UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

ALEJANDRO VILLANUEVA CERVANTES,

Petitioner,

v. Case No.

Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami, Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.
_______________________________________/

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner ALEJADNRO Villanueva Cervantes is in the physical custody of Respondents at the Broward Transitional Center, in Pompano Beach, Florida, within the jurisdiction of the Miami (Krome) Immigration Court. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner's release from immigration custody pursuant to a DHS policy issued on July 8, 2025. That policy directs Immigration and Customs Enforcement ("ICE") personnel to treat any individual deemed inadmissible under § 1182(a)(6)(A)(i). Accordingly those who entered the United States without admission or inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and therefore categorically ineligible for release on bond.

4. Likewise, on September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued *Matter of Yajure Hurtado*, a precedent decision binding on all immigration judges, holding an immigration judge has no authority to consider bond requests for an individual who entered the United States without admission. 29 I&N Dec. 216 (BIA 2025). The Board determined such individuals are subject to detention in accordance with § 1225(b)(2)(A) and as such, ineligible to be released on bond.

5. Petitioner submits his detention on this basis is a violation of the plain language of the Immigration and Nationality Act ("INA" or "Act"). Section 1225(b)(2)(A) does not apply to individuals, like Petitioner, who previously entered and are now residing in the United States. Rather, such individuals are subject to 8 U.S.C. § 1226(a), allowing for release on conditional parole or bond. This statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents' newly adopted interpretation is inconsistent with the governing statutory scheme and departs from decades of settled agency practice applying § 1226(a) to individuals in circumstances like Petitioner's.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring his release unless Respondents provide a bond hearing pursuant to § 1226(a) within seven days.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Broward Transitional Center, in Pompano Beach, Florida.

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

VENUE

11. 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 Petitioner is currently detained.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) as Respondents are employees, officers, and agencies of the United States, and as a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of Florida.

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

EXHAUSTION

15. In the instant case, exhaustion is not required because the administrative process cannot provide any relief. Precedent of the U.S. Supreme Court confirms exhaustion is excused under such circumstances. Respondents will likely argue Petitioner failed to exhaust administrative remedies as he did not first seek custody review before the Immigration Judge. However, this argument is incorrect for several reasons. First, an Immigration Judge and the Board lack jurisdiction to adjudicate the statutory basis of Petitioner's detention. Second, both the Immigration Judge and the Board are bound by *Matter of Yujure Hurtado*, requiring denial holding custody jurisdiction in cases where the Department classifies § 1225(b)(2)(A). Finally, the exhaustion doctrine pursuant to § 2241

is prudential, not statutory, and the Supreme Court's decision in *McCarthy v. Madigan*, squarely applies here as the agency cannot provide relief the relief Petitioner seeks or adjudicate the legal question raise. Accordingly, exhaustion is not required.

A. The Immigration Judge Lacks Jurisdiction to Consider Custody Under the Government's Classification

16. The Government consistently asserts individuals detained pursuant to § 1225(b)(2)(A) are categorically ineligible for bond and Immigration Judges lack jurisdiction to consider custody. In every recent case involving this issue, including *Aguilar Merino v. Field Office Director, ERO Miami*, the Government has argued the Immigration Judge lacks authority to review custody for individuals DHS designates as "applicants for admission." The Government cannot simultaneously insist the Immigration Judge has no jurisdiction and then argue Petitioner must exhaust a remedy the Government itself claims is unavailable. A remedy the agency lacks power to provide is not one that must be exhausted.

B. The Board of Immigration Appeals Is Bound by Matter of Yajure Hurtado and Would Be Required to Affirm the Immigration Judge's Jurisdictional Denial

17. Even if Petitioner filed a custody motion, the Immigration Judge would be required under *Matter of Yajure Hurtado* to deny jurisdiction. The Board is likewise bound by this published precedent and cannot reverse or reconsider the rule it established. Thus, any administrative appeal of a bond denial would be predetermined and futile. Exhaustion is not required when the result is foreordained, and the agency cannot grant the relief requested.

C. Neither the Immigration Judge nor the Board Has Authority to Decide the Statutory Basis of Petitioner's Detention

18. Petitioner does not challenge the discretionary denial of bond. Petitioner challenges the legal authority under which he is detained. This is a pure question of statutory authority. The Immigration Courts do not possess jurisdiction to determine whether DHS applied the correct detention statute, whether DHS misclassified Petitioner's detention authority, or whether detention must proceed under § 1226(a). These issues lie exclusively within the competency of a federal habeas court. Because the administrative bodies cannot adjudicate the question presented, exhaustion is excused.

D. *McCarthy v. Madigan* Confirms Exhaustion Is Not Required When the Agency Cannot Provide a Remedy or Decide the Legal Issue, and This Principle Applies in Habeas Cases Under Section 2241

19. *McCarthy v. Madigan*, 503 U.S. 140 (1992), although not an immigration case, is directly applicable here. In *McCarthy*, petitioner was a federal prisoner seeking monetary damages for alleged constitutional violations. The administrative grievance procedure available to him could neither award monetary relief nor adjudicate the legal claim he asserted. The Supreme Court concluded exhaustion was not required because the administrative body lacked the authority to grant the requested relief and was powerless to resolve the legal issue presented.

20. The holding in *McCarthy* is not limited to the prison context. The Supreme Court in *McCarthy* articulated the general administrative law principles governing exhaustion in actions brought under 28 U.S.C. § 2241. Section 2241 contains no statutory exhaustion requirement; accordingly, exhaustion in habeas cases challenging detention is

a prudential, judge-made doctrine rather than a jurisdictional mandate. *McCarthy* therefore remains controlling law unless Congress has clearly displaced it. Moreover, the INA does not impose a statutory exhaustion requirement for habeas challenges to the legal basis of detention. Nor does it establish any administrative mechanism capable of providing the relief Petitioner seeks.

21. *McCarthy* applies with particular force in the present matter. As in *McCarthy*, the agency's administrative framework is incapable of providing the relief sought. An Immigration Judge lacks authority to conduct a custody hearing where DHS asserts that detention arises under § 1225(b)(2)(A). The Board cannot grant relief because it is bound by its own precedent. Moreover, neither the Immigration Judge nor the Board has authority to determine whether DHS invoked the correct statutory basis for detention in the first instance. Because the administrative process cannot adjudicate Petitioner's purely legal claim, any effort to pursue relief through that process would be futile.

22. Thus, under *McCarthy*, exhaustion is excused because the agency lacks authority to grant relief, lacks authority to resolve the legal question presented, and could not provide an effective remedy under any circumstance.

E. Additional Government Arguments Under Sections 1252(e)(3), 1252(g), and 1252(b)(9) Are Misplaced and Do Not Bar Habeas Review

23. The Government has asserted in comparable cases that this Court lacks jurisdiction pursuant to 8 U.S.C. §§ 1252(e)(3), 1252(g), and 1252(b)(9). Those provisions, however, are inapplicable to the present action.

24. First, 8 U.S.C. § 1252(e)(3) is limited to systemic challenges to the implementation of § 1225(b); it does not extend to individualized habeas petitions contesting the statutory basis for a particular person's detention. Petitioner submits he does not contest any regulation, policy, or written directive. Rather, he challenges only DHS's application of its statutory authority applied to him in his specific case.

25. Second, the Supreme Court has made clear 8 U.S.C. § 1252(g) does not apply as this provision is narrowly limited to three discrete actions: (1) the decision to commence proceedings, (2) the decision to adjudicate cases, and (3) the decision to execute removal orders. A challenge to the legality of detention falls within none of these categories.

26. Third, 8 U.S.C. § 1252(b)(9) is a channeling provision, not a jurisdiction-stripping bar. In *Jennings v. Rodriguez*, the Supreme Court made clear challenges to the statutory basis or duration of detention are distinct from challenges to removal proceedings themselves. Accordingly, such detention claims do not fall within the purview of § 1252(b)(9).

F. Because No Administrative Avenue Exists to Address Petitioner's Claim, Habeas Review is Proper and Necessary

27. Petitioner has no available administrative mechanism through which to challenge the statutory basis of his detention. The Immigration Judge lacks jurisdiction to decide the issue, and the Board lacks authority to reverse the decision of the Immigration Judge. The existing administrative framework provides no forum to determine whether DHS invoked the correct detention statute. Accordingly, exhaustion is not required, and

this Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's detention.

PARTIES

28. Petitioner ALEJANDRO VILLANUEVA CERVANTES is a citizen of Mexico, who has been in immigration detention since on or about January 14, 2026. ICE did not set bond and Petitioner is unable to obtain review of his custody by an Immigration Judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

29. Respondent, Garrett Ripa, is the Director of the Miami Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

30. 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.

31. Respondent, Department of Homeland Security ("DHS"), is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

32. Respondent, Pamela Bondi, is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration

Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

33. Respondent, Executive Office for Immigration Review (EOIR), is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

LEGAL FRAMEWORK

34. The INA establishes three primary detention frameworks governing the vast majority of noncitizens placed in removal proceedings.

35. First, 8 U.S.C. § 1226 governs the detention of noncitizens placed in standard removal proceedings before an Immigration Judge pursuant to 8 U.S.C. § 1229a. Individuals detained under § 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, certain noncitizens who have been arrested for, charged with, or convicted of specified offenses are subject to mandatory detention under 8 U.S.C. § 1226(c).

36. Second, the INA mandates detention for certain categories of arriving noncitizens. Individuals subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission who are processed under § 1225(b)(2), are generally subject to mandatory detention during the pendency of those proceedings.

37. Third, the INA authorizes detention of noncitizens who are subject to a final order of removal, including those placed in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

38. This case concerns the detention provisions found in §§ 1226(a) and 1225(b)(2).

39. The detention provisions codified at 8 U.S.C. §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), 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 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

40. Following the enactment of IIRIRA, the EOIR promulgated regulations clarifying, as a general matter, individuals who entered the United States without inspection were not considered detained under 8 U.S.C. § 1225, but instead were detained pursuant to § 1226(a). *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).

41. Accordingly, in the decades following IIRIRA's enactment, most individuals who entered without inspection and were placed in standard removal proceedings were detained under § 1226(a) and afforded bond hearings, unless they were subject to mandatory detention pursuant to § 1226(c) as a result of qualifying criminal history. This approach was consistent with longstanding prior practice. For decades before IIRIRA, noncitizens who were not classified as "arriving" were entitled to a custody determination before an Immigration Judge or other authorized officer. See 8 U.S.C. § 1252(a) (1994). Congress itself recognized this continuity, noting § 1226(a) largely "restates" the detention authority previously codified at § 1252(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

42. On July 8, 2025, ICE, "in coordination with" the Department of Justice ("DOJ"), announced a new policy departing from the longstanding understanding of the governing statutory framework and reversed decades of settled practice.

43. The new policy, entitled *"Interim Guidance Regarding Detention Authority for Applicants for Admission,"* asserts all individuals who entered the United States without inspection are subject to the mandatory detention provision set forth in § 1225(b)(2)(A). The policy applies irrespective of when the individual was apprehended and reaches persons who have lived in the United States for months, years, or even decades.

44. On September 5, 2025, the Board adopted this same interpretation in a published decision, *Matter of Yajure Hurtado*. There, the Board held all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are therefore ineligible for bond hearings before an Immigration Judge.

45. Since Respondents implemented their new policies, numerous federal courts have rejected their revised interpretation of the INA's detention provisions. Courts have similarly declined to follow *Matter of Yajure Hurtado*, which adopts the same statutory construction advanced by ICE.

46. Even before ICE and the Board formally adopted these nationwide policies, Immigration Judges in Tacoma, Washington, had begun denying bond hearings to individuals who entered the United States without inspection but had since resided here for extended periods. In response, the U.S. District Court for the Western District of Washington concluded this interpretation of the INA was likely unlawful. The court held

§ 1226(a)—not § 1225(b)—governs the detention of noncitizens who were not apprehended upon arrival to the United States. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

47. Since that time, court after court has adopted the same interpretation of the INA's detention framework and rejected ICE and EOIR's revised reading of the statute. *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).

48. Courts have uniformly rejected DHS's and EOIR's revised interpretation because it is inconsistent with the INA's text and structure. As the court explained in *Rodriguez Vazquez v. Bostock*, and as numerous other courts have likewise concluded, the plain language of the statute makes clear § 1226(a)—not § 1225(b)—governs the detention of individuals like Petitioner.

49. Section 1226(a) applies, by its plain terms, to noncitizens "pending a decision on whether the [noncitizen] is to be removed from the United States." These determinations occur in removal proceedings conducted under 8 U.S.C. § 1229a, which governs hearings to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

50. The text of § 1226 expressly encompasses individuals charged as inadmissible, including those alleged to have entered the United States without inspection. *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.

51. Section 1226 thus makes clear it governs the detention of individuals charged with inadmissibility, including those who are present in the United States without having been admitted or paroled.

52. By contrast, 8 U.S.C. § 1225(b) governs individuals who are arriving at ports of entry or who have recently entered the United States and are undergoing inspection. The statutory scheme is expressly premised on border inspections of persons who are "seeking admission" to the country. § 1225(b)(2)(A). As the Supreme Court explained in *Jennings v. Rodriguez*, this mandatory detention framework operates "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." 583 U.S. 281, 287 (2018).

53. Accordingly, the mandatory detention provision set forth in § 1225(b)(2)(A) does not apply to individuals like Petitioner, who had already entered the United States and were residing here at the time of their apprehension.

FACTS

54. Petitioner has resided in the United States since in or about 2008, and lives in Winter Garden, Florida.

55. On or about January 14, 2026, Petitioner was detained by ICE and remains in detention as of the filing of this petition.

56. While detained, DHS placed Petitioner in removal proceedings again before the Miami (Krome) Immigration Court, pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. Petitioner and Raguel Ann Hernandez, a citizen of the United States, were married on November 8, 2025. (*See* Ex. A). He will be seeking cancellation of removal before the Immigration Court based on his marriage to a U.S. Citizen and the length of time he has spent in the United States. Through this application, Petitioner will be eligible to file for an employment authorization document ("EAD") which will allow him to lawfully work in the United States while his case proceeds with the Immigration Court.

57. Petitioner has reason to return to the Immigration Court, as he relief available before the Immigration Court. Petitioner submits he is not a danger to the community. He has a fixed address in the United States where he lives with his spouse should he be released on a monetary bond. He intends to comply with any terms of release on monetary bond and has retained the undersigned counsel for representation during these proceedings. Petitioner has friends and family that have pledged to provide transportation for him. He is neither a flight risk nor a danger to the community.

58. Pursuant to *Matter of Yajure Hurtado*, the immigration judge lacks jurisdiction to consider Petitioner's request for bond redetermination.

69. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

60. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

61. The mandatory detention provision codified at 8 U.S.C. § 1225(b)(2) does not extend to all noncitizens residing in the United States who are charged under the grounds of inadmissibility. As relevant here, it does not apply to individuals who previously entered the country and were residing in the United States before being apprehended and placed in removal proceedings by Respondents. Such individuals are detained pursuant to § 1226(a), unless they fall within the separate detention authorities set forth in § 1225(b)(1), § 1226(c), or § 1231.

62. The application of 8 U.S.C. § 1225(b)(2) to Petitioner improperly subjects him to mandatory detention and is contrary to the INA.

COUNT II

Violation of the Bond Regulations

63. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

64. In 1997, following Congress's enactment of IIRIRA, EOIR and the legacy Immigration and Naturalization Service ("INS") promulgated an interim rule to interpret and implement the amended INA. Under the section titled "Apprehension, Custody, and Detention of [Noncitizens]," the agencies expressly stated 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. Through this guidance, the agencies made clear individuals who had entered without inspection were eligible for bond consideration and bond redetermination hearings before Immigration Judges pursuant to 8 U.S.C. § 1226 and its implementing regulations.

65. Nonetheless, in reliance on *Matter of Yajure Hurtado*, EOIR has adopted a policy and practice of applying 8 U.S.C. § 1225(b)(2) to individuals like Petitioner.

66. The application of 8 U.S.C. § 1225(b)(2) to Petitioner improperly subjects him to mandatory detention and contravenes the governing regulations, including 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of Due Process

67. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

68. The government may not deprive any person of life, liberty, or property without due process of law. U.S. Const. amend. V. As the Supreme Court explained in *Zadvydas v. Davis*, "[f]reedom from imprisonment—from government custody, detention,

or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." 533 U.S. 678, 690 (2001).

69. Petitioner has a fundamental interest in liberty and being free from official restraint.

70. The government's continued detention of Petitioner without affording him a bond redetermination hearing which would allow the Immigration Judge to assess whether he poses a flight risk or danger to the community, violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern District of Florida while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

Dated this 11th day of February, 2026.

Respectfully submitted,

By: */s/Rachel Krewson*

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I hereby certify I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to all counsel in this case on February 11, 2026.

/s/Rachel Krewson

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Attorney for Petitioner