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

JAVIER DE LA MONEDA ROSARIO)
)
Petitioner,)

Case No:

1:26-CV-20990-CMA

v.)
)

WARDEN of the KROME NORTH SERVICE)
PROCESSING CENTER; GARRETT RIPA,)
FIELD OFFICE DIRECTOR of the)
IMMIGRATION AND CUSTOMS)
ENFORCEMENT'S ENFORCEMENT and)
REMOVAL OPERATIONS)
MIAMI FIELD OFFICE; TODD LYONS,)
in his official Capacity as Acting Director of)
Immigration and Customs Enforcement;)
KRISTI NOEM, in her official capacity as)
Secretary of the Department of Homeland)
Security; and PAMELA BONDI, in her official)
capacity as Attorney General.)

Respondents)

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR
ORDER TO SHOW CAUSE**

INTRODUCTION

1. Petitioner, Javier De La Moneda Rosario (“Mr. De La Moneda Rosario”), through the undersigned, files this Amended Petition pursuant to the Court’s Order dismissing the prior Petition as an impermissible shotgun pleading. This Amended Petition complies with Federal Rule of Civil Procedure 8(a)(2) by providing a short and plain statement of each claim.

2. Mr. De La Moneda Rosario, was in immigration detention since August 28, 2025.

3. The Department of Homeland Security (“DHS”) moved to dismiss his INA § 240, 8 U.S.C. § 1229a removal proceedings with the goal of placing him in expedited removal proceedings pursuant to INA § 235, 8 U.S.C. § 1225, despite lacking such authority because Mr. De La Moneda Rosario was—and still is—in pending removal proceedings under 8 U.S.C. § 1229a, INA § 240, and Mr. De La Moneda Rosario does not satisfy either threshold inadmissibility ground for expedited removal proceedings.

4. And because the government purports to hold Mr. De La Moneda Rosario under § 1225(b)(1), it has not provided him an individualized bond hearing to challenge his detention under 8 U.S.C. § 1226(a), INA § 236(a), contravening his rights under the Immigration and Nationality Act and the Fifth Amendment’s Due Process Clause.

5. In background, U.S. Customs and Border Protection officers first apprehended Mr. De La Moneda Rosario and the DHS officers placed him in removal proceedings under 8 U.S.C. § 1229(a), INA § 240.

6. Mr. De La Moneda Rosario was scheduled for a hearing before the Immigration Court in Miami, Florida that was scheduled for August 28, 2025.

7. Mr. De La Moneda Rosario appeared before the Immigration Judge for his hearing, and was subsequently arrested and detained on August 28, 2025, when he exited the courtroom following the dismissal of his case. Despite his previous ongoing proceedings and compliance with all court requirements, ICE nonetheless arrested and detained him without any articulated cause.

8. But Mr. De La Moneda Rosario timely appealed the IJ's order granting that motion, meaning the IJ's order was—and is—not final, and those proceedings remained—and are still pending. Thus, ICE had no authority to detain him under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), and proceed with expedited removal. Mr. De La Moneda Rosario also lacks the threshold inadmissibility necessary for expedited removal, which is available for those inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or (a)(7), INA §§ 212(a)(6)(C), (a)(7).

9. Absent an order from this Court, Petitioner will continue to suffer irreparable harm caused by his unlawful detention and violation of his constitutional rights. No other neutral adjudicator will examine Mr. De La Moneda Rosario's plight: Respondents will continue—unchecked—to detain him until they remove him under authorities they do not have.

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

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

I. JURISDICTION

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

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

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

II. VENUE

15. Venue is proper in this district pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because Mr. De La Moneda Rosario is detained at the Krome North Processing Center, 18201 S.W. 12th St. Miami, FL 33194 within the Southern District of Florida, and Petitioner's immediate physical custodian is in this District and Petitioner's immediate physical custodian is in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243

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

17. 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).

IV. PARTIES

18. Petitioner, Mr. De La Moneda Rosario is detained at the Krome North Processing Center, 18201 S.W. 12th St. Miami, FL 33194 within the Southern District of Florida, and Petitioner's immediate physical custodian is in this District and Petitioner's immediate physical custodian is in this District.

19. Respondent, Warden of the Krome North Processing Center, is named in his official capacity as the Warden of the Krome North Processing Center. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner. Respondent's address is Krome North SPC, 18201 S.W. 12th ST., Miami, FL 33194.

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

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

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

22. Respondent, Kristi Noem, is named in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); is legally responsible for pursuing any effort to confine and remove the Petitioner; and as such is a custodian of Mr. De La Moneda Rosario. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

23. Respondent, Pamela Bondi, is named in her official capacity as Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g); and as such is a custodian of Mr. De La Moneda Rosario. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, W, Washington, DC 20530-0001.

V. FACTUAL BACKGROUND

24. Petitioner is a native and citizen of Cuba. Mr. De La Moneda Rosario entered the United States on or about July 28, 2022, near San Luis, Arizona.

25. On July 30, 2022, DHS issued a Warrant for Arrest of Alien (Form I-200) pursuant to INA § 236. That same day, DHS issued a Notice to Appear (Form I-862), charging Petitioner as removable under INA § 212(a)(6)(A)(i) as an alien present without admission or parole.

26. Petitioner timely filed a Form I-589, *Application for Asylum and for Withholding of Removal, and CAT Protection*, on September 17, 2022, with USCIS, which was then accepted by the Immigration Court.

27. On April 27, 2023, Petitioner received a notice of hearing stating he was ordered to appear before an Immigration Judge on August 28, 2025 in the Miami Immigration Court.

28. On August 28, 2025, counsel for the Department of Homeland Security (DHS) Office of the Principal Legal Advisor (OPLA) orally moved to dismiss these proceedings. DHS alleges that, pursuant to 8 C.F.R. § 239.2(a)(7), “the circumstances of this case have changed after the issuance of the Notice to Appear to such an extent that continuation is no longer in the best interest of the government because the government has now decided that it would like to pursue expedited removal against the Respondent.” OPLA did not seek Mr. De La Moneda Rosario’s position before orally moving to dismiss, and Mr. De La Moneda Rosario, opposed the motion.

29. On August 28, 2025 the Immigration Judge dismissed proceedings without adjudicating the pending application for relief. After the dismissal of his removal proceedings, Mr. De La Moneda Rosario was arrested outside of the courtroom and subsequently taken into custody, where he has remained detained.

30. Petitioner has no criminal history in the United States, nor in any country in the world.

31. On or about February 20, 2026, while undersigned as preparing this Amended Petition pursuant to the Court’s Order, DHS removed Petitioner to Cuba. At the time of removal, Petitioner’s appeal of the Immigration Judge’s dismissal order remained pending before the Board of Immigration Appeals, and no administratively final order had issued.

VI. LEGAL FRAMEWORK

32. Respondents have purported to hold Mr. De La Moneda Rosario under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), since August 28, 2025, despite lacking authority to hold him

under § 1225(b)(1), and without giving him an individualized bond hearing before a neutral adjudicator under § 1226(a). That violates Petitioner's rights under the INA and the Fifth Amendment's Due Process Clause.

33. On or about July 28, 2022, DHS Officers apprehended Mr. De La Moneda Rosario near San Luis, Arizona after he had already effected an entry into the United States. He then claimed a fear of persecution rather than apply for admission, and the CBP officers placed him in removal proceedings under 8 U.S.C. § 1229(a), INA § 240. On August 28, 2025, DHS Counsel moved an IJ at the Immigration Court in Miami, Florida to dismiss Mr. De La Moneda Rosario's pending removal proceedings. The IJ then granted DHS's motion to dismiss the proceedings, and ICE then served Mr. De La Moneda Rosario with a Form I-860, Notice and Order of Expedited Removal.

34. But Mr. De La Moneda Rosario timely appealed the IJ's order dismissing the removal proceedings, meaning the IJ's order was and is not final, and those proceedings remained and are still pending. *See* 8 C.F.R. §§ 1003.6(a). And because Mr. De La Moneda Rosario was and is in pending removal proceedings, ICE lacks authority to detain him under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), and proceed with expedited removal.

35. Mr. De La Moneda Rosario also lacks the threshold of inadmissibility necessary for expedited removal. Expedited removal is available only for those who are inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or (a)(7), INA §§ 212(a)(6)(C), (a)(7). *See* 8 U.S.C. § 1225(b)(1)(A)(i), INA § 235(b)(1)(A)(i).

36. Consequently, this Court should determine that Mr. De La Moneda Rosario's detention under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), is unlawful, and order either his immediate release or that Respondents provide Mr. De La Moneda Rosario a bond hearing.

VII. CLAIMS FOR RELIEF

COUNT ONE

Statutory Violation

37. Mr. De La Moneda Rosario re-alleges and incorporates by reference, as if fully set forth herein.

38. Respondents lack statutory authority to detain Mr. De La Moneda Rosaio under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), because that statute requires that the individual be an “arriving alien” (8 U.S.C. § 1225(b)(1)(A)(i), INA § 235(b)(1)(A)(i)) or fall within specific designations (8 U.S.C. § 1225(b)(1)(A)(iii), INA § 235(b)(1)(A)(iii)), and be inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7), INA §§ 212(a)(6)(C), (a)(7).

39. As Mr. De La Moneda Rosario does not meet these criteria, his detention must be governed by 8 U.S.C. § 1226(a), INA § 236(a), which provides discretionary detention authority and requires ICE to make an individualized custody determination.

40. Under § 1226(a), individuals may be detained as a matter of discretion, released on their own recognizance, or released on bond of at least \$1,500.

41. Respondents’ failure to apply the correct statutory framework violates the INA and exceeds the government’s detention authority.

42. Thus, Mr. De La Moneda Rosario respectfully requests that this Court order his release from detention under 8 U.S.C. § 1226(a), INA § 236(a), for the duration of his removal proceedings under 8 U.S.C. § 1229a, INA § 240. Alternatively, he requests that this Court order a constitutionally adequate bond hearing complying with the procedural requirements in *Singh*.

COUNT TWO

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

43. Mr. De La Moneda Rosario incorporates paragraphs 2, 4, 7-8, and 29-30 only.

44. Mr. De La Moneda Rosario's continued detention without any bond hearing violates his right to due process under the Fifth Amendment.

45. When the Government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the Government's interest. *See Mathews v. Eldridge*, 424 U.S. 319,335 (1976).

46. Freedom from imprisonment, including government detention, is central to the liberty protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Mr. De La Moneda Rosario has a substantial personal interest given that his interest is his freedom from arbitrary government detention, the liberty that "lies at the heart of the [Due Process] Clause protects". *See id.*

47. At the time DHS unlawfully detained him, Mr. De La Moneda Rosario was actively pursuing claims for asylum, withholding of removal, and protection under the CAT, which are claims that implicate serious statutory and constitutional protections. By pursuing the dismissal of § 240 proceedings, expressing an intent to pursue expedited removal, and failing to follow through with any formal process, Respondents have effectively stripped Mr. De La Moneda Rosario of both procedural safeguards and a forum to adjudicate his claims. The

absence of any review mechanism, combined with the limited avenues for judicial oversight under the expedited removal framework, significantly increases the likelihood that Mr. De La Moneda Rosario's liberty has been erroneously and unlawfully restricted. Outside of this Petition for Writ of Habeas Corpus, Mr. De La Moneda Rosario has no access to a court with jurisdiction to review the legality of his detention or the Government's failure to initiate proper removal procedures.

48. The Government's interest in Mr. De La Moneda Rosario's continued detention is minimal under the current circumstances. While the Government generally has a legitimate interest in enforcing immigration laws and effectuating removal for individuals with final orders, that interest does not extend to detaining individuals indefinitely without any legal basis. Mr. De La Moneda Rosario was previously released after his entry into the United States and complied fully with all reporting and court appearance obligations during the pendency of his §240 removal proceedings. He also affirmatively sought immigration relief in the form of asylum, withholding of removal, and CAT protection. At present, there is no final order of removal against him.

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

COUNT THREE

Violation of the Substantive Due Process Clause of the Fifth Amendment to the U.S.

Constitution

50. Mr. De La Moneda Rosario incorporates paragraphs 2, 7-8, and 29-30 only.

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

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

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

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

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

56. Petitioner's detention appears to be purely punitive as it bears no "reasonable relation" to any legitimate government purpose. *See Zadvydas*, 533 U.S. at 690. (finding immigration detention is civil and thus assumed to be "nonpunitive in purpose and effect").

57. Thus, Petitioner's detention violates substantive due process.

VIII. PRAYER FOR RELIEF

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

- (1) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for a writ of habeas corpus filed by Mr. De La Moneda Rosario pursuant to 28 U.S.C. § 2241 should not be granted within three days;
- (2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (3) In the alternative, grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody under reasonable conditions of supervision;
- (4) Declare that Petitioner's detention violates the Procedural Due Process Clause of the Fifth Amendment;
- (5) Declare that Petitioner's detention violates the Substantial Due Process Clause of the Fifth Amendment; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Avelino J. Gonzalez
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Dated: February 23, 2026

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

I represent Petitioner, Javier De La Moneda Rosario and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 23rd day of February, 2026.

/s/Avelino J. Gonzalez
Avelino J. Gonzalez
Counsel for Petitioner