest in his liberty exists above and apart from the INA." *Rojas*, 2025 WL 3038262 at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.")). Further, while the government "has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community," such interest "would be squarely addressed through a bond hearing." *Id.* (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)). To this end, the Petitioner has resided in the United States for more than two years, he has worked here and established community ties, and has no criminal record. Indeed, the burden on the Government to provide the Petitioner with the procedural safeguards of a hearing are minimal, and it would be less of a burden to return the Petitioner home to await a determination on his immigration proceedings than to continue to detain him.

Conclusion

For the reasons set forth herein, the Petitioner respectfully requests that the Court grant the Petitioner's Writ of Habeas Corpus and order his immediate release from custody or alternatively, that he be provided with a constitutionally adequate bond hearing before an Immigration Judge.

Respectfully submitted,

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