

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

JAVIER FRANCISCO TOMAS,

A 

Petitioner,

v.

STEWART, DETENTION CENTER;
MARKWAYNE MULLIN, Secretary,
U.S. Department of Homeland Security.

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Javier Francisco Tomas, respectfully petitions this Court for writ of habeas corpus to challenge his unlawful detention by the Department of Homeland Security.

2. Petitioner has been detained since April 2, 2026 at the Stewart Detention Center. DHS has refused to provide him any bond hearing based on a recently adopted legal interpretation asserting that individuals who entered the United States without inspection must be detained under U.S.C. § (b) () and are therefore categorically ineligible for release on bond.

3. That interpretation is contrary to the text of the Immigration and Nationality Act, decades of agency practice, and recent federal court decisions—including decisions of this Court—holding that individuals apprehended inside the United States years after entry are detained under 8 U.S.C. § 1226(a) and are entitled to individualized custody determinations.

4. Because immigration judges are refusing to exercise jurisdiction over custody determinations based on the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, Petitioner has no administrative avenue to challenge his detention.

5. Habeas corpus therefore provides the only meaningful mechanism to indicate Petitioner's statutory and constitutional rights. Petitioner respectfully

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2 requests that this Court order his immediate release, or in the alternative, set a
3 reasonable bond, or at minimum, order a constitutionally compliant bond hearing.

4 JURISDICTION

5 6. Petitioner is in the physical custody of Respondents. Petitioner is
6 detained at the Stewart Detention Center located in Lumpkin, Georgia.

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

10 8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the
11 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C.
12 § 1651.
13

14 VENUE

15 9. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
16 484, 493- 500 (1973), venue lies in the United States District Court for the Middle
17 District of Georgia, the judicial district in which Petitioner currently is detained.

18 10. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
19 because Respondent is employee, officer, and agency of the United States, and
20 because a substantial part of the events or omissions giving rise to the claims
21 occurred in the Middle District of Georgia.
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REQUIREMENTS OF 28 U.S.C. § 2243

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

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

PARTIES

13. Petitioner, Mr. Javier Francisco Tomas is native and citizen of Mexico who has been in immigration detention since April 2, 2026. After arresting Petitioner, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

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2 14. Respondent, the Warden of the Stewart Detention Center, is employed
3 by Core Civic Group. He has immediate physical custody of Petitioner. He is sued
4 in his official capacity.

5 15. Respondent Markwayne Mullin is the Secretary of the Department of
6 Homeland Security. He is responsible for the implementation and enforcement of
7 the Immigration and Nationality Act (INA), and oversees ICE, which is responsible
8 for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner
9 and is sued in his official capacity.
10

11 **LEGAL FRAMEWORK**

12 16. The Immigration and Nationality Act ("INA") establishes several
13 detention schemes for noncitizens in removal proceedings.
14

15 17. First, 8 U.S.C. § 1226 governs the detention of individuals placed in
16 standard removal proceedings under § 1229a. Noncitizens detained under § 1226(a)
17 are generally entitled to a custody redetermination before an Immigration Judge
18 unless they fall into the narrow mandatory-detention categories of § 1226(c).

19 18. Second, 8 U.S.C. § 1225(b)(1)–(2) provides for mandatory detention of
20 certain individuals seeking admission who are inspected at the border and
21 determined not "clearly and beyond a doubt entitled to be admitted." This detention
22 framework is tied to the process of arrival inspection performed by an examining
23 immigration officer.
24

1
2 19. Third, 8 U.S.C. § 1231 governs detention of individuals who are subject
3 to final orders of removal.

4 20. This case turns on the proper application of § 1226(a) versus §
5 1225(b)(2) for a noncitizen like Petitioner—an individual who entered the United
6 States years ago, resided here, and was apprehended within the interior, not at a port
7 of entry.

8
9 21. Historically, individuals who entered without inspection and were later
10 placed in § 1229a removal proceedings were treated as detained under § 1226, not §
11 1225. EOIR regulations following IIRIRA confirm that such individuals were not
12 considered “arriving” and therefore were eligible for bond hearings. *See* 62 Fed. Reg.
13 10312, 10323 (Mar. 6, 1997).

14
15 22. For decades, consistent with this regulatory framework and prior
16 immigration law, noncitizens who entered without inspection and were apprehended
17 inside the United States received custody redeterminations unless subject to §
18 1226(c). *See* former 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229
19 (1996).

20 **The Government’s Recent Policy Shift**

21
22 23. On July 8, 2025, ICE— “in coordination with” DOJ—issued guidance
23 declaring that all individuals who entered without inspection must now be detained
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2 under § 1225(b)(2)(A), regardless of when they entered the United States or whether
3 they were ever inspected by an immigration officer.

4 24. On September 5, 2025, the BIA adopted this new position in *Matter of*
5 *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that any noncitizen who
6 entered without admission is subject to § 1225(b)(2)(A) and categorically barred
7 from a bond hearing.
8

9 **This Court Has Rejected Respondents' Interpretation**

10 25. This Court has already rejected the government's reading of
11 §1225 (b)(2). In *Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 *(S.D. Ga.
12 Nov. 4, 2025), the Court held that § 1225(b)(2) applies only to noncitizens who are
13 "seeking admission" in the context of an arrival inspection by an examining
14 immigration officer.
15

16 26. The Court explained that "seeking admission" requires an affirmative
17 act at or near the time of arrival to obtain legal entry, coupled with contemporaneous
18 inspection. The Court rejected DHS's argument that individuals apprehended years
19 after entering the United States may be treated as if they were seeking admission. *Id.*
20 at 3.
21

22 27. Applying that interpretation, the Court concluded that § 1225(b)(2)
23 does not apply to individuals like Petitioner, whose alleged inadmissibility is based
24 on conduct occurring long after entry and not in connection with an arrival inspection.

1
2 28. Despite this Court's binding precedent, the Stewart Immigration Court
3 continues to decline jurisdiction over custody redeterminations for noncitizens like
4 Petitioner, based on the BIA's erroneous decision in *Matter of Yajure Hurtado*.

5 29. Because Petitioner has no administrative avenue to challenge his
6 custody, habeas corpus is the only remedy capable of addressing the ongoing
7 violation of federal law
8

9 **FACTUAL BACKGROUND**

10 30. Petitioner is a native and citizen of Mexico who entered the United
11 States on or about January 6, 2021, without inspection (EWI). Since his entry,
12 Petitioner has remained continuously in the United States and has not departed the
13 country. During this time, he has established residence and has worked to support
14 himself, demonstrating stability and a commitment to remaining in the United States
15 while his immigration case proceeds.
16

17 31. Petitioner is the father of three children, including two lawful
18 permanent resident daughters, A [REDACTED] age seven (7), and A [REDACTED], age
19 five (5), and one United States citizen daughter, G [REDACTED], age one (1). Petitioner has
20 been a constant and stabilizing presence in his children's lives, providing consistent
21 financial, emotional, and parental support. As young children, they depend heavily
22 on Petitioner for their daily care, guidance, and overall well-being. Petitioner plays
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24

1
2 a critical role in their upbringing, including assisting with daily routines, providing
3 emotional support, and ensuring a stable and nurturing home environment.

4 Petitioner is also married to a United States citizen, Gabriela, and has resided with
5 his family at [REDACTED] for approximately
6 three to four years, maintaining a stable and supportive household. Since Petitioner's
7 detention, his absence has had a significant and adverse impact on his children and
8 spouse, causing emotional and financial hardship. The children have experienced
9 distress and instability due to the sudden separation from their father, further
10 underscoring the essential and irreplaceable role Petitioner plays in their lives. These
11 strong family ties and the clear dependence of his family weigh heavily in favor of
12 his release.
13

14 32. Petitioner has consistently worked to support his family since his arrival
15 in the United States. Upon his arrival, he worked as a waiter, and thereafter
16 transitioned into the construction industry, where he has remained employed to this
17 day. Through his steady employment, Petitioner has demonstrated a strong work
18 ethic, reliability, and financial responsibility. His continued work in the construction
19 field reflects his commitment to providing for his family and contributing positively
20 to the local economy.
21

22 33. Petitioner has had extremely limited contact with the criminal justice
23 system. His only interactions with law enforcement consist of two minor traffic-
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2 related citations: one for driving without a valid driver's license and another for
3 speeding. These infractions are non-violent in nature and did not involve any
4 allegations of harm, reckless conduct, or threat to public safety. Aside from these
5 isolated incidents, Petitioner has no criminal history whatsoever. There is no
6 evidence of any arrests or convictions involving violence, controlled substances, or
7 any conduct that would suggest a risk to the community. Accordingly, the record
8 clearly demonstrates that Petitioner does not pose a danger to the community, and
9 these minor infractions should not weigh against his release on bond.
10

11 34. Petitioner poses no flight risk and no danger to the community. His
12 years of residence in the United States, provider of U.S. citizen children,
13 overwhelmingly demonstrate that he is an appropriate candidate for release on bond
14 under INA § 236(a).
15

16 35. Petitioner's continued detention violates due process because it is based
17 on an unlawful application of INA § 235 to an individual who was apprehended
18 inside the United States long after entry and who is not seeking admission. Petitioner
19 therefore falls squarely within the discretionary detention framework of INA §
20 236(a), which entitles him to an individualized bond hearing.
21

22 36. By continuing to detain Petitioner without bond while his immigration
23 case remains pending—despite his extensive equities, serious family hardship, and
24 lack of any disqualifying factors—Respondents are subjecting him to prolonged and

1
2 arbitrary imprisonment in violation of the Fifth Amendment's Due Process Clause,
3 thereby necessitating habeas relief.

4 37. Petitioner's continued detention also violates due process because it is
5 based on an unlawful statutory interpretation already rejected by this Court and by a
6 certified nationwide class action. In *Villa v. Normand*, this Court held that 8 U.S.C.
7 § 1225(b)(2) applies only when a noncitizen is "seeking admission" in the context
8 of an arrival inspection by an examining immigration officer. Petitioner, however,
9 was apprehended inside the United States years after his entry and therefore falls
10 squarely within the detention framework of § 1226(a), which entitles him to a bond
11 hearing.
12

13 38. Because Petitioner is a long-term resident of the United States with five
14 years of continuous presence, deep family and community ties, his continued and
15 prolonged detention without any opportunity for individualized custody review
16 violates the fundamental requirements of due process and underscores the urgent
17 necessity of habeas relief.
18

19 **CLAIMS FOR RELIEF**

20 **COUNT I**

21 **Violation of the INA**

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

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2 40. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
3 apply to all noncitizens residing in the United States who are subject to the grounds
4 of inadmissibility. As relevant here, it does not apply to those who previously
5 entered the country and have been residing in the United States prior to being
6 apprehended and placed in removal proceedings by Respondents. Such noncitizens
7 are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or
8 § 1231.
9

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

12 **COUNT II**

13 **Violation of the Bond Regulations**

14 42. Petitioner incorporates by reference the allegations of fact set forth in
15 preceding paragraphs.
16

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

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

7
8 45. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
9 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19

10 **COUNT III**

11 **Violation of Due Process**

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

14
15 47. The government may not deprive a person of life, liberty, or property
16 without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—
17 from government custody, detention, or other forms of physical restraint—lies at the
18 heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690
19 (2001).

20 48. Petitioner has a fundamental interest in liberty and being free from
21 official restraint.
22
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2 49. The government's detention of Petitioner without a bond
3 redetermination hearing to determine whether he is a flight risk or danger to others
4 violates his right to due process.

5 REMEDY

6 50. The equitable and flexible nature of habeas corpus provides this Court
7 with broad authority to craft an appropriate remedy that fully addresses the statutory
8 and constitutional violations presented in this case. Habeas corpus is fundamentally
9 an equitable remedy, and courts exercising habeas jurisdiction possess significant
10 discretion to fashion relief that effectively remedies unlawful detention. See *Velasco*
11 *Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *Schlup v. Delo*, 513 U.S. 298,
12 319 (1995).

13
14 51. The habeas statute further directs that courts shall "dispose of the
15 matter as law and justice require." 28 U.S.C. § 2243. The Supreme Court has
16 emphasized PETITION FOR WRIT OF HABEAS CORPUS - 13 that the statute
17 does not limit the relief that may be granted in habeas proceedings and that federal
18 courts retain broad remedial authority when unlawful detention is established.
19 *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968)

20
21 52. Given the statutory and constitutional violations presented here, the
22 Court should exercise its equitable authority to order relief that effectively remedies
23 Petitioner's unlawful detention.
24

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2 **Immediate Release**

3 53. Release from unlawful custody is the traditional and most appropriate
4 remedy in habeas proceedings. The Supreme Court has long recognized that the
5 central function of the writ of habeas corpus is to secure release from illegal
6 detention. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

7
8 54. Federal courts across the country have repeatedly ordered immediate
9 release where immigration detention was imposed in violation of federal law or the
10 Constitution. Numerous courts have recognized that release is particularly
11 appropriate where detention rests on an unlawful statutory interpretation or where
12 the detainee has been deprived of meaningful procedural safeguards. Courts ordering
13 release in similar immigration detention cases include *Munoz Materano v. Arteta*,
14 2025 WL 2630826 (S.D.N.Y. Sept. 12, 2025); *Chipantiza-Sisalema v. Francis*, 2025
15 WL 1927931 (S.D.N.Y. July 13, 2025); *Rueda Torres v. Francis*, 2025 WL 3168759
16 (S.D.N.Y. Nov. 13, 2025); *Cifuentes v. Soto*, 2025 WL 3771380 (D.N.J. Dec. 31
17 2025); *Gonzalez Centeno v. Lowe*, 2026 WL 94642 (M.D. Pa. Jan. 13, 2026); *Feisal*
18 *O. v. Noem*, 2026 WL 92857 (D. Minn. Jan. 13, 2026); *Garcia Covarrubias v.*
19 *Holston*, 2026 WL 25970 (D. Nev. Jan. 5, 2026); and *Kenzhebaev v. Noem*, 2025
20 WL 3737975 (W.D. Mich. Dec. 29, 2025).

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22
23 55. Courts have further recognized that ordering a bond hearing may not
24 adequately remedy constitutional violations where the detainee has already been

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2 deprived of liberty without due process. In *Qasemi v. Francis*, 2025 WL 3654098
3 (S.D.N.Y. Dec. 17, 2025), the court concluded that a bond hearing would not
4 sufficiently remedy the due process violation caused by detention without lawful
5 procedures. Similarly, in *Noyola v. Bondi*, 2026 WL 607266 (W.D. Tex. Mar. 4,
6 2026), the court determined that immediate release was the appropriate remedy for
7 unlawful immigration detention.
8

9 56. Because Petitioner's detention rests on an unlawful interpretation of the
10 Immigration and Nationality Act and because he has been denied any meaningful
11 opportunity to challenge his custody, immediate release is the most appropriate and
12 effective remedy.
13

14 **Custody Determination by the Habeas Court**

15 57. If the Court declines to order immediate release, the Court possesses
16 authority to conduct its own custody determination within this habeas proceeding.
17 Federal courts exercising habeas jurisdiction have repeatedly recognized their
18 authority to determine whether continued detention is justified and to set appropriate
19 conditions of release. Courts have explained that conducting a custody determination
20 within the habeas proceeding may be more efficient and may better ensure
21 compliance with constitutional requirements than delegating the determination back
22 to the immigration court system. *See L.G.M. v. LaRocco*, 788 F. Supp. 3d 401
23
24

(E.D.N.Y. 2025); *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 474 (D. Mass. 2010); and *Ramirez v. Watkins*, 2010 WL 6269226 (S.D. Tex. 2010).

58. Under this approach, the Court may determine whether the government can demonstrate that continued detention is justified based on danger to the community or risk of flight. If the government cannot meet its burden, the Court may order Petitioner released on recognizance or set a reasonable bond consistent with Petitioner's financial circumstances.

Ineffectiveness of Immigration Court Bond Hearings

59. Although courts sometimes order immigration judges to conduct bond hearings, recent litigation across the country demonstrates that such hearings frequently fail to remedy unlawful detention. Federal courts have repeatedly documented systemic problems that undermine the effectiveness of such hearings. One recurring problem arises when the Department of Homeland Security appeals an immigration judge's bond grant and invokes the automatic stay regulation, which prevents release even after a judge has determined that bond is appropriate. Numerous courts have concluded that this practice raises serious due process concerns. *See Merchan-Pacheco v. Noem*, 2026 WL 88526 (D. Colo. Jan. 12, 2026); *M.P.L. v. Arteta*, 2025 WL 3288354 (S.D.N.Y. Nov. 25, 2025); and *Garvey v. Noem*, 2026 WL 612302 (W.D. Mo. Mar. 4, 2026).

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2 60. Courts have also documented cases in which immigration authorities
3 imposed electronic monitoring or other restrictive conditions of release that were
4 never ordered by any judge. Federal courts have repeatedly required such conditions
5 to be removed. *See Gonzalez Centeno v. Lowe*, 2026 WL 196513 (M.D. Pa. Jan. 26,
6 2026); *Diahn v. Lowe*, 2026 WL 84576 (M.D. Pa. Jan. 12, 2026); and *Montes*
7 *Aguillon v. Bondi*, 2026 WL 531899 (W.D. Tex. Feb. 25, 2026).
8

9 61. Courts have additionally documented repeated failures to conduct
10 timely bond hearings after federal courts ordered them. In *Bautista v. Santacruz*, the
11 court observed that hundreds of detainees were forced to file individual habeas
12 petitions because the government failed to provide bond hearings ordered in prior
13 litigation. These enforcement problems illustrate why immediate release or a
14 custody determination by the habeas court is often the most effective remedy for
15 unlawful immigration detention.
16

17 **Safeguards If a Bond Hearing Is Ordered**

18 62. If the Court determines that an immigration judge should conduct a
19 bond hearing, that hearing must include procedural safeguards sufficient to satisfy
20 due process. Courts have widely recognized that the government must bear the
21 burden of justifying continued detention in court-ordered bond hearings. *See*
22 *Hernandez- Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025);
23 *Gomez v. Olson*, 2025 WL 3768242 (N.D. Ill. Dec. 31, 2025).
24

63. Courts have further required that the government demonstrate danger or risk of flight by clear and convincing evidence, that the immigration judge consider the detainee's ability to pay any bond amount, and that the government be prohibited from invoking the automatic stay regulation if bond is granted. *See Lopez-Romero v. Lyons*, 2026 WL 92873 (D.N.M. Jan. 13, 2026); *Perez-Regalado v. Feeley*, 2026 WL 36112 (D. Nev. Jan. 6, 2026).

64. These safeguards ensure that any custody determination meaningfully protects the constitutional liberty interests at stake.

PRAYER FOR RELIEF

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

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

DATED this 21th day of April, 2026.

ZAMBRANO LAW,

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I represent Petitioner, Mr. Javier Francisco Tomas, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 21th day of April, 2026.

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