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

FERNANDO EFRAIN LEZCANO-ORDAZ)

Petitioner,)

Case No. _____

Agency File: 

v.)

E.K. Carlton, in his official capacity as)
Warden of the Miami Federal Detention)
Center; Garrett Ripa, in his official capacity)
as Field Office Director, Immigration and)
Office Director, Immigration and Customs)
Enforcement's Enforcement and Removal)
Operations Miami Field Office; Todd Lyons,)
in his official Capacity as Acting Director of)
of Immigration and Customs Enforcement;)
Kristi Noem, in her official capacity as)
Secretary of the Department of Homeland)
Security; and Pamela Bondi in her in her)
official capacity as Attorney General.)

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

INTRODUCTION

1. Petitioner, Fernando Efrain Lezcano-Ordaz, has been in detention since on or about November 2025, and remains in custody currently at the Miami Federal Detention Center (“FDC”) 33 NE 4 street Miami, FL 33132.

2. On November 2, 2025, Petitioner was detained by U.S. Immigration and Customs Enforcement (“ICE”) following an arrest in Miami-Dade County arising from an alleged incident in which he was charged with aggravated assault. At no time did Petitioner cause any physical harm, and no injuries were reported. The State of Florida dismissed the criminal case on December 31, 2025, due to a lack of evidence establishing any criminal conduct.

3. Despite his ongoing proceedings, dismissal of his criminal case, and compliance with all court requirements, ICE nonetheless has the petitioner in detention.

4. Mr. Lezcano-Ordaz 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.

5. 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).

6. Based on this allegation in Petitioner’s removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

7. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or

Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

8. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

9. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

10. Absent an order from this Court, Petitioner will continue to suffer irreparable harm caused by his unlawful detention and violation of his constitutional rights.

11. To remedy this, Mr. Lezcano-Ordaz asks this Court to, under 28 U.S.C. § 2241, issue a writ of habeas corpus directing Respondents to release Mr. Lezcano-Ordaz because his continued confinement violates procedural due process, and substantive due process.

12. Mr. Lezcano-Ordaz requests this Court to order Respondents to show cause demonstrating why he should not be released within three days, or request an Immigration Judge to order a bond hearing under § 1226(a) within seven days.

I. JURISDICTION

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

14. 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).

15. 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

16. Venue is proper in this district pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because Mr. Lezcano-Ordaz is detained at the Miami Federal Detention Center ("FDC") located at 33 NE 4th Street, Miami, Florida 33132, within the Southern District of Florida, and Petitioner's immediate physical custodian is in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243

17. 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.*

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention.

19. 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

20. Petitioner, Fernando Efrain Lezcano-Ordaz, is currently detained at Miami Federal Detention Center ("FDC"), located at 33 NE 4th Street, Miami, Florida 33132. Mr. Lezcano-Ordaz is in the custody and under the direct control of Respondents and their agents.

21. Respondent, E.K. Carlton, is named in his official capacity as the Warden of the Miami Federal Detention Center. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner. Respondent Carlton's address is 33 NE 4th Street, Miami, Florida 33132.

22. 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. Lezcano-Ordaz is confined. As such, he is a custodian of Mr. Lezcano-Ordaz. Respondent Ripa's address is 865 SW 78th Avenue, Suite 101, Plantation, FL 33324.

23. 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. Lezcano-Ordaz and confine him pending removal. As such, he is a custodian of Mr. Lezcano-Ordaz. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

24. 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. Lezcano-Ordaz. 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.

25. 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. Lezcano-Ordaz. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, W, Washington, DC 20530-0001.

V. LEGAL FRAMEWORK

26. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

28. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

29. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

30. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 6104--208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 8139 Stat. 3 (2025).

32. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 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).

33. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

34. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

35. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The

policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

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

37. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

38. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

39. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *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).

40. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

41. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a [noncitizen].”

42. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered 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.

43. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

44. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

45. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

VI. STATEMENT OF FACTS

46. Petitioner is a native and citizen of Cuba.

47. On or about October 22, 2020, Mr. Lezcano-Ordaz entered the United States, at or near Roma, Texas.

48. After being detained by immigration, Mr. Lezcano-Ordaz was issued a warrant for Arrest of Alien and was given a Notice to Appear (“NTA”), to appear before an Immigration Judge.

49. On the same day, Petitioner was granted a Notice of Custody Determination, releasing him on his own recognizance pending removal proceedings.

50. On October 22, 2020, the Department of Homeland Security prepared a Record of Deportable/Inadmissible Alien (Form I-213), documenting the circumstances surrounding the Petitioner’s encounter and subsequent processing.

51. On May 3, 2021, the Immigration Court in Harlingen, Texas granted a Motion for Change of Venue in Petitioner’s removal proceedings to the Miami Immigration Court.

52. On November 14, 2022, the Immigration Court in Miami, Florida issued a Decision on a Motion granting a Motion to Dismiss in Petitioner’s removal proceedings. The Immigration Judge granted the motion without opposition and without prejudice, noting that Petitioner had a pending Form I-485 application before U.S. Citizenship and Immigration Services.

53. Petitioner timely filed his Form I-589, Application for Asylum and for Withholding of Removal, to the Immigration Court within a year of his arrival to the United States. His Form I-589, Application for Asylum was filed with the Immigration Court.

54. Petitioner timely filed his Form I-485, Application to Register Permanent Residence or Adjust Status, with U.S. Citizenship and Immigration Services ("USCIS"). His Form I-485 was filed on or about May 16, 2022 and remains pending.

55. On November 2, 2025, the Petitioner's detention by U.S. Immigration and Customs Enforcement (ICE) stems from an arrest in Miami-Dade County arising out of a misunderstanding, in which he was charged with aggravated assault. At no point, did the Petitioner cause any physical harm, nor was any injury reported. The State ultimately dismissed the criminal case on December 31, 2025, due to a lack of evidence establishing any harm or criminal conduct.

56. On December 22, 2025, an Order of the Immigration Judge denied the Petitioner's motion for custody redetermination, finding that the court lacked jurisdiction to conduct a bond hearing under *Matter of Yajure Hurtado*, 29 I&N Dec.216 (BIA 2025).

VII. CLAIMS FOR RELIEF

COUNT ONE

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

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

58. 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).

59. 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. Lezcano-Ordaz 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.*

60. The risk of an erroneous deprivation of Mr. Lezcano-Ordaz's liberty under the current procedures is extraordinarily high. At the time DHS unlawfully detained him, Mr. Lezcano-Ordaz was actively pursuing claims for asylum, withholding of removal, and protection under the CAT, which are claims that implicate serious statutory and constitutional protections. Outside of this Petition for Writ of Habeas Corpus, Mr. Lezcano-Ordaz has no access to a court with jurisdiction to review the legality of his detention.

61. The Government's interest in Mr. Lezcano-Ordaz'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. Lezcano-Ordaz 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. Thus,

the Government's interest in detaining Mr. Lezcano-Ordaz, is not only weak but constitutionally insufficient to justify depriving him of his liberty without adequate procedural protections.

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

COUNT TWO

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

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

64. 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.

65. 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).

66. 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.

67. Preventing flight, which is meant to ensure compliance with court appearances, is not a legitimate concern in Mr. Lezcano-Ordaz'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. Mr. Lezcano-Ordaz was actively pursuing legal avenues to regularize his immigration status. Under these circumstances, continued detention cannot be justified on the basis of flight prevention.

68. Petitioner is no danger to society, as evidenced by the dismissal of his case in Miami-Dade County, Florida.

69. Mr. Lezcano-Ordaz'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").

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

COUNT THREE

Release Pending Determination

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

72. As part of this Court's authority under the All Writs Act, the habeas corpus statute, and its inherent equitable authority to preserve the Court's authority, the Court may order the release of Mr. Lezcano-Ordaz on bond during the pendency of these proceedings. *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974). Such release is proper when the Petitioner (1) has raised substantial constitutional claims with a high probability of success; and (2) where exceptional circumstances exist. *Calley*, 496 F.2d at 702 & n.1.

72. Mr. Lezcano-Ordaz is not a flight risk and does not pose any danger to the community, therefore the Government has no legitimate interest in his continued detention that could outweigh the daily harm and constitutional violation that his continued detention inflicts.

73. Here, Mr. Lezcano-Ordaz has presented substantial constitutional claims challenging his unjust detention. Extraordinary circumstance, such as Mr. Lezcano-Ordaz's re-detention without any active Order of Removal, exists making Mr. Lezcano-Ordaz's release essential for the remedy to be effective.

COUNT FOUR

Violation of the INA

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

75. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

76. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT FIVE

Violation of the Bond Regulations

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

78. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained 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 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

79. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

80. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

VIII. PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for a writ of habeas corpus filed by Mr. Lezcano-Ordaz pursuant to 28 U.S.C. § 2241 should not be granted within three days;
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- (4) In the alternative, grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody under reasonable conditions of supervision or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days ;
- (5) Declare that Petitioner's detention is unlawful; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

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Dated: February 17, 2026

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

I represent Petitioner, Fernando Efrain Lezcano-Ordaz, 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 17th day of February 2026.

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