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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MAURICIO SANCHEZ HERNANDEZ A# [redacted] Petitioner, v. **[WARDEN],** Warden, Broward County Transitional Center, in his/her official capacity; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security, in her official capacity; **CALEB VITELLO,** Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity, , Respondents.	)	Case No. _______________ **PETITION FOR WRIT OF HABEAS CORPUS**

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

CERTIFICATE OF EMERGENCY

Undersigned counsel certifies that this Petition requires emergency consideration for the following reasons:

1. Petitioner Mauricio Sanchez Hernandez is scheduled to appear before Immigration Judge Stuart A. Siegel at the Miami Krome Immigration Court tomorrow, February 18, 2026, at 9:00 a.m.
2. At that hearing, Petitioner will be ordered removed to Ecuador pursuant to the U.S.-Ecuador Asylum Cooperative Agreement.
3. Once a removal order is entered, U.S. Immigration and Customs Enforcement may effectuate removal within hours or days.
4. Removal to Ecuador will cause immediate, permanent, and irreversible harm: it will destroy Petitioner's statutory eligibility to adjust status to lawful permanent resident through his U.S. citizen wife's pending I-130 petition.
5. This harm cannot be undone. There is no mechanism to restore Petitioner's adjustment eligibility after removal.
6. Petitioner has been detained for 103 days without a bond hearing. The Immigration Judge denied bond on jurisdictional grounds without conducting any evidentiary hearing.
7. Absent emergency relief from this Court, Petitioner will be removed to a country where he has no ties, no family, no resources, and no claim—permanently separated from his American wife.
8. Counsel respectfully requests that this Court give this Petition immediate attention and rule on an emergency basis

INTRODUCTION

1. The government wants to imprison Mauricio Sanchez Hernandez indefinitely and then deport him to a country he has never seen, where he knows no one, and where he has no future—all while his American wife waits for him at home, her petition to bring him into lawful status gathering dust on a government desk.
2. This is not how America treats people. It is not how the law works. And this Court has the power to stop it.
3. Mr. Sanchez Hernandez arrived in the United States on December 21, 2022, fleeing Cuba. The government evaluated him, found he had a credible fear of persecution, and released him. It gave him a work permit. It told him to build a life while his case was pending. And that is exactly what he did.
4. For three years, Mr. Sanchez Hernandez did everything right. He worked. He paid taxes. He reported to immigration authorities exactly as required—never missing a single check-in. He never broke a single law. Then he fell in love with an American citizen named Jenny Clifford. They married. She filed a petition to make him a lawful permanent resident. He was on the path Congress created for people in exactly his situation.
5. Then, on November 6, 2025, without warning, ICE agents arrived at his workplace and arrested him. Not because he had done anything wrong. Not because he had missed an appointment. Not because he posed any threat. Simply because the government changed its policy.
6. He has been locked in a cell ever since—103 days and counting—without a single hearing to determine whether there is any reason to keep him there.

7. When Mr. Sanchez Hernandez asked for a bond hearing, Immigration Judge Stuart A. Siegel refused. The judge said he lacked jurisdiction because of how Mr. Sanchez Hernandez entered the country three years ago. The judge did not hear any evidence. He did not consider Mr. Sanchez Hernandez's marriage. He did not consider his perfect compliance record. He did not consider that this man has every incentive in the world to show up for court because his wife filed a petition that could make him a permanent resident.
8. When the government moved to deport Mr. Sanchez Hernandez to Ecuador—a country he has never visited, where he knows no one, where he has no claim to make—the same judge granted that motion. The judge's order does not mention that Mr. Sanchez Hernandez has an American wife. It does not mention the pending I-130. It does not mention that removal to Ecuador will permanently destroy his pathway to legal status.
9. Tomorrow morning, February 18, 2026, Mr. Sanchez Hernandez will appear before that judge again. Unless this Court intervenes, he will be ordered removed to Ecuador. Once that happens, it is over. His wife's petition becomes worthless. His chance at legal status vanishes. His marriage, for all practical purposes, ends. He will be abandoned in a South American country where he has no family, no friends, no resources, and no protection claim—because his fear is of Cuba, not Ecuador.
10. The Constitution does not permit this. The immigration laws do not require it. And basic human decency forbids it.
11. Mr. Sanchez Hernandez asks this Court for what the Constitution guarantees: a hearing. He asks for what fairness demands: a chance to stay with his wife while her petition is

decided. He asks for what justice requires: that the government not destroy his future based on a policy change that ignores everything he has done right.

JURISDICTION

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 to review the lawfulness of Petitioner's detention. The writ of habeas corpus is the "remedy to be applied to executive restraints upon personal liberty." Fay v. Noia, 372 U.S. 391, 400 (1963). The writ is available to any person held "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

13. This Court has jurisdiction under 28 U.S.C. § 1331 to adjudicate claims arising under the Constitution and laws of the United States, including the Due Process Clause and Equal Protection guarantees of the Fifth Amendment.

14. This Court has jurisdiction under the Administrative Procedure Act, 5 U.S.C. §§ 702, 704, 706, to review final agency action. The APA waives sovereign immunity and provides that a "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

15. This Court has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, to declare the rights and legal relations of the parties in this case of actual controversy.

16. This Court has equitable jurisdiction to enjoin unconstitutional government action and to issue all writs necessary in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651.

17. Venue is proper in this District under 28 U.S.C. § 2241(d) because Petitioner is detained at the Broward County Transitional Center, 3900 Powerline Road, Pompano Beach, Florida 33073, within this judicial district.

18. The jurisdictional limitations of INA § 242, 8 U.S.C. § 1252, do not bar this Court's review:

   a. Section 1252(a)(2)(B) does not apply because Petitioner challenges the legal framework for his detention and removal, not a discretionary judgment.

   b. Section 1252(a)(2)(D) expressly preserves judicial review of "constitutional claims or questions of law," which Petitioner raises here.

   c. Section 1252(b)(9) does not channel Petitioner's claims exclusively to the courts of appeals because habeas challenges to detention are cognizable under § 2241. *See Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018).

PARTIES

19. Petitioner **MAURICIO SANCHEZ HERNANDEZ** is a 38-year-old native and citizen of Cuba. His Alien Registration Number is [redacted]. He is currently detained at the Broward County Transitional Center, 3900 Powerline Road, Pompano Beach, Florida 33073.

20. Respondent **FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MIAMI FIELD OFFICE**, is the ICE official responsible for Petitioner's custody and detention in this district. The Field Office Director is sued in his or her official capacity.

21. Respondent **WARDEN, BROWARD COUNTY TRANSITIONAL CENTER**, is the immediate custodian of Petitioner and is responsible for his day-to-day detention. The Warden is sued in his or her official capacity.

22. Respondent **KRISTI NOEM** is the Secretary of the Department of Homeland Security. Secretary Noem is responsible for the administration and enforcement of the immigration laws, including detention and removal. She is sued in her official capacity.

23. Respondent **PAMELA BONDI** is the Attorney General of the United States. Attorney General Bondi is responsible for the conduct of immigration proceedings through the Executive Office for Immigration Review. She is sued in her official capacity.

STATEMENT OF FACTS

A. PETITONER FLEES CUBA AND ARRIVES TO THE UNITED STATES

24. Petitioner Mauricio Sanchez Hernandez was born on [redacted], in Cuba. He is a citizen of Cuba.

25. On December 18, 2022, Petitioner departed Cuba by sea along with 75 other Cuban nationals, [redacted]

26. After two days at sea, Petitioner made landfall on December 20, 2022, at the Dry Tortugas National Park and the Marquesas Keys, Florida—remote island chains located several miles offshore of Key West.

27. On December 21, 2022, at approximately 0800 hours, the U.S. Coast Guard encountered

Petitioner and the other 75 Cuban migrants. The group included 47 adult males, 19 adult females, 5 accompanied male juveniles, 4 accompanied female juveniles, 1 unaccompanied minor male, and 5 family units.

28. The Coast Guard transported all 76 migrants to USCG Station Key West and transferred them to U.S. Border Patrol custody.

29. Petitioner was processed at the Miami Sector Marathon Station (MAF).

B. THE GOVERNMENT FINDS PETITIONER HAS A CREDIBLE FEAR AND RELEASE HIM ON PAROLE

Upon processing, immigration officers determined that Petitioner was inadmissible under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of valid entry documents.

30. Petitioner told immigration officers that he feared returning to Cuba.

31. As part of standard processing, Petitioner's fingerprints and biographical information were queried through DHS systems. These checks revealed:

    a. **No immigration history. CBP systems showed no prior immigration record for Petitioner.**

    b. **No criminal history. CBP systems showed no criminal record for Petitioner.**

32. Petitioner was classified as "Expedited Removal with Credible Fear" and held in custody pending a credible fear interview. He remained in initial custody for approximately 97 days.

33. An asylum officer conducted a credible fear interview pursuant to INA § 235(b)(1)(B), 8 U.S.C. § 1225(b)(1)(B). The asylum officer found that Petitioner had established a credible fear of persecution if returned to Cuba.

34. Based on this positive credible fear determination, the government released Petitioner from custody.

35. The government's release of Petitioner constituted parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). The Form G-56 issued to Petitioner stated he was released "a discreción del Servicio de Aduanas y Protección Fronteriza de los Estados Unidos" (at the discretion of U.S. Customs and Border Protection). This discretionary release following a positive credible fear finding is the textbook definition of parole.

36. DHS's own policy confirms this practice. ICE Directive No. 11002.1, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," provides that "ICE officers may, in the exercise of discretion, parole arriving aliens who have been found to have a credible fear of persecution or torture." ICE Directive No. 11002.1, § 6.2 (Dec. 8, 2009).

37. The regulations implementing credible fear procedures expressly contemplate parole as the mechanism for release. *See* 8 C.F.R. § 235.3(b)(2)(iii); 8 C.F.R. § 235.3(b)(4)(ii).

38. Upon release, Petitioner was issued an Employment Authorization Document by USCIS, authorizing him to work lawfully in the United States.

C. PETITIONERS PAROLE STATUS MAKES HIM ELIGIBLE TO ADJUST TO PERMANENT RESIDENT

39. The legal significance of Petitioner's parole cannot be overstated.

40. Under INA § 245(a), 8 U.S.C. § 1255(a), a noncitizen may adjust status to lawful permanent resident if he or she:

    a. **Was "inspected and admitted or paroled into the United States";**

b. Is eligible to receive an immigrant visa and is admissible for permanent residence; and

c. Has an immigrant visa immediately available.

41. Petitioner satisfies the first requirement: he was paroled.

42. Petitioner satisfies the second and third requirements through his marriage to a U.S. citizen: as the spouse of a U.S. citizen, he is an "immediate relative" under INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i), for whom a visa is immediately available upon approval of the I-130 petition.

43. Once Petitioner's wife's I-130 is approved, Petitioner can file to adjust status to lawful permanent resident without leaving the United States. This is not discretionary relief. It is a statutory pathway that Congress created for people in exactly Petitioner's circumstances.

44. Removal from the United States will destroy this pathway permanently. A person removed from the United States cannot adjust status. The I-130 becomes worthless.

D. PETITIONER BUILDS A LIFE IN THE UNITED STATES

45. Following his release, Petitioner established residence in Florida.

46. Petitioner used his Employment Authorization Document to obtain lawful employment. He has been continuously employed since his release.

47. Petitioner has paid federal income taxes, state taxes, and local taxes every year since arriving in the United States.

48. Petitioner complied with every immigration reporting requirement imposed upon him. He attended every scheduled check-in with ICE. He never missed a single appointment. His compliance record is perfect.

49. Petitioner has never been arrested in the United States.

50. Petitioner has never been convicted of any crime in the United States.

51. Petitioner has never been arrested or convicted of any crime in any country.

52. Petitioner has no pending criminal charges.

53. Petitioner has resided at the same address since October 1, 2024.

54. Petitioner has extended family in the United States, including cousins, aunts, and uncles.

55. Petitioner provides financial support to his wife and family.

E. PETITIONER MARRIES A US CITIZEN

56. Petitioner met Jenny D. Clifford, a United States citizen.

57. Petitioner and Ms. Clifford fell in love and decided to marry.

58. Petitioner and Ms. Clifford were lawfully married. Their marriage is bona fide—a genuine marital relationship, not entered into for immigration purposes.

59. Following their marriage, Ms. Clifford filed Form I-130, Petition for Alien Relative, with U.S. Citizenship and Immigration Services, seeking to classify Petitioner as her immediate relative.

60. The I-130 petition remains pending with USCIS.

61. Upon approval of the I-130, Petitioner—as a parolee—will be eligible to file Form I-485, Application to Adjust Status, and become a lawful permanent resident of the United States.

F. PETITIONERS ASYLUM APPLICATIONS

62. On or about July 3, 2023, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal, with USCIS.

63. On or about June 11, 2025, USCIS dismissed Petitioner's asylum application. The

application was not denied on the merits; it was dismissed for procedural reasons.

G. THE GOVERNMENT ARRESTS PETITIONER AT HIS WORKPLACE

64. On November 6, 2025, ICE Enforcement and Removal Operations officers arrived at Petitioner's workplace.

65. The officers arrested Petitioner.

66. Petitioner did not resist. He did not flee. He was simply working, as he had done every day for years.

67. At the time of his arrest:

a. Petitioner had not committed any crime.

b. Petitioner had not missed any immigration check-in.

c. Petitioner had not violated any condition of his release.

d. Petitioner had not done anything wrong.

69. The government did not articulate any individualized reason for arresting Petitioner. The government did not claim he was a flight risk. The government did not claim he was a danger. The government identified no changed circumstance in Petitioner's case. The sole reason for Petitioner's arrest was a change in government enforcement policy.

70. The government took Petitioner from his job, away from his wife, and locked him in a detention facility—not because of anything he did, but because of a policy shift in Washington.

H. PETITIONERS DETENTION

71. Since November 6, 2025, Petitioner has been continuously detained.

72. Petitioner is currently held at the Broward County Transitional Center, 3900 Powerline Road, Pompano Beach, Florida 33073.

73. As of February 17, 2026, Petitioner has been detained for 103 days.

74. Petitioner has not received any hearing to determine whether his detention is necessary to ensure his appearance at proceedings or to protect the community.

75. Petitioner suffers from severe anxiety, which has been exacerbated by his prolonged detention and separation from his wife.

I. THE IMMIGRATION JUDGE DENIES BOND WITHOUT A HEARING

76. Petitioner requested a custody redetermination (bond hearing) before the Immigration Court.

77. On February 13, 2026, Immigration Judge Stuart A. Siegel of the Miami Krome Immigration Court denied Petitioner's request.

78. The Immigration Judge's written order states:

"Based on his manner of entry (entering without inspection), the Court lacks jurisdiction. *see Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Even if Court had jurisdiction, Respondent entered by boat and, as an irregular maritime arrival, the Court finds Respondent ineligible for a bond. *see Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). Respondent does not appear to be a suitable bail risk. *see Matter of Guera* [sic]."

79. The Immigration Judge did not conduct an evidentiary hearing.

80. The Immigration Judge did not hear testimony from Petitioner.

81. The Immigration Judge did not hear testimony from Petitioner's wife.

82. The Immigration Judge did not consider any evidence regarding:

a. Petitioner's marriage to a United States citizen

b. The pending I-130 petition

c. Petitioner's parole status

d. Petitioner's eligibility to adjust status

e. Petitioner's continuous employment

f. Petitioner's perfect compliance with immigration check-ins;

g. Petitioner's complete lack of criminal history;

h. Petitioner's stable residence;

i. Petitioner's ties to family in the United States;

j. Any factor relevant to flight risk or danger to the community.

83. The Immigration Judge's conclusory statement that Petitioner "does not appear to be a suitable bail risk" was made without hearing any evidence and is contradicted by every fact in the record.

J. THE IMMIGRATION JUDGE ORDERS THE PETITIONER REMOVED TO ECUADOR

84. On February 4, 2026, the Department of Homeland Security filed a motion to pretermit Petitioner's applications for asylum, statutory withholding of removal, and protection under the Convention Against Torture.

85. The government argued that Petitioner is subject to the U.S.-Ecuador Asylum Cooperative Agreement ("ACA") and therefore barred from seeking protection in the United States.

86. On February 4, 2026, Immigration Judge Stuart A. Siegel granted the government's motion.

87. The Immigration Judge found that:

a. Petitioner is a native and citizen of Cuba who entered the United States on or about December 19, 2022.

b. Petitioner entered after the ACA implementing regulations took effect (November 19, 2019).

c. Petitioner is not a citizen or national of Ecuador, not a habitual resident of Ecuador, and not an unaccompanied child.

d. Petitioner "does not have any ties to Ecuador."

e. Petitioner's only evidence regarding Ecuador was "country condition reports that indicate Ecuador has criminal activity," which is "insufficient to support [his] individualized claim for relief."

88. The Immigration Judge ordered: "Respondent is barred from applying for asylum, statutory withholding of removal, and CAT protection in the United States.... [T]he Motion to Pretermit is granted and Respondent is ordered removed to Ecuador where Respondent can pursue a protection application pursuant to the U.S. ACA with Ecuador."

89. The Immigration Judge's February 4, 2026 order does not mention:

a. Petitioner's marriage to Jenny Clifford, a United States citizen;

b. The I-130 petition that Ms. Clifford filed on Petitioner's behalf;

c. Petitioner's parole status;

d. Petitioner's eligibility to adjust status to lawful permanent resident;

e. The fact that removal to Ecuador will permanently destroy Petitioner's statutory pathway to legal status;

f. Any consideration of alternatives to removal.

90. The Immigration Judge set the matter for a hearing on February 18, 2026, at 9:00 a.m. The order states: "On the next hearing, Respondent will have an opportunity to qualify for voluntary departure (which would require him to waive appeal), or the Court will issue an Order of Removal (Respondent will have the option to reserve or waive appeal)."

K. EVERY FACTOR SHOWS PETITIONER IS NOT A FLIGHT RISK OR DANGER

91. Courts assess custody determinations by examining factors including: length of residence, family ties, employment history, criminal record, immigration compliance history, and incentives to appear. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

92. Every single factor weighs decisively in Petitioner's favor:

a. **Length of Residence; Petitioner has resided in the United States continuously for over three years since his arrival in December 2022.**

b. **Fixed Address; Petitioner has maintained the same residential address since October 1, 2024, demonstrating stability and permanent ties to the community.**

c. **Family Ties; Petitioner is married to Jenny D. Clifford, a United States citizen. He also has extended family members in the United States, including cousins, aunts, and uncles.**

d. **Employment; Petitioner has been continuously employed since his release from initial custody. He was arrested by ICE at his workplace while working—not fleeing, not hiding, but doing his job.**

e. **Tax Compliance; Petitioner has filed and paid federal, state, and local taxes every year since his arrival in the United States.**

f. Immigration Compliance; Petitioner has a perfect compliance record. He reported to ICE for every scheduled check-in. He never missed a single appointment. He did everything the government asked of him.

g. Criminal History. Petitioner has no criminal history whatsoever. He has never been arrested in any country. He has never been convicted of any crime in any country. He has no pending criminal charges.

h. Manner of Apprehension. When ICE officers came for Petitioner, he was at his workplace. He was not fleeing. He was not in hiding. He did not resist.

i. Danger to the Community. There is no evidence that Petitioner poses any danger to any person or to the community. The government has never alleged otherwise.

j. Incentive to Appear. Petitioner has the strongest possible incentive to appear at all proceedings: his wife has filed an I-130 petition that, upon approval, will allow him to become a lawful permanent resident of the United States. This pathway requires his presence in the United States and his compliance with the legal process. Absconding would permanently destroy this pathway. No rational person in Petitioner's circumstances would flee.

93. The government has never identified any fact suggesting Petitioner is a flight risk or danger.

94. Petitioner has the strongest possible incentive to appear at all proceedings: his wife has filed an I-130 petition that, if approved, will allow him to become a lawful permanent resident.

Absconding would destroy that pathway forever. No rational person in Petitioner's position would flee.

CLAIMS FOR RELIEF

COUNT I PETITIONER'S PROLONGED DETENTION WITHOUT A BOND HEARING VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

95. The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.
96. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
97. The Supreme Court has recognized that indefinite civil detention poses grave constitutional problems: "A statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.* at 692.
98. Petitioner has been detained for 103 days without any individualized hearing to determine whether his detention serves a legitimate purpose.
99. The government's position—that Petitioner is subject to mandatory detention under INA § 235(b)(2)(A) without any opportunity to be heard—violates due process.
100. Due process, at minimum, requires notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Petitioner has received neither.

A. ELEVENTH CIRCUIT PRECEDENT MANDATES PROCEDURAL PROTECTIONS

101. The Eleventh Circuit has squarely held that due process concerns intensify as detention lengthens. *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1215 (11th Cir. 2016) ("[T]he process due in any given case rises in proportion to the length of the detention.").

102. In *Sopo*, the Eleventh Circuit held that noncitizens in prolonged detention must receive "adequate procedural protections," including periodic review of the necessity of continued detention. *Id.* at 1214-15.

103. The Eleventh Circuit emphasized that "mandatory detention without any process is constitutionally problematic." *Id.* at 1215.

104. The Eleventh Circuit has also recognized that even noncitizens who arrived by sea are entitled to individualized determinations. *Jean v. Nelson*, 727 F.2d 957, 975 (11th Cir. 1984) (en banc), *aff'd*, 472 U.S. 846 (1985) (Haitian asylum seekers entitled to individualized parole determinations).

105. More recently, the Eleventh Circuit confirmed that noncitizens possess due process rights in immigration detention proceedings. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

106. Under binding Eleventh Circuit precedent, Petitioner is entitled to an individualized hearing to determine whether his detention is justified.

B. THE MATHEWS BALANCING TEST FAVORS PETITIONER

107. The Supreme Court's three-factor balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), confirms that due process requires a hearing here.

108. *First*, the private interest at stake is liberty—"the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner has been imprisoned for over three months.

109. *Second*, the risk of erroneous deprivation is high. The Immigration Judge denied bond without hearing any evidence. The judge's conclusory finding that Petitioner is not "a suitable bail risk" is unsupported and contradicted by every fact in the record.

110. *Third*, the government's interest in detention without a hearing is minimal. Petitioner poses no flight risk—he has a pending I-130 that gives him every incentive to appear. He poses no danger—he has no criminal history whatsoever.

111. All three *Mathews* factors favor Petitioner. Due process requires a hearing.

COUNT II THE IMMIGRATION JUDGE ERRED IN FINDING LACK OF JURISDICTION OVER PETITIONER'S BOND REQUEST

112. The Immigration Judge denied Petitioner's bond request on the ground that, "[b]ased on his manner of entry (entering without inspection), the Court lacks jurisdiction," citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

113. The Immigration Judge alternatively held that "Respondent entered by boat and, as an irregular maritime arrival, the Court finds Respondent ineligible for a bond," citing *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003).

114. Both holdings are legally erroneous.

A. SECTION 235(b)(2)(A) DOES NOT APPLY TO PETITIONER

115. INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), applies to "an alien who is an applicant for admission." The statute contemplates persons actively seeking entry at a port of entry or immediately upon interdiction at the border.

116. Petitioner is not an "applicant for admission" in any meaningful sense. He was paroled into the United States over three years ago. He has lived here continuously. He has worked, paid taxes, married a U.S. citizen, and built a life. He is not "seeking entry"—he has been here for years.

117. The government's interpretation of § 235(b)(2)(A)—that it applies to anyone who ever entered without inspection, regardless of how long ago or what has happened since—stretches the statute beyond its text and purpose.

118. Congress carefully delineated the categories of noncitizens subject to mandatory detention in INA § 236(c), 8 U.S.C. § 1226(c). Congress recently amended that provision through the Laken Riley Act to add new mandatory detention categories. These deliberate legislative choices demonstrate that mandatory detention is the exception, not the rule.

119. The government cannot, through administrative interpretation of § 235(b)(2), expand mandatory detention to categories Congress never specified. That is a legislative function.

B. *MATTER OF D-J- DOES NOT ESTABLISH A CATEGORICAL BAR*

120. The Immigration Judge's reliance on *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003), is misplaced.

121. *D-J-* arose in a specific context: a mass maritime migration event requiring coordinated policy response. It addressed whether the government could adopt a general "no parole" policy during such an event.

122. *D-J-* did not hold that every person who arrives by boat is forever categorically ineligible for bond, regardless of individual circumstances or the passage of time.

123. Even *D-J-* recognized that parole decisions must account for individual circumstances. 23 I&N Dec. at 580.

124. Applying *D-J-* to categorically deny bond to Petitioner—who was paroled years ago, released, and built a life—ignores the decision's context and Petitioner's dramatically different circumstances.

C. *MATTER OF YAJURE HURTADO WAS WRONGLY DECIDED OR MISAPPLIED*

125. To the extent *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holds that Immigration Judges categorically lack jurisdiction to conduct bond hearings for persons who entered without inspection—regardless of how long ago or whether they were subsequently paroled—that decision exceeds the BIA's statutory authority and violates due process.

126. An administrative agency cannot, by adjudication, eliminate constitutional protections that the Fifth Amendment guarantees. The BIA's interpretation in *Yajure Hurtado* cannot override the Constitution.

COUNT III CONSTITUTIONAL AVOIDANCE REQUIRES REJECTION OF THE GOVERNMENT'S INTERPRETATION

127. The canon of constitutional avoidance instructs that "[w]hen a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [the Court's] duty is to adopt the latter." *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909).

128. The government's interpretation of § 235(b)(2) raises multiple grave constitutional questions:

A. INDEFINITE DETENTION WITHOUT A HEARING

129. Under the government's interpretation, any person who entered without inspection can be detained for months or years without any opportunity to contest the necessity of detention. This raises serious Fifth Amendment concerns. *See Zadvydas*, 533 U.S. at 692.

B. RETROACTIVE APPLICATION

130. The government seeks to apply its current interpretation to persons who entered years ago, stripping them of bond eligibility they previously possessed. This raises due process concerns under *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994) (disfavoring retroactive application of laws that attach new legal consequences to completed conduct).

C. IRREBUTTABLE PRESUMPTION

131. The government's position creates an irrebuttable presumption that anyone who entered without inspection is a flight risk or danger, regardless of actual circumstances. Due process prohibits such "irrebuttable presumptions" that are "not necessarily or universally true." *Vlandis v. Kline*, 412 U.S. 441, 446 (1973).

132. Petitioner's circumstances conclusively rebut any presumption of flight risk: he has a U.S. citizen wife, a pending pathway to permanent residence, perfect compliance, and every reason to appear.

D. EQUAL PROTECTION

133. Under the government's interpretation, a person who overstayed a tourist visa by one day receives a bond hearing, while a person who has lived lawfully in the country for years—working, paying taxes, marrying a citizen—does not, based solely on manner of entry. This arbitrary distinction raises equal protection concerns. *See Plyler v. Doe*, 457 U.S. 202, 210 (1982) (undocumented persons are "persons" entitled to equal protection).

134. This Court should avoid these grave constitutional problems by interpreting § 235(b)(2) to apply only to persons actively seeking entry, not to persons who were paroled years ago and have been living in the United States.

COUNT IV THE GOVERNMENT'S ACTIONS ARE ARBITRARY AND CAPRICIOUS UNDER THE APA

135. The Administrative Procedure Act requires courts 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).

136. Multiple agency actions in this case are arbitrary and capricious.

A. RE-DETENTION WITHOUT CHANGES CIRCUMSTANCES

137. In 2022-2023, the government evaluated Petitioner individually. It found he had a credible fear of persecution. It determined he could be released. It paroled him. It gave him a work permit. This was a reasoned decision based on his individual circumstances.

138. In November 2025, the government re-detained Petitioner without identifying any changed circumstance in his case:

a. He had not committed any crime.

b. He had not missed any check-in.

c. He had not violated any condition.

d. He had not done anything wrong.

139. The only thing that changed was the government's policy.

140. An agency that reverses a prior determination must provide a "reasoned explanation for the change." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016). Where an agency's "new policy rests upon factual findings that contradict those which underlay its prior policy," the agency must "provide a more detailed justification." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009).

141. The government provided no explanation for re-detaining Petitioner. None. This is the definition of arbitrary action.

B. FAILURE TO CONSIDER RELIANCE INTEREST

142. Petitioner relied on the government's decision to release him. Based on that reliance, he:

a. Obtained lawful employment;

b. Paid taxes;

c. Established a residence;

d. Married a United States citizen;

e. Had his wife file an I-130 petition;

f. Built a life in the United States.

143. An agency changing policy must consider "serious reliance interests." *Encino Motorcars*, 579 U.S. at 221-22. The Supreme Court invalidated the rescission of DACA in part because DHS "failed to consider... serious reliance interests." *DHS v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1913-15 (2020).

144. The government entirely failed to consider Petitioner's reliance interests. It did not address his marriage. It did not address his employment. It did not address his tax payments. It did not address his wife's pending I-130 petition. It did not address the life he built in reliance on the government's own decision to release him.

145. This failure renders Petitioner's re-detention arbitrary and capricious.

C. FAILURE TO CONSIDER THE I-130 IN THE PRETERMISSION ORDER

136. The Immigration Judge's February 4, 2026 order granting the motion to pretermit does not mention:

a. Petitioner's marriage to a U.S. citizen;

b. The pending I-130 petition;

c. Petitioner's parole status and adjustment eligibility;

d. The permanent destruction of Petitioner's pathway to legal status that removal would cause.

137. An agency acts arbitrarily when it "entirely fail[s] to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

138. The pending I-130 is not a peripheral issue. It is a pathway to lawful permanent residence that will be permanently destroyed by removal to Ecuador. This is a material fact directly relevant to whether removal is appropriate.

139. The failure to consider this fact renders the pretermission order arbitrary and capricious.

COUNT V THE GOVERNMENT'S INTERPRETATION VIOLATES SEPARATION OF POWERS

140. Congress, not the Executive, determines which categories of noncitizens are subject to mandatory detention.

141. Congress carefully delineated mandatory detention categories in INA § 236(c), 8 U.S.C. § 1226(c), specifying particular grounds (certain criminal convictions, terrorism, etc.) that trigger mandatory detention.

142. Congress recently amended § 236(c) through the Laken Riley Act, adding new categories of mandatory detention. These deliberate legislative choices confirm that Congress—not the Executive—decides who must be detained.

143. The government's interpretation of § 235(b)(2)(A) creates a new mandatory detention category that Congress never authorized: anyone who ever entered without inspection, regardless of subsequent parole, length of residence, or individual circumstances.

144. This interpretation renders Congress's careful work in § 236(c) meaningless. Why would Congress specify particular mandatory detention categories if the Executive could simply invoke § 235(b)(2) to detain anyone who entered without inspection?

145. The Executive cannot, through administrative interpretation, expand mandatory detention beyond what Congress authorized. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring) ("When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.").

146. The government's interpretation should be rejected.

COUNT VI THE BIA'S INTERPRETATION IN *YAJURE HURTADO* IS ULTRA VIRES

147. To the extent *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holds that persons who entered without inspection are categorically ineligible for bond hearings regardless of individual circumstances, the decision exceeds the BIA's authority.

148. Administrative agencies possess only the authority Congress delegates to them. An agency "may not bootstrap itself into an area in which it has no jurisdiction." *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 650 (1990).

149. Congress did not authorize the BIA to eliminate bond hearings for an entire category of persons based on manner of entry. Congress did not authorize the BIA to create new mandatory detention categories by adjudication.

150. The BIA cannot, by issuing a precedential decision, override constitutional due process protections or expand mandatory detention beyond statutory limits.

151. *Yajure Hurtado*, as applied to strip Petitioner of any right to a bond hearing, is ultra vires and should not be followed.

COUNT VII THE GOVERNMENT SHOULD BE ESTOPPED FROM RE-DETAINING PETITIONER

152. While equitable estoppel against the government is disfavored, it remains available in compelling circumstances where the government's conduct is egregious and the harm is severe. *See INS v. Hibi*, 414 U.S. 5, 8 (1973) (reserving question); *Schweiker v. Hansen*, 450 U.S. 785, 788 (1981) (same).

153. The government's conduct here warrants estoppel:

a. The government released Petitioner after finding he had a credible fear.

b. The government issued Petitioner a work permit, authorizing him to work.

c. The government allowed Petitioner to build a life for over three years.

d. Petitioner reasonably relied on the government's actions: he worked, paid taxes, married, and had his wife file an I-130.

e. The government then reversed course without warning, arresting Petitioner at work and destroying the life he built in reliance on the government's own decisions.

154. The government induced Petitioner to rely on its decisions. Having done so, it should not now be permitted to inflict devastating harm by reversing course without explanation.

155. At minimum, the government's conduct is relevant to the arbitrariness analysis under the APA and the due process analysis under the Fifth Amendment.

COUNT VIII PETITIONER IS A PAROLEE ELIGIBLE FOR ADJUSTMENT OF STATUS AND REMOVAL WOULD CAUSE IRREPARABLE HARM

156. Petitioner was paroled into the United States following his positive credible fear determination, as evidenced by his discretionary release and issuance of employment authorization.

157. As a parolee, Petitioner satisfies the "inspected and admitted or paroled" requirement of INA § 245(a), 8 U.S.C. § 1255(a).

158. Petitioner's U.S. citizen spouse has filed an I-130 petition on his behalf. Upon approval, Petitioner will be eligible to file Form I-485 and adjust status to lawful permanent resident—without leaving the United States.

159. Removal to Ecuador will permanently destroy this statutory right:

a. Once removed, Petitioner cannot adjust status. The statute requires physical presence in the United States.

b. The I-130 becomes worthless. It cannot benefit Petitioner if he is in Ecuador.

c. There is no mechanism to "undo" a removal and restore adjustment eligibility.

160. This constitutes irreparable harm that cannot be remedied by any subsequent legal action.

161. The government cannot identify any countervailing interest that outweighs the permanent destruction of Petitioner's statutory pathway to legal residence.

COUNT IX REMOVAL TO ECUADOR IS UNLAWFUL

162. On February 4, 2026, the Immigration Judge ordered Petitioner removed to Ecuador under the U.S.-Ecuador Asylum Cooperative Agreement.

163. This removal order is unlawful for multiple reasons.

A. PETITIONER HAS NO CLAIM IN ECUADOR

164. Petitioner is a Cuban national who fears persecution in Cuba. He has no ties to Ecuador. The Immigration Judge expressly found that "Respondent does not have any ties to Ecuador."

165. Sending Petitioner to Ecuador to "pursue a protection application" is a fiction. His fear is of Cuba, not Ecuador. He has no protection claim to make in Ecuador because he faces no persecution there.

166. Ecuador cannot grant Petitioner asylum from Cuba. Ecuador cannot protect Petitioner from the Cuban government. Removal to Ecuador serves no legitimate purpose.

B. THE ACA FRAMEWORK DESTROYS PETITIONERS PATHWAY TO LEGAL STATUS

167. Petitioner's wife has filed an I-130 petition. If approved, and because Petitioner was paroled, he can adjust to permanent resident status under INA § 245(a).

167. Removal to Ecuador will permanently destroy this pathway. The I-130 will be rendered meaningless. Petitioner will be stranded in a country where he has no family, no resources, and no legal status—while his U.S. citizen wife waits in vain.

168. The Immigration Judge did not consider this consequence. The government did not address it. This failure to consider a material factor renders the removal order arbitrary.

C. INTERNATIONAL LAW CONCERNS

170. The United States is bound by the 1967 Protocol Relating to the Status of Refugees, which incorporates the 1951 Refugee Convention and prohibits refoulement—returning a refugee to persecution.

171. The U.S.-Ecuador ACA itself requires that actions under the agreement "shall be in accordance with [the parties'] obligations under the 1951 Convention Relating to the Status of Refugees" and "the Convention against Torture." 90 Fed. Reg. at 51,378.

172. Sending Petitioner to Ecuador—where he has no claim and no meaningful protection—while destroying his ability to pursue family-based relief in the United States raises serious questions about compliance with international obligations.

<u>COUNT X PETITIONER FACES POTENTIALLY INDEFINITE DETENTION</u>

173. If removal to Ecuador is unlawful, and Cuba refuses to accept Petitioner's return (as Cuba historically refuses repatriation), Petitioner faces potentially indefinite detention.

174. Cuba has a long history of refusing to accept repatriated Cuban nationals. *See Benitez v. Wallis*, 337 F.3d 1289, 1295 (11th Cir. 2003) (noting "Cuba's general refusal to accept" repatriated nationals).

175. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention beyond six months after a final removal order is "presumptively unreasonable" if removal is not "reasonably foreseeable." *Id.* at 701.

176. This Court should consider the *Zadvydas* concerns in evaluating Petitioner's detention. If Ecuador removal is blocked and Cuba refuses repatriation, Petitioner cannot be held indefinitely.

IRREPARABLE HARM

177. Absent relief from this Court, Petitioner will suffer immediate, irreparable harm that cannot be undone.

A. DESTRUCTION OF ADJUSTMENT ELIGIBILITY

178. Removal will permanently destroy Petitioner's eligibility to adjust status under INA § 245(a). Once removed, he cannot adjust—the statute requires physical presence. His wife's I-130 petition becomes meaningless.

179. This harm is irreparable. There is no mechanism to restore adjustment eligibility after removal.

B. PERMANENT FAMILY SEPARATION

180. Removal will separate Petitioner from his U.S. citizen wife, Jenny Clifford. He will be stranded in Ecuador indefinitely—a country where he has no family, no resources, no legal status.

181. This separation may be permanent. Ms. Clifford cannot sponsor her husband for immigration benefits if he is removed.

C. LOSS OF ESTABLISHED LIFE

182. Petitioner has built a life over three years: employment, residence, family relationships, community ties. Removal will sever all of these connections.

D. NO ADEQUEATE REMEDY AT LAW

183. Money damages cannot compensate for the loss of the right to remain with one's spouse, the destruction of a pathway to legal status, or permanent exile to a foreign country.

184. The Supreme Court has recognized that removal itself causes irreparable harm because it "can result in the loss of all that makes life worth living." *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). *See also Nken v. Holder*, 556 U.S. 418, 435 (2009) (recognizing removal causes irreparable injury).

BALANCE OF HARDSHIPS AND PUBLIC INTEREST

185. The balance of hardships tips decisively in Petitioner's favor.

186. Harm to Petitioner if relief is denied: Permanent removal to a country where he has no ties. Permanent destruction of his adjustment eligibility. Permanent separation from his wife. Loss of everything he has built.

187. Harm to government if relief is granted: A brief delay in removal proceedings while this Court considers the merits. Petitioner poses no flight risk (he has every incentive to appear) and no danger (he has no criminal history).

188. The public interest favors keeping families together. The public interest favors allowing U.S. citizens to live with their spouses. The public interest favors orderly

administration of immigration laws—which includes allowing people with valid pathways to legal status to pursue them.

189. The public interest does not favor removing a person with no criminal history, perfect compliance, and a pending pathway to legal residence, based solely on a policy change that ignores his individual circumstances.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Mauricio Sanchez Hernandez respectfully prays that this Court:

A. **Issue a Writ of Habeas Corpus** declaring that Petitioner's continued detention without a bond hearing violates the Due Process Clause of the Fifth Amendment

B. **Order Respondents to provide Petitioner an individualized bond hearing** before a neutral decisionmaker within seven (7) days, at which the government bears the burden of proving by clear and convincing evidence that detention is necessary

C. **Declare** that INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), does not apply to Petitioner, who was paroled into the United States and has resided here for over three years

D. **Declare** that the Immigration Judge's February 13, 2026 order denying bond was erroneous as a matter of law

E. **Declare** that the Immigration Judge's February 4, 2026 order granting the motion to pretermit and ordering removal to Ecuador was arbitrary and capricious for failure to

consider Petitioner's marriage to a U.S. citizen, the pending I-130 petition, and Petitioner's eligibility to adjust status

F. **Stay Petitioner's removal to Ecuador** pending:

(i) Adjudication of this Petition

(ii) Adjudication of the I-130 petition filed by Petitioner's U.S. citizen spouse; and

(iii) Petitioner's opportunity to apply for adjustment of status if the I-130 is approved

G. **Enjoin Respondents** from removing Petitioner to Ecuador or any other country while this matter is pending

H. **Order Petitioner's immediate release** from detention, subject to reasonable conditions of supervision as this Court deems appropriate

I. **Grant an evidentiary hearing** at which Petitioner may present evidence regarding his parole status, his eligibility for adjustment of status, his ties to the community, and the lack of any flight risk or danger

J. **Award Petitioner his reasonable attorneys' fees and costs** pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412

K. **Grant leave to supplement** this Petition and introduce additional evidence as necessary; and

L. **Grant such other relief** as this Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing **Emergency Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241** with the Clerk of the United States District Court for the Southern District of Florida using the CM/ECF system.

Respectfully Submitted,
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