UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
Waycross Division

Jairo Ariel Barahona Perez, (A[redacted]) *Petitioner*,	
v.	Civil Action No.
Kristi Noem, *Secretary, U.S. Department Of Homeland Security*,	
Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*,	
George Sterling, *Director, Atlanta Field Office, U.S. Immigration and Customs Enforcement*,	
Pamela Bondi, *Attorney General*,	
Warden, *Folkston D Ray ICE Processing Center*,	
Respondents.	

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Jairo Ariel Barahona Perez (A[redacted]) is a citizen of Guatemala who entered the United States without inspection between ports of entry on the U.S.-Mexico border in or around 2004. Petitioner was not encountered by U.S. immigration authorities at that time. More than 21 years later, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE") in the interior of the country. Petitioner is now detained by ICE under facts and circumstances that place him squarely within ICE's general detention authority set forth in 8 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to seek discretionary release on bond from an Immigration Judge

("IJ"). However, due to a new policy announced by ICE in July 2025, and now a recent Board of Immigration Appeals (BIA) decision that overturns decades of settled law, Respondents contend that Petitioner is actually detained under 8 U.S.C. § 1225(b)(2). While § 1225(b)(2) requires mandatory detention and does not allow release on bond, it only applies to a subset of noncitizens apprehended at the border who are found to be "seeking admission"— not to individuals like Petitioner, who enter without inspection and are apprehended in the interior years later. Petitioner therefore brings this action for a declaratory judgment from this Court that he is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a) and order Petitioner's immediate release from custody, or in the alternative, an order that Respondents schedule him for a discretionary bond hearing pursuant to § 1226(a) before an Immigration Judge within 7 days.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. This Court has 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 review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

3. Venue lies in this District because Petitioner is currently detained within the territorial jurisdiction of this division of this District; and each Respondent is an agency or officer of the United States sued in their official capacities. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

THE PARTIES

4. Petitioner Jairo Ariel Barahona Perez ([redacted]) is a citizen and native of Guatemala and is currently detained by Respondents at the Folkston D Ray ICE Processing Center in Folkston, Georgia, within the territorial jurisdiction of this Court.

5. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

6. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

7. Respondent George Sterling is the Director of the Atlanta ICE Field Office. He is responsible for overseeing ICE operations pertaining to noncitizens within his territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. He is the immediate legal custodian of Petitioner for purposes of a federal habeas petition.

8. Respondent Pamela Bondi is the Attorney General of the United States, head of the U.S. Department of Justice. She oversees the Executive Office for Immigration Review, including all Immigration Judges and the Board of Immigration Appeals who decide removal cases and applications for bond and relief from removal, and do so as her designees.

9. The warden of the Folkston D Ray ICE Processing Center in Folkston, Georgia. He or she is the immediate custodian who is currently holding Petitioner in physical custody. He or she is sued in his or her official capacity.

10. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

11. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

12. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c)." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "'[e]xcept as provided in subsection (c) of this section,' the Attorney General 'may release' an alien detained under § 1226(a) 'on ...bond' or 'conditional parole.'" *Id.*

13. Alternatively, mandatory detention is authorized for "certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

> "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission."

§ 1225(a)(1).

14. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an "arriving alien," and if they have not been physically present in the United States continuously for a two-year period immediately prior. Regulations define an "arriving alien" as:

> "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."

8 C.F.R. § 1.2.

15. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "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," i.e. for traditional removal proceedings [emphasis added].

16. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

17. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a

case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

18. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

19. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

20. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum "Interim

Guidance Regarding Detention Authority for Applications for Admission."[1] This memo concerns the detention of "applicants for admission" as defined by § 1225(a)(1). "Effective immediately, it is the position of DHS that such aliens are subject to detention under [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)]." *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* ("For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.")

21. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under [8 U.S.C. § 1226(c)]." *Id.*

22. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct" paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO and HIS are not required to 'correct' the release paperwork by issuing INA § 212(d)(5) parole paperwork.")

23. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

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[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited November 10, 2025).

C. Recent BIA decision *Matter of Yajure Hurtado*

24. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

25. The BIA held that the respondent was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

26. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. *Id.* at 220.

27. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

28. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, n. 6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled '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), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'")

29. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229. The BIA decision is binding on all immigration judges nationwide.

30. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")

D. Class Action In *Maldonado Bautista*

34. In the U.S. District Court for the Central District of California, a class brought suit against the July 2025 policy to apply § 1225(b)(2) to individuals who previously entered the U.S. without inspection. *Maldonado Bautista v. Santacruz*, --- F.Supp.3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20 2025). On November 20, 2025, summary judgment was partially granted in favor of the putative class in *Maldonado Bautista*, holding that ICE's July 2025 policy was unlawful. *Id.* at *10 ("Thus, Respondents' expansive interpretation of 'applicants for admission' would effectively nullify a portion of the INA through the DHS's legislative or interpretive exercise of power. Neither is appropriate under the separation of powers."). The court held that § 1226(a) applies to the putative class. *Id.* at 11. The court declined to issue a final judgment under Fed. R. Civ. Pro. 54(b), as the motion for class certification was still pending. *Id.* On November 25, 2025, the court

certified "Bond Eligible Class" of:

> "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination."

Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The *Maldonado Bautista* court then set a status conference for early 2026. *Id.*

35. Since the decisions in *Maldonado Bautista*, immigration judges nation-wide have continued to bar access to bond hearings citing § 1225(b)(2), stating that *Maldonado Bautista v. Santacruz*, --- F.Supp.3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20 2025), is not a final judgment and therefore does not bind them to its holding. Accordingly, immigration judges have continued to follow *Yajure Hurtado*, 29 I&N Dec.216 (BIA 2025). *See e.g.*

☑ **Other:**
The Court has not been shown to have jurisdiction to set bond with respect to this Respondent. The court in Bautista v. Noem, 5:25-cv-01873-SSS-BFM (C.D. Cal.), granted class certification and partial summary judgment for the plaintiffs in that case, but did not issue a class-wide declaratory judgment. The court also did not issue a class-wide injunction, which would not be permitted by law. Until and unless the Bautista court issues a class-wide declaratory judgment or injunction, the Bautista court's opinion and partial grant of summary judgment does not constitute a judgment. See, e.g., Fed. R. Civ. P. 54(b)

36. On December 18, 2025, the court granted the motion to reconsider, in light of the fact that immigration judges nationwide were refusing to follow the court's prior summary judgment decision, and granted a final judgment. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The court reiterated its prior holding. *Id.* at *6 ("In spite of *Yajure Hurtado*, this Court determined that Petitioners and those similarly situated are not "applicants for admission," and therefore not subject to mandatory detention under §

1225.") The court explained that "Although the MSJ Order does not grant vacatur of *Yajure Hurtado* under the APA, *Yajure Hurtado* is no longer controlling; the legal conclusion underlying the decision is no longer tenable." *Id.* However, the court did proceed to hold that "the Application is GRANTED as to the clarification that the MSJ Order declared the DHS Policy unlawful and granted vacatur under the APA." *Id.* at *12.

37. Upon information and belief, immigration judges nationwide have been interpreting the effect of the Central District of California's December 18, 2025 order differently. Numerous, though not all, immigration judges are still finding that they lack jurisdiction to consider bonds for noncitizens like Petitioner, who entered without inspection and were not apprehended until years later.

FACTS

31. Petitioner is a 45-year-old citizen of Guatemala. He entered the United States without inspection between ports of entry, across the U.S.-Mexico border, in or around 2004, when he was approximately 23 years old, and was not encountered by immigration officials at that time.

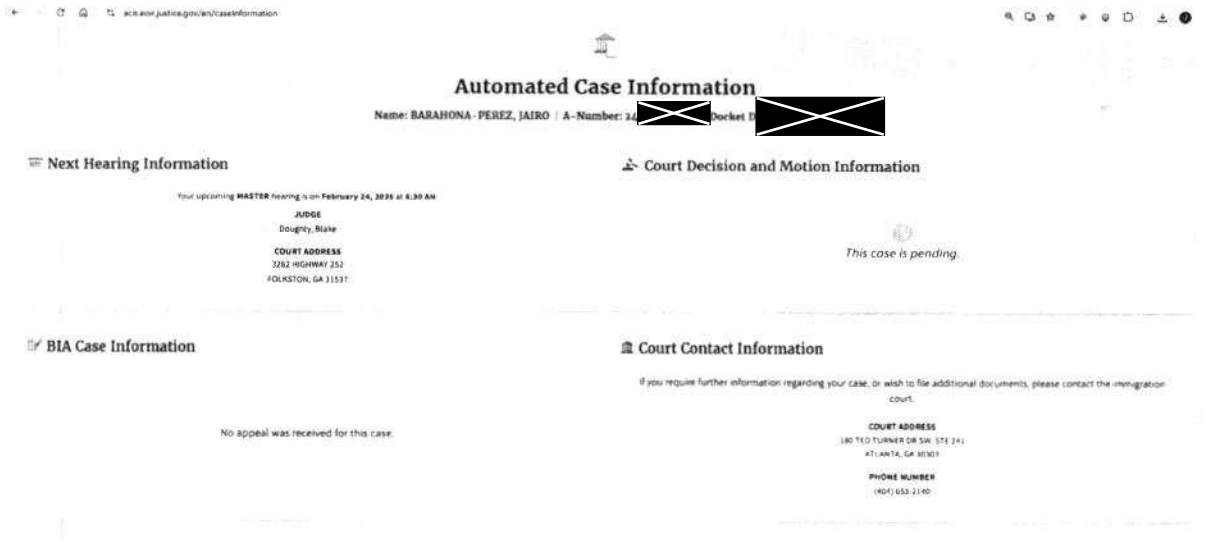
32. Petitioner thereafter relocated to Maryland, where he established a stable and peaceful life with his partner and their four-year-old U.S. citizen daughter, as well as Petitioner's two U.S. citizen sons, ages thirteen and seventeen, from a prior marriage.

33. Upon information and belief, Petitioner's criminal history consists of minor traffic-related offenses, all of which have been resolved and paid. Petitioner was also previously charged in a domestic violence matter; however, that charge was dismissed and did not result in a conviction.

34. On December 12, 2025, Petitioner was detained by Immigration and Customs Enforcement while on his way to work in Laurel, Maryland.

35. Petitioner is currently detained at the Folkston D Ray ICE Processing Center in Folkston, Georgia. *See* ICE Detainee Locator information, (*available at* https://locator.ice.gov/ (last visited February 6, 2026)):

36. Petitioner has pending removal proceedings (his next Master Calendar Hearing is scheduled for February 24, 2026), and he is not subject to a final order of removal. *See also* EOIR Automated Case Information, (*available at* https://acis.eoir.justice.gov/ (last visited February 6, 2026)):



Automated Case Information

Name: BARAHONA-PEREZ, JAIRO | A-Number: 24[redacted] Docket D[redacted]

Next Hearing Information

Your upcoming MASTER hearing is on February 24, 2026 at 8:30 AM

JUDGE
Doughty, Blake

COURT ADDRESS
3262 HIGHWAY 252
FOLKSTON, GA 31537

Court Decision and Motion Information

This case is pending.

BIA Case Information

No appeal was received for this case.

Court Contact Information

If you require further information regarding your case, or wish to file additional documents, please contact the immigration court.

COURT ADDRESS
180 TED TURNER DR SW, STE 241
ATLANTA, GA 30303

PHONE NUMBER
(404) 653-2140

37. Petitioner's detention has caused severe financial and emotional hardship to his family. Petitioner is the sole financial provider for his household, and without his income, his family is unable to cover basic living expenses and is experiencing ongoing financial instability. The detention has also resulted in significant emotional distress for Petitioner's children. Petitioner's seventeen-year-old U.S. citizen son, who has autism, witnessed Petitioner's detention while on a school bus. Since that incident, his condition has worsened, including increased anxiety, frequent crying, and heightened alertness. The emotional impact has also affected Petitioner's younger child, who has struggled with the sudden absence of Petitioner from the household.

38. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to request a bond from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.

FIRST CLAIM FOR RELIEF:
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)

39. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-38.

40. Since Petitioner is not an applicant for admission "seeking admission" nor "an

arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and because he has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

41. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a bond redetermination hearing in front of an immigration judge.

SECOND CLAIM FOR RELIEF:
Detention in Violation of Due Process

42. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-38.

43. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

44. After entering the United States unlawfully, Petitioner went on to develop strong ties to the community over five years. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and he has a liberty interest in freedom from physical restraint.

45. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives him of his rights without due process of law.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;

b) Enjoin Respondents from holding Petitioner subject to detention under 8 U.S.C. § 1225(b)(2) and denying him a bond hearing on that basis;

c) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;

d) Enjoin Respondents from re-arresting Petitioner subject to § 1225(b)(2);

e) Order Petitioner's immediate release from custody;

f) Order, in the alternative, Petitioner's immediate release and that Respondents conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 15 days;

g) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;

h) Award Petitioner his costs of suit; and

i) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: February 6, 2026

/s/ Benjamin Osorio
Benjamin Osorio, Esq.
Georgia State Bar no. 194702
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, Virginia 22030
Telephone: 703-352-2399
Facsimile: 703-763-2304
benjamin@murrayosorio.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for
the Southern District of Georgia
22 Barnard Street, Suite 300
Savannah, GA 31401

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the
United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Office of the Principal Legal Advisor
U.S. Immigration and Customs
Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Warden,
Folkston D Ray ICE Processing Center
P.O. Box 548, 3262 Highway 252 East
Folkston, GA 31537

Respectfully submitted,

Date: February 6, 2026

/s/ Benjamin Osorio
Benjamin Osorio, Esq.
Georgia State Bar no. 194702
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, Virginia 22030
Telephone: 703-352-2399
Facsimile: 703-763-2304
benjamin@murrayosorio.com

Counsel for Petitioner