UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

CASE NO: _____

JOSE LUIS DONAYRE FLORES,
([redacted])

Petitioner,

v.

WARDEN, *Florida Soft Side South Detention Center;* GARRETT J. RIPA, *Field Office Director of U.S. Immigration and Customs Enforcement Miami Office;* TODD LYONS, *Acting Director of Immigration and Customs Enforcement;* KRISTI NOEM, *Secretary of the United States Department of Homeland Security*; and PAM BONDI, *Attorney General of the United States, in their official capacities*,

Respondents.

_____)

PETITION FOR WRIT OF HABEAS CORPUS, FOR IMMEDIATE RELEASE & STAY OF REMOVAL

INTRODUCTION

1. Petitioner, JOSE LUIS DONAYRE FLORES, brings this Petition for Writ of Habeas Corpus to seek enforcement of their rights under 28 U.S.C. § 2241.

2. Petitioner is a Peruvian citizen born on [redacted] in Ica, Peru. Petitioner entered the United States on or about December 8, 2022 through Eagle Pass, Texas. Petitioner has lived in the country ever since.

3. Approximately four (4) years later, on or about March 2026, Petitioner was detained by local law enforcement, and was thereafter taken to the local police department, where members of U.S. Immigration and Customs Enforcement were present and detained him.

4. Petitioner has been detained in immigration custody since March of 2026, even though no neutral decisionmaker has conducted a hearing to determine whether this incarceration is warranted based on danger or flight risk.

5. Petitioner's prolonged detention also violates the Due Process Clause of the Fifth Amendment as his detention has become both prolonged and unreasonable.

6. Petitioner hereby petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, specifically determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention, as well as determine that Petitioner's detention is not mandatory and order Petitioner's immediate release, with appropriate conditions of supervision if necessary, taking into account Petitioner's ability to pay a bond.

7. Petitioner also respectfully requests this Court to enjoin Respondents from removing Petitioner pending resolution of this action.

8. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and order Petitioner's release within 48 hours unless Respondents schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government cannot meet its burden, the immigration judge shall order Petitioner's

release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

CUSTODY

9. Petitioner is presently detained at Florida Soft Side South, located in Ochopee, Florida. under direct control and custody of Respondents and Respondents' agents, who are responsible for all decisions and actions regarding the Petitioner's detention at this facility.

JURISDICTION

10. This action arises under the United States Constitution and the Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 et seq. ("INA").

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). 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. § 165.1

VENUE

12. Venue in this District is proper under 28 U.S.C. § 1391(e)(2) because the Officer in Charge who makes custody decisions in Petitioner's case is located within this judicial district and Petitioner is detained within this judicial district; and venue is proper under § 1391(b)(2) because a substantial part of the events giving rise to these claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a

return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

PARTIES

15. Petitioner, a Peruvian citizen, is in the custody, and under the direct control, of Respondents and their agents at Florida Soft Side South.

16. Respondent Warden of Florida Soft Side South is the acting Warden of Florida Soft Side South, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

17. Respondent Garret J. Ripa, in his official capacity as Field Office Director of U.S. Immigration and Customs Enforcement, Miami Office, is responsible for the Miami Field Office of ICE with administrative jurisdiction over Petitioner's case. They are legal custodian of Petitioner and are named in their official capacity.

18. Respondent Todd Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement, has administrative jurisdiction over Petitioner's case and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Lyons is a legal custodian of Petitioner.

19. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

21. Petitioner is a native and citizen of Peru, and has resided in the United States since approximately December 8, 2022 with his U.S. Citizen Wife, Stephanie Sandoval, and his Wife's family, including Perla A. Gkinis, whom Petitioner will be residing with upon release. A true and correct copy of Ms. Gkinis' Affidavit is attached hereto as **Exhibit "A."**

22. Petitioner has resided continuously in the United States for approximately three and a half years after he entered the United States.

23. Petitioner entered the United States on December 8, 2022 through Eagle Pass, Texas and was thereafter paroled. A true and correct copy of the Department of Homeland Security Parole is attached hereto as **Exhibit "B."**

24. Petitioner pursued immigration relief after arriving in the United States. He filed an Application for Asylum and for Withholding of Removal (Form I-589), stating that he fled Peru out of fear for his own safety, as [redacted] A true

and correct copy of the Application for Asylum and for Withholding of Removal is attached hereto as **Exhibit "C."**

25. Petitioner's Application for Asylum and for Withholding of Removal (Form I-589) was received on May 26, 2023. A true and correct copy of the Confirmation Notice is attached hereto as **Exhibit "D."**

26. Following Petitioner's submission of Asylum paperwork, he attended a biometrics appointment in connection with his asylum application on or about June of 2023. He was later issued a Notice of Forwarding to EOIR dated July 1, 2025, stating that USCIS was forwarding Petitioner's Form I-589 to the immigration court and that the original USCIS receipt date would be treated as the filing date for one-year-deadline purposes. *See Id.*

26. Petitioner has also sought lawful status through his marriage to a United States Citizen, Steophanie Sandoval. Following his lawful marriage, Petitioner filed an I-130 Petition for Alien Relative. A receipt notice reflecting that the petition was filed, was received on December 16, 2025. A true and correct copy of the I-130 Notice of Receipt is attached hereto as **Exhibit "E."**

27. Additionally, Petitioner filed an Application for Employment Authorization, which was approved by USCIS as Class C08, showing validity from November 28, 2023 through November 27, 2028. A true and correct copy of the I-797 Notice of Action is attached hereto as **Exhibit "F."**

28. Thereafter, Petitioner sought meaningful employment as a chef in Florida. Specifically, the majority of Petitioner's employment history consists of his journey to becoming sous chef at [redacted], located at [redacted] Coral Gables, FL 33134. Petitioner has been employed there since January 10, 2026 through the present. Petitioner is also

currently employed as a Private Chef, working for numerous individuals seeking his expertise. He has been doing so from August 1, 2025 through the present. Between January 10, 2024 through October 31, 2025, Petitioner worked as a line cook for renowned restaurants such as Amazonico, Soho Beach House, Soho Pool House, and Jarana Aventura, all located in Florida.

29. On or about March 1, 2026, Petitioner was arrested in Miami Beach, Florida, following a domestic incident reported at his apartment that he shares with his wife, Ms. Sandoval. Following the arrest, Ms. Sandoval executed a Sworn Waiver of Prosecution dated March 4, 2026. In the sworn statement, Ms. Sandoval testifies, among other things, that she and Petitioner were married, that she did not fear Petitioner, and that Petitioner did not touch her against her will, nor did she wish to pursue prosecution. A true and correct copy of Stephanie Sandoval's Affidavit is attached hereto as **Exhibit "G."**

30. The Miami Dade State Attorney's Office thereafter abandoned the criminal matter on April 10, 2026 and filed a No Action Memorandum, formally announcing that no further action would be taken in the criminal case against the Petitioner. Thus, the very criminal matter precipitating Petitioner's current immigration detention is no longer being prosecuted by the State of Florida. A true and correct copy of the No Action Memorandum is attached hereto as **Exhibit "H."**

31. Despite the collapse of the underlying criminal case, Petitioner remains in immigration detention without having received a meaningful opportunity to seek release on bond before an Immigration Judge.

32. Petitioner is not a flight risk or a danger to the community. He has substantial ties to the United States, including his Fiance and long-term residence, and no history of criminal

conduct. He has a stable residence available to him upon release and intends to comply with all court requirements.

33. Petitioner's substantial ties to the United States include his wife, his place of employment, and his friends, who have all expressed willingness to assist with his care and compliance with any conditions of release. A true and correct copy of letters of support are attached hereto as Composite **Exhibit "I."**

34. On the present record, continued detention separates him from his U.S.-citizen spouse, prevents him from working and supporting his household, and serves no legitimate purpose commensurate with the severe deprivation of liberty at issue.

35. Petitioner's continued detention has also caused significant emotional and psychological harm. He has experienced distress, depression, and significant anxiety as a result of his prolonged confinement.

36. Within days of entering detention, Petitioner has been subjected to dangerous, abusive, and constitutionally deficient conditions of confinement that place his physical safety and health at serious risk.

37. Specifically, Petitioner was recently physically assaulted by other detainees within the facility. Rather than being protected, Petitioner reports that officers subsequently intervened and used physical force against him, further injuring him.

38. As a result of these incidents, Petitioner sustained significant visible injuries, including his eyes swollen completely shut, active bleeding from one eye, and multiple bumps and trauma to the head.

39. Despite these obvious and serious injuries, Petitioner was denied timely and adequate medical care. Although Petitioner was seen briefly by a nurse, he repeatedly requested evaluation

by a physician due to his worsening symptoms. Unfortunately, however, his requests were ignored for approximately four (4) days. During this time, Petitioner's condition has deteriorated while he remained without meaningful treatment.

40. Petitioner's continued detention under these conditions constitutes an immediate threat to his life and health. Without intervention, Petitioner will suffer irreparable harm.

41. Petitioner was neither seeking admission at the time of his arrest, nor was he detained anywhere near the border.

42. There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before a neutral decision maker.

43. Absent intervention by this Court, Petitioner cannot and will not be provided with a bond hearing by a neutral decision maker to assess the propriety of Petitioner's continued detention.

LEGAL GROUNDS FOR PETITIONER'S RELEASE FROM CUSTODY

"'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious").

Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for bail as part of due process" because "[b]ail is basic to our system of law." *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding at the time that such detentions are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("[I]ndividualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); see also Jackson v. Indiana, 406 U.S. 715, 733 (1972) (holding that detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that "lesser safeguards may be appropriate" for "shortterm confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards"); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021)

(holding that "the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention" under section 1226(c)) (internal quotation marks omitted).

Furthermore, under 8 U.S.C. § 1225(b)(1)(A)(i), the United States Department of Homeland Security may subject to expedited removal a noncitizen (1) "who is arriving in the United States" at a port of entry and (2) who is inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7) (emphasis added). Section 1182(a)(6)(C) renders inadmissible an individual who makes a false claim to U.S. citizenship or who seeks an immigration benefit by fraud or misrepresentation of material facts. Section 1182(a)(7) renders inadmissible an individual who lacks proper entry documentation. Petitioner does not classify as an individual subject to expedited removal.

Furthermore, the Fifth Amendment of the U.S. Constitution also guarantees that civil detainees, including noncitizen detainees, may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *see also Jones v. Wolf*, 467 F. Supp. 3d 74, 82 (W.D.N.Y. 2020) (noting detainees "may not be punished prior to an adjudication of guilt in accordance with due process of law.") (internal citation and quotation marks omitted). The federal government violates a detained individual's substantive due process rights if it subjects "takes [that] person into custody, severely limiting his ability to care for himself, and then is deliberately indifferent to his medical needs[.]" *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019); *see also Helling v. McKinney*, 509 U.S. 25, 32 (1993) ("[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., . . . medical care and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment.").

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

44. Petitioner realleges and incorporates by reference all preceding paragraphs.

45. Section 1226 of the INA "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). But § 1226 provides additional safeguards, including the right to an individualized bond hearing. *Id.* at 306 ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.") (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

46. This potential misclassification has unlawfully deprived Petitioner access to bond proceedings and has resulted in detention without individualized custody review.

47. Petitioner entered the United States December of 2022. During these almost four (4) years, Petitioner held gainful employment. Petitioner does not have any criminal convictions that would render him subject to mandatory detention.

48. Because Petitioner entered the United States almost four (4) years ago, was not actively seeking admission at the time of his arrest, was nowhere near the border at the time of his arrest, and has resided in the interior of the country for several years, his detention falls under 8 U.S.C. §1226, not §1225.

49. Furthermore, the record reflects that Petitioner entered the United States on or about December 8, 2022 and was subsequently paroled into the country by the Department of Homeland Security.

50. Following his entry, Petitioner (1) filed an application for Asylum, which was later forwarded to the Immigration Court after issuance of a Notice to Appear; (2) obtained

employment authorization, valid through 2028; (3) and married a United States citizen, who has filed an I-130 Petition for Alien Relative on his behalf which remains pending.

51. These facts place Petitioner squarely within the category of noncitizens who are physically present in the United States, pursuing relief, and integrated into the community—not recent arrivals subject to mandatory or summary detention.

52. Noncitizens detained under 8 U.S.C. §1226(a) are entitled to an individualized custody determination before an immigration judge. Respondents have failed to provide Petitioner with such a custody determination.

53. To the extent the Government asserts that Petitioner is subject to detention under 8 U.S.C. § 1225(b) as an "applicant for admission," such detention is unlawful as applied to the facts of this case.

54. Although parole does not constitute a formal "admission" under the INA, it does not follow that a parolee may be subjected to indefinite, unreviewable detention, particularly where, as here, the individual has: been physically present in the United States for an extended period, filed for asylum and been placed into full removal proceedings, established family ties through marriage to a U.S. citizen, And obtained authorization to work lawfully.

55. Here, Petitioner is not a newly arriving noncitizen at the border; he is a paroled, work-authorized individual with pending immigration relief and significant ties to the United States. Continued detention under § 1225(b) is therefore improper.

56. Accordingly, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment.

COUNT II: PROLONGED DETENTION WITHOUT A CONSTITUTIONALLY ADEQUATE BOND HEARING VIOLATES DUE PROCESS

57. Petitioner realleges and incorporates by reference all preceding paragraphs.

58. The Fifth Amendment does not permit the government to incarcerate a civil detainee for months on end without requiring the government to demonstrate, by clear and convincing evidence, that continued detention is necessary to serve its legitimate purposes. Where liberty is at stake, heightened procedural safeguards are required.

59. Immigration detention must bear a reasonable relationship to its regulatory purpose. Petitioner's continued detention no longer serves its regulatory purpose.

60. Petitioner has been detained since March of 2026 following his arrest, which led to his immediate detention. Although immigration detention is civil in nature, civil detention cannot be indefinite and must comport with the requirements of the Fifth Amendment's Due Process Clause.

61. Most notably, Petitioner has provided substantial and competent evidence that he does not present neither a threat to national security, nor does he pose a flight risk. Specifically, Petitioner has no prior immigration record nor history of non-appearance at immigration court proceedings. To the contrary, Petitioner has shown, through substantial and competent evidence, that he is neither a flight risk nor a danger to the community.

62. Petitioner's detention, without any individualized review, is unreasonable under the *Mathews v. Eldridge* due process test. Alternatively, Petitioner prevails under the multi-factor reasonableness test the Third Circuit adopted in *German Santos v. Warden Pike Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

63. Each year, thousands of noncitizens are incarcerated for lengthy periods pending the resolution of their removal proceedings. See *Jennings*, 138 S. Ct. at 860 (Breyer, J., dissenting) (observing that class members, numbering in the thousands, had been detained "on average one

year" and some had been detained for several years). For noncitizens who have some criminal history, their immigration detention often dwarfs the time spent in criminal custody, if any. *Id.*

64. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a locked down facility, with limited freedom of movement and access to Petitioner's family or support network: "[T]he circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting).

65. The *Mathews* test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Here, each factor weighs in Petitioner's favor, requiring this Court to promptly hold a hearing to evaluate whether the government can justify their ongoing detention.

66. First, Petitioner indisputably has a weighty interest in their liberty, the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment. . . lies at the heart of the liberty [the Due Process Clause] protects.")

67. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty is high, as they have been detained since March of 2026, without any evaluation of whether the government can justify detention under their individualized circumstances. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decision maker is substantial." *Diouf*, 634 F.3d at 1092. Conversely, the probable value of additional procedural safeguards is high, because Respondents have provided virtually no procedural safeguards at all.

68. Third, the government's interest is very low in continuing to detain Petitioner without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at stake here is not the government's ability to continue to detain Petitioner, but rather the government's ability to continue to detain them for months on end without any individualized review.

69. Without such safeguards, Petitioner's continued detention violates procedural due process.

COUNT III - CONDITIONS OF CONFINEMENT VIOLATE THE FIFTH AMENDMENT

70. Petitioner realleges and incorporates by reference all preceding paragraphs.

71. Petitioner's continued detention is independently unlawful because the conditions under which he is being held violate the Due Process Clause of the Fifth Amendment.

72. Civil immigration detainees are protected by the Due Process Clause of the Fifth Amendment, which prohibits government officials from acting with deliberate indifference to serious medical needs.

73. Petitioner has been subjected to physical abuse, denied adequate medical care, and exposed to conditions that amount to punishment, notwithstanding his status as a civil immigration detainee.

74. More specifically, Petitioner has sustained significant physical trauma, including having his eyes swollen shut, bruises and bumps on his head, and active bleeding from one eye. These injuries are not minor and could lead to risk of internal head injury, vision impairment, infection, and long-term damage.

75. Only after several days of persistent requests was Petitioner finally taken to see a physician, and even then, no meaningful treatment or intervention was provided. This conduct constitutes deliberate indifference.

76. Despite this incident, Petitioner has not been transported to a hospital nor has he received proper medical treatment. Petitioner alleges to have only received minimal unspecified medication and his condition continues to worsen. These facts establish deliberate indifference.

77. Such deliberate indifference violates Petitioner's rights under the Due Process Clause of the Fifth Amendment.

78. Unlike criminal incarceration, immigration detention is civil in nature. Accordingly, the Government may not subject detainees to punitive conditions or treatment. *See Bell v. Wolfish*, 441 U.S. 520, 535–37 (1979). Conditions or conduct that are excessive in relation to legitimate governmental objectives, or that reflect deliberate indifference to a detainee's health or safety, violate due process.

79. Where unconstitutional conditions of confinement pose an imminent threat to a detainee's health, courts have the authority to order release, given the severity of Petitioner's medical condition, the failure of detention officials to provide care, and the absence of any lawful detention basis, no remedy short of immediate release is adequate.

EXHAUSTION

80. Petitioner believes any appeal to the BIA would be futile considering the September 5, 2025, BIA decision where the BIA adopted DHS' interpretation of the INA as mandating detention without bond for millions of noncitizens who reside in the U.S. *See Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)*. The BIA's decision held that immigration judges lack jurisdiction to hold bond hearings or grant bail to all individuals charged with entering the country without inspection. *Id.* 65.

81. Based on the above, the Court should find administrative exhaustion would be futile. *See Vasquez- Rodriguez v. Garland, 7 F.4th 888, 896 (9th Cir. 2021)* ("where the agency's position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required."). BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an immigration judge from finding jurisdiction over noncitizens like petitioner to hold a custody redetermination hearing. Judicial intervention is needed to stop Respondents from blocking petitioner's bond hearing under *Hurtado*, so petitioner can pursue administrative remedies. Therefore, the Court should consider the merits of the Petition.

RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

c. Declare that Petitioner's detention violates the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment;

d. Issue a Writ of Habeas Corpus ordering Petitioner's ***immediate release*** by Respondents;

e. Enjoin Petitioner's removal from the United States pending a final decision on this Habeas action;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412 and on any other basis justified under law.

g. Grant such other relief as this Court may deem just and proper.

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

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 21st day of April, 2026.

/s/ Mariela E. Cano
Mariela E. Cano, Esq.
Counsel for Petitioner

Dated: April 21, 2026

Respectfully submitted,

CANO LAW FIRM, P.A,
Counsel for Petitioner
9100 SW 24th St., STE 1
Miami, FL 33156
Phone No.: 786-432-2587
Email: mcano@canolawfirm.com

By: */s/ Mariela E. Cano*
Mariela E. Cano, Esq.
Florida Bar No.: 1015817

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served via the CM/ECF system on all counsel or parties of record on the Service List below.

By: */s/ Mariela E. Cano*
Mariela E. Cano, Esq.

SERVICE LIST

U.S. Attorney's Office
Middle District of Florida – Fort Myers Division
2110 First Street
Fort Myers, FL 33901

ICE Field Office Director
2805 SW 145th Avenue
Miramar, FL 33027

Florida Soft Side South Detention Center
54575 Tamiami Trl E NA
Ochopee, FL 34141

ICE Office of Chief Counsel
333 S. Miami Avenue, Suite 200
Miami, FL 33130