

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NELSON PIRES DOS SANTOS
(A-NUMBER )

Petitioner,

v.

WARDEN OF FLORIDA SOFT SIDE
SOUTH (ALLIGATOR ALCATRAZ);
KRISTI NOEM, as United States Secretary
of Homeland Security; GARRETT J. RIPA,
as Field Office Director, U.S. Immigration
and Customs Enforcement; and PAM
BONDI, as United States Attorney General.

Respondents.

Case No.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner, NELSON PIRES DOS SANTOS (“Dos Santos” or “Petitioner”),
by and through undersigned counsel, respectfully files this Petition for Writ of Habeas
Corpus under 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents.
Petitioner seeks immediate release, or alternatively, an order requiring Respondents to
provide the custody review and bond procedures mandated by 8 U.S.C. § 1226. In
support of this Petition, Petitioner alleges:

PRELIMINARY STATEMENT

This habeas petition presents a now-familiar question before this Court: whether
a noncitizen who entered the United States without inspection years ago and has long

resided within the interior of the country is detained under 8 U.S.C. § 1225(b)(2) or under 8 U.S.C. § 1226(a).

The distinction is dispositive. Section 1225(b)(2) mandates detention without bond during removal proceedings. Section 1226(a), by contrast, authorizes detention but guarantees the right to seek release on bond before an Immigration Judge.

Petitioner is a long-term resident arrested inside the United States. He is not an “arriving alien,” nor was he encountered at a port of entry or near the border. Nevertheless, ICE has classified him as an “applicant for admission” subject to mandatory detention under section 1225(b)(2), relying on (1) a July 8, 2025 agency memorandum (the “**ICE Memo**”) that directed officers to treat all individuals present without admission or parole as subject to section 1225(b)(2), regardless of length of residence; and (2) the Board of Immigration Appeals’ precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 221 (B.I.A. 2025) (hereinafter, “*Hurtado*”)—a decision that was vacated by the United States District Court for the Central District of California on February 18, 2026.

The vast majority of district courts throughout the United States, including numerous courts within the Middle District of Florida, have repeatedly rejected that interpretation, holding that individuals already present in the United States who do not fall within the limited exception of § 1226(c) are detained under § 1226(a) and are entitled to bond hearings. *See, e.g., Guaiquire v. Warden, Orange County Jail, et al.*, No. 6:26-cv-169-RBD-RMN, Dkt. 19, 2026 WL 279369, at *2 (M.D. Fla. Feb. 3, 2026) (comprehensive analysis of rationale for joining “hundreds” of courts in concluding

that the government's use of § 1225 to detain noncitizens already present in the United States without hearings is unlawful).¹

Petitioner's detention fits squarely within that now-established pattern.

Additionally, Petitioner qualifies as a member of the nationwide bond-eligible class recognized in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal. 2025), which held that long-term interior noncitizens classified under § 1225(b)(2) are entitled to bond hearings under the INA. The Central District of California entered final declaratory judgment to that effect on December 18, 2025. *Id.* at Dkt. 94.²

ICE's detention decision is independently unlawful because ICE failed to provide a written custody determination on Form I-286 and advise Petitioner of his right to seek bond review as required by 8 C.F.R. § 236.1(g)(1), in violation of the *Accardi* doctrine,³ which prohibits agencies from departing from their own regulations. This regulation exists to protect a recognized liberty interest, and the failure to follow

¹ Petitioner acknowledges the recent decision of the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. 2026), which agreed with the Government's interpretation of the scope of mandatory detention under 8 U.S.C. § 1225(b)(2). The decision is not binding in this circuit. Petitioner further notes the likelihood of a circuit split, in view of the Seventh Circuit's decision that the Government's interpretation of § 1225(b)(2) is unlikely to succeed on the merits, in *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-63 (7th Cir. 2025).

² The entry of final judgment in *Maldonado Bautista* followed the grant of partial summary judgment (Dkt. 81, Nov. 20, 2025), 2025 WL 3289861, at *11, and the Class Certification Order (Dkt. 82, Nov. 25, 2025), 2025 WL 3288403, at *9.

³ *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

it deprived Petitioner of his procedural due process rights in violation of the Fifth Amendment.

Petitioner therefore seeks immediate release, or at minimum, an order requiring Respondents to provide the custody review and bond procedures mandated by § 1226(a).

JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570.

2. The Court has *habeas corpus* jurisdiction pursuant to 28 U.S.C. § 2241 and U.S. Const. art. I, § 9, cl. 2 (the “**Suspension Clause**”), because Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States.

3. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(a)(2)(B) (INA § 242(a)(2)(B)), because Petitioner is not challenging the denial of any discretionary relief. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (INA § 242 does not bar a claim challenging agency authority that does not implicate discretion). Nor is Petitioner asserting any claim arising from the decision or action of the Attorney General to commence proceedings, adjudicate cases, or execute a removal order; accordingly, the jurisdiction-stripping provision at 8 U.S.C. § 1252(g) is not triggered.

Courts construe jurisdiction-stripping provisions narrowly, given the “presumption favoring judicial review of administrative action.” *Kucana v. Holder*, 558 U.S. 233, 251 (2010).

4. This Court may also exercise federal question jurisdiction under 28 U.S.C. § 1331, because Petitioner’s claims arise under the Constitution and laws of the United States, including the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

VENUE

5. Venue properly lies in the United States District Court, Middle District of Florida (Fort Myers Division), pursuant to 28 U.S.C. § 1391(b)(2), because Petitioner is being detained by ICE at the Florida Soft Side South detention center (“**Alligator Alcatraz**”), which is located at 54575 Tamiami Trail E, Ochopee, Collier County, Florida 34141, within the Middle District of Florida. *See* 28 U.S.C. § 89(b) (providing that the Middle District of Florida comprises Collier County).

6. Venue also lies in this judicial district pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are officers, employees, or agencies of the United States acting in their official capacities, and (1) the Warden of Alligator Alcatraz maintains an office in Collier County, Florida, within this judicial district and (2) Petitioner resides in this judicial district.

APPLICATION FOR AN ORDER TO SHOW CAUSE (28 U.S.C. § 2243)

7. Petitioner is in custody for purposes of 28 U.S.C. § 2241.

8. The writ of habeas corpus has long occupied a celebrated role in Anglo-American jurisprudence, “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) (citation omitted) (emphasis added).

9. Under 28 U.S.C. § 2243, a Court must “forthwith” either grant the petition or issue an Order to Show Cause (“OSC”), unless it appears from the face of the petition that Petitioner is not entitled to relief. If an OSC is issued, the Court may direct Respondents to file a return within the time period the Court deems appropriate.

10. Given the ongoing deprivation of liberty at issue, Petitioner respectfully requests that the Court expedite consideration of this Petition and issue an OSC directing Respondents to show cause why the writ should not be granted, or alternatively grant such other relief as the Court deems just and proper.

PARTIES

11. Petitioner **NELSON PIRES DOS SANTOS** is a native and citizen of Brazil who entered the United States on or about 2000. He is presently detained by U.S. Immigration and Customs Enforcement (“ICE”) at Alligator Alcatraz, within the jurisdiction of the Fort Myers Division of the Middle District of Florida.

12. Respondent **WARDEN OF FLORIDA SOFT SIDE SOUTH** (“**Warden**”) is sued in his or her official capacity as warden of the detention center where Petitioner is currently detained. Warden is thus Petitioner’s immediate physical custodian. *See* 28 U.S.C. § 2243.

13. Respondent **KRISTI NOEM** (“**Noem**”) is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (“**DHS**”). Under the Homeland Security Act of 2002, Pub. L. 107-296, Noem is responsible for the administration of the DHS; the implementation and enforcement of the immigration laws of the United States pursuant to 8 U.S.C. § 1103; the oversight of ICE, the agency responsible for Petitioner’s detention, including the nationwide policies governing ICE’s detention authority and the interpretation of 8 U.S.C. §§ 1225(b)(2) and 1226(a)(1); and the supervision of Respondent Ripa. Because Petitioner’s continued detention arises from DHS statutory authority and policy, Noem is a proper respondent in this action.

14. Respondent **GARRETT J. RIPA** (“**Ripa**”) is sued in his official capacity as Field Office Director, Miami Field Office, Immigration and Customs Enforcement. In this capacity, Ripa manages ICE Enforcement and Removal Operations (“**ERO**”) for the entire State of Florida, Puerto Rico, and the U.S. Virgin Islands as well as the Migrant Operations Center in Guantanamo Bay, Cuba. Ripa is the senior ICE detention official in this judicial district and, in that role, is a legal custodian of Petitioner. Ripa exercises direct supervisory authority over Petitioner’s continued detention and has the delegated power to release him.

15. Respondent **PAM BONDI** (“**Bondi**”) is sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice (“**DOJ**”). The Executive Office for Immigration Review (“**EOIR**”)—including the

Immigration Courts and the Board of Immigration Appeals (“BIA”)—is housed within DOJ and operates under the supervision and control of the Attorney General pursuant to 8 C.F.R. §§ 1003.0–1003.1. Because Petitioner seeks a constitutionally adequate custody hearing before an Immigration Judge, Bondi is the official responsible for the adjudicatory framework that Petitioner invokes. In addition, 8 U.S.C. § 1226 authorizes the arrest and detention of noncitizens “on a warrant issued by the Attorney General.” Although many enforcement functions were transferred to DHS under the Homeland Security Act, the statutory detention scheme applicable to Petitioner remains textually lodged in the Attorney General. Petitioner’s arrest, continued detention, and the denial of any custody hearing therefore arise under a statutory structure for which Bondi bears ultimate legal responsibility.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Exhaustion does not bar this petition. The exhaustion requirement of 8 U.S.C. § 1252(d)(1) applies only to review of final orders of removal and is not jurisdictional. *Santos-Zacaria v. Garland*, 598 U.S. 411, 413 (2023); *Kemokai v. U.S. Att’y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023). Petitioner does not challenge a final order of removal. He challenges the legality of his present detention under 28 U.S.C. § 2241. Section 1252(d)(1) therefore does not apply.

A. Statutory exhaustion does not apply to detention challenges.

17. The general habeas statute, 28 U.S.C. § 2241, contains no exhaustion requirement. The INA mandates exhaustion only for judicial review of final removal orders. 8 U.S.C. § 1252(d)(1). Custody determinations are separate from removal

proceedings. See *Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982); *Ulysee v. Dep't of Homeland Sec.*, 291 F. Supp. 2d 1318, 1324 (M.D. Fla. 2003) (holding that § 1252(d)(1) applies to removal orders, not detention).

B. Prudential exhaustion is excused where no administrative remedy exists.

18. Prudential exhaustion is not required where no genuine opportunity for adequate relief exists or where resort to administrative procedures would be futile. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992); *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982).

19. Courts analyzing futility in the immigration detention context have found that when agency positions predetermine outcomes, requiring exhaustion of administrative remedies would be futile and is therefore excused. Courts in Florida have applied this principle when immigration judges rely on invalidated policies or legally incorrect statutory interpretations to deny bond jurisdiction, finding the predetermined outcome satisfies exceptions to exhaustion requirements.

20. Respondents assert that Petitioner is detained under 8 U.S.C. § 1225(b)(2) and that under the binding agency precedent of *Hurtado*,⁴ immigration judges lack

⁴ Although *Hurtado* was vacated by Judge Sunshine in *Maldonado Bautista*, *supra*, at Dkt. 116 (C.D. Cal. Feb. 18, 2026), the *vacatur* has been temporarily stayed by the Ninth Circuit Court of Appeals pending a ruling on the Government's emergency motion for a stay pending appeal. *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044 (9th Cir. Mar. 6, 2026) (Dkt. 5.1). As a result of the temporary stay, Respondents continue to assert that *Hurtado* is binding and thus necessitates mandatory detention of noncitizens situated like Dos Santos.

jurisdiction to conduct bond redeterminations for detainees so classified. 8 C.F.R. § 1003.1(g)(2).

21. Florida courts consistently excuse exhaustion requirements when Immigration Judges cite agency policies to deny bond jurisdiction. For example, in *Patel v. Hardin*, 2025 WL 3442706 (2025), the Middle District of Florida found that “requiring Patel to make an administrative request for a bond hearing would be futile because the result is predetermined,” noting that the Immigration Court concluded that Patel was not entitled to relief “because he was being held under 1225(b)(2).”

22. The Government cannot simultaneously maintain that Petitioner is subject to mandatory detention under § 1225(b)(2) and require him to pursue a bond remedy that the agency has definitively declared unavailable. Because no meaningful administrative relief exists, exhaustion is excused. *See Puga v. Asst. Field Office Director, Krome North Service Processing Center*, No. 25-24535-civ-Altonaga, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025) (because the outcome of a bond appeal to the BIA is a foregone conclusion under *Hurtado*, “any prudential exhaustion requirements are excused for futility.”).

FACTUAL AND PROCEDURAL BACKGROUND

23. Dos Santos is a native and citizen of Brazil, born [REDACTED], 1970, in Itanhomi, Minas Gerais, Brazil. *See* photocopy of Birth Certificate with English translation, attached as **Exhibit 1**.

24. Upon information and belief, Dos Santos entered the United States without inspection in the summer of 2000, having crossed the border from Matamoros, Tamaulipas, Mexico, into Brownsville, Texas.

25. Dos Santos was not apprehended upon his arrival in the United States and has never had any encounter with DHS or ICE prior to the event leading to his current detention.

26. After arriving in the United States, Dos Santos settled in Florida, first living for approximately two years in Pompano Beach, and then moving to Fort Myers, where he resided for approximately twelve years.

27. Since 2014, Dos Santos has resided in LaBelle, Florida 33935 with Carrie Frazee Dos Santos, his United States citizen wife, whom he married on May 2, 2024 in Fort Myers, Florida. *See* State of Florida Marriage Record, attached as **Exhibit 2**.

28. Upon information and belief, Dos Santos has no criminal convictions in the United States or anywhere else in the world.

29. During his two and-one-half decades of residence in the United States, Dos Santos has established familial and social ties, and has lived as a law-abiding member of his community.

30. Dos Santos is the beneficiary of a pending I-130 filed by his U.S. citizen spouse, demonstrating strong family ties and a concrete effort to pursue lawful immigration status. *See* copy of Form I-797C, Notice of Action, Receipt No.



attached as **Exhibit 3**.

31. On January 17, 2026, Dos Santos was arrested pursuant to a traffic stop and detained in Lee County jail where he was charged with operating a motor vehicle without a valid license, a second-degree misdemeanor pursuant to § 322.03(1), Fla. Stat. *See* Lee County Sheriff's Office Booking No. 10181815, attached as **Exhibit 4**.

32. On January 18, 2026, pursuant to Florida Statutes Chapter 908, the Lee County Sheriff's Office provided notice of a federal immigration detainer to the County Court of the 20th Judicial Circuit in and for Lee County, Florida, Case No.  *See* **Exhibit 5**.

33. Upon information and belief, ICE also issued a Form I-247A, *Immigration Detainer – Notice of Action*, and a Form I-200, *Warrant for Arrest of Alien*, to the Lee County Sheriff's Office, under authority of INA § 236(a).

34. Dos Santos was held in the Lee County jail for sixty days, until March 18, 2026, when a final disposition of “adjudication withheld” was entered as to the misdemeanor traffic offense. *See* **Exhibit 6**.

35. On March 19, 2026, ICE took Dos Santos into custody, processed him through its Fort Myers ERO sub-office, and transported him to Alligator Alcatraz, where he remains detained.

36. ICE issued a Form I-862, *Notice to Appear* (“NTA”), placing him in INA § 240 removal proceedings.

37. The NTA charges Dos Santos with removability under section 212(a)(6)(A)(i) of the INA as an alien present in the United States without being admitted or paroled.

38. By charging Dos Santos under § 212(a)(6)(A)(i), DHS placed him squarely within INA §240 removal proceedings—not as an “arriving alien” subject to detention under INA § 235(b).

39. Upon information and belief, DHS has failed to issue Dos Santos a Form I-286, *Notice of Custody Determination*. Had ICE complied with its regulatory duty to provide Dos Santos with a custody determination, Dos Santos would have been provided with notice of his right to a custody determination before an Immigration Judge.

STATUTORY FRAMEWORK

A. 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2), applies to Dos Santos

40. 8 U.S.C. § 1225 (INA § 235) governs inspection of noncitizens seeking admission at ports of entry or their functional equivalents. Section 1225(b)(2)(A) mandates detention where an immigration officer determines that an applicant for admission “is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

41. By contrast, 8 U.S.C. § 1226(a) (INA § 236(a)) governs arrest and detention of noncitizens already present in the United States pending removal proceedings. Section 1226(a) provides that a noncitizen “may be arrested and detained

pending a decision on whether the alien is to be removed. 8 U.S.C. § 1226(a) (emphasis added). Under 8 U.S.C. § 1226(a)(2), the Attorney General may release such an individual on bond or conditional parole.

42. The Supreme Court has long recognized the distinction between individuals seeking entry and those already present in the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States”); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission...and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely on the threshold of initial entry.”).

43. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court explained that § 1225(b)(2) governs the detention of individuals “seeking entry” to the United States, *id.* at 297, and § 1226 “applies to aliens already present in the United States.” *Id.* at 303.

44. Noncitizens detained under § 1226(a) receive bond hearings at the outset of detention. *Id.* at 306; *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579-80 (2022).

45. Dos Santos was arrested inside the United States after residing here for more than 25 years. He was not encountered at a port of entry, was not placed into expedited removal, and was served with a Notice to Appear initiating removal

proceedings under INA § 240. His removability charge under INA § 212(a)(6)(A)(i) places him squarely within ordinary removal proceedings—not within the inspection framework of § 1225(b).

46. Under this statutory structure, noncitizens arrested in the United States and placed into § 240 proceedings fall within the detention framework of § 1226(a), unless subject to § 1226(c). *See, e.g., Jacobo v. Ripa*, 2026 WL 145460, at *1 (M.D. Fla. Jan. 20, 2026).

47. Prior to July 8, 2025, DHS routinely detained such individuals under § 1226(a). *See Zumba v. Bondi*, 2025 WL 2753496, at *4 (D.N.J. Sept. 26, 2025) (noting respondents’ admission that interior arrestees were previously detained under § 1226(a)).

48. On July 8, 2025, DHS issued internal guidance instructing officers to classify all individuals present without admission or parole as “applicants for admission” under § 1225(b)(2). *See ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission*, AILA Doc. No. 25071607 (July 8, 2025), <https://perma.cc/5GKM-JYGX>. Even if characterized as interpretive guidance, the ICE Memo cannot override the statutory framework enacted by Congress. While the Supreme Court has recognized that immigration officials have ‘broad discretion’ in carrying out the immigration laws, *see Arizona v. United States*, 567 U.S. 387, 396 (2012), that discretion must be exercised within the confines established by Congress because, as the Supreme Court has repeatedly held, “Congress—not the President or Executive

Branch officials—has the ‘complete and absolute power’ over the subject of immigration.” *Florida v. United States*, 660 F. Supp. 3d 1239 (2023).

49. After *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), courts independently interpret the INA without *Chevron* deference. Courts therefore owe no deference to agency interpretations that conflict with statutory text and structure.

50. In *Hurtado*, *supra*, the BIA reinforced the policy change effectuated by the ICE Memo, holding that all noncitizens who are present in the United States without admission must be deemed “applicants for admission” as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and therefore must be detained for the duration of their removal proceedings.

51. Numerous federal district courts in Florida have concluded that long-term interior noncitizens arrested within the United States are detained under § 1226(a), not § 1225(b)(2), notwithstanding the ICE Memo and the BIA’s decision in *Hurtado*.⁵

⁵ See, e.g., *Ardon Ramirez v. Warden of Florida Soft Side South*, No. 2:26-cv-00202-KCD-DNF, Dkt. 8, 2026 WL 517158 (M.D. Fla. Feb. 25, 2026); *Rodriguez v. Quinones, et al.*, No. 6:26-cv-187-PGB-DCI, Dkt. 17 (M.D. Fla. Feb. 5, 2026); *Guaiquire v. Warden, Orange County Jail, et al.*, 2026 WL 279369 (M.D. Fla. Feb. 3, 2026); *Diego Trujillo Claros v. Quinones et al.*, 2026 WL 251807 (M.D. Fla. Jan. 30, 2026); *Gimenez Rivero v. Mina*, 2026 WL 199319 (M.D. Fla. Jan. 26, 2026); *Izaguirre v. Mordant*, 2026 WL 194214 (M.D. Fla. Jan. 26, 2026); *Vasquez-Vail v. Field Office Director (Miami Field Office)*, 2026 WL 174061 (M.D. Fla. Jan. 22, 2026); *Jacobo v. Ripa*, 2026 WL 145460 (M.D. Fla. Jan. 20, 2026); *Gutierrez v. Miami Field Office Director, et al.*, 2026 WL 100724 (M.D. Fla. Jan. 14, 2026); *Ortiz v. Mordant*, 2026 WL 44815 (M.D. Fla. Jan. 7, 2026); *Tomas v. Warden of Florida Soft Side South*, 2026 WL 35283 (M.D. Fla. Jan. 6, 2026); *Nodarse Pereira v. Bondi*, 2026 WL 709758 (S.D. Fla. Mar. 13, 2026); *Silva Cueva v. Bondi*, 2026 WL 693129 (S.D. Fla. Mar. 12, 2026); *Figuera v. Ripa*, 2026 WL 467569 (S.D. Fla. Feb. 19, 2026); *Frenes v. Walker*, 2026 WL 710057 (S.D. Fla. Mar. 2, 2026); *Sanchez v. Noem*, 2026 WL 218739 (S.D. Fla. Jan. 20, 2026); *Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Puga v. Assistant Field Office Director, Krome North Service Processing Center, supra*.

52. Reading § 1225(b)(2) to encompass all noncitizens present without admission would render significant portions of § 1226—including § 1226(c)—superfluous and collapse Congress’s carefully structured detention scheme. *See Oliveira Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

53. Congress’s recent amendment to § 1226(c) through the Laken Riley Act confirms this structure. Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025). Congress expressly mandated detention for certain noncitizens present without admission who have been charged with or convicted of specified offenses. If § 1225(b)(2) already required mandatory detention for all noncitizens present without admission, this amendment would have been unnecessary. *See Guaiquire v. Warden, Orange County Jail, et al.*, No. 6:26-cv-169-RBD-RMN, Dkt. 19, at p. 17.

54. Because Dos Santos was arrested inside the United States, placed in full removal proceedings, and does not fall within § 1226(c), his detention is governed by § 1226(a), and he is entitled to a bond hearing.

B. The *Maldonado Bautista* decision supports Petitioner’s Bond Eligibility.

55. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Dkt. 94 (C.D. Cal. Dec. 18, 2025), the district court entered final declaratory judgment concluding that certain long-term interior noncitizens classified under § 1225(b)(2) are detained under § 1226(a) and entitled to a bond hearing.

56. Specifically, the *Maldonado Bautista* court certified a bond eligible class (the “**Bond Eligible Class**”), consisting of all noncitizens in the United States without

lawful status, including Dos Santos, 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) at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista*, 2025 WL 328403, at *1.

57. The *Maldonado Bautista* judgment—extended expressly to the entire nationwide Bond Eligible Class—specifically renounced the DHS policy that instructed agencies to treat these individuals as "applicants for admission" subject to mandatory detention, thus rendering the DHS policy upon which Immigration Judges and the Executive Office for Immigration Review have cited as grounds for its denial of bond hearings, a nullity.

58. On February 18, 2026, Judge Sunshine Suzanne Sykes further granted Plaintiffs' motion to enforce the judgment and expressly vacated the BIA's precedential decision in *Hurtado* under the Administrative Procedure Act. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, Dkt. 116 (C.D. Cal. Feb. 18, 2026). The court held that the agency interpretation embodied in *Hurtado* could not lawfully be applied to members of the certified class and ordered class-wide notice of the vacatur.

59. The Government has appealed that judgment to the Ninth Circuit. See *Maldonado Bautista v. U.S. Dep't of Homeland Security*, No. 25-7958 (9th Cir. 2026). On March 6, 2026, the Ninth Circuit entered an order which limited the Bond Eligible Class to the Central District of California, temporarily stayed the final declaratory judgment to the extent that it extends beyond the Central District of California, and

temporarily stayed the ruling vacating *Hurtado*, pending a ruling on the Government's emergency motion for a stay pending appeal. *Id.* at Dkt. 5.1 (Mar. 6, 2026).

C. ICE's Failure to Issue a Custody Determination Violates Binding Regulations and Is Not Harmless

60. 8 C.F.R. § 236.1 establishes the framework governing DHS custody determinations under 8 U.S.C. § 1226 and expressly contemplates that a noncitizen subject to such a determination may seek review before an Immigration Judge pursuant to 8 C.F.R. § 1003.19.

61. Although 8 C.F.R. § 236.1 affords DHS discretion in deciding whether to release or detain a noncitizen, the regulation necessarily presupposes that a custody determination will be made and communicated in a manner that enables the detainee to invoke the right to seek review before an Immigration Judge. That right has no practical meaning absent notice of the custody determination and the availability of review.

62. In practice, DHS implements this regulatory framework through issuance of Form I-286, *Notice of Custody Determination*, which serves as the mechanism by which DHS communicates the basis for detention and advises the detainee of the right to seek bond redetermination. By detaining Petitioner without issuing any written custody determination or providing notice of review rights, DHS has failed to implement the regulatory scheme governing custody under § 1226.

63. The regulatory framework thus protects a recognized liberty interest—the opportunity to seek release from civil detention through prompt review before an

Immigration Judge. The denial of notice and access to that process deprives Petitioner of the very procedural safeguard the regulation is designed to provide.

64. An agency's failure to follow its own binding regulations renders its action invalid under the *Accardi* doctrine. *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Where, as here, DHS has exercised its detention authority while disregarding the procedures that give effect to the detainee's right to seek review, the resulting detention is procedurally unlawful.

65. This violation is not harmless. By failing to provide notice of any custody determination or the right to seek review, DHS has effectively insulated its detention decision from the regulatory review process contemplated by § 236.1 and § 1003.19. Petitioner has therefore been subjected to ongoing confinement without any meaningful opportunity to challenge his detention.

66. Under these circumstances, remand for further administrative process would not cure the defect. Petitioner is presently detained pursuant to a custody determination that has never been lawfully implemented in accordance with governing regulations. Because the regulatory violation has resulted in continued detention without access to the required review process, the appropriate remedy is immediate release, or, at minimum, an order requiring prompt compliance with the regulatory framework and an individualized custody determination before an Immigration Judge. The writ of habeas corpus exists precisely to remedy unlawful executive detention where no adequate process has been afforded.

CONSTITUTIONAL FRAMEWORK

67. The Due Process Clause of the United States Constitution prohibits the federal government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

68. It is well-established that due process protections extend to noncitizens physically present in the United States, regardless of immigration status. *Demore v. Kim*, 538 U.S. 510, 523 (2003).

69. Freedom from physical restraint lies at the core of the liberty protected by the Due Process clause. *Zadvydas, supra*, 533 U.S. at 690.

70. Procedural due process requires that the Government provide constitutionally adequate procedures before depriving an individual of a significant liberty interest. *Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Eldridge* test balances: (1) the private interest at stake; (2) the risk of erroneous deprivation under existing procedures and the value of additional safeguards; and (3) the Government's interests.

71. District courts throughout the United States have recognized that noncitizens already in the United States who have “established a life here—albeit without authorization,” possess “a strong liberty interest in their freedom from detention.” *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025).

72. Even assuming *arguendo* that Respondents' statutory interpretation of section 1225(b)'s mandatory detention provision is correct (which it is not), Petitioner's detention independently violates procedural due process as applied to him. *See, e.g., Hassen v. Noem*, No. EP-26-cv-00048-DB, Dkt. 8, fn. 1 (W.D. Tex. Feb. 9,

2026) (holding that habeas relief was warranted despite Fifth Circuit decision in *Buenrostro-Mendez, supra*, which did not address independent procedural due process violations); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025).

73. Upon violation of a noncitizen's due process rights, a habeas court has the power to order the immediate conditional release of the individually unlawfully detained. *Gimenez Rivero v. Mina*, No. 6:26-cv-66, 2026 WL 199319, at *4-5 (M.D. Fla. Jan. 26, 2026), citing *Boumediene v. Bush*, 553 U.S. 723, 779 (2008).

74. The Supreme Court has stated that “[h]abeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (internal citations omitted).

CLAIMS FOR RELIEF

COUNT I

Violation of 8 U.S.C. § 1226 and associated regulation

75. Petitioner realleges paragraphs 1 through 74 as if fully set forth herein.

76. Petitioner's continued detention without a bond hearing violates 8 U.S.C. § 1226 (INA § 236), because Petitioner was residing in the United States for more than twenty-five years prior to his being placed in removal proceedings. As such, Respondents have unlawfully subjected Petitioner to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2), rather than the discretionary detention framework of § 1226(a).

77. By charging Petitioner under INA § 212(a)(6)(A)(i) as an individual present in the United States without being admitted or paroled, DHS placed Petitioner

in removal proceedings under INA § 240, not as an “arriving alien” subject to detention under INA § 235(b). Under this statutory framework, Petitioner’s detention is governed by § 1226(a), which affords the opportunity to seek release on bond before an Immigration Judge.

78. Respondents’ classification of Petitioner under § 1225(b)(2) is not compelled by statute but instead reflects an agency policy that has been widely rejected by federal courts. By applying mandatory detention to a long-term interior resident, Respondents have acted in excess of their statutory authority.

79. Independently, even assuming *arguendo* that Respondents’ statutory interpretation were correct, Petitioner’s continued detention is unlawful because DHS has failed to comply with the regulatory framework governing custody determinations under § 1226.

80. 8 C.F.R. § 236.1 establishes that noncitizens detained under § 1226 may seek review of their custody before an Immigration Judge pursuant to 8 C.F.R. § 1003.19. Although the regulation affords DHS discretion in deciding whether to release or detain, it necessarily presupposes that a custody determination will be made and communicated in a manner that enables the detainee to invoke the right to seek review.

81. That right has no practical meaning absent notice of the custody determination and the availability of review. In practice, DHS implements this regulatory framework through issuance of Form I-286, which communicates the basis for detention and advises the detainee of the right to seek bond redetermination.

82. By detaining Petitioner without issuing any written custody determination or providing notice of the right to seek review, DHS has failed to implement the regulatory scheme governing custody under § 1226 and has deprived Petitioner of the opportunity to obtain prompt review of his detention before an Immigration Judge.

83. This failure violates binding agency regulations and renders Petitioner's detention procedurally unlawful under the *Accardi* doctrine.

84. By failing to provide notice or a mechanism to invoke custody review, DHS has effectively insulated its detention decision from the regulatory review process contemplated by §§ 236.1 and 1003.19, resulting in Petitioner's continued confinement without meaningful procedural safeguards.

85. Under these circumstances, Petitioner is presently detained pursuant to a custody determination that has never been lawfully implemented in accordance with governing regulations. Because the defect has resulted in ongoing detention without access to required review procedures, the appropriate remedy is immediate release, or, at minimum, an order requiring prompt compliance with the regulatory framework and an individualized custody determination before an Immigration Judge.

COUNT II
Unlawful Detention in Disregard of
Maldonado Bautista Class-Wide Declaratory Relief

86. Petitioner realleges paragraphs 1 through 74 as if fully set forth herein.

87. In *Maldonado Bautista v. Santacruz*, *supra*, the United States District Court for the Central District of California granted final judgment on December 18, 2025 in

favor of the Bond Eligible Class, to wit, individuals who (1) entered without inspection, (2) were not apprehended at or near the border, and (3) were not subject to 8 U.S.C. § 1226(c) at the time of DHS's initial custody determination.

88. The court held that DHS's nationwide policy of subjecting such individuals to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)—including reliance on the ICE Memo and *Hurtado*—violates the INA. *Maldonado Bautista, supra*, at Dkt. 94. The court declared that class members are detained, if at all, under 8 U.S.C. § 1226(a) and are entitled to an individualized bond hearing. *Id.*

89. Petitioner satisfies the criteria of the Bond Eligible Class and is therefore detained under § 1226(a).

90. By continuing to detain Petitioner under § 1225(b)(2)(A) and denying him a bond hearing under § 1226(a), Respondents act contrary to law and in excess of statutory authority. Habeas relief is warranted where detention exceeds the bounds authorized by Congress. *See Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

COUNT III
Violation of the Due Process Clause of the Fifth Amendment
(Alternative Ground for Relief)

91. Petitioner realleges paragraphs 1 through 74 as if fully set forth herein.

92. Petitioner has a substantial liberty interest in freedom from civil detention pending removal proceedings. *See Zadvydas*, 533 U.S. at 690; *Addington v. Texas*, 441 U.S. 418, 427 (1979).

93. ICE detained Petitioner without issuing a written custody determination or advising him of any opportunity to seek bond review. As a result, Petitioner has

been confined without any individualized determination of flight risk or danger to the community.

94. Under the *Mathews* framework, Petitioner's continued detention without a bond hearing violates procedural due process because (i) the private interest at stake—freedom from prolonged civil detention—is profound; (ii) the risk of erroneous deprivation is substantial where an individual is categorically denied access to a bond hearing based solely on agency classification, without any individualized assessment; and (iii) the government's interests in administrative efficiency or removal do not justify denying a meaningful opportunity to seek release, particularly where Congress has provided for bond eligibility under § 1226(a).

95. The denial of any individualized bond determination renders Petitioner's detention constitutionally deficient, even apart from the statutory and regulatory violations described above.

96. To the extent Respondents rely on a categorical reclassification under § 1225(b)(2) to deny bond eligibility, that application of mandatory detention—without individualized review and without meaningful procedural safeguards—violates the Fifth Amendment as applied to Petitioner.

97. District courts throughout the country are increasingly recognizing that immediate habeas release, rather than an individualized bond hearing, is the appropriate remedy when immigration detention violates constitutional due process. As stated in *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025), bond hearings are “no substitute for the requirement that

ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.”

98. Petitioner therefore seeks immediate release, or, at minimum, a constitutionally adequate bond hearing before an Immigration Judge.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, NELSON PIRES DOS SANTOS, respectfully prays that this Honorable Court:

1. Assume jurisdiction over the matter;
2. Issue an Order to Show Cause ordering Respondents to show cause, within a time set by the Court, why this Petition should not be granted;
3. Grant the Petition and issue the writ of habeas corpus, finding that Respondents’ continued detention of Petitioner is unlawful;
4. Order Petitioner’s immediate release from custody, on the ground that Respondents have failed to lawfully implement a custody determination in accordance with governing statutes and regulations, and the Due Process Clause of the United States Constitution, thereby resulting in detention without the procedural safeguards required by law;
5. Alternatively, if the Court declines to order immediate release, order Respondents to comply forthwith with 8 U.S.C. § 1226(a) and its implementing regulations, including: providing Petitioner with a prompt individualized bond

hearing before an Immigration Judge, at which Respondents bear the burden of justifying continued detention;

6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority;

7. Grant any other and further relief this Court deems just and proper.

EQUAL ACCESS TO JUSTICE ACT

Dos Santos has retained the undersigned counsel to represent him in this matter and has agreed to pay counsel a reasonable attorney's fee, plus costs and expenses. Dos Santos therefore seeks an award of his attorney's fees and costs incurred in this lawsuit under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412.

Dated: March 20, 2026

Respectfully submitted,

/s/Howard Jerome Levine
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COUNSEL'S VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner as his attorney. I have discussed extensively the events described in this Petition with the Petitioner's wife Carrie Frazee Dos Santos and I have reviewed all documentation made available

to me. On the basis of those discussions and my review of the supporting documentation,

I DECLARE UNDER PENALTY OF PERJURY pursuant to 28 U.S.C. § 1746, that the statements made and 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/Howard J. Levine
Howard J. Levine, Esq.

March 20, 2026