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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

AVILA TAPIA, Daniel,

Petitioner,

v.

Jason STREEVAL, Warden of STEWART
DETENTION CENTER, *in his official
capacity.*

Respondent.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

8 U.S.C. § 2241

Agency number:



INTRODUCTION

1. Petitioner Daniel Avila Tapia (“Petitioner”) is in the physical custody of Respondent at the Stewart Detention Center. He now faces unlawful detention because the Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) will conclude that Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States (“U.S”) 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 will certainly deny Petitioner’s 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 U.S. 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 (“IJs”), holding that an IJ has no authority to consider bond requests for any person who entered the U.S. 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 (“INA”). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the U.S. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute

the U.S. without inspection.

framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *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) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). However, the decision was stayed by the Ninth Circuit on March 6, 2026. Therefore, upon information and belief, IJs at the Stewart Immigration Court will continue to follow precedent from the BIA. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

unless Respondent provides a bond hearing under § 1226(a) within seven (7) days.

JURISDICTION

Stewart Detention Center located in Lumpkin, Georgia.

10. 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).

11. 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

12. 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 Middle District of Georgia, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondent is an employee, officer, or agency of the U.S., and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Georgia.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondent 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, Respondent must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

15. 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).

PARTIES

16. Petitioner Daniel Avila Tapia has been in immigration detention since on or about February 6, 2026. Petitioner was detained and taken into ICE custody, who 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).

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

LEGAL FRAMEWORK

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

19. 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).

20. 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).

21. 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).

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

1 23. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
2 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No.
3 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
4 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1,
5 139 Stat. 3 (2025).

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

11 25. Thus, in the decades that followed, most people who entered without inspection
12 and were placed in standard removal proceedings received bond hearings, unless their criminal
13 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
14 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
15 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
16 (1994); *see also* H.R. Rep. No. 104–469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
17 “restates” the detention authority previously found at § 1252(a)).

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

21 27. The new policy, entitled “Interim Guidance Regarding Detention Authority for
22 Applicants for Admission,”¹ claims that all persons who entered the U.S. without inspection
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24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies
2 regardless of when a person is apprehended and affects those who have resided in the U.S. for
3 months, years, and even decades.

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

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

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

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

21 32. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it
22 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
23 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
24

1 This court has also rejected DHS's and EOIR's new interpretation. *See, e.g., J.A.M. v. Streeval*,
2 No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No.
3 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025).

4 33. Section 1226(a) applies by default to all persons "pending a decision on whether
5 the [noncitizen] is to be removed from the United States." These removal hearings are held under
6 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

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

15 35. Section 1226 therefore leaves no doubt that it applies to people who face charges
16 of being inadmissible to the U.S., including those who are present without admission or parole.

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

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

4 38. Finally, as mentioned above, on November 20, 2025, the district court granted
5 partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified
6 a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista*
7 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11
8 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-
9 Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d --
10 --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners'
11 proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment
12 from Order Granting Petitioners' Motion for Partial Summary Judgment).

13 39. Despite this declaratory judgment holding that the Bond Denial Class members
14 are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on
15 bond under § 1225(b)(2)(A), class members are being blatantly refused bond hearings across the
16 country. *Maldonado Bautista*, 2025 WL 3289861, at *11.

17 FACTS

18 40. Petitioner Daniel Avila Tapia, age 37, has resided in the U.S. since his sole entry
19 without inspection on or about 2006.

20 41. Petitioner has an eighteen (18) year old United States Citizen ("USC") son with
21 his former partner.

22 42. On January 19, 2023, Petitioner was charged with (1) battery - family violence
23 first offense, and (2) simple battery - family violence, by the DeKalb County State Court from an
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1 incident that occurred on or about January 13, 2023. Petitioner was enrolled in a diversionary
2 program for domestic violence, for which he completed fifteen (15) out of twenty-four (24)
3 classes before his detention in ICE custody prevented further attendance. The charges remain
4 pending. As the alleged incident occurred in 2023, more than two years before the *Laken Riley*
5 *Act*, Petitioner would not be subjected to mandatory detention under 8 U.S.C. § 1226(c)(1)(E).

6 43. On or about December 2025, Petitioner's son suffered a devastating motorcycle
7 accident which left him with significant injuries, including a shattered ankle and femur. Since
8 Petitioner's son has limited movement, Petitioner became his son's caretaker in every aspect of
9 life, including financially and medically, knowing it would be a difficult and long journey until
10 his son was fully recovered.

11 44. In the early morning of February 6, 2026, Petitioner was detained along with two
12 (2) work colleagues while at gas station in Brookhaven, Georgia. He was subsequently turned
13 over into ICE custody and transferred to the Stewart Detention Center in Lumpkin, Georgia,
14 where he currently resides.

15 45. DHS initiated a Notice to Appear ("NTA") and subsequently initiated removal
16 proceedings before the Stewart Immigration Court.

17 46. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. §
18 1182(a)(6)(A)(i) as someone who entered the U.S. without inspection.

19 47. Petitioner's next immigration court date, a Master Calendar hearing, is scheduled
20 for March 18, 2026, at 8:30 a.m., with an IJ at the Stewart Immigration Court.

21 48. Pursuant to *Matter of Yajure Hurtado*, the IJ is jurisdictionally barred from
22 granting Petitioner a bond during at the conclusion of a custody redetermination hearing.
23 Additionally, despite being a member of the certified nationwide class pursuant to *Maldonado*
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1 *Bautista v. Santacruz*, the EOIR and its subagency the Immigration Court and the DHS have
2 blatantly refused to abide by the declaratory relief for class members similarly situated to this
3 petitioner before the Stewart Immigration Court and other Immigration Courts across the
4 country.

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

8 **CLAIMS FOR RELIEF**

9 **COUNT I** 10 **Violation of the INA**

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

13 51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
14 noncitizens residing in the U.S. who are subject to the grounds of inadmissibility. As relevant
15 here, it does not apply to those who previously entered the country and have been residing in the
16 U.S. prior to being apprehended and placed in removal proceedings by Respondent. Such
17 noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or §
18 1231.

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

21 **COUNT II** 22 **Violation of the Bond Regulations**

23 53. Petitioner incorporates by reference the allegations of fact set forth in preceding
24 paragraphs.

1 54. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
2 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
3 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
4 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
5 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
6 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
7 (emphasis added). The agencies thus made clear that individuals who had entered without
8 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
9 1226 and its implementing regulations.

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

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

14
15 **COUNT III**
 Violation of Due Process

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

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

22 59. Petitioner has a fundamental interest in liberty and being free from official
23 restraint.
24

1 60. The government's detention of Petitioner without a bond redetermination hearing
2 to determine whether he is a flight risk or danger to others violates his right to due process.

3 **PRAYER FOR RELIEF**

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

- 5 a. Assume jurisdiction over this matter;
- 6 b. Order that Petitioner shall not be transferred outside the Middle District of
7 Georgia while this habeas petition is pending;
- 8 c. Issue an Order to Show Cause ordering Respondent to show cause why this
9 Petition should not be granted within three (3) days;
- 10 d. Issue a Writ of Habeas Corpus requiring that Respondent release Petitioner or, in
11 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
12 1226(a) within seven (7) days;
- 13 e. Declare that Petitioner's detention is unlawful;
- 14 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
15 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
16 law; and
- 17 g. Grant any other and further relief that this Court deems just and proper.
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1 Dated: March 9, 2026

Respectfully submitted,

2
3 /s/ Matthew O. Boles

4 Matthew O. Boles

5 GA Bar No. 904287; LA Bar No. 37593

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10 941-524-7913

11 *Counsel for Petitioner*

Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Matthew O. Boles

Date: March 9, 2026