Arno Javier Lemus
Counsel for Petitioner
Lemus Law Group
1024 NW 102 PL
Miami, Florida 33172
786-816-2795
lemusarno@gmail.com
BAR 0103075

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Franchel, BRAVO PEREZ

Petitioner,

v.

Warden, Glades County Detention Center;

Pamela BONDI, U.S. Attorney General;

Todd LYONS, Acting Director of Immigration and Customs Enforcement;

U.S. Attorney for the Middle District of Florida;

Respondents.

Case No. -----

PETITION FOR

WRIT OF HABEAS CORPUS

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INTRODUCTION

This case challenges the unlawful immigration detention of a Cuban national who was lawfully paroled into the United States, has continuously resided in the country since his entry, and is actively pursuing lawful permanent residence under the Cuban Adjustment Act ("CAA"). Petitioner entered the United States through the Brownsville, Texas Port of Entry on September 1, 2024, and was granted parole pursuant to Immigration and Nationality Act ("INA") § 212(d)(5). *See Exhibit ("Exh.") A*, a copy of Petitioner's Birth Certificate with English Translation, Cuban Passport, Notice to Appear ("NTA"), and Form I-94 ("Parole Document"). Since that time, he has remained physically present in the United States and has properly filed an application for adjustment of status with U.S. Citizenship and Immigration Services ("USCIS"). *See Exh. B,* proof of filing of Petitioner's adjustment of status application. Despite that lawful parole, continuous presence, and pending application for lawful status, Respondents are now subjecting Petitioner to mandatory detention under 8 U.S.C. § 1225(b), as though he were an arriving applicant for admission still in the border inspection process.

That detention is unlawful. Petitioner was not apprehended at the border, during inspection, or while seeking entry into the United States. Rather, Immigration and Customs Enforcement ("ICE") assumed custody of him in the interior of the country after local authorities had arrested him, a state court had set bond, and his family had posted that bond. *See Exh. C*, receipt showing payment of the $1,500 bond. By reclassifying Petitioner as though he remained in the inspection framework governed by § 1225(b), Respondents have imposed a mandatory detention regime that Congress did not authorize for an individual in Petitioner's posture: a parolee living in the United States, pursuing adjustment of status, and taken into custody after an interior arrest. Under the statutory structure of the INA, Petitioner's detention falls, at most, under 8 U.S.C. § 1226(a), which requires an individualized custody determination and permits release on bond.

Respondents' conduct is unlawful for additional and independent reasons. Petitioner was taken into immigration custody without a warrant and without the circumstances necessary to justify a warrantless civil immigration arrest under 8 U.S.C. § 1357(a)(2). *See Exh. D*, Petitioner's Detention Information. He was also deprived of liberty without any meaningful pre-deprivation process, even though ICE assumed custody only after the state court had already determined that release on bond was appropriate. His continued detention is arbitrary and disproportionate in light of his pending CAA application, his lawful parole, and his strong incentive to appear for all future proceedings in order to preserve his statutory pathway to lawful permanent residence.

This Court has authority under 28 U.S.C. § 2241 to remedy unlawful federal custody. Because Respondents are detaining Petitioner under the wrong statutory scheme, because the manner of his arrest and detention violated federal law and the Constitution, and because no adequate administrative remedy exists to cure these defects, habeas relief is warranted. Petitioner therefore respectfully requests that this Court order his immediate release under reasonable conditions of supervision, or, at a minimum, require Respondents to provide him with a prompt individualized custody hearing under 8 U.S.C. § 1226(a).

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is held in federal custody within this District and challenges the legality of that custody. See 28 U.S.C. § 2241(c)(3). The habeas petition does not seek review of a final order of removal and therefore is not barred by 8 U.S.C. § 1252(a)(5) or (b)(9). A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court in the district where the prisoner is confined. *Diaz v. United States*, 580 F. App'x 716, 717 (11th Cir. 2014) ("A § 2241 petitioner by a federal prisoner must be brought in the district where the inmate is incarcerated."). As such, venue is proper in the Fort Myers Division because Petitioner is detained at the Glades County Detention Center in Moore Haven, FL, within this Division; and the immediate custodian is located here. *Id.* Therefore, the case is ripe for adjudication.

STATEMENT OF THE FACTS

Petitioner is a Cuban national who lawfully entered the United States on September 1, 2024, through the Brownsville, Texas, Port of Entry, and he was granted parole pursuant to INA § 212(d)(5). *See Exh A.* He has resided in the United States continuously since that date, and he is pursuing lawful permanent residence under the CAA. From September 15, 2025, the Petitioner has an application for adjustment of status that has been properly filed with USCIS. *See Exh B.*

On February 20, 2026, Petitioner was taken into custody by local law enforcement in Fort Myers, Florida, following an incident involving his same-sex partner. Petitioner remained in local detention following the arrest. Petitioner's family retained counsel to represent him in the criminal matter, and bond was set on February 21, 2026. On February 23, 2026, counsel confirmed that no immigration holds or detainer had been placed on Petitioner at that time. Petitioner's family posted a bond for $1,500. *See Exh. C.* Although Petitioner's partner subsequently retracted the allegations and requested that the complaint be withdrawn, the jail did not allow Petitioner to execute the release of paperwork until February 24, 2026. By the time Petitioner was permitted to sign up for his release, Immigration and Customs Enforcement ("ICE") had already been notified and assumed custody of him. Petitioner was thereafter transferred to another immigration detention facility. On March 3, 2026, he was transferred to the Glades County Detention Center, where he remains detained to this day. *See Exh. D.*

Respondents purport to detain Petitioner under 8 U.S.C. § 1225(b) as an applicant for admission subject to mandatory detention. That classification is incorrect. Petitioner was taken into immigration custody without a warrant and without any individualized custody determination. Notably, prior to ICE assuming custody, bond had already been set by the state court, and

Petitioner's family had paid the bond in the amount of $1,500. Despite the bond being posted and Petitioner being eligible for release from local custody, ICE assumed custody of Petitioner before he could be released. His continued detention, therefore, exceeds statutory authority and violates the Due Process Clause of the Fifth Amendment. At a minimum, Petitioner is entitled to an individualized custody review pursuant to 8 U.S.C. § 1226(a).

ARGUMENT

I. Prudential Exhaustion is not required

The Board of Immigration Appeals is applying its precedential decision in *Matter of Yajure Hurtado*, to remove Immigration Judge's jurisdiction over bond hearings. 29 I. & N. Dec. 216 (B.I.A. 2025). As a result, an administrative appeal would serve no purpose.

Generally, "exhaustion is not required where no genuine opportunity for adequate relief exists . . . or an administrative appeal would be futile[.]" *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (alterations added; citations omitted); see also *United States v. Barbieri*, No. 18-cr-20060, 2021 WL 2646604, at (S.D. Fla. June 28, 2021) ("The Court recognizes . . . that administrative exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief." (alteration added; citation omitted)).

Administrative exhaustion is prudential, not statutory, and is excused as futile in light of *Matter of Yajure Hurtado*. The Southern District of Florida has already recognized that, because *Yajure Hurtado* is a published BIA precedent binding in immigration proceedings, the outcome of a custody appeal raising the same "seeking admission" theory is effectively foreordained—making further administrative process futile and non-commensurate with the habeas claim for a bond hearing. See *Alvarez Puga v. Assistant Field Office Director, Krome North Service Processing Center*, No. 1:25-cv-24535 (S.D. Fla. Oct. 15, 2025) (excusing prudential exhaustion for futility post-*Yajure Hurtado* and ordering § 1226(a) bond hearing or release).

II. Unlawful Detention (Ultra vires Agency Action) – The government is detaining the petitioner under the wrong statutory scheme

The INA establishes distinct detention regimes depending on a noncitizen's procedural posture. Section 1225 governs individuals seeking admission to the United States, typically those encountered at or near the border or presenting themselves at a port of entry. Section 1226, by contrast, governs detention of individuals who have already entered the United States and are detained pending a decision regarding removal.

The BIA's decision in *Yajure Hurtado* asserts that anyone who entered without admission is perpetually an "applicant for admission," thus subject to § 1225 mandatory detention under 8 U.S.C. § 1225(b)(2). See *Yajure Hurtado*, 29 I. & N. Dec. at 218–23. There are several reasons why the board's expansive interpretation of 8 U.S.C. § 1225(b)(2) misreads the statute, most recently confirmed in *Maldonado Bautista v. Santacruz*. No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In *Maldonado Bautista* the court certified the Bond Eligible Class, defined as:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

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). In that case, the Court held that individuals who entered the United States without inspection and were not apprehended at the border are not properly detained as "applicants for admission" under 8 U.S.C. § 1225(b)(2). Rather, their detention falls under 8 U.S.C. § 1226(a), which permits them to seek release through a bond hearing. *Id.*

As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "*at the Nation's borders and ports of entry*, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." See *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

Throughout its text, 8 U.S.C. § 1225 repeatedly refers to "inspections," a term not expressly defined in the statute, but which ordinarily connotes an examination conducted at or shortly after physical entry into the United States. See 8 U.S.C. § 1225 (entitled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"); 8 U.S.C. §§ 1225(b)(1)–(2); 8 U.S.C. § 1225(d)(1). Many statutory provisions, various regulations, and agency precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. See, e.g. 8 U.S.C. §§ 1187 (h)(2)(B)(i), 1225A; 8 C.F.R. § 1225.1; *Matter of Quilantan*, 25 I&N Dec. 285, 289–90 (BIA 2010).

Consistent with this focus on the moment of physical entry, § 1225(b)(2) is limited to those in the process of "seeking admission." See generally 8 U.S.C. § 1225. Similarly, the implementing regulations at 8 C.F.R. § 1.2 define noncitizens who are presently "coming or attempting to come into the United States." The statutory and regulatory text's use of the present and present progressive tenses excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. See *Martinez v. Hyde*, 2025 WL 2084238, at 6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at 6–7 (S.D.N.Y. Aug. 13, 2025); See also *United States v. Wilson*, 503 U.S. 329, 333 (1992).

A number of the courts cited above have agreed that § 1225(b)(2) only reaches individuals who are in the process of entering or who have just entered the United States. See, e.g. *Orellana Juarez v. Moniz*, 2025 WL 1698600, at 3–4 (D. Mass. June 11, 2025); *Sampiao v. Hyde*, 2025 WL 2607924, at 5–6 (D. Mass. Sept. 9, 2025).

The statutory history also supports a limited reading of 8 U.S.C. § 1225(b)'s reach. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. See H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b).

Similarly, H.R. Rep. No. 104-469, at 18–19 (1996) (Conf. Rep.), confirms that Congress vested the Attorney General with authority under 8 U.S.C. § 1226 to apprehend and detain noncitizens who are present in the United States but have not been formally admitted. Section 1226 governs the arrest and detention of such individuals pending a decision on whether they are to be removed from the United States and authorizes their release on bond or conditional parole while removal proceedings are ongoing. *Id.* This framework applies to individuals like Petitioner, who entered the United States without inspection, has resided in the interior while pursuing immigration relief, and was later taken into custody by immigration authorities. Under § 1226, detention in these circumstances is discretionary and must include the procedural safeguards Congress established, including the availability of release on bond before an immigration judge.

Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225 and 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, a habeas court should give it no weight under *Loper Bright or Skidmore v. Swift & Co.* See *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, a federal habeas court should independently interpret the meaning and scope of § 1225(b) using the traditional tools of statutory construction. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385, 401 (2024). Even if the phrase "seeking admission" were ambiguous, the Court may not defer to the agency's preferred interpretation merely because ambiguity exists. *Alvarez Puga* applied *Loper Bright* to reject deference to the BIA's reading of § 1225(b)(2)(A) post-*Yajure Hurtado*, explaining that courts must use the traditional tools of statutory construction and may not defer solely on ambiguity. *Alvarez Puga*, No. 1:25-cv-24535 (S.D. Fla. Oct. 15, 2025) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)).

The Board in *Yajure Hurtado* attempts to eliminate judicial bond proceedings for individuals who have lived in the interior for years and have long been under § 1226(a). See generally *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218–23 (BIA 2025). That reasoning, however, contradicts the Board's prior decision in *Matter of Cabrera Fernandez*, where it specifically clarified that DHS officers have the discretion to classify and detain border entrants under 8 U.S.C. § 1226(a). "The respondents are applicants for admission to the United States due to the circumstances surrounding their arrival and encounter with immigration authorities." See INA § 235(a)(1), 8 U.S.C. § 1225(a)(1); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (explaining that applicants for admission include those seeking permission to enter and those who are present in the United States without having requested or received permission to enter). Moreover, the Eleventh Circuit recently cautioned against expansive readings of § 1225 that would allow the government to treat individuals encountered in the interior as if they were continuously detained at the border. See *Labrada-Hechavarria v. U.S. Att'y Gen.*, No. 23-13664, slip op. at 5–6 (11th Cir. Feb. 23, 2026). The court emphasized that immigration detention authority must be grounded in the proper statutory framework and cannot be stretched beyond the circumstances contemplated by Congress. *Id.*

For applicants for admission charged as inadmissible, DHS has authority to determine whether to initiate expedited removal proceedings under section 235(b)(1)(A)(i) of the INA, 8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a.[1]." See *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023).

Most concerning, Respondents contradict the reasoning provided by *Jennings*, reiterating the government's unfettered right to detain aliens under either §§ 1225 or 1226. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018). "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." See *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S. Ct. 830, 838, 200 L. Ed. 2d 122 (2018).

Consistent with the statements in *Jennings v. Rodriguez* that all noncitizens detained under 8 U.S.C. § 1225(b) may only be released via 8 U.S.C. § 1182(d)(5)(A), it follows that noncitizens who are detained shortly after entering without inspection, placed in 8 U.S.C. § 1229a proceedings and then released on conditional parole under 8 U.S.C. § 1226(a)(2)(B) must have been initially held pursuant to 8 U.S.C. § 1226(a). (The Petitioner's case and procedural posture). See *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); INA §§ 1182(d)(5)(A), 1226(a)(2)(B).

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[1] This authority is illustrated in the Attorney General's decision in Matter of D-J-, 23 I&N Dec. 572, 572–76 (A.G. 2003), which involved a similar fact pattern. In that case, DHS apprehended a respondent shortly after he entered the United States without admission or parole and charged him with the same ground of inadmissibility at issue here. The Attorney General reviewed his eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). Cf. Matter of M-S-, 27 I&N Dec. 509, 510–13 (A.G. 2019) (addressing the detention and release of respondents whom DHS initially elects to place in expedited removal proceedings, but who are later transferred to section 240 removal proceedings after establishing a credible fear of persecution or torture).

This interpretation is inconsistent with the board's reasoning in *Cabrera-Fernandez*, which held that noncitizens who Entered Without Inspection ("EWI") and are apprehended near the border can be released pursuant to 8 U.S.C. § 1226(a)(2) (implying that their initial detention was also pursuant to 8 U.S.C. § 1226(a), see *Matter of Cabrera-Fernandez*, 28 I&N Dec. at 748–49. Indeed, the statutory structure makes clear that 8 U.S.C. § 1226 also reaches individuals who have not been admitted and have entered without inspection. See 8 U.S.C.§ 1226.

Section 1226(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 1226(a), including noncitizens subject to certain grounds of inadmissibility. See 8 U.S.C. § 1226(c). Moreover, Congress recently added new mandatory detention grounds to 8 U.S.C. § 1226(c) that apply only to noncitizens who have not been admitted, expressly including those who are inadmissible under § 1182(a)(6)(A), or (7)--that is, persons who entered without being admitted. See Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. §§ 1182(a)(6)(A), 1182(a)(7), 1226(c)(1)(E). If 8 U.S.C. § 1226(a) did not apply to inadmissible noncitizens, then the carve out in § 1226(c) that refers to inadmissibility and Congress' most recent amendments would all be surplusage. *Id.*

The Laken Riley Act ("LRA") amendment confirms that § 1226 reaches inadmissible EWI's and defeats the government's effort to make § 1225(b)(2) universal. *Alvarez Puga* reasoned that if Respondents were correct that § 1225(b)(2)(A) mandates detention for all non-admitted noncitizens present in the United States, Congress would have had no reason to enact the LRA's new mandatory detention provision within § 1226(c)(1)(E), which expressly covers inadmissibility categories including § 1182(a)(6)(A) and § 1182(a)(7). *Alvarez Puga*, No. 1:25-cv-24535 (S.D. Fla. Oct. 15, 2025) (invoking the rule against surplusage and citing *Corley v. United States*, 556

U.S. 303, 314 (2009), and *Bilski v. Kappos*, 561 U.S. 593, 608 (2010)). This Court should apply the same structural reasoning here.

This case tracks the statutory posture that courts have treated as quintessentially governed by § 1226(a): a noncitizen re-detained in the interior pursuant to ICE custody authority. In *Alvarez Puga*, the Court emphasized that § 1226 is the detention scheme that "authorizes the Government to detain certain aliens already in the country" and noted that several courts have suggested § 1226—not § 1225(b)—governs detention of noncitizens arrested on a warrant while residing in the United States. *Alvarez Puga*, No. 1:25-cv-24535 (S.D. Fla. Oct. 15, 2025) (discussing *Jennings* and warrant-based arrest posture).

The government's post hoc reclassification maneuver underscores why habeas relief is warranted. In *Alvarez Puga*, ICE initially issued a Notice of Custody Determination stating detention was "[p]ursuant to" INA § 236 (8 U.S.C. § 1226), and only later cancelled it as "improvidently issued," contending instead that detention was under INA § 235(b)(2)(A) (8 U.S.C. § 1225(b)(2)(A)). *Alvarez Puga*, No. 1:25-cv-24535 (S.D. Fla. Oct. 15, 2025). That sequence mirrors the structural problem here: the agency cannot deprive Petitioner of the procedures attached to the detention authority it actually invoked and operationalized, then retroactively relabel custody to evade bond jurisdiction.

Under longstanding Supreme Court precedent, courts must read statutes and agency action as prospective unless Congress has "unambiguously instructed" retroactive application. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 263–65 (1994). A law or agency action has impermissible retroactive effect where it "attaches a new disability, in respect to transactions or considerations already past." *Id.* at 269–70; *INS v. St. Cyr*, 533 U.S. 289, 321 (2001). This presumption applies with particular force in the immigration context, where retroactive application of new legal consequences that upset settled expectations and reliance interests is strongly disfavored. *St. Cyr*, 533 U.S. at 321–23; *Vartelas v. Holder*, 566 U.S. 257, 266 (2012).

In *Vartelas*, the Government argued that no retroactive effect existed because the relevant event was the noncitizen's post-enactment travel, rather than his pre-enactment conviction. The Supreme Court rejected that argument as "disingenuous," holding that the "new disability" flowed from past conduct and could not be imposed retroactively absent clear congressional authorization. *Vartelas*, 566 U.S. at 271–73. The Court emphasized that retroactivity doctrine is violated where the Government seeks to impose new legal consequences by relabeling later conduct as the trigger, when the operative facts occurred earlier. *Id.*

Here, Respondents are detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b) by treating him as though he were an "applicant for admission" subject to the inspection framework at the border. That classification is legally incorrect. Petitioner lawfully entered the United States through the Brownsville, Texas Port of Entry on September 1, 2024, and was granted parole pursuant to INA § 212(d)(5). Since that time, he has remained continuously present in the United States, established residence in the community, and pursued lawful status through a pending adjustment of status application under the CAA. When ICE assumed custody of Petitioner in February 2026, it did so following an interior arrest by local law enforcement after Petitioner had already been granted and posted bond in state court. This interior transfer of custody bears no resemblance to the border inspection context governed by § 1225(b). By nevertheless invoking the mandatory detention framework reserved for arriving applicants for admission, Respondents have imposed a regime of detention that Congress did not authorize for individuals who have been paroled into the country, living in the interior, and actively pursuing adjustment of status. Under these circumstances, the governing detention authority is 8 U.S.C. § 1226(a), which requires an individualized custody determination and eligibility for release on bond. Respondents' reliance on § 1225(b) therefore constitutes ultra vires agency action and renders Petitioner's continued detention unlawful.

As in *Vartelas* and *St. Cyr*, the Government's action here "attaches a new disability in respect to transactions already past" and therefore has impermissible retroactive effect. *Landgraf*, 511 U.S. at 269–70; *St. Cyr*, 533 U.S. at 321. The presumption against retroactivity forecloses DHS's attempt to evade bond jurisdiction by post-hoc reclassification of Petitioner's detention. Because the agency's action alters the legal consequences of completed custody determinations without statutory authorization, it is unlawful and cannot support Petitioner's continued detention.

III. Petitioner's Detention Is Arbitrary and Disproportionate in Light of His Pending Cuban Adjustment Act Application

Petitioner is pursuing lawful permanent residence under the CAA, a statute enacted to provide humanitarian protection to Cuban nationals. See Cuban Adjustment Act of 1966, Pub. L. 89-732, 80 Stat. 1161; see also *Exh. B.* Congress expressly contemplated that such individuals could remain physically present while seeking adjustment. Petitioner satisfies the physical presence requirement and has relied upon statutory protections for years.

The Executive's decision to detain a CAA-eligible parolee during routine employment activity undermines congressional intent. It imposes severe liberty deprivation without advancing removal objectives, particularly where adjustment eligibility may ultimately regularize status. Arbitrary detention divorced from removal necessity violates both statutory purpose and constitutional safeguards.

IV. The Government Violated the Fifth Amendment by Failing to Afford a Pre Deprivation Hearing prior to Re-detaining Petitioner

Noncitizens released on parole acquire a due process-protected liberty interest in their continued freedom when DHS releases them pending final removal decisions on condition that they abide by reporting requirements. *Esquivel Pacheco v. LaRose*, No. 3:25-CV-2421-JO-AHG, 2026 WL 242300, at 6 (S.D. Cal. Jan. 29, 2026). This liberty interest is similar to, if not greater than, the liberty interests of people on pre-parole, parole, and probation. *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1054 (N.D. Cal. 2021). Courts have distinguished between the initial parole decision, which is part of the admissions process, and the revocation of parole after release, with the latter implicating stronger constitutional protections. *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D. Cal. 2025).

The released individual's interest in avoiding re-detention differs from a detainee's interest in having ongoing periodic reviews of prolonged detention, as revocation implicates a liberty interest that inheres in the Due Process Clause while denial of eligibility for release does not. *Id.* at 1033. Even if immigration detainees must wait months before periodic re-review of their detention, those already released on immigration bond possess an interest in their continued liberty that grows over time and creates a due process right to a hearing before being re-detained. *Id.* at 1031.

Courts apply the three-factor balancing test from *Mathews v. Eldridge* to determine what process is due before revoking parole. See *Mathews v. Eldridge*, 424 U.S. 319 (1976). The first factor—the private interest affected—weighs heavily in favor of parolees, as they have a significant interest in remaining free from physical detention. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1337 (M.D. Ga. 2020). The second factor examines the risk of erroneous deprivation, which courts have found to be high when the government deprives an individual of any procedure before a neutral adjudicator to determine whether he poses a flight risk and a danger to the community. *Moore v. Nielsen*, No. 418CV01722LSCHNJ, 2019 WL 2152582, at 13 (N.D. Ala. May 3, 2019). When noncitizens are arrested immediately after appearing in court with inconsistent justifications and no prior assessment of changed circumstances, the risk of erroneous deprivation is substantial. *Id.*

The third factor—the government's interest—has been found to carry little weight when balanced against constitutional protections. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1340 (M.D. Ga. 2020). Although providing pre-deprivation hearings requires expenditure of finite resources, these costs are far outweighed by the risk of erroneous deprivation of liberty. *Id.* Courts have noted that when an individual did not pose a risk of flight or danger, those factors should be assessed before detention. *Id.* at 1342.

The Eleventh Circuit has repeatedly affirmed the vitality of *Mathews v. Eldridge* in recent decisions. In *Moore v. Nielsen*, the court explicitly relied on the balancing test in *Mathews v. Eldridge* to determine that continued detention without an individualized bond hearing fails to "comport with the 'fundamental fairness' demanded by the Due Process Clause." No. 418CV01722LSCHNJ, 2019 WL 2152582, at 12 (N.D. Ala. May 3, 2019).

The Eleventh Circuit has historically held that excludable aliens do not have the same procedural due process rights in connection with initial revocation of immigration parole as those granted to criminal parolees. *Fernandez-Roque v. Smith*, 734 F.2d 576, 582 (11th Cir. 1984). In *Fernandez-Roque v. Smith*, the Eleventh Circuit ruled that immigration parole is part of the admissions process, and its denial or revocation does not rise to the level of a constitutional infringement. *Id.*

However, this older Eleventh Circuit precedent from 1984 predates the subsequent wave of district court decisions that have found pre-deprivation hearings constitutionally required. The

Eleventh Circuit's position that excludable aliens can raise constitutional challenges to deprivations of liberty or property outside the context of entry or admission reflects a more deferential approach to executive immigration decisions that may be in tension with current constitutional analysis. See *Alexis v. U.S. Att'y Gen.*, 431 F.3d 1291, 1295 (11th Cir. 2005) (quoting *Jean v. Nelson*, 727 F.2d 957, 972 (11th Cir. 1984)) (noting that excludable aliens "can raise constitutional challenges to deprivations of liberty or property outside the context of entry or admission, when the plenary authority of the political branches is not implicated").

V. The Warrantless Civil Immigration Arrest Violated the Fourth Amendment and 8 U.S.C. § 1357(a)(2)

The Fourth Amendment protects "[t]he right of the people to be secure in their persons... against unreasonable searches and seizures." U.S. Const. amend. IV. A civil immigration arrest constitutes a seizure within the meaning of the Fourth Amendment and must therefore comply with both constitutional requirements and the statutory limits imposed by Congress. *Alcocer v. Mills*, 800 F. App'x 860, 865 (11th Cir. 2020). Immigration officers may execute a civil arrest pursuant to an administrative warrant issued under the INA. *C.F.C. v. Miami-Dade Cnty.*, 349 F. Supp. 3d 1236, 1260 (S.D. Fla. 2018). Absent such a warrant, immigration officers may conduct a warrantless arrest only under the narrow circumstances set forth in 8 U.S.C. § 1357(a)(2). *Id.* at 1261. That statute permits a warrantless immigration arrest only where the officer has "reason to believe" the individual is removable **and** where the officer has reason to believe the individual is likely to escape before a warrant can be obtained. Both conditions must be satisfied before a warrantless arrest is permissible.

Those statutory and constitutional requirements were not met here. Petitioner was taken into immigration custody after being arrested by local law enforcement and detained in a county jail. A state court had already set bond, and Petitioner's family posted that bond in the amount of $1,500. At the time ICE assumed custody, Petitioner remained in secure local custody and therefore posed no risk of escape. Because Petitioner was already detained and subject to release only through the formal jail process, there was ample opportunity for immigration authorities to obtain a warrant if they believed an immigration arrest was warranted. Nevertheless, ICE assumed custody of Petitioner without presenting a judicial warrant or an administrative warrant issued pursuant to the INA.

The absence of a warrant is particularly significant because the statutory exception allowing warrantless immigration arrests applies only when immediate action is necessary to prevent escape. *Creedle v. Miami-Dade Cnty.*, 349 F. Supp. 3d 1276, 1296 (S.D. Fla. 2018). That circumstance plainly did not exist here. Petitioner was already in the custody of state authorities, his bond had been processed through the state court system, and his release required the completion of formal jail procedures. Under these circumstances, there was no exigency that could justify a warrantless civil immigration arrest. By taking Petitioner into immigration custody without a warrant and without satisfying the statutory prerequisites for a warrantless arrest, Respondents exceeded the authority granted to them by Congress.

Moreover, Respondents lacked probable cause—or the statutory equivalent "reason to believe"—that Petitioner was removable at the time they assumed custody. *Id.* Petitioner was lawfully paroled into the United States through a designated port of entry pursuant to INA § 212(d)(5) and has remained continuously present in the country since that time. He has a properly filed application for adjustment of status pending with USCIS under the CAA. These facts demonstrate that Petitioner was participating in lawful immigration processes and pursuing a statutory pathway to permanent residence. The government cannot justify a warrantless civil arrest where the available information demonstrates lawful parole and ongoing immigration proceedings rather than an immediate or obvious basis for removability.

Courts have consistently recognized that civil immigration enforcement does not operate outside the protections of the Fourth Amendment. Even in the immigration context, a seizure must be supported by lawful authority. See, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873, 878–82 (1975) (holding that immigration stops must comply with Fourth Amendment standards); *Almeida-Sanchez v. United States*, 413 U.S. 266, 272–73 (1973) (rejecting warrantless immigration searches conducted away from the border). Those principles reflect the fundamental rule that immigration enforcement is not exempt from constitutional limitations. When immigration officers detain an individual without a warrant and outside the narrow circumstances permitted by statute, the resulting detention is unlawful.

Petitioner's continued detention therefore rests upon an unlawful arrest. A detention that flows from an unconstitutional seizure cannot be sustained through habeas corpus review. Because Respondents arrested Petitioner without a judicial warrant, without an administrative immigration warrant, and without circumstances justifying a warrantless arrest under 8 U.S.C. § 1357(a)(2), the seizure violated the Fourth Amendment. Petitioner's continued detention is therefore unlawful under 28 U.S.C. § 2241 and must be remedied through the issuance of the writ.

VI. The Balance of Equities and the Public Interest Support Immediate Release Under Reasonable Conditions of Supervision

Habeas relief is appropriate where a petitioner's custody violates federal law or the Constitution. Petitioner's continued detention serves no legitimate governmental purpose and is inconsistent with both the statutory framework governing immigration detention and the equitable principles that guide habeas review. Petitioner lawfully entered the United States through a designated port of entry and was granted parole pursuant to INA § 212(d)(5). Since that time, he has remained continuously present in the United States and has pursued lawful permanent residence through a properly filed adjustment of status application under the CAA. His presence in the United States has therefore been both authorized and consistent with the statutory pathway Congress created for Cuban nationals seeking lawful status.

The circumstances surrounding Petitioner's arrest further demonstrate that continued detention is unwarranted. A state court evaluated the underlying criminal allegations and determined that release on bond was appropriate. Petitioner's family promptly posted the $1,500 bond ordered by the court, reflecting both the court's assessment that Petitioner did not present a danger to the community and his family's commitment to ensuring his compliance with legal proceedings. ICE nevertheless assumed custody of Petitioner before he could be released from state custody, thereby converting what the state court determined should be a conditional release into prolonged immigration detention without any individualized custody determination.

Petitioner also presents minimal risk of flight. He has resided in the United States since his lawful parole entry, has been authorized to work, and has actively pursued lawful immigration relief through USCIS. Individuals seeking adjustment of status under the CAA have a strong incentive to remain present and comply with all immigration proceedings in order to complete the process toward lawful permanent residence. Detaining such individuals—who are pursuing a congressionally authorized pathway to status—undermines, rather than advances, the orderly administration of immigration law.

The public interest likewise weighs heavily in favor of release. Immigration detention is intended to ensure appearance at proceedings and protect public safety, not to impose punitive confinement on individuals who have complied with immigration processes and remain eligible for lawful status. Reasonable conditions of supervision—including reporting requirements, travel restrictions, or other monitoring measures—can adequately ensure Petitioner's appearance at all future proceedings while preserving the constitutional and statutory limits on immigration detention.

For these reasons, the balance of equities and the public interest strongly favor Petitioner's immediate release, or at a minimum, an order requiring Respondents to provide Petitioner with a prompt individualized custody hearing consistent with the requirements of 8 U.S.C. § 1226(a).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Respondents are unlawfully detaining Petitioner under the wrong statutory scheme, without the individualized custody process required by 8 U.S.C. § 1226(a), and in violation of the Fourth and Fifth Amendments. Prudential exhaustion does not bar review because further administrative process would be futile, and Petitioner's continued detention inflicts an ongoing deprivation of liberty for which habeas relief is the proper remedy.

Accordingly, Petitioner requests that this Court order Respondents to immediately release him under reasonable conditions of supervision. In the alternative, Petitioner requests that this Court order Respondents to provide him, within a prompt and definite time, an individualized custody hearing under 8 U.S.C. § 1226(a) before a neutral adjudicator with authority to grant release on bond or other appropriate conditions. Petitioner further requests such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Arno Lemus___
Arno Javier Lemus
Counsel for Petitioner
Lemus Law Group
1024 NW 102 PL
Miami, Florida 33172
786-816-2795
lemusarno@gmail.com
BAR 0103075

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** was filed via **CM/ECF** and served on all counsels of record on this **10th** day of **MARCH** 202**6**.

Respectfully submitted,

/s/ Arno Lemus
Arno Javier Lemus
Counsel for Petitioner
Lemus Law Group
1024 NW 102 PL
Miami, Florida 33172
786-816-2795
lemusarno@gmail.com
BAR 0103075