

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

JOSE LEMUS LOPEZ,

Petitioner,

v.

JASON STREEVAL, in his official
capacity as Warden of Stewart Detention
Center; LADEON FRANCIS, in his
official capacity as Field Office Director
of Enforcement and Removal
Operations, Atlanta Field Office,
Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity
as Secretary, U.S. Department of
Homeland Security; PAMELA BONDI,
in her official capacity as U.S. Attorney
General,

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

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3 1. Petitioner Jose Lemus Lopez is in the physical custody of
4 Respondents at the Stewart Detention Center located in Lumpkin, Georgia. He now
5 faces unlawful detention because the Department of Homeland Security (DHS) and
6 the Executive Office of Immigration Review (EOIR) have concluded Petitioner is
7 subject to mandatory detention.
8

9 2. Petitioner is likely to be charged with, inter alia, having entered the
10 United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
11

12 3. DHS denied Petitioner release from immigration custody, consistent
13 with a new DHS policy issued on July 8, 2025, instructing all Immigration and
14 Customs Enforcement (ICE) employees to consider anyone inadmissible under §
15 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or
16 inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
17 therefore ineligible to be released on bond.
18

19 4. Similarly, on September 5, 2025, the Board of Immigration Appeals
20 (BIA or Board) issued a precedent decision, binding on all immigration judges,
21 holding that an immigration judge has no authority to consider bond requests for
22 any person who entered the United States without admission. *See Matter of Yajure*
23 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such
24

1 individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
2 ineligible to be released on bond.

3 5. Petitioner's detention on this basis violates the plain language of the
4 Immigration and Nationality Act ("INA"). Section 1225(b)(2)(A) does not apply to
5 individuals like Petitioner who previously entered and are now residing in the
6 United States. Instead, such individuals are subject to a different statute, § 1226(a),
7 that allows for release on conditional parole or bond. That statute expressly applies
8 to people who are charged as inadmissible for having entered the United States
9 without inspection.
10

11 6. Respondents' new legal interpretation is plainly contrary to the
12 statutory framework and contrary to decades of agency practice applying § 1226(a)
13 to people like Petitioner.
14

15 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he
16 be released unless Respondents provide a new custody redetermination hearing
17 under § 1226(a) within seven days whereby the Immigration Judge does have
18 jurisdiction over Petitioner's custody redetermination request.
19

20 II. JURISDICTION

21 8. Petitioner is in the physical custody of Respondents. Petitioner is
22 detained at the Stewart Detention Center in Lumpkin, Georgia.
23
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1 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas
2 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of
3 the United States Constitution (the Suspension Clause).

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

8 III. VENUE

9 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410
10 U.S. 484, 493- 500 (1973), venue lies with the district court having jurisdiction
11 over the custodian of the detainee. In the case at hand, venue is proper with the
12 United States District Court for the Middle District of Georgia, the judicial district
13 encompassing the Stewart Detention Center in Lumpkin, Georgia in Stewart
14 County, Georgia.

15 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
16 because Respondents are employees, officers, and agencies of the United States,
17 and because a substantial part of the events or omissions giving rise to the claims
18 occurred in the Middle District of Georgia.
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20

21 IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

4
5 14. Habeas corpus is “perhaps the most important writ known to the
6 constitutional law . . . affording as it does a *swift* and imperative remedy in all
7 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963)
8 (emphasis added).

9
10 **V. PARTIES**

11 15. Petitioner Jose Lemus Lopez is alleged to be a citizen of El Salvador
12 who entered the United States without admission, inspection, or parole. Petitioner
13 is currently detained at the Stewart Detention Center in the custody, and under the
14 direct control, of Respondents and their agents. Petitioner has been in immigration
15 detention since approximately January 2026. After arresting Petitioner, ICE did not
16 set bond.

17 16. Respondent Jason Streeval is employed by CoreCivic as Warden of
18 the Stewart Detention Center where Petitioner is detained. He has immediate
19 physical custody of Petitioner. He is sued in his official capacity.

20
21 17. Respondent LaDeon Francis is the Director of the Atlanta Field
22 Office of ICE’s Enforcement and Removal Operations division. As such, LaDeon
23
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1 Francis is Petitioner's immediate custodian and is responsible for Petitioner's
2 detention and removal. He is named in his official capacity.

3 18. Respondent Kristi Noem is the Secretary of the Department of
4 Homeland Security. She is responsible for the implementation and enforcement of
5 the Immigration and Nationality Act (INA), and oversees ICE, which is
6 responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority
7 over Petitioner and is sued in her official capacity.
8

9 19. Respondent Pamela Bondi is the Attorney General of the United
10 States. She is responsible for the Department of Justice, of which the Executive
11 Office for Immigration Review and the immigration court system it operates is a
12 component agency. She is sued in her official capacity.
13

14 VI. LEGAL FRAMEWORK

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

17 21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
18 standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a.
19 Individuals detained pursuant to § 1226(a) are generally entitled to a bond hearing
20 at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while
21 noncitizens who have been arrested, charged with, or convicted of certain crimes
22 are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
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1 22. Second, the INA provides for mandatory detention of noncitizens
2 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
3 arrivals seeking admission referred to under § 1225(b)(2).
4

5 23. Last, the INA also provides for detention of noncitizens who have
6 been ordered removed, including individuals in withholding-only proceedings, *see*
7 8 U.S.C. § 1231(a)–(b).
8

9 24. This case concerns the detention provisions at §§ 1226(a) and
10 1225(b)(2).
11

12 25. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted
13 as part of the Illegal Immigration Reform and Immigrant Responsibility Act
14 (IIRIRA) of 1996, Pub. L. No. 104--208, Div. C, §§ 302–03, 110 Stat. 3009-546,
15 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended
16 earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
17

18 26. Following the enactment of the IIRIRA, EOIR drafted new
19 regulations explaining that, in general, people who entered the country without
20 inspection were not considered detained under § 1225 and that they were instead
21 detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens;
22 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
23 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
24

1 27. Thus, in the decades that followed, most people who entered without
2 inspection and were placed in standard removal proceedings received bond
3 hearings, unless their criminal history rendered them ineligible pursuant to 8
4 U.S.C. § 1226(c). That practice was consistent with many more decades of prior
5 practice, in which noncitizens who were not deemed “arriving” were entitled to a
6 custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C.
7 § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that
8 § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
9

10 28. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new
11 policy that rejected well-established understanding of the statutory framework and
12 reversed decades of practice.
13

14 29. The new policy, entitled “Interim Guidance Regarding Detention
15 Authority for Applicants for Admission,”¹ claims that all persons who entered the
16 United States without inspection shall now be subject to a mandatory detention
17 provision under § 1225(b)(2)(A). This interpretation of the statute applies
18 regardless of when a person is apprehended and affects those who have resided in
19 the United States for months, years, and even decades.
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24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

1 30. On September 5, 2025, the BIA adopted this same position in a
2 published decision, *Matter of Yajure Hurtado*. There, the Board held that all
3 noncitizens who entered the United States without admission or parole are subject
4 to mandatory detention under § 1225(b)(2)(A) and are therefore ineligible for bond
5 hearings.
6

7 31. Since Respondents adopted their new policies, dozens of federal
8 courts have rejected their new interpretation of the INA's detention authorities.²
9 Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same
10 reading of the statute as ICE. As of February 18, 2026, the Ninth Circuit Court
11 vacated *Yajure Hurtado* as it is "contrary to law under the APA." *Maldonado*
12 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM.
13

14 32. Even before ICE or the BIA introduced these nationwide policies,
15 Immigration Judges in the Tacoma, Washington, immigration court stopped
16 providing bond hearings for persons who entered the United States without
17 inspection and who have since resided here. There, the U.S. District Court in the
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19 ² Petitioner is a class member of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In
20 *Maldonado Bautista* the court certified the Bond Eligible Class, defined as: All noncitizens in the United States
21 without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will
22 not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), §
23 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.
24 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403, at *9
(C.D. Cal. Nov. 25, 2025).

22 Courts are obligated to apply the law to all class members, as determined in the binding, final judgment issued in
23 *Maldonado Bautista* on December 18, 2025. The Executive Office for Immigration Review is a Defendant in
24 *Maldonado Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment."
28 U.S.C. § 2201(a). Nevertheless, DHS continues to argue that immigration judges do not have jurisdiction
pursuant to *Yajure Hurtado* when respondents request custody redetermination hearings pursuant to class
membership.

1 Western District of Washington found that such a reading of the INA is likely
2 unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
3 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779
4 F. Supp. 3d 1239 (W.D. Wash. 2025).

5
6 33. Subsequently, several courts have adopted the same reading of the
7 INA's detention authorities and rejected ICE and EOIR's new interpretation. *See*,
8 *e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July
9 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----,
10 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-
11 02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*
12 *recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
13 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937
14 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No.
15 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-*
16 *Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D.
17 Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D.
18 Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL
19 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
20 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No.
21 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*,
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23
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1 No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose*
2 *J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL
3 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-
4 BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v.*
5 *Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025);
6 *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL
7 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546,
8 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-
9 11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma*
10 *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025)
11 (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2)
12 authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
13 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-
14 03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

22 35. Section 1226(a) applies by default to all persons “pending a decision
23 on whether the [noncitizen] is to be removed from the United States.” These
24

1 removal hearings are held under § 1229a, to “decid[e] the inadmissibility or
2 deportability of a[] [noncitizen].”

3 36. The text of § 1226 also explicitly applies to people likely to be
4 charged as being inadmissible, including those who entered without inspection. *See*
5 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear
6 that, by default, such people are afforded a bond hearing under subsection (a). As
7 the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific
8 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the
9 statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing
10 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
11 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

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

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

3 39. Accordingly, the detention provision of § 1225(b)(2)(A) does not
4 apply to people like Petitioner, who have already entered and were residing in the
5 United States at the time they were apprehended.
6

7 FACTS

8 40. Petitioner has resided in the United States since approximately 2004
9 and lives in Dalton, Georgia.

10 41. According to Petitioner, on or about January 14, 2026, he was arrested
11 for driving without a license in Whitfield County, Georgia. Petitioner is now
12 detained by DHS at the Stewart Detention Center in Lumpkin, Georgia.
13

14 42. Petitioner is someone who entered the United States without
15 inspection or admission and is likely to be placed in removal proceedings before
16 the Stewart Immigration Court pursuant to 8 U.S.C. § 1229a. ICE is likely to
17 charge Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §
18 1182(a)(6)(A)(i) as someone who entered the United States without inspection.
19

20 43. Petitioner is in a committed domestic partnership with a United States
21 Citizen and the two have plans to get married when the Petitioner is released from
22 detention. His partner has multiple U.S. Citizen children, two of which live with
23 the Petitioner and his partner, the eighteen (18) year old and the sixteen (16) year
24

1 old. According to Petitioner, his father is a Legal Permanent Resident who relies
2 on the Petitioner both financially and emotionally. The Petitioner maintains a fixed
3 address as he has rented home, which is located in Dalton, Georgia, for
4 approximately one (1) year. As such, Petitioner is not a flight risk.
5

6 44. To the knowledge of undersigned counsel, Petitioner has not been
7 convicted of any violent crimes. As such, Petitioner is not a danger to the
8 community.

9 45. Following Petitioner's arrest and transfer to the Stewart Detention
10 Center, ICE issued a custody determination to continue Petitioner's detention
11 without an opportunity to post bond or be released on other conditions.
12

13 46. In practice, following grants of habeas corpus relief, custody
14 redetermination proceedings frequently fail to provide the individualized analysis
15 contemplated by the Court's order, instead resulting in summary denials based on
16 generalized findings of flight risk. Without relief from this court—specifically in
17 the form of immediate release as requested—Petitioner faces the prospect of
18 months, or even years, in immigration custody, where he will be separated from his
19 family and community.
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CLAIMS FOR RELIEF

COUNT I

Violation of the Immigration and Nationality Act

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

48. 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.

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

COUNT II

Violation of the Bond Regulations

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

51. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret

1 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
2 Detention of [Noncitizens],” the agencies explained that “[d]espite being
3 applicants for admission, [noncitizens] who are present without having been
4 admitted or paroled (formerly referred to as [noncitizens] who entered without
5 inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at
6 10323 (emphasis added). The agencies thus made clear that individuals who had
7 entered without inspection were eligible for consideration for bond and bond
8 hearings before Immigration Judges under 8 U.S.C. § 1226 and its implementing
9 regulations.
10

11 52. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has
12 previously had a policy and practice of applying § 1225(b)(2) to individuals like
13 Petitioner.
14

15 53. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
16 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
17

18 COUNT III

19 **Violation of Fifth Amendment Right to Due Process**

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

22 55. The government may not deprive a person of life, liberty, or property
23 without due process of law. U.S. Const. amend. V. “Freedom from
24

1 imprisonment—from government custody, detention, or other forms of physical
2 restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v.*
3 *Davis*, 533 U.S. 678, 690 (2001).

4 56. Petitioner has a fundamental interest in liberty and being free from
5 official restraint.
6

7 57. The government’s detention of Petitioner without a bond
8 redetermination hearing to determine whether he is a flight risk or danger to others
9 violates his right to due process.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioner prays that this Court grant the following relief:
12

- 13 a. Assume jurisdiction over this matter;
- 14 b. Order that Petitioner shall not be transferred outside the Middle
15 District Court of Georgia while this habeas petition is pending;
- 16 c. Issue an Order to Show Cause ordering Respondents to show cause
17 why this Petition should not be granted within three days;
- 18 d. Issue a Writ of Habeas Corpus requiring that Respondents
19 immediately release Petitioner;
- 20 e. In the alternative, provide Petitioner with a bond hearing in the
21 Middle District within seven days;
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- 1 f. In the alternative, provide Petitioner with a bond hearing in front of an
2 immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days
3 or immediately release Petitioner from DHS custody;
4
5 g. Declare that Petitioner's detention is unlawful;
6
7 h. Award Petitioner attorney's fees and costs under the Equal Access to
8 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any
9 other basis justified under law; and
10
11 i. Grant any other and further relief that this Court deems just and
12 proper.

13 It is RESPECTFULLY SUBMITTED this 24th day of February, 2026.

14 The Kennedy Immigration Firm, LLC

15 /s/Alexandra H. Bradley

16 Alexandra H. Bradley, Esq.

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