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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No.: _____

Adrian Alejandro Abdul Khalek Salazar

Petitioner

v.

WARDEN for Federal Detention Center Miami,
U.S. Immigration and Customs Enforcement;
GARRETT RIPA, Director of Miami Field
Office, U.S. Immigration and Customs
Enforcement, Enforcement and Removal
Operations; **TODD M. LYONS**, Acting Director
of U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary of the
U.S. Department of Homeland Security; and
TODD BLANCHE, Deputy Attorney General of
the United States, in their official capacities.

Respondents.

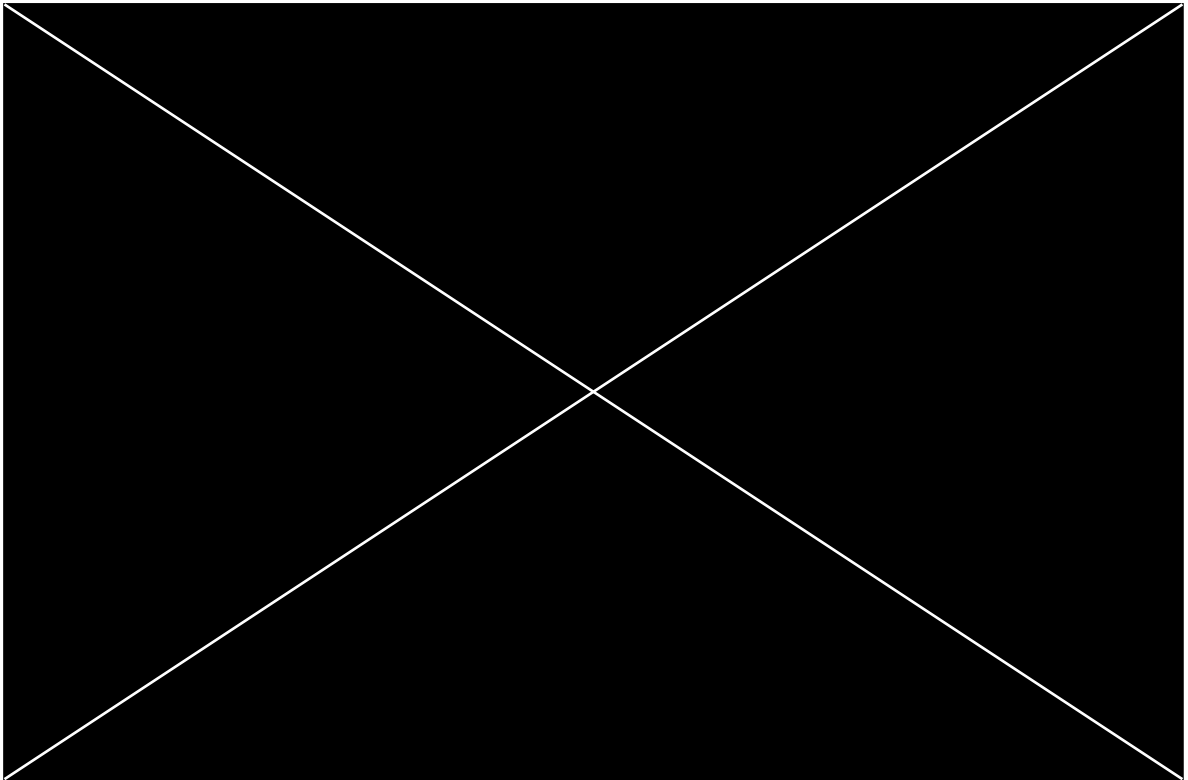
VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241, COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

1. Petitioner, Adrian Alejandro Abdul Khalek Salazar, (A# ) ("Petitioner" or "Mr. Abdul Khalek Salazar"), is a native and citizen of Venezuela who entered the United States for the first and only time on or about May 19, 2021, when he was 13 years old, and has been residing in the United States continuously since that date.
2. The U.S. Department of Homeland Security ("DHS") inspected Petitioner at the border. DHS determined Petitioner was not a danger to the community or a flight risk and released him from custody on his own recognizance. Exhibit A, Notice of Custody Determination and Exhibit B, Order of Release on Recognizance.
3. There has been no change in Petitioner's circumstances, such as a conviction for a crime, that disturbs DHS's determination.
4. On August 9, 2021, Petitioner's mother filed an Application for Asylum and Withholding of Removal before the United States Citizenship and Immigration Services (USCIS) and included Petitioner as a derivative applicant. Exhibit C, Form I-797C Notice of Action on Forms I-589 Application for Asylum and Withholding of Removal. This application remains pending.
5. On November 10, 2023, Petitioner applied for Temporary Protected Status (TPS). USCIS approved this application on April 29, 2024. Petitioner maintained a valid

legal status under TPS from April 20, 2024, to April 2, 2025. Exhibit D, I-797A Notice of Action for Application for Temporary Protected Status.

6.



7. On February 28, 2026, Petitioner was stopped by state law enforcement and subsequently taken into custody. He was then transferred to ICE custody and moved to FDC Miami. For weeks, Petitioner was unlawfully detained with no removal proceedings initiated against him. Petitioner remains at FDC Miami to this day.
8. On April 7, 2026, after a month of unlawful detention, ICE finally commenced removal proceedings against Petitioner by lodging a Notice to Appear with the immigration court in Miami, Florida. His first Master Calendar Hearing was scheduled for April 20, 2026, at 8:00 am. His second Master Calendar Hearing is scheduled for May 21, 2026, at 9:00 am. Exhibit G, EOIR Automated Case Information webpage.

9. This petition for a writ of habeas corpus challenges the legal basis for Respondents' continued detention of Petitioner on the theory that he is subject to mandatory detention under 8 U.S.C. § 1225(b)
10. Petitioner was released on his own recognizance nearly five years ago, has no criminal record, has , and has been issued a valid Employment Authorization Document (EAD).
11. Petitioner was not "seeking admission" at the time of his most recent arrest by ICE, after having resided in the United States for nearly five (5) years and is therefore outside the gambit of § 1225(b)(2)(A)'s mandatory detention provision.
12. Petitioner's detention is unlawful because if DHS possessed some detention authority, Petitioner's re-detention without a meaningful individualized process violates the Due Process Clause of the Fifth Amendment.
13. Petitioner seeks immediate release from unlawful custody. In the alternative, Petitioner seeks a prompt individualized custody hearing under the correct legal framework before a neutral decisionmaker.
14. Because Petitioner remains detained now, suffers ongoing loss of liberty, and faces irreparable harm each day this unlawful detention continues, emergency temporary and preliminary injunctive relief is warranted.

JURISDICTION AND VENUE

15. 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), and the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 *et. Seq.*

16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651 and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
17. This Court has habeas jurisdiction because Petitioner challenges the legality of present executive detention, not the merits of any final order of removal.
18. Petitioner is in the physical custody of Respondents. He is detained at Federal Detention Center (“FDC”) Miami and under the direct control of Respondents and their agents, in violation of the Constitution, laws, or treaties of the United States.” 28 U.S.C. 2241(c)(3).
19. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 2241 because Petitioner is detained at the FDC Miami, in Miami, Florida, under the jurisdiction of the ICE Miami Field Office.

EXHAUSTION

20. Administrative exhaustion, which is a prudential doctrine in habeas cases, does not apply in this case due to futility. *Puga v. Assistant Field Office Director, Krome North Service Processing Center*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025) (“Since the result of Petitioner’s custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements

are excused for futility.”). “A petitioner need not exhaust administrative remedies if “the administrative body is shown to be biased or has otherwise predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992); *Lara-Reyes v. Woodall*, 2026 U.S. Dist. LEXIS 53142 * 4 (M.D. Fla. March 16, 2026); *Ardon-Quiroz v. Assistant Field Dir.*, No. 25-cv-25290, 2025 WL 3451645, at *4-5 (S.D. Fla. Dec. 1, 2025); *Inlago Tocagon v. Moniz*, No. 25-cv-12453, 2025 WL 2778023, at *2 (D. Mass. Sept. 29, 2025).

REQUIREMENTS OF 28 U.S.C. § 2243

21. 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).
22. 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).

PARTIES

23. Petitioner, Adrian Alejandro Abdul Khalek Salazar, is a native and citizen of

Venezuela who entered the United States on May 19, 2021, and has pending applications  with USCIS. He is currently detained in ICE custody at the FDC Miami in Miami, Florida.

24. Respondent WARDEN of FDC Miami, which is under a federal contract with U.S. Immigration and Customs Enforcement, is sued in his or her official capacity as the official responsible for overseeing FDC Miami. The individual who occupies this position is not publicly disclosed. This Respondent is a legal custodian of Petitioner and is sued in his or her official capacity.
25. Respondent GARRETT RIPA is the Field Office Director for the Miami Field Office, U.S. Immigration and Customs Enforcement. The Miami Field Office is the Field Office that oversees Federal Detention Center (FDC) Miami.
26. Respondent TODD LYONS is the Acting Director for U.S. Immigration and Customs Enforcement. Respondent Lyons has authority over the actions of Respondent Ripa and ICE in general.
27. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security. Respondent 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.
28. Respondent TODD BLANCHE is the Deputy Attorney General of the United States

and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he 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.

29. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK FOR IMMIGRATION DETENTION

30. The Immigration and Nationality Act (“INA”) prescribes two statutory sections that govern a noncitizen’s detention prior to a final order of removal: 8 U.S.C. §§ 1225 and 1226.

31. The detention provisions at 8 U.S.C. § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.

32. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals detained under the authority of § 1226(a) are entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

33. The INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

34. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination... The effect of this change is that inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not. This procedure maintains the status quo . . .”).

35. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

36. Respondents’ new policy turns this well-established understanding on its head and violates the statutory scheme. Indeed, prior to the BIA’s change in position, this legal theory that noncitizens who entered the United States without admission or

parole are ineligible for bond hearings was already rejected by a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240 TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

37. Despite this finding from a federal court, on July 8, 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.

38. On September 5, 2025, the BIA issued an opinion adopting this approach to the detention statutes, see *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, further entrenching the government's interpretation of the governing detention statutes. Because this decision is precedential, it is binding on immigration judges (absent contrary instructions from a federal court sitting in habeas).

39. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), would apply to people like Petitioner.

40. Respondents treat Petitioner as detained under 8 U.S.C. § 1225, which they construe as imposing mandatory detention.

41. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

42. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.
43. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a “good faith” challenge to removal—that is, the challenge is “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the length of the detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; accord *Sopo v. United States*, 825 F.3d 1199 (11th Cir. 2016) at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after nine months of detention, when the parties could “have reasonably predicted that Chavez-Alvarez’s appeal would take a substantial amount of time, making his already lengthy detention considerably longer”); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.
44. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof at least by clear

and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where the detainee was afforded a “full-blown adversary hearing,” requiring “clear and convincing evidence” before a “neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, inter alia, they placed burden on detainee); see also *Padilla v. Immigration & Customs Enf’t*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been detained for more than 18 months).

45. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted or paroled.
46. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.
47. Even if Petitioner moves an immigration judge to redetermine his custody status, the DHS is virtually guaranteed to win the appeal, considering the BIA’s decision

in *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220.

48. In *Matter of Yajure Hurtado*, the BIA held that all noncitizens who entered the United States without admission or parole, like Petitioner, are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are ineligible for bond hearings. It constitutes the BIA's affirmation of Respondents' faulty reimagining of the governing detention statutes.

49. This Court has rejected the BIA's reasoning in *Matter of Yajure Hurtado* and declined to follow it in granting habeas relief to petitioners in the Southern District of Florida. *See supra*.

50. Numerous other federal courts have ruled that the BIA's decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), and have overwhelmingly rejected the BIA's decision in *Yajure Hurtado*, concluding it is contrary to law. *See, e.g., Antonio Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 LX 442534, at *35-36 (S.D. Ga. Nov. 4, 2025) ("I conclude Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) . . . Thus, Petitioner's detention based on 8 U.S.C. § 1225(b)(2) is unlawful. Any immigration court order which has relied on this misinterpretation to continue to detain Petitioner is contrary to the INA, and therefore, § 2241 relief is proper."); *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 LX 418115, at *14-16 (M.D. Ga. Nov. 1, 2025) (rejecting the government's arguments, which largely parrot the rationale in *Yajure Hurtado* . . . [to] conclude[] that § 1226(a), not § 1225(b)(2), applies" to immigrants like Petitioner, and ordering the immigration court to grant a bond hearing); *Garcia v.*

Noem, No. 2:25-cv-00879-SPC-NPM, 2025 LX 400655, at *11 (M.D. Fla. Oct. 31, 2025) (“Since DHS’s change in policy, courts in this District and around the country have rejected its new interpretation of the INA. This Court agrees with the growing consensus.”).¹

51. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

52. Immigration detention is a form of civil confinement that “constitutes a significant

¹ The overwhelming majority of United States Federal District Courts outside of the Eleventh Circuit have drawn the same conclusion. See, e.g., *Aguilar Guerra v. Joyce*, 2:25-cv-534-SDN, 2025 U.S. Dist. LEXIS 208608, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-cv-13004, 2025 U.S. Dist. LEXIS 208752, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem*, No. 5:25-cv-02771-ODW (PDx), 2025 U.S. Dist. LEXIS 209286, 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 U.S. Dist. LEXIS 204142, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *N.A. v. Larose*, No. 25-cv-2384-RSH-BLM, 2025 U.S. Dist. LEXIS 198688, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 U.S. Dist. LEXIS 175513, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 U.S. Dist. LEXIS 174828, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 U.S. Dist. LEXIS 171714, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 U.S. Dist. LEXIS 167280, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 U.S. Dist. LEXIS 165015, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 U.S. Dist. LEXIS 163056, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 U.S. Dist. LEXIS 161109, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 U.S. Dist. LEXIS 158808, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 25-cv-03142-SRN-SGE, 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. 25-CV-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. 25-CV-11613-BEM, 2025 U.S. Dist. LEXIS 141724, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299 (D. Mass. July 7, 2025).

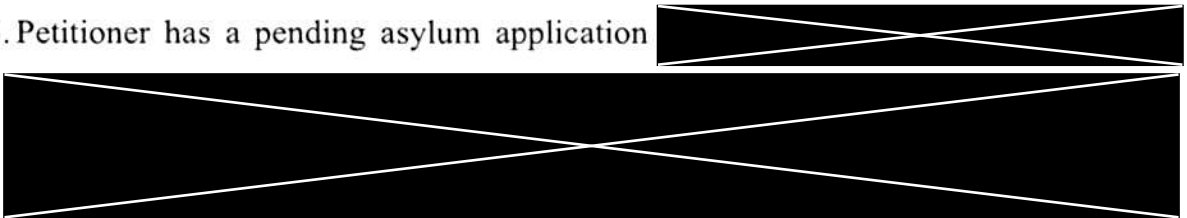
deprivation of liberty that requires due process protection.”

53. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate the risk of flight. *See Bell v Wolfish*, 441 U.S. 520, 538 (1979). ICE’s alternatives to detention program, the Intensive Supervision Appearance Program (ISAP), has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

FACTUAL ALLEGATIONS AND RELEVANT BACKGROUND

54. After the U.S. Department of Homeland Security (“DHS”) inspected the 13-year-old Petitioner at the border upon his arrival in May 2021, it released Petitioner on his own recognizance.

55. Petitioner has a pending asylum application



56. Petitioner has no criminal convictions in the United States. He had two criminal

charges in Florida. One in 2025 for not having a valid motor vehicle registration, which resulted in Nolle Prosequi. Exhibit H, Nolle Prosequi for Case No. 2025-CT-403439-A-O. The second charge was in March 2026 for driving while the license was suspended or revoked, which also resulted in Nolle Prosequi. Exhibit I, Nolle Prosequi for Case No. 48-2026-CT-401505-O.

57. Petitioner has paid his suspension fee in full. Exhibit J, Orange County Tax Collector Receipt. On February 26, 2026, the Florida Department of Highway Safety and Motor Vehicles (FLHSMV) issued a Letter of Clearance stating that Petitioner's driving privilege is valid in the state of Florida. Exhibit K, FDHSMV Letter of Clearance.

58. Just two days later, on or about February 28, 2026, Petitioner was stopped by a state law for absolutely no reason. Despite presenting his valid Florida ID and not committing any criminal actions or traffic infractions, the State Trooper arrested Petitioner and called ICE. Petitioner was subsequently detained by ICE at FDC Miami and has remained there ever since.

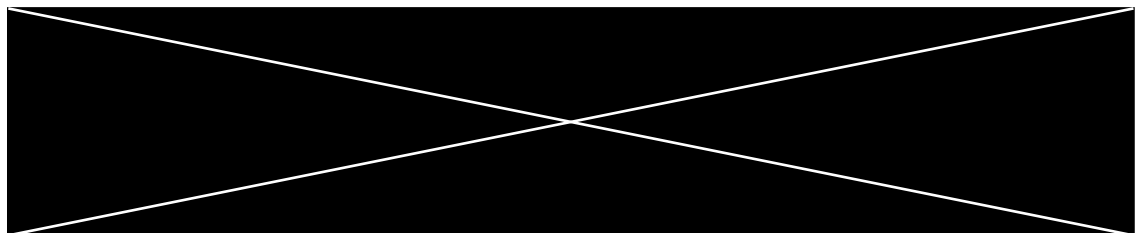
59. Under *Yajure Hurtado*, it is virtually certain that the immigration judge will follow that decision and conclude that Petitioner is a mandatory detainee because of the manner of his entry.

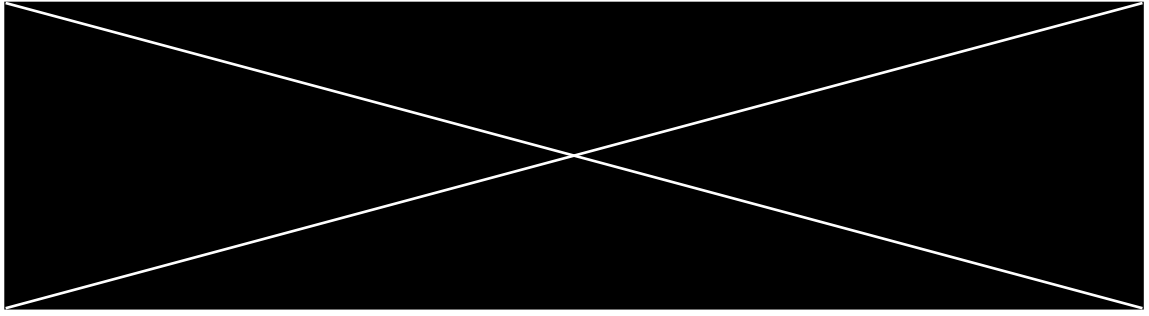
CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Procedural Due Process

60. Petitioner incorporates paragraphs 1 to 59 as if fully stated herein.
61. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.
62. Petitioner's private interests in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment-form government custody, detention, or other forms of physical restraint- lies at the heart of the liberty that [the Due process] Clause protects.")
63. Petitioner has a profound liberty interest in freedom from physical restraint.
64. Petitioner entered the United States at age 13. Although he was detained upon entry, DHS determined that Petitioner did not pose a danger or flight risk and released him from custody on his own recognizance.
65. CBP's Order of Release on Recognizance stated that Petitioner was being released on his own recognizance "[i]n accordance with section 236 of the Immigration and Nationality Act."
66. Petitioner has resided in the United States for nearly 5 years, has a pending asylum application, and USCIS has determined that Petitioner presumptively





- 67. Petitioner has no criminal convictions and substantial indicia of stability, identity verification, and compliance, including a valid EAD, a state ID, and community ties.
- 68. Respondents re-detained Petitioner without meaningful notice and opportunity to be heard before a neutral decisionmaker regarding danger, flight risk, changed circumstances, or less restrictive alternatives.
- 69. The risk of erroneous deprivation is high where the government detains a previously released noncitizen without an individualized neutral process.
- 70. Under the balancing framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), the private liberty interest is substantial, the risk of error is high, and additional safeguards would impose little burden on the government.
- 71. Petitioner's detention therefore violates procedural due process.

COUNT TWO

Violation of Fifth Amendment Right to Substantive Due Process

- 72. Petitioner incorporates paragraphs 1 to 59 as if fully stated herein.
- 73. Civil immigration detention must bear a reasonable relation to legitimate nonpunitive purposes.

74. Petitioner was unlawfully detained for weeks before removal proceedings were initiated against him.
75. Petitioner has no criminal history, and no individualized evidence supports the conclusion that secure detention is necessary to protect the public or ensure appearance.
76. Respondents' categorical use of § 1225 to detain Petitioner is arbitrary.
77. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)); accord *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025) ("It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings.") (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
78. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a neutral decision-maker.
79. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, courts must weigh (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the

fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

80. Applying the *Mathews* test, Petitioner’s liberty interest is paramount, and the risk of erroneous deprivation is extreme considering that Petitioner, who has no criminal history in the United States, and whom the CBP has already determined is not a flight risk or danger to the community, is not subject to mandatory detention under 8 U.S.C. § 1226(c). Likewise, the risk of erroneous deprivation of liberty is great due to the lack of a non-independent adjudicator. *Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955).
81. Petitioner’s continued detention therefore violates substantive due process.

COUNT THREE

Violation of the Administrative Procedure Act

82. Petitioner incorporates paragraphs 1 to 59 as if fully stated herein.
83. Respondents’ decision to detain and continue detaining Petitioner under § 1225 constitutes final agency action for which there is no adequate alternative remedy.
84. That action is contrary to law because Respondents failed to apply the governing statutory framework outlined in 8 U.S.C. § 1226(a).
85. That action is arbitrary and capricious because Respondents ignored relevant factors, including Petitioner’s pending  lack of criminal history, EAD, state ID, family and community ties, and availability of less restrictive alternatives.

86. The action should be set aside under 5 U.S.C. § 706(2)(A).

COUNT FOUR

Emergency Motion for Temporary Restraining Order and Preliminary Injunction

87. Petitioner incorporates paragraphs 1 to 59 as if fully stated herein.

88. Petitioner respectfully moves for a temporary restraining order and preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure.

89. It is well-established that a party seeking Temporary Restraining Order must show: (1) they have a substantial likelihood of success on the merits; (2) irreparable injury will occur unless a restraining order issues; (3) the equities balance in the movant's favor; and (4) if issued, the restraining order would not be adverse to the public interest. *See Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc); *see also Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005); *Wood v. Netflix, Inc.*, No. 8:22-cv-2431-CEH-AAS, 2024 U.S. Dist. LEXIS 211754, *4 (M.D. Fla. Nov. 21, 2024); Local Rule 6.01(b). Likelihood of success on the merits "is generally the most important of the four factors." *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1271 (11th Cir. 2020).

90. Emergency relief is necessary because Petitioner is suffering present and continuing unlawful detention, and each additional day of detention inflicts irreparable injury.

A. Petitioner is likely to succeed on the merits.

91. For the reasons stated above, Petitioner is likely to succeed on the merits of at least one and likely several claims.
92. Petitioner is likely to establish that Respondents are detaining Petitioner under the wrong statute because Petitioner is likely to establish that the Fifth Amendment forbids re-detention under these circumstances without meaningful individualized process. *See Lopez v. Sessions*, 18 Civ. 4189 (RWS) (S.D. N.Y. Jun 12, 2018).

B. Petitioner is suffering irreparable harm.

93. The loss of physical liberty constitutes irreparable injury.
94. As a threshold point, “It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1205 (S.D. Fla. 2020) (Cooke, J.) (internal quotations omitted) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“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.”); *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988) (holding that “unnecessary deprivation of liberty clearly constitutes irreparable harm”). Accordingly, continued unlawful detention by ICE under 8 U.S.C. § 1225(b)(2) constitutes per se irreparable harm.

95. Any ongoing violation of a constitutional right also constitutes per se irreparable injury. *See Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1128 (11th Cir. 2022); *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020); *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983) (quotation marks omitted); *FF Cosms. FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017). Petitioner herein alleges violation of his Fifth Amendment right to procedural due process.

96. Based upon this factor alone, Petitioner sufficiently demonstrates irreparable harm. This stated, putting aside the unlawful deprivation of liberty at stake, Petitioner also demonstrates irreparable harm will follow to his family absent entry of a Temporary Restraining Order by this Court. Directly due to and as a result of his unlawful detention by ICE, Petitioner is also suffering irreparable injury through separation from family, inability to work, inability to support household members, diminished access to counsel, 


97. Money damages cannot remedy those harms.

C. The balance of equities and public interest favors relief.

98. The equities overwhelmingly favor Petitioner.

99. The final two elements merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941, 955 (11th Cir. 2022). They require Plaintiff-Petitioner to clearly

establish that the threatened injury to him outweighs whatever damage the proposed injunction may cause to Defendants-Respondents and that, if issued, the injunction would not disserve (or be adverse to) the public interest. *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010) (citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1455 (11th Cir. 1986)); *Wreal*, 480 F.3d at 1247.

100. Proper application of the Constitution and statutory authority for detention of noncitizens serves the public interest because it is always in the public interest to prevent the violation of individual constitutional rights. *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019) (“[T]he public interest is served when constitutional rights are protected.”). Conversely, neither the government nor the public has any legitimate interest in accomplishing or enforcing an unlawful and unconstitutional deprivation of liberty. *Otto*, 981 F.3d at 870; *LaCroix*, 38 F.4th at 955.
101. Petitioner has no criminal history, and there is no individualized basis demonstrating danger or meaningful flight risk.
102. Respondents will suffer no cognizable harm from being required to stop enforcing unlawful detention or, at a minimum, to provide a prompt lawful custody determination under the correct standards.
103. The public has a strong interest in ensuring that executive detention complies with federal statutes and the Constitution.
104. The public also has a strong interest in preventing unlawful detention and ensuring that asylum applicants receive the process guaranteed by federal law.

E. This Court should waive any bond requirements.

105. Rule 65(c) requires that a party seeking preliminary injunctive relief provide security “in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” See FED. R. CIV. P. 65(c). However, the bond requirement of Rule 65(c) is appropriately waived in certain circumstances. See *Johnston v. Tampa Sports Auth.*, No. 8:05-CV-2191-T-27MAP, 2006 U.S. Dist. LEXIS 77614, *1-2 (M.D. Fla. Oct. 13, 2006); *Baldree v. Cargill, Inc.*, 758 F. Supp. 704 (M.D. Fla. 1990), aff’d, 925 F.2d 1474 (11th Cir. 1991) (district court has discretion to waive bond requirement imposed by Rule 65(c)); see also *Caterpillar, Inc. v. Nationwide Equip.*, 877 F. Supp. 611 (M.D. Fla. 1994) (waiving bond requirement).
106. The Court should exercise its discretion to waive bond in this instance. First, no potential economic loss to the enjoined party is implicated. Second, bond would impose undue financial hardship on Plaintiff-Petitioner and likely deter others from vindicating their rights in connection with the patently unlawful and widespread detention of noncitizens by ICE under 8 U.S.C. § 1225(b)(2) to the substantial prejudice of those noncitizens and others across the Nation. Third, there is no fair and equitable way to evaluate or monetize the enforcement of federal immigration prerogatives (or here, returning to the status quo, an adverse civil and administrative action). Finally, and most importantly, Petitioner herein alleges infringement of his Fifth Amendment fundamental right to procedural

due process. This factor makes any requirement of bond here particularly inappropriate, as District Courts regularly and routinely waive bond in connection with temporary or preliminary injunctive relief where constitutional violations are alleged.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a) Assume jurisdiction over this matter;
- b) Issue a temporary restraining order immediately;
- c) Issue a preliminary injunction after hearing;
- d) Grant the writ of habeas corpus and order that Respondents to immediately release Petitioner from immigration detention.
- e) Alternatively, order a prompt individualized custody redetermination hearing before a neutral decisionmaker under the correct legal framework, with consideration of lack of danger, flight risk, and less restrictive alternatives;
- f) Enjoin the Respondents from transferring Petitioner outside the jurisdiction of the U.S. District Court for the Southern District of Florida;
- g) Enjoin Respondents from removing Petitioner while this action is pending, absent prior order of the Court;
- h) Declare that Petitioner's detention under INA § 235 / 8 U.S.C. § 1225 is unlawful;
- i) Declare that Respondents violated the INA and the Fifth Amendment;
- j) Enjoin Respondents from re-detaining Petitioner absent lawful authority,

meaningful notice, and constitutionally adequate process;

- k) Waive any bond requirement under Rule 65(c), or set nominal bond;
- l) Award petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- m) Grant any additional relief that this Court deems just and proper.

Respectfully submitted,

/s/ Vanessa McCarthy
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Counsels for Petitioner
Dated: April 23, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

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

Dated this 23rd day of April 2026.

/s/ Vanessa McCarthy
Vanessa McCarthy, Esq.
Florida Bar 109072