UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

GREGORIO MARTINEZ MORAN,

Petitioner,

v. Case No. 0:26-cv-60519

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

Respondents.
_____/

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner GREGORIO MARTINEZ MORAN is in the physical custody of Respondents at the Broward Transitional Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

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

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner 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.

4. 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.

5. 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.

6. 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.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released immediately from Respondents unlawful detention.

JURISDICTION

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

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

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

VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of Florida, the judicial district in which Petitioner currently is detained.

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

EXHAUSTION

15. In the instant case, exhaustion is not required because the administrative process cannot provide any relief, and Supreme Court Precedent confirms exhaustion is excused under these circumstances.

Respondents will likely argue that Petitioner failed to exhaust administrative remedies because he did not first seek custody review before the Immigration Judge. That argument is incorrect for several reasons. First, the Immigration Judge and the Board of Immigration Appeals lack jurisdiction to adjudicate the statutory basis of Petitioner's detention. Second, both the Immigration Judge and the Board are bound by *Matter of Yajure Hurtado*, which requires them to deny custody jurisdiction in cases DHS classifies under section 1225(b)(2)(A). Third, the exhaustion doctrine under section 2241 is prudential, not statutory, and the Supreme Court's decision in *McCarthy v. Madigan* squarely applies here because the agency cannot provide the relief Petitioner seeks and cannot adjudicate the legal question raised. Accordingly, exhaustion is not required.

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

16. The Government consistently asserts that individuals detained under section 1225(b)(2)(A) are categorically ineligible for bond and that Immigration Judges lack jurisdiction to consider custody. In every recent case involving this issue, including *Aguilar Merino v. Field Office Director, ERO Miami*, the Government has argued that the Immigration Judge lacks authority to review custody for individuals DHS designates as "applicants for admission." The Government cannot simultaneously insist that the

Immigration Judge has no jurisdiction and then argue that Petitioner must exhaust a remedy the Government itself claims is unavailable. A remedy that the agency lacks power to provide is not one that must be exhausted.

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

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

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

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

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

19. *McCarthy v. Madigan*, 503 U.S. 140 (1992), although not an immigration case, is directly applicable here. *McCarthy* involved a federal prisoner who sought monetary damages for constitutional violations. The administrative grievance process at issue could not award monetary relief and lacked authority to resolve the legal claim he raised. The Supreme Court held that exhaustion was not required because the administrative body was powerless to afford the relief requested and lacked authority to decide the question presented.

20. The holding in *McCarthy* is not limited to the prison context. The Supreme Court articulated general administrative law principles governing exhaustion under section 2241. Section 2241 contains no statutory exhaustion requirement. As a result, exhaustion in habeas cases that challenge detention is governed by judge-made prudential doctrine. *McCarthy* remains binding on all federal courts unless Congress expressly displaces it. The Immigration and Nationality Act does not contain any statute requiring exhaustion for habeas challenges to the legal basis of detention, nor does it provide any administrative mechanism for the relief Petitioner seeks.

21. *McCarthy* applies with particular force here. As in *McCarthy*, the agency's administrative structure cannot provide the relief requested. The Immigration Judge cannot grant a custody hearing if DHS claims detention is under section 1225(b)(2)(A). The Board cannot reverse because it is bound by its own precedent. Neither the Immigration Judge nor the Board can determine whether DHS used the correct detention statute. The administrative process cannot address Petitioner's legal claim, and any attempt to pursue it would be futile.

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

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

23. The Government has argued in similar cases that this Court lacks jurisdiction under sections 1252(e)(3), 1252(g), and 1252(b)(9). These provisions do not apply here.

24. First, section 1252(e)(3) applies only to systemic challenges to the implementation of section 1225(b), not to individualized habeas challenges concerning the statutory basis of a specific person's detention. Petitioner does not challenge regulations, policies, or written directives. Petitioner challenges only how DHS applied statutory authority to him.

25. Second, section 1252(g) is inapplicable because the Supreme Court has held that it applies only to three discrete actions: the decision to commence proceedings, the decision to adjudicate cases, and the decision to execute removal orders. The legality of detention is none of these.

26. Third, section 1252(b)(9) is a channeling provision, not a jurisdiction-stripping rule. Under *Jennings v. Rodriguez*, detention challenges that question the statutory basis and duration of detention are independent of the removal process and do not fall within section 1252(b)(9).

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

27. Petitioner has no administrative remedy to challenge the statutory basis of his detention. The Immigration Judge lacks jurisdiction. The Board lacks authority to reverse. The administrative structure cannot adjudicate whether DHS applied the correct detention statute. Accordingly, exhaustion is not required and this Court possesses jurisdiction under 28 U.S.C. section 2241 to review the legality of detention.

PARTIES

28. Petitioner GREGORIO MARTINEZ MORAN is a citizen of Mexico who has been in immigration detention since on or about January 9, 2026. After arresting Petitioner in Hillsborough County, Florida, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ,

pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

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

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

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

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

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

34. Respondent Cynthia Swain, is the Facility Director and Chief Correctional Officer of Broward Transitional Center, where Petitioner is detained. She has immediate physical custody of Petitioner. (*See* Exhibit A). He is sued in his official capacity.

LEGAL FRAMEWORK

A. §§ 1226(a) and 1225(b)(2)

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

36. 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).

37. 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).

38. 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).

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

40. 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. 104-–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, 139 Stat. 3 (2025).

41. 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).

42. 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)).

43. 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.

44. 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.

45. 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.

46. 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.

47. 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).

48. Subsequently, court after court, with judges appointed by every President from Ronald Reagan through Donald Trump, have adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Reyes v. Bondi*, No. 4:25-CV-239, 2025 WL 3755928, at *3 (S.D. Ind. Dec. 29, 2025) (Barker, J., Reagan appointee); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J., George H.W. Bush appointee), *rev'd and remanded*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026); *Gallardo v. Warden Glades Detention Facility*, No. 2:25-cv-1193, 2026 WL 139244, at *1 (M.D. Fla. Jan. 20, 2026) (Steele, J., Clinton appointee); *Quispe v. Crawford*, No. 1:25-CV-1471, 2025 WL 2783799, at *6 (E.D. Va. Sep. 29, 2025) (Trenga, J., George W. Bush appointee); *Giron Reyes v. Lyons*, 801 F. Supp. 3d 797, 804–05 (N.D. Iowa 2025) (Strand, J., Obama appointee); *Singh v. Lewis*, No. 4:25-CV-96, 2025 WL

2699219, at *5 (W.D. Ky. Sep. 22, 2025) (Jennings, J., Trump appointee); *Bethancourt Soto v. Soto*, No. 25-CV-16200, —— F.Supp.3d ——, ——, 2025 WL 2976572, at *7 (D.N.J. Oct. 22, 2025) (O'Hearn, J., Biden appointee).

49. 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.

50. 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]."

51. 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.

52. 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.

53. 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).

54. 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.

B. Separation of Powers

55. Nonetheless, there is a stronger constitutional reason to reject the Government's incorrect interpretation of the INA, namely separation of powers. *See Daniela Guaiquire, v. Louis A. Quinones, Jr., et al.*, No. 6:26-CV-169-RBD-RMN, 2026 WL 279369 (M.D. Fla. Feb. 3, 2026) (citation cleaned up). The dangers of the Government's current trend of encroaching upon the

judiciary requires Article III courts to curb the "tide in the affairs of men..."

William Shakespeare, *Julius Caesar*, Act 4, sc. 3.

> While the relative sphere of power of the three branches is currently under great strain, Article III courts are serving as the proverbial "judicial finger in the constitutional dike." *Conejo Arias v. Noem*, No. SA-26-CV-415 (W.D. Tex. Jan. 31, 2026) (Biery, J.).
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> "It is emphatically the province and duty of the judicial department"—not the Executive—"to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Judiciary "has imposed upon it by the constitution, the solemn duty to interpret the laws,...and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender, or to waive it." *United States v. Dickson*, 40 U.S. 141, 162 (1841). "Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011).
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> The American people rebelled against the tyrant King George III in part because he "made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries," leading to judges abusing the rights of the people to curry favor with the Executive. THE DECLARATION OF INDEPENDENCE ¶ 11 (U.S. 1776). So the Framers, in their genius, established the Judiciary as independent from the Executive to protect the people—for, as Alexander Hamilton wrote, "liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments." THE FEDERALIST No. 78, at 403 (Alexander Hamilton) (Gideon ed., 1818). "A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government." *United States v. Will*, 449 U.S. 200, 217–18 (1980).

> Often unappreciated by the general public is that immigration judges serve at the whim of the President. *See generally* Alisa Chang, *The Trump Administration Fires at Least 7 Immigration Judges in New York*, NPR (Dec. 2, 2025), https://www.npr.org/2025/12/02/nx-s1-5628393/the-trump-administration-fires-at-least-7-immigration-judges-in-new-york. They are members of the Executive branch, not independent Article III judges. They lack life tenure and are dependent on the President for their livelihood. They cannot always be expected to safeguard the rights of individuals in the same way as the independent
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> Judiciary must. *See Stern v. Marshall*, 564 U.S. 462, 483–84 (2011). So no, the Judiciary won't be deferring to the Executive branch about what the law says.
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> Nor will this Court acquiesce to a statutory interpretation urged by the Executive that reads out entire sections drafted by the Legislature. Just as the Judiciary must remain independent for this country to function, so too must the Legislature. The power to eliminate entire portions of statutes rests with the elected members of the Congress of these United States. *See id.*; *Marbury*, 5 U.S. at 177. Adopting the Government's interpretation of § 1225, which by necessity acts as if § 1226 does not exist, amounts to the Executive's unilateral elimination of an act of Congress, something wholly alien to our system. *See Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 3713987, at *12 (C.D. Cal. Dec. 18, 2025) ("Respondents' expansive interpretation...would effectively nullify a portion of the INA through [ ] DHS's . . . interpretive exercise of power."). What the Government is in effect urging is to give the Executive free rein to rewrite acts of Congress to suit its purpose and to tell the Judiciary what those laws must mean. This the Court cannot do, for it would fall victim to the very evils the Framers rejected 250 years ago. So the Court gives *Hurtado* the deference a decision drafted by immigration judges wholly beholden to the Executive deserves: none.

Daniela Guaiquire, 2026 WL 279369 at *8-9.

C. Due Process Necessitates an Impartial Tribunal

56. Due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001)). Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm and be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690-91. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico,* Inc., 446 U.S. 238, 242 (1980).

57. The immigration court system ("ICS") has been transformed into a body that is structurally incapable of upholding Petitioner's statutory and constitutional rights. The ICS is not an independent adjudicative body. It operates under the Department of justice ("DOJ"). In the last year the DOJ and its sub-agencies, the Executive Office for Immigration Review ("EOIR") and the Board of Immigration Appeals ("BIA"), in apparent coordination with the Department of Homeland Security ("DHS") have systematically dismantled the integrity of the ICS to turn it into an extension of DHS' deportation and detention operations. The evidence of EOIR's institutional capture falls into five categories, each independently sufficient to establish

bias, but together demonstrating systematic destruction of judicial independence:

> (1) the ongoing mass-scale purge of immigration judges perceived as obstacles to DHS' enforcement agenda;
> (2) the parallel purge and reconstitution of the BIA, resulting in a 97% pro-government decision rate;
> (3) the recruitment and installation of explicitly enforcement-aligned "deportation judges" with dramatically reduced qualifications;
> (4) EOIR policy directives establishing expectations that adjudications favor the government over noncitizens; and
> (5) explicit instructions to defy district court rulings that impede DHS's enforcement goals. Each category is addressed in turn below.

58. As of September 26, 2025, the administration has terminated 128 immigration judges[1] ("IJs"). Former New York IJ David K.S. Kim[2] explained the targeting criteria: "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates." This is not the complaint of disgruntled employees—these are career jurists with decades of combined experience who felt compelled to speak out publicly.

59. The terminated and resigned judges consistently reported three

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[1] *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-respondsnbsp.

[2] Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025), https://www.donga.com/en/article/all/20250920/5859412/1.

themes, the first being explicit pressure to act as instruments of mass deportation rather than as neutral adjudicators. Former Baltimore IJ Emmett Soper[3] stated: "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives." Former San Francisco IJ Jeremiah Johnson[4] similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially." Former San Francisco IJ George Pappas[5] was even more direct: "We were told to facilitate deportation... Due process is dead in immigration courts."

60. The second theme reported is a pervasive climate of fear designed to ensure compliance. Former Baltimore IJ David C. Koelsch[6] described it as "an atmosphere of paranoia and fear, which is exactly what they want." Former

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[3] Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog

[4] Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/.

[5] Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside.

[6] Poggio, *supra* note 5.

Annandale IJ Anam Petit observed: "There's a climate of fear…Judges feel like, if they step a toe out of line right now…or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings." [7] Former New York IJ Carmen Maria Rey Caldas[8] similarly described judges working "under 'constant threat' of getting fired if they don't follow certain rules from leadership."

61. The final theme reported is the inevitable compromise of judicial independence when self-preservation requires favoring the government. Former San Francisco IJ Elizabeth Young[9] explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'"[12] Former Boston IJ Sarah Cade[10] reached her breaking point: "I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice."[13]

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[7] Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste m-jeopardy-due-trumps-firings/409544/.

[8] Isabela Dias, *"Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9, 2025), https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/.

[9] Poggio, *supra* note 5.

[10] Poggio, *supra* note 5.

62. The message to remaining immigration judges is unmistakable: impartiality is a terminable offense. No adjudicator can remain objectively neutral when faced with the choice between upholding due process and maintaining their livelihood. Any immigration judge assigned to Petitioner's bond hearing now operates under the understanding that granting bond may cost them their position.

63. A parallel purge ensued at the BIA reducing its membership from 28 members to 15 members. All Biden appointees on the BIA were fired. The statistical impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions.[11] Of those, 69 decisions (97%) favored the administration. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.[12] Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination[13] of one administration's appointees—speaks for itself.

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[11] Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29.

[12] Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), https://www.justice.gov/eoir/volume-28. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021)

[13] Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undoc umented-immigrants/.

64. To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges." DHS—a party in immigration proceedings before EOIR—promoted these IJ openings on social media[14] with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."

65. In addition, the DOJ has authorized up to 600 military lawyers to serve as temporary IJs for a renewable term not to exceed six months, while simultaneously eliminating requirements to serve as a temporary IJ.[15] Previously, temporary judge candidates were required to have served as a former immigration judge, appellate immigration judge, or administrative judge within another agency, or to have at least 10 years of immigration law experience. The administration removed those requirements entirely, allowing "any attorney" to be selected as a temporary IJ and reduced training to approximately two weeks—far less than the standard training for permanent immigration judges, which includes six weeks of initial training, one year of mentorship by an experienced judge, and two years of quarterly reviews.[16]

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[14] dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

[15] Designation of Temporary Immigration Judges, 90 Fed. Reg. 41,883 (Aug. 28, 2025).

[16] Margy O'Herron, *Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal*, Brennan Ctr. for Just. (Sept. 29, 2025), https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially.

Corey Lewandowski, an adviser to DHS Secretary Noem, responded to the announcement by posting[17]: "I see more deportations of illegal immigrants in the near future"—an explicit acknowledgment of the mass deportation policy objective underlying these appointments and the erosion of institutional boundaries between DOJ and DHS. In December, one of the appointed temporary judges was fired just a month into his six-month term. "That judge, Christopher Day, had granted asylum claims in just over half the cases he heard."[18]

66. Beyond personnel changes, EOIR's new acting director, Sirce E. Owen, quickly released "a string of sharply worded policy memos" that immediately "[set] the tone for her leadership." "Sources familiar with Owen described her as a 'restrictionist loyalist' with a reputation for denying cases." The Catholic Legal Immigration Network (CLINIC) observed that "these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration's clearly anti-immigrant views." The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate "bias directed against

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[17] Corey R. Lewandowski (@CLewandowski_), X (Sept. 2, 2025, 1:47 PM), https://x.com/clewandowski_/status/1962950546652070269.

[18] Radley Balko, *"The courts are dead." An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), https://radleybalko.substack.com/p/the-courts-are-dead-an-interview

DHS" or to be "adjudicatory outliers," at risk of "close examination and potential action"; a memorandum encouraging judges to deny asylum applications without full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections; and memorandums restricting immigration judges' ability to grant continuances and administrative closure.

67. However, the clearest evidence that EOIR has abandoned its role as an impartial tribunal comes from its response to federal court orders protecting bond hearing rights. In *Maldonado Bautista v. Santacruz*, the Central District of California issued both declaratory and injunctive relief holding that noncitizens who entered without inspection but were not apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are therefore entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Judge Sunshine Sykes certified a nationwide class and entered final judgment. *Id.* Rather than comply with the order, EOIR leadership directed all immigration judges to ignore the order. On January 13, 2026, Chief Immigration Judge Teresa L. Riley sent an email to all immigration judges instructing:

Please provide the following guidance to all immigration judges

> forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore *Yajure Hurtado* remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party. Thank you for your attention to this matter.

The effect was immediate: ACLU lawyers reported that immigration judges who had begun granting bond hearings in compliance with Judge Sykes' ruling reversed course after receiving Chief Judge Riley's directive. Immigration judges were placed in an impossible position—comply with a federal district court order and risk termination or defy the federal court and retain their positions.

68. On January 16, 2026, Judge Sykes issued a scathing order directly addressing the government's systematic defiance:

> This matter is yet another in a slew of habeas petitions following the Court's ruling in *Bautista v. Santacruz* that has unfortunately become routine in this Court. But individuals filing these habeas petitions are not to blame; rather, the current volume of habeas petitions and temporary restraining orders being filed can be attributed to ***Respondents' deliberate choice to continue defying the final judgment entered in Bautista***. ...
> Despite the clarity of the Court's previous orders and legal doctrines that preclude Respondents from relitigating issues at the heart of these requests, Respondents continue to manufacture arguments for sake of opposition. At this point in time, **the Court can no longer confer Respondents with the benefit of the doubt as to the intent of their filings.**

> Despite the final judgment in Bautista, it appears that immigration judges continue to rely on legal interpretations that were expressly found unlawful. ... Respondents are collaterally estopped from relitigating the issue as to whether Bond Eligible Class members are entitled to the exact relief as provided in the Bautista final judgment. Accordingly, Respondents are collaterally estopped from relitigating this issue against all members of the Bond Eligible Class.

Palomera Baltazar v. Janecka, No. 5:26-cv-00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026). (emphasis added).

69. As evinced *supra*, Judge Sykes' findings are a condemnation of the Executive Branch's encroachment upon the judiciary: the government is not merely disagreeing with her legal conclusions—it is engaged in "deliberate" defiance, "manufacturing arguments," and instructing immigration judges to rely on "interpretations that were expressly found unlawful." This is not a case of good-faith disagreement over statutory interpretation. "Judges across the country—the vast majority who have considered this question—have told the Government many times in the past few months that its interpretation of the law is wrong." *See Gimenez Rivero v. Sheriff John Mina, et al.*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *5 (M.D. Fla. Jan. 26, 2026); *see also id* ("If the Government is going to argue for expanding the interpretation of a law or maintain a widely rejected position to preserve its appellate rights, it may do so. But its lawyers must make those arguments in a way that comports with their professional obligations, as lawyers have done since time immemorial:

Cite the contrary binding authority and argue why it's wrong. Don't hide the ball. Don't ignore the overwhelming weight of persuasive authority as if it won't be found.").

70 The Government is engaged in systematic institutional defiance of federal court orders, orchestrated by EOIR leadership and enforced through the threat of termination. No clearer evidence of institutional capture could exist—when presented with a federal court order protecting noncitizens' rights—EOIR's response was to order judges to violate it. The ultimate victim is the detained noncitizen, who like Petitioner, remains detained in violation of the due process and is denied their fundamental right to have an impartial adjudicator determine whether their continued detention serves any legitimate purpose related to flight risk or community safety.

71. This detention is also averred to endure the entirety of the noncitizen's removal process. According to latest TRAC Immigration and Executive Office for Immigration Review ("EOIR") reports, the average length of time from a Notice to Appear ("NTA") to a final order of removal is from two (2) to three (3) years nationwide (with some busier jurisdictions taking longer). As a result, this newly discovered detention authority invented by ICE is akin to a confinement sentence in a term of years to any noncitizen picked up off the street by ICE today, tomorrow, and unless nationwide compulsory injunctive relief is issued or until—similar to the unlawful termination of SEVIS status

cases that surged earlier this year—the Executive acquiesces to the eventuality of nearly universal defeat in a court of law and surrenders to the futility of pursuing that line.

72. At bottom, this radical shift in policy constitutes a thinly veiled attempt to utilize detention as an instrument of suffering and to psychologically and financially coerce immigrants to abandon the legal process as both the foreseeable result and unstated goal undergirding the change. John Gihon, a Board Certified Immigration and Nationality Law Attorney in Florida, and former DHS Attorney, commented[19] on this, stating, "[d]etention is the easiest way to deport people... People who would stay in the country and fight their case on the non-detained docket ... [decide] 'I don't want to sit in custody at all, I just want to go back to my country.' "

73. It is unfortunate that Respondents recent about-face toward mass detention under § 1225 requires this Court to serve as the proverbial "judicial finger in the constitutional dike"—*Conejo Arias v. Noem*, No. SA-26-CV-415 (W.D. Tex. Jan. 31, 2026) (Biery, J.)—so that "the political branches have [not] the power to switch the Constitution on or off at will" lest it "lead to a regime in which ... [the Executive Branch], not th[e Supreme] Court, say[s] 'what the

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[19] Jason Buch, *How Trump's ICE Is Locking Up Longtime Texans with Paths to Legal Status*, Texas Observer (Feb. 9, 2026, 11:44 AM CST), https://www.texasobserver.org/trump-ice-detention-bond-prosecutorial-discretion/

law is.' " *Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (quoting *Marbury v Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

D. Proposed Remedies

74. The "equitable and flexible nature of habeas relief' affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. V*elasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted"). Here, because ordering a 1226(a) bond hearing before EOIR–a clearly compromised adjudicatory body–would not properly redress the statutory and constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure:

> **a. First, Petitioner submits that immediate release is the most appropriate remedy.** Petitioner's lack of criminal history, strong family ties to the United States, and long duration of residency all support his immediate release. "In recent months, courts across the country have ordered the release of detainees in similar situations." *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (**given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in**

jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing). (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025)("Without a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.")

b. In the alternative, Petitioner requests a custody hearing before this Court. The habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance.

c. At a minimum, the court should order that Petitioner be provided a 1226(a) bond hearing, *but with additional safeguards.* Specifically, the Court should order:

i. A bond hearing where the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk to "[reflect] the concern that '[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025).[34]

ii. Provide that the habeas court shall retain jurisdiction to review the immigration judge bond decision to ensure compliance with the court's order and due process.

iii. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2), and enjoin Respondents permanently from detaining Petitioner under 8 U.S.C. §1225. *Rivero v. Mina*, No. 6:26-CV-66-RBD-NWH, 2026 WL 199319 at *6 (M.D. Fla. Jan. 26, 2026) (ordering

petitioner's immediate release and permanently restraining and enjoining respondents from detaining petitioner under 8 U.S.C. § 1225).

FACTS

75. Petitioner is a national and citizen of Mexico. He entered the United States on or about 1999, without admission or inspection.

76. On or about January 9, 2026, Petitioner was arrested by DHS/ICE agents in Hillsborough County, Florida, after a traffic stop was conducted on the vehicle Petitioner was traveling in. Petitioner was charged with driving with no valid driver's license.

77. While detained, DHS placed Petitioner in removal proceedings before the Miami Krome Immigration Court, pursuant to 8 U.S.C. § 1229a. ICE charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection. *See* Exhibit B.

78. Mr. Martinez Moran has every reason to return to Immigration Court, as his adult USC daughter filed a Petition for Alien Relative with USCIS, on June 29, 2023, which was approved October 30, 2024. *See* Exhibit C. At the time ICE detained Petitioner, he had his approved I-130 pending and ICE had no justification to detain Petitioner. *See* Exhibit C. On November 17, 2025, Mr. Martinez Moran was notified that a visa number had become available. *See* Exhibit D. Mr. Martinez Moran is not a threat to anyone or our

national security. Petitioner is not a terrorist, has never been a terrorist, and he has never participated otherwise in the persecution of any individual or group of individuals. Petitioner is not a flight risk. Petitioner will comply with any and all lawful conditions placed on him by DHS/ICE. Mr. Martinez Moran has no criminal history. Mr. Martinez Moran has secured a custodial sponsor, that has pledged to provide support and assistance as needed throughout his immigration proceedings. Mr. Martinez Moran has a fixed address to stay, should he be released on a monetary bond. Mr. Martinez Moran intends to comply with any terms of release on monetary bond. Mr. Martinez Moran will be represented by the undersigned during these proceedings. Mr. Martinez Moran has friends and family that have pledged to provide transportation for him. Mr. Martinez Moran is gainfully employed and has employment authorization documentation. Moreover, Mr. Martinez Moran has four USC children, ages 24, 15, 8 and 2, who rely upon his care and financial support. Additionally, his ex-wife, a lawful permanent resident, also relies heavily upon Mr. Martinez Moran for financial support and help.

79. Following Petitioner's arrest and transfer to Broward Transitional Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

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

Exhibit B. However, the immigration judge noted that, notwithstanding *Hurtado*, it would have granted Petitioner bond in the amount $5,000, based upon his ties to the United States.

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

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

83. 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.

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

COUNT II

Violation of the Bond Regulations

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

86. 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.

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

88. 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.

COUNT III

Violation of the Fifth Amendment

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

90. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

91. Petitioner has a fundamental interest in liberty and being free from official restraint. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

92. Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

93. Petitioner has a significant interest at stake. Being free from physical detention by one's own government "is the most elemental of liberty interests." *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

94. Petitioner is being held at a county jail in the same conditions as criminal inmates and is far from his Family, which desperately requires both his financial assistance and logistical support.

95. There is a large risk of erroneous deprivation of Petitioner's liberty interest through the procedures used in this case (in this case nil) and there are available alternative procedures which would ameliorate those risks.

96. The risk of deprivation is high because, contrary to law, Respondents refuse to afford Petitioner any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226 and 8 C.F.R. §§ 1003.19(i)(2).

97. Respondents have not determined Petitioner to be flight risk or danger to the community or any other individualized factors; rather, they have unliterally deprived Petitioner of his liberty based upon an erroneous reinterpretation of legal authority that strains credulity and runs against the grain of long-standing precedent, existing statutory and regulatory authority, and established agency policies and practices.

98. There are no significant governmental interest at stake related to Petitioner's continued detention because his availability for removal

proceedings may be secured by less restrictive means, *i.e.*, bond, in light of the fact that Petitioner is unquestionably neither a danger to any community nor a flight risk as well as the high likelihood he will succeed in obtaining favorable relief in his removal proceedings.

99. As a direct and proximate result of the violation of Petitioner's procedural due process rights, Petitioner has suffered and will continue to suffer injury and the government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT IV

Violation of Administrative Procedure Act

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

101. Under § 706(a) of the APA, final agency action can be set aside if it is "contrary to a constitutional right, power, privilege, or immunity." *See* 5 U.S.C. § 706(2)(B). As discussed, *supra*, Petitioner is being detained in direct violation of the governing statutory and regulatory scheme, as interpreted by the Supreme Court.

102. Respondents have deprived Petitioner of his liberty without providing any meaningful bond redetermination hearing, or other individualized and constitutionally adequate hearing.

103. Continued detention of Petitioner, absent any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing or sufficient and compelling legitimate government interest constitutes a violation of Due Process Clause of the Fifth Amendment to the United States Constitution.

104. The adverse agency action at issue is therefore necessarily contrary to a constitutional right and thus falls within the ambit of 5 U.S.C. § 706(2)(B).

105. As a direct and proximate result of the unauthorized and unlawful detention alleged herein, Petitioner has suffered and will continue to suffer injury.

COUNT V

Violation of APA (Arbitrary and Capricious Deprivation of Liberty)

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

107. Under § 706(a) of the APA, final agency action can be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," including if it fails to make a rational connection between the facts found and the decision made. *See* 5 U.S.C. § 706(2)(A).

108. Respondents have failed to articulate any facts or sufficient legal authority that forms a basis for their decision to detain Petitioner, and

Respondents have failed to articulate any rational connection between the facts found and their adverse decision made.

109. Due to the lack of any meaningful bond redetermination hearing, Respondents have made no determinations of fact at issue.

110. As discussed, *supra*, Petitioner is being detained in direct violation of the governing statutory and regulatory scheme, as interpreted by the Supreme Court. Petitioner's continued detention absent any meaningful bond redetermination hearing or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226(a) is unlawful.

111. The adverse action by Respondents is therefore arbitrary and capricious. As a direct and proximate result of his wrongful, unlawful, and *ultra vires* detention by Respondents, absent any meaningful bond redetermination hearing, or other individualized and constitutionally adequate hearing under 8 U.S.C. § 1226(a), Petitioner has suffered and will continue to suffer injury.

PRAYER FOR RELIEF

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

a. Order that Petitioner shall not be transferred outside the Southern District of Florida while this habeas petition is pending;
b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
c. Issue a Writ of Habeas Corpus requiring that Respondents

immediately release Petitioner or in the alternative, order a bond hearing before this Court where the government must prove by clear and convincing evidence that Petitioner poses a danger or flight risk in order to continue his detention;

d. Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2), and enjoin Respondents permanently from detaining Petitioner under 8 U.S.C. §1225.
e. Declare that Petitioner's detention is unlawful;
f. Order Respondents to return all of Petitioner's lawful property in Respondents' custody;
g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
h. Grant any other and further relief that this Court deems just and proper.

DATED this 25th day of February 2026.

Respectfully submitted,

By: */s/Joel Alexis Caminero*
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Attorney for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

In accordance with 28 U.S.C. § 2242, undersigned counsel hereby submits this verification on behalf of Petitioner, GREGORIO MARTINEZ MORAN, because I am Petitioner's legal counsel. I have discussed with

Petitioner and/or his family, the events described in the foregoing Petition. Based on those discussions, as well as documents provided to me by Petitioner's family, pursuant to 28 U.S.C. § 1746, I hereby verify under penalty of perjury, that I have reviewed the foregoing and the facts stated therein are true and accurate to the best of my knowledge and belief, and the Exhibits filed herewith are true, accurate, and authentic.

/s/Joel Alexis Caminero
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