

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JUANIER DIAZ HERNANDEZ

Plaintiff/Petitioner,

Case No.:

v.

MARKWAYNE MULLIN as Secretary for
The Department of Homeland Security (DHS);

TODD M. LYONS as Acting Director, Miami
Field Office, Enforcement and Removal Operations (ERO),
Department of Homeland Security;

TODD BLANCHE as Acting United States Attorney General;

RONNIE WOODALL as Warden of Baker Correctional Institute in
Sanderson, Florida,

Respondents/Defendants.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff/Petitioner, JUANIER DIAZ HERNANDEZ, by and through undersigned counsel, respectfully, and hereby brings this Petition for a Writ of Habeas Corpus.

IN SUPPORT OF THIS PETITION, Plaintiff/Petitioner alleges the following:

INTRODUCTION

1. The Plaintiff/Petitioner respectfully petitions this Court for a writ of habeas corpus to remedy his unlawful detention by the U.S. Department of Homeland Security.
2. The Plaintiff/Petitioner is a citizen and national of Cuba who was born on [REDACTED] in Havana, Cuba, and on June 20, 2022, presented himself at the Eagle Pass International Bridge and was paroled into the United States pursuant to INA 212(d)(5) on July 21, 2022. *See Exhibit No. 1.*
3. The Plaintiff/Petitioner, a Cuban national who was paroled into the United States, and having resided in the United States for more than one year, and complied with all terms of parole, filed for Adjustment of Status under the Cuban Adjustment Act, with the United States Citizenship and Immigration Service ("USCIS"), which was received on July 15, 2025, receipt number [REDACTED] and remains pending. *See Exhibit No. 2.*
4. The Plaintiff/Petitioner was detained without a warrant or without having committed any violations of law and held by ICE at the Florida Baker Correctional Institute at 20706 US 90 W, Sanderson, Florida, and the Department of Homeland Security ("DHS") issued a Notice to Appear, dated September 19, 2025, alleging that his parole was terminated without acknowledging that he has resided in the United States with parole for more than two years. *See Exhibit No. 1.*
5. The Plaintiff/Petitioner, after being detained, retained the services of the "Vargas Law Group" which claimed to have extensive experience in handling immigration cases. *See Exhibit No. 3*, Tab A, at 2. The law firm presented extensive and detailed documents to the Plaintiff/Petitioner and his domestic partner, Roxana Alfonso, they claimed were official documents from USCIS, the Department of Homeland Security ("DHS"), U.S.

Department of Justice (“DOJ”), the Executive Office for Immigration Review (“EOIR”), and the “Review Board of Immigration Motion” that were all fraudulent documents. *Id.* at Tabs F-N. The “Vargas Law Group” went as far as to stage a bond hearing for Mr. Diaz via a three-way communication with the “vargasgroup.com” and the “USCIS Hearings Virtual,” and Ms. Alfonso, who believed she was listening in on a Bond hearing before an immigration judge. *Id.* After the fake hearing, Ms. Alfonso received a letter purporting to notify Mr. Diaz that “Immigration Judge Thompson Kenley” approved an “exoneration waiver on bail in the deportation process”. *Id.* Tab J, at 34. The extent and detail of the fraud became apparent when Mr. Diaz was not released. *Id.* Tab A, at 3. The persons alleging they were lawyers or persons working at a law firm had created an elaborate fraud that led Mr. Diaz and Ms. Alfonso to pay approximately \$14,000.00 for legal representation of Mr. Diaz in the removal proceedings. *Id.* On February 8, 2026, Ms. Alfonso filed a complaint with the Tampa Police Department, reporting they were the victim of fraud. *Id.*; *see also* Tab O, at 46.

6. The Plaintiff/Petitioner appeared at a Master hearing on February 20, 2026, and informed the Immigration Judge (“IJ”) that he had been the victim of fraud by persons posing as an attorney and was the reason he was appearing at the hearing without an attorney, advising the IJ that he “did not know what to do.” *See Exhibit 6*, Addendum, at 6. In response, the IJ told Mr. Diaz that he was not eligible for bond and ordered him removed to Cuba at that hearing. *Id.*; *see also Exhibit 4*. The Plaintiff/Petitioner filed a Motion to Reopen removal proceedings based on the fraudulent representation, which the IJ denied. *See Exhibit 5*. The Plaintiff/Petitioner has appealed the matter to the Board of Immigration Appeals (“BIA”), which remains pending. *See Exhibit 6*.

7. Despite not being subject to mandatory detention, the Plaintiff/Petitioner is being detained without bond at the Baker Correctional Institute in Sanderson, Florida, under a recent policy that categorically denies bond hearings to certain noncitizens who are applicants for admission. The policy was recently declared unlawful by a federal district court in a nationwide class action judgment. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025).
8. The Plaintiff/Petitioner is a member of the eligible class certified in *Maldonado Bautista*. As such, the Respondents/Defendants must afford him a bond hearing pursuant to 8 U.S.C. § 1226(a).
9. Relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Executive Officer for Immigration Review (“EOIR”) has been denying motions for bond to immigrants who entered the U.S. without inspection.
10. The Plaintiff/Petitioner was informed by the IJ at the Master hearing on February 20, 2026, that he was ineligible for bond. *See Exhibit No. 6*.
11. The Plaintiff/Petitioner challenges his detention as a violation of the INA, 8 U.S.C. §§ 1101 *et seq.*, and regulations, thereunder, Administrative Procedure Act (“APA”), and the Due Process Clause of the Fifth Amendment.
12. The Petitioner/Plaintiff/Petitioner respectfully requests *inter alia* that this Honorable Court grant him a Writ of Habeas Corpus and order the Defendants/Respondents to release him from custody, and order other relief as described herein.

JURISDICTION

13. This action arises under the United States Constitution and the INA. This Honorable Court has jurisdiction over this complaint pursuant to: 28 U.S.C. § 1651 (the All Writs

Act); 28 U.S.C. § 2241 (power to grant Writ of Habeas Corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States Defendant); 28 U.S.C. § 1361 (jurisdiction to compel an officer to perform a duty owed to Plaintiff/Petitioner, the Mandamus Act); 5 U.S.C. § 555(b), 5 U.S.C. § 702 (APA waiver of sovereign immunity), 5 U.S.C. § 704 (no other adequate remedy) and 5 U.S.C. § 706 (compel agency action unlawfully withheld or unreasonably delayed), APA. The Plaintiff/Petitioner's custody is in violation of the Constitution and laws of the United States.

14. This Court has jurisdiction because this action falls outside the scope of § 1252(g) and (b)(9), exhaustion is excused because it would be futile, and Mr. Diaz's detention is governed by § 1226(a), not § 1225(b)(2). *See Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 U.S. Dist. LEXIS 214695, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025) and *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 U.S. Dist. LEXIS 219450, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025).

A. Auto Transfer/All Writs Act 28 U.S.C. § 1651

15. The petition requests that the Court enjoin transfer out of the district pending final disposition, as transfer to a facility in another district would require refiling and would defeat jurisdiction. Under *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004), District courts are limited to granting habeas relief "within their respective jurisdictions." *See* 28 U. S. C. §2241(a). When the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Id.* at 41. "We have interpreted this language to require nothing more than that the court issuing the writ have jurisdiction over the custodian. *Id.*

(citing *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U. S. 484, 495 (1973). To defeat this Court's jurisdiction over Mr. Diaz and his current custodian would be to move and subject Mr. Diaz to another custodian in another District.

16. If ICE transfers Petitioner to a facility in another district — a not-uncommon practice with Cuban nationals — the petition would need to be refiled, and jurisdiction would be lost.

VENUE

17. Venue is proper in this Middle District of Florida under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(e)(1) (United States defendant resides in this district), 28 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. § 1391(e)(4) (Plaintiff/Petitioner resides in this district and no real property is at issue).
18. The Plaintiff/Petitioner is in the Defendants/Respondents' physical custody within this district at the Baker Correctional Institute in Sanderson, Florida, a Florida state prison and now immigration detention center under the direct control of the Defendants/Respondents and their agents.

PARTIES

19. Plaintiff/Petitioner **JUANIER DIAZ HERNANDEZ** is a citizen and national of Cuba in the Defendants/Respondents' physical custody. The Defendants/Respondents have assigned him File No. A .
20. The Plaintiff/Petitioner brings a suit against **MARKWAYNE MULLIN** in his official capacity as Secretary for the Department of Homeland Security (DHS). In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.

21. The Plaintiff/Petitioner brings a suit against **TODD M. LYONS** in his official capacity as Acting Director, Miami Field Office, Enforcement and Removal Operations (ERO), Department of Homeland Security. In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.
22. The Plaintiff/Petitioner brings a suit against **TODD BLANCHE** in his official capacity as Acting United States Attorney General. In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.
23. The Plaintiff/Petitioner brings a suit against **RONNIE WOODALL** in his official capacity as Warden of Baker Correctional Institute in Sanderson, Florida. In this official capacity, he is a legal custodian of the Plaintiff/Petitioner.

CUSTODY

24. The Plaintiff/Petitioner is in the Defendants/Respondents' physical custody within this district at the Baker Correctional Institute in Sanderson, Florida, an immigration detention center under the direct control of the Defendants/Respondents and their agents.

LEGAL BACKGROUND

A. The Exhaustion of Administrative Remedies would be futile

25. The Plaintiff/Petitioner is excused from exhausting administrative remedies because exhaustion would be futile and would cause irreparable harm. *See Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 U.S. Dist. LEXIS 214695, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 U.S. Dist. LEXIS 219450, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025).
26. The Board of Immigration Appeals ("BIA") has issued a binding precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who

entered without inspection are “applicants for admission” subject to mandatory detention under § 1225(b)(2).

27. An Immigration Judge (“IJ”) is bound by *Yajure Hurtado* and would be compelled to deny jurisdiction over a bond request. Such continued detention without a hearing constitutes irreparable harm, involving the deprivation of fundamental liberty interests.
28. The Plaintiff/Petitioner has appealed the denial by the IJ of his motion to reopen his removal proceedings to the BIA. *See* Exhibit 6. The appeal does not claim or address the IJ’s finding that Mr. Diaz is not eligible for bond, as an appeal of that decision, as noted herein, is bound by the BIA’s decision in *Yajure Hurtado*, and would be futile. *See Exhibit 6*. Whether Mr. Diaz’s appeal is granted and his removal proceedings reopened, Mr. Diaz would continue to be detained by the defendants.

**B. District Courts throughout the US have rejected
Defendants/Respondents’ policy**

29. The government’s sweeping reinterpretation – treating long-present noncitizens who entered without inspection (EWI) as mandatory detainees – has been widely condemned as unlawful under the INA and contrary to due process. Since the policy’s introduction, “over 220 judges in hundreds of cases across the country have declared the government’s new detention policy to be contrary to immigration law and the Constitution”.¹ The “vast majority of district court judges” to consider this issue have “rejected the government’s position,” instead holding that individuals who were not apprehended at the time of entry are detained under 8 U.S.C. § 1226(a) (the general arrest-and-detention authority for

¹ *Cf.* American Civil Liberties Union, *Federal Court Affirms Nationwide Class Has Right to Bond Hearings*, December 22, 2025. Available at: <https://www.aclu.org/press-releases/federal-court-affirms-nationwide-class-has-right-to-bond-hearings>.

those already in the country) and thus are eligible for a bond hearing.² In other words, numerous courts have ruled that DHS's attempt to collapse all EWI cases into the "applicant for admission" category of §1225 is inconsistent with the statutory text and framework. See **Exhibit No. 7** (list of cases finding detention for long-time residents in the United States unlawful under 8 U.S.C. § 1225 and applying 8 U.S.C. § 1226(a)).

30. DHS claims that the Plaintiff/Petitioner is an applicant for admission who has applied for adjustment of status under the Cuban Adjustment Act, whose detention is mandatory. Section 1225 governs "applicants for admission," which the statute defines as "[a]n alien present in the United States who has not been admitted" or those "arriv[ing] in the United States." 8 U.S.C. § 1225(a)(1); see *Torres v. United States Dep't of Homeland Sec.*, Case No. 3:26-cv-646-TJC-LLL, *7 (M.D. Fla. Apr 8, 2026), 2026 U.S. Dist. Lexis 75964 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) (noting that under § 1225, "an alien who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission").
- Section 1225(b)(2) "serves as a catchall provision," *Jennings*, 583 U.S. at 287, and provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained," 8 U.S.C. § 1225(b)(2)(A). *Id.* at *7-8. On the other hand, section 1226(a) states: "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* at *8. The Attorney General "may continue to

² See American Civil Liberties Union and the Northwest Immigrant Rights Project, *Seeking Bond Hearings for Maldonado Bautista Class Members—Those Who Entered Without Inspection and Are Subject to Yajure-Hurtado*, December 3, 2025. Available at: https://www.nwirp.org/uploads/2025/Maldonado%20Bautista%20Practice%20Advisory_12%203%202025.pdf

detain the arrested alien" or "may release the alien on bond" or "conditional parole." *Id.* 8 U.S.C. § 1226(a)(1)-(2). The Supreme Court has recognized that this section "applies to aliens already present in the United States." *Id.* (citing *Jennings*, 583 U.S. at 303). The [c]ourt is further persuaded that 'seeking admission' applies to arriving aliens and not aliens who have entered without inspection and lived in the United States for years.") *Id.* at *9-10 (citing *Belsai D.S. v. Bondi*, 810 F. Supp. 3d 1016, 2025 WL 2802947, at *5 (D. Minn. 2025) ("Overwhelmingly, courts have rejected the interpretation offered by [the r]espondents that § 1225(b)(2) requires the detention of all noncitizens living in the country who are 'inadmissible' because they entered the United States without inspection."). [T]he court found that the alien, a Cuban national who entered on November 4, 2023 as an "arriving alien" who was paroled into the United States, eligible for an adjustment of status under the Cuban Adjustment Act, had applied for adjustment, resided in the community, complied with all applicable legal requirements, and has no criminal history, is subject to § 1226, not § 1225(b)(2), because he has continuously resided in the United States since 2023. *Id.* at *2, *11. The court in that matter found that the alien can no longer be classified as a noncitizen "who is arriving in the United States" even though he was initially detained upon his arrival in Texas. *Id.* at *13. When ICE most recently detained him in Florida in December 2025—more than two years after he entered the United States—the alien was not in the process of "arriving" in the United States. *Id.* The court noted that it would be absurd to find that the alien is still in the process of "arriving" in the United States when he has been continuously residing here for at least eight months after the expiration of his parole. *Id.* Thus, he is not properly

detained under § 1225(b)(2) as DHS contends. *Id.* Instead, his detention is governed by § 1226, and the Petition for Habeas Corpus was granted. *Id.*

31. The argument that the expiration of parole returned the Plaintiff/Petitioner to the status of an "arriving alien" subject to mandatory detention under § 1225(b)(2) also fails. *Id.* at *11. Though the expiration of § 1182(d)(5)(A) parole returns the parolee "to the custody from which he was paroled", "district courts across the country have consistently held that the expiration of § 1182 parole does not require treating the noncitizen as if they had never been paroled in the first place." *Id.* at *11-12. (citing *Linarez v. Stamper*, No. 1:26-cv-101-JAW, 2026 U.S. Dist. LEXIS 45588, 2026 WL 592294, at * 5 (D. Me. Mar. 3, 2026). The court joined "other district courts in finding that, following the expiration of parole, noncitizens like Mr. Orozco Torres do not return to the status of an "arriving alien." *Id.* at *12. (citing *Qasemi v. Francis*, No. 25-cv-10029 (LJL), 2025 U.S. Dist. LEXIS 261199, 2025 WL 3654098, at * 6 (S.D.N.Y. Dec. 17, 2025) ("It would try any plain understanding of the term arrival to classify an individual like [petitioner] who has lived and worked in the United States for over a year prior to his re-detention as an arriving alien."); *Walizada v. Trump*, No. 2:25-cv-768, 2025 U.S. Dist. LEXIS 256630, 2025 WL 3551972, at *15 (D. Vt. Dec. 11, 2025) (finding it "unjust" and "counterintuitive" that a petitioner "who was welcomed into the United States after extensive screening, would be entitled to less statutory protection and due process rights than someone who has entered the country illegally and committed certain crimes here.")).

**C. The Plaintiff/Petitioner is a member of the *Maldonado Bautista* Class
and is entitled to a bond hearing**

32. On December 18, 2025, the U.S. District Court for the Central District of California entered a Final Judgment in *Maldonado Bautista v. Santacruz*.

33. The court certified a nationwide "Bond Eligible Class" defined as:

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

The U.S. District Court for the Central District of California vacated the July 8, 2025, DHS policy "Interim Guidance Regarding Detention Authority for Applicants for Admission" as unlawful.

34. The U.S. District Court for the Central District of California declared that members of the Bond Eligible Class are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2). The Court further declared that class members are entitled to custody redetermination hearings before an Immigration Judge.

35. The Plaintiff/Petitioner meets every criterion of the Bond Eligible Class: he entered without inspection (EWI), was paroled by the U.S. Immigration and Customs Enforcement on July 21, 2022, and has resided in the United States for more than two years, and is not subject to mandatory detention under § 1225(b)(2) as an arriving alien subject to expedited removal. Under its plain language, the expedited removal statute does not apply. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (applying expedited removal only to an individual who "is arriving in the United States" who "unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution or "has not been admitted or paroled into the United States"). Plaintiff/Petitioner expressed a fear of persecution and was paroled into the United States and exempted under § 1225(b)(1)(A)(i).

36. Despite the clear findings and declaratory relief issued on behalf of the class in *Maldonado Bautista*, the DHS and the EOIR have not voluntarily complied nationwide.

D. Due Process, Statutory, and Regulatory Rights

37. “Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause.” *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
38. Immigration detention must “bear a reasonable relation to the purpose for which the individual was committed.” *See Demore v. Kim*, 538 U.S. 510, 527 (2003).
39. Moreover, under the Fifth Amendment of the United States Constitution, DHS and the EOIR may not deprive a noncitizen of notice and an opportunity to be heard. *See Mathews v. Elridge*, 424 U.S. 319 (1976).

E. The APA

40. Federal Agencies must comply with the APA when crafting and enforcing decisions, regulations, and legislative rules. 5 U.S.C. § 553.
41. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.
42. Under the APA, this Honorable Court has the authority to compel agency action that has been unreasonably delayed. 5 U.S.C. § 706(1).
43. An agency must “conclude a matter presented to it [...] within a reasonable time”. 5 U.S.C. § 555(b).
44. “A person suffering legal wrong because of agency action [...] is entitled to judicial review thereof.” 5 U.S.C. § 702.

STATEMENT OF THE FACTS

45. The Plaintiff/Petitioner is a national of Cuba who [REDACTED]

Fearing for his life, he came to the United States to seek protection.

46. The Plaintiff/Petitioner is a citizen and national of Cuba who was born on [REDACTED]

in Havana, Cuba, and on June 20, 2022, and was paroled into the United States pursuant to INA 212(d)(5) on July 21, 2022. *See Exhibit No. 1.*

47. The Plaintiff/Petitioner filed for Adjustment of Status with the United States Citizenship and Immigration Service ("USCIS"), which was received on July 15, 2025, receipt number [REDACTED] that remains pending, after having been paroled into the United States, and residing in the United States for more than one year, and is eligible to adjust status under the Cuban Adjustment Act. *See Exhibit No. 2.*

48. Despite having complied with all terms of parole, the Plaintiff/Petitioner was detained without a warrant or without having committed any violations of law and held by ICE at the Florida Baker Correctional Institute at 20706 US 90 W, Sanderson, Florida.

49. The Plaintiff/Petitioner, after being detained, retained the services of the "Vargas Law Group" which claimed to have extensive experience in handling immigration cases. *See Exhibit No. 3, Tab A, at 2.* The law firm presented extensive and detailed documents to the Plaintiff/Petitioner and his domestic partner, Roxana Alfonso, they claimed were official documents from USCIS, the Department of Homeland Security ("DHS"), U.S. Department of Justice ("DOJ"), the Executive Office for Immigration Review ("EOIR"), and the "Review Board of Immigration Motion" that were all fraudulent documents. *Id.* at Tabs F-N. The "Vargas Law Group" went as far as to stage a bond hearing for Mr. Diaz via a three-way communication with the "vargaslgroup.com" and the "USCIS Hearings Virtual," and Ms. Alfonso, who believed she was listening in on a Bond hearing

before an immigration judge. *Id.* After the fake hearing, Ms. Alfonso received a letter purporting to notify Mr. Diaz that “Immigration Judge Thompson Kenley” approved an “exoneration waiver on bail in the deportation process”. *Id.* Tab J, at 34. The extent and detail of the fraud became apparent when Mr. Diaz was not released. *Id.* Tab A, at 3. The persons alleging they were lawyers or persons working at a law firm had created an elaborate fraud that led Mr. Diaz and Ms. Alfonso to pay approximately \$14,000.00 for legal representation of Mr. Diaz in the removal proceedings. *Id.* On February 8, 2026, Ms. Alfonso filed a complaint with the Tampa Police Department, reporting they were the victim of fraud. *Id.*; *see also* Tab O, at 46.

50. The Plaintiff/Petitioner appeared at a Master hearing on February 20, 2026. He informed the Immigration Judge (“IJ”) that he had been the victim of fraud by persons posing as an attorney and a law firm and therefore appeared without an attorney at the hearing, and that he “did not know what to do.” *See Exhibit 6*, Addendum at 6. In response, the IJ told Mr. Diaz he was not eligible for bond and ordered him removed to Cuba. *Id.*; *see also Exhibit 4*. The Plaintiff/Petitioner filed a Motion to Reopen removal proceedings based on the fraudulent representation, which the IJ denied. *See Exhibit 5*. The Plaintiff/Petitioner has appealed the matter to the Board of Immigration Appeals (“BIA”), which remains pending. *See Exhibit 6*.
51. It is the Plaintiff/Petitioner’s understanding that the Orlando Immigration Court, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as well as *Matter of E-L-H-*, 23 I&N Dec. 814 (BIA 2005), is not affording bond hearings to similarly situated persons to review ICE’s custody decision or set a bond.

CAUSES OF ACTION

COUNT I

DEFENDANTS/RESPONDENTS HAVE VIOLATED THE INA, AND THE REGULATIONS

52. Plaintiff/Petitioner incorporates paragraphs 1 through 51.

53. The plain text of 8 U.S.C. § 1225(b)(2) applies to aliens “seeking admission.” The

Supreme Court has recognized that § 1225 applies to those at the border, while § 1226 applies to those already present in the United States. *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

54. Plaintiff/Petitioner, having resided in the U.S. for more than 2 years, is not “seeking admission” in any temporal sense. When ICE most recently detained him in Florida, more than two years after he entered the United States, he was not in the process of “arriving” in the United States. *Torres v. United States Dep’t of Homeland Sec.*, Case No. 3:26-cv-646-TJC-LLL, at *13 (M.D. Fla. 2026). Upon termination of his parole, the petitioner did not become a noncitizen seeking admission. Regardless of whether petitioner was detained pursuant to § 1225(b)(1) or § 1225(b)(2) upon his initial entry into the United States, petitioner’s detention did not revert back to § 1225 when his parole was terminated. *See Vasquez Salgado v. Francis*, 2026 WL 915304, at *6 (S.D.N.Y. Apr. 3, 2026) (“When Petitioner was released on parole under Section 1182(d)(5)(A), she was removed from the ambit of the mandatory detention regime established in Section 1225. The mere expiration of her parole does not return Petitioner to that world.”); *Kumar v. Johnson*, 2026 WL 937560, at *1-2 (W.D. Okla. Apr. 7, 2026) (rejecting respondents’ argument that § 1225(b)(2) controls the detention of a petitioner who was initially released on parole under 8 U.S.C. § 1182(d)(5)(A) and later re-detained). “[A]n applicant ‘seeking admission’ is similarly positioned to one arriving”

and “it necessarily follows that a noncitizen paroled into the country – i.e., a noncitizen residing in the United States – is not an arriving alien.” *See Qasemi v. Francis*, 2025 WL 3654098, at *8 (S.D.N.Y. Dec. 17, 2025).

55. As established by the binding judgment in *Maldonado Bautista*, Petitioner's detention is governed by 8 U.S.C. § 1226(a). Under this statute, detention is discretionary, and Petitioner is entitled to a bond hearing.
56. Defendants/Respondents' detention of Petitioner under § 1225(b)(2) is *ultra vires* to the INA and unlawful.

COUNT II

A. DEFENDANTS/RESPONDENTS HAVE VIOLATED THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

57. Plaintiff/Petitioner incorporates paragraphs 1 through 56.
58. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. The clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). It is thus "well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).
59. The Supreme Court has long recognized that "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1976).

60. Due process requires that civil detention be accompanied by adequate procedural safeguards, including an individualized hearing before a neutral decisionmaker to determine if detention is necessary to prevent flight or danger.
61. The underlying premise of Mr. Diaz's claim is that he should be classified under 8 U.S.C. § 1226(a) and afforded a bond hearing before an immigration judge instead of being mandatorily detained under 8 U.S.C. § 1225(b)(2).
62. By classifying Plaintiff/Petitioner for mandatory detention without a hearing, Defendants/Respondents have deprived him of his liberty without due process. Due process requires that respondents in immigration proceedings be given an opportunity to be heard "at a meaningful time and in a meaningful manner." *United States v. Tanner*, 544 F.3d 793, 795 (7th Cir. 2008) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).
63. The government cannot justify this deprivation. There is no compelling interest in detaining a long-term resident with no serious criminal history without even considering his release, particularly when less restrictive alternatives exist.
64. In addition to violating the Plaintiff/Petitioner's procedural due process, in denying Plaintiff/Petitioner a bond hearing, the government has violated his right to substantive due process as his detention is prolonged, serves no legitimate regulatory purpose, and is effectively punitive, in violation of the Fifth Amendment liberty guarantee. *See Foucha v. Louisiana*, 504 U.S. 71 (1992).
65. Mr. Diaz, who has been detained since December 2025, can no longer be classified as a noncitizen "who is arriving in the United States" even though he was initially detained upon his arrival in Texas on June 20, 2022. When ICE most recently detained him in December 2025, Mr. Diaz had resided for more than two years in the United States after

being granted humanitarian parole on July 21, 2022. He was not in the process of "arriving" in the United States. It would be absurd to find that he is still in the process of "arriving" in the United States when he has been continuously residing here for at least ten months after the expiration of parole for Cubans by DHS. Thus, he is not properly detained under § 1225(b)(2) as the Respondents contend. Instead, his detention is governed by § 1226, and the Petition is due to be granted. *Torres v. United States Dep't of Homeland Sec.*, Case No. 3:26-cv-646-TJC-LLL, at *13.

66. The Plaintiff/Petitioner has no criminal history, has a domestic partner who is a permanent resident, and has a pending application to adjust status under the Cuban Adjustment Act. *See Exhibit 2, 3*. He is not a danger to the community and is not a flight risk. There is no regulatory justification for his continued detention beyond the government's erroneous claim that it is mandatory.
67. Cuba is among the most non-cooperative countries for the repatriation of aliens ordered removed to Cuba. Post-order civil detention for more than six months is presumptively unlawful when removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 702 (2001). The Petitioner/Plaintiff expressly preserves his right to seek relief if and when his detention exceeds six months.

B. DEFENDANTS/RESPONDENTS HAVE VIOLATED THE EQUAL PROTECTION IMPLICIT IN THE FIFTH AMENDMENT

68. Plaintiff/Petitioner incorporates paragraphs 1 through 67.
69. Cuban nationals admitted under INA § 212(d)(5) parole are in a materially different legal posture than other aliens who enter the United States without inspection ("EWI"). Cubans granted parole were formally inspected, documented, processed, and conditionally admitted by the United States government through an affirmative act of executive

discretion. Treating Cubans paroled into the U.S., and therefore eligible to adjust under the Cuban Adjustment Act, the same as undocumented EWI aliens, for purposes of § 1225(b)(2) mandatory detention, places those who entered with parole in the same position as those who entered without inspection or permission.

70. The expiration of § 1182(d)(5)(A) parole returns the parolee "to the custody from which he was paroled." *Torres v. United States Dep't of Homeland Sec.*, Case No. 3:26-cv-646-TJC-LLL, at * 11. However, "[D]istrict courts across the country have consistently held that the expiration of § 1182 parole does not require treating the noncitizen as if they had never been paroled in the first place." *Id.* at *12 (citing *Linarez v. Stamper*, No. 1:26-cv-101-JAW, 2026 U.S. Dist. LEXIS 45588, 2026 WL 592294, at * 5 (D. Me. Mar. 3, 2026)). Instead, "Section 1182(d)(5)(A) suggests that rather than reverting to any prior status, a noncitizen whose parole has expired is treated like the vast majority of undocumented immigrants currently living in this country who are not subjected to expedited removal." *Id.* (citing *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 2025 WL 3314420, at * 17 (E.D.N.Y. 2025); *Matkarimov v. Noem*, No. 26-48-DLB, 2026 U.S. Dist. LEXIS 50887, 2026 WL 700072, at *2 (E.D. Ky. Mar. 12, 2026)).
71. As the Board of Immigration Appeals ("BIA") has reiterated, there are notable differences between applying for adjustment of status under INA § 245(a) and adjusting under the CAA. *Matter of Martinez-Montalvo*, 24 I&N Dec. 778 (BIA 2009) (citing *Matter of Artigas*, 23 I&N Dec. 99 (BIA 2001)). It is "unjust" and "counterintuitive" that a petitioner "who was welcomed into the United States after extensive screening, would be entitled to less statutory protection and due process rights than someone who has

entered the country illegally and committed certain crimes here." *Walizada v. Trump*, No. 2:25-cv-768, 2025 U.S. Dist. LEXIS 256630, 2025 WL 3551972, at *15 (D. Vt. Dec. 11, 2025).

72. The Torres Court observed that it would be absurd to treat a Cuban parolee as still arriving years after entry. As a parolee, Mr. Diaz's "physical presence within the United States cannot be said to be unlawful or illegal because it is authorized by the Attorney General, and parole has long been understood to constitute lawful status." *United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019). The government's policy of detaining Cuban nationals with no criminal history, who were paroled into the U.S., who have pending applications with USCIS to adjust status, irrationally penalizes inspected, documented parolees more harshly than undocumented EWI individuals. It is exceptionally punitive in light of the fact that applications under the Cuban Adjustment Act are exclusively the jurisdiction of USCIS, and cannot be adjudicated in removal proceedings before an immigration court, with the exception of those Cubans who, after filing their applications, were permitted to leave the United States and return under advance parole. *See Matter of Martinez-Montalvo*, 24 I&N 778, 783 (BIA 2009). Such is not the case with Mr. Diaz. USCIS has exclusive jurisdiction over his application.

COUNT III

DEFENDANTS/RESPONDENTS HAVE VIOLATED THE APA

73. Plaintiff/Petitioner incorporates paragraphs 1 through 72.

74. The APA prohibits agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

75. Defendants/Respondents' continued application and reliance on policy that was vacated by the U.S. District Court for the Central District of California in *Maldonado Bautista* is unlawful.
76. Defendants/Respondents' continued application and reliance on *Matter of Yajure Hurtado* (which is based on the policy vacated by the U.S. District Court for the Central District of California in *Maldonado Bautista*) is arbitrary and capricious because it contradicts the plain language of the INA and federal court precedent in this District. *See Hernandez Lopez v. Hardin*, 2:25-cv-00830, (M.D. Fla.).

COUNT IV

DEFENDANTS/RESPONDENTS HAVE VIOLATED THE FIFTH AMENDMENT DUE PROCESS BASED ON PLAINTIFF/PETITIONER BEING THE VICTIM OF THE FRAUDULENT UNLAWFUL PRACTICE OF LAW

77. Plaintiff/Petitioner incorporates paragraphs 1 through 76.
78. The Plaintiff/Petitioner appeared pro se at his February 20, 2026, Master Hearing as a direct and proximate result of a sophisticated fraud by a person or persons posing as experienced immigration attorneys that cost him \$14,000 and deprived him of counsel at the most critical stage of his proceedings. *See Exhibit 3*. When asked by the IJ why he did not have counsel present to represent him, he expressly told the IJ of the fraud and that he now “did not know what to do” and asked, “So what is my next step?” *See Exhibit 6*, Addendum, at 6-7. The IJ responded by informing Mr. Diaz that he was not eligible for bond and ordered him removed to Cuba. *Id.* At a previous master hearing, the IJ was informed that the Plaintiff/Petitioner had been paroled into the United States, where he resided for more than one year, and that as an “arriving alien,” he already had a meritorious adjustment of status petition pending with USCIS where he had been advised

to notify the Court when the application was approved so the removal process could be dismissed. *Id.*

79. Under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), and its federal habeas analogs, fraud or ineffective assistance that causes a fundamental breakdown of the adversarial process is itself a Fifth Amendment due process violation cognizable under 28 U.S.C. § 2241. The IJ's summary removal order entered under these circumstances — and the subsequent denial of the Motion to Reopen — are independently reviewable on habeas as a violation of the right to a meaningful hearing.
80. The Plaintiff/Petitioner submitted to the IJ documents demonstrating that he was the victim of the Unlawful Practice of Law (“UPL”) and that he fully complied with the requirements under *Matter of Lozada*. See **Exhibit 3**. The IJ ignored the due process violation and ordered him removed to Cuba and denied his motion to reopen based on that violation.

COUNT V

DEFENDANTS/RESPONDENTS HAVE VIOLATED THE INA, AND THE CUBAN ADJUSTMENT ACT PROCESS

81. Plaintiff/Petitioner incorporates paragraphs 1 through 80.
82. The Cuban Adjustment Act, 8 § U.S.C. 1255, provides a statutory right to adjust status for Cuban nationals who have been inspected, admitted, or paroled, and have been physically present in the United States for at least one year. As noted above, the Plaintiff/Petitioner satisfies each criterion. His pending application creates a liberty interest in its adjudication by USCIS prior to execution of any removal order. The IJ's removal order, entered at a hearing where Plaintiff/Petitioner appeared unrepresented as a

result of fraud, and without any consideration of his meritorious application to adjust status under the CAA, pending with USCIS, is void or voidable on its face.

83. The IJ should have considered terminating or dismissing removal proceedings where the respondent is classified as an “arriving alien” and already has a meritorious application to adjust status pending with USCIS. *Matter of Roque-Izada*, 29 I&N Dec. 106, 107 (BIA 2025) (citing 8 C.F.R. § 1245.2(a)(1)(2025)); *see also Matter of Silitonga*, 25 I&N Dec. 778, 783 (BIA 2009) (addressing an adjustment of status application under the Cuban Adjustment Act filed by an arriving alien). The IJ has authority to terminate cases where USCIS has Jurisdiction to adjudicate the application where the alien is not in proceedings, and where the alien has filed the application with USCIS. 8 C.F.R. § 1003.18(d)(1)(ii)(B). The IJ gave no consideration of Mr. Diaz’s meritorious eligibility to adjust status or to dismiss or terminate removal proceedings prior to ordering him removed.

84. The only consideration provided by the IJ was the Court’s calendar, in ordering the removal of Mr. Diaz to Cuba. The result of the IJ’s removal order is leaving Mr. Diaz detained while his application with USCIS remains pending and with exclusive jurisdiction for adjudicating adjusting of status under the CAA, whether or not he is in removal proceedings, or under an order of removal. *See Matter of Martinez-Montalvo*, 24 I&N Dec. at 783.

COUNT VI

PRELIMINARY INJUNCTIVE RELIEF IS WARRANTED

85. An alien seeking a stay of removal pending adjudication of a petition for review does not ask for a coercive order against the Government, but rather for the temporary setting

aside of the source of the Government's authority to remove. *Nken v. Holder*, 556 U.S. 418, 429 (2009). The first two factors of the traditional standard are the most critical. It is not enough that the chance of success on the merits be "better than negligible." *Id.* at 434 (citing *Sofinet v. INS*, 188 F. 3d 703, 707 (CA7 1999)). Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. *Id.* at 435. In considering them, courts must be mindful that the Government's role as the respondent in every removal proceeding does not make the public interest in each individual one negligible. *Id.* The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and "permit[s] and prolong[s] a continuing violation of United States law." *Id.* at 436.

86. In *Nken v. Holder*, the U.S. Supreme Court established a four-factor test for circuit courts to apply when deciding whether to grant noncitizen petitioners a stay of removal. The four factors are: (1) whether the noncitizen petitioner has made a strong showing that he is likely to succeed on the merits; (2) whether the petitioner will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties; and (4) where the public interest lies. *Id.* at 425-26. As noted, 1) the Plaintiff/Petitioner has a meritorious application to adjust status under the CAA that was previously filed with USCIS and remains pending. As an arriving alien, USCIS maintains jurisdiction over the application regardless of whether the alien is in removal proceedings or has a removal order; 2) if the Plaintiff/Petitioner were removed as ordered, he will no longer fulfill the eligibility requirement of having maintained his residency in the U.S. prior to adjudication of his application to adjust status and, having been ordered removed, will no

longer be admissible to the United States; 3) an injunction will not harm the government whose intent in granting parole was to allow the Plaintiff/Petitioner sufficient time to have his application for adjustment under the CAA adjudicated; 4) the public interest lies in the Plaintiff/Petitioner being allowed to adjust status under the CAA, enacted by Congress, the voice of the people and of the public interest. Additionally, the overwhelming circuit-wide consensus against the respondent's position on mandatory detention, and the irreparable nature of the ongoing unlawful deprivation of Mr. Diaz's liberty is demonstrably against the public interest.

RELIEF REQUESTED

WHEREFORE, Plaintiff/Petitioner prays that this Honorable Court grants the following relief:

- A. Exercise jurisdiction over this action;
- B. Declare that Petitioner is a member of the *Maldonado Bautista* Bond Eligible Class;
- C. Declare that the Petitioner is detained under 8 U.S.C. § 1226(a) and is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2);
- D. Issue a Writ of Habeas Corpus requiring the Defendants/Respondents to immediately schedule an individualized bond hearing for Petitioner before an Immigration Judge within seven (7) days, and at said hearing, require the government to bear the burden of proving by clear and convincing evidence that Petitioner presents a flight risk or danger to the community that no condition of release can mitigate;
- E. Grant temporary and permanent injunctive relief requiring the Defendants/Respondents to release the Plaintiff/Petitioner from custody;

- F. Enjoin the Defendants/Respondents from moving or transferring the Plaintiff/Petitioner outside of the jurisdiction of this Court;
- G. Order the Plaintiff/Petitioner's immediate release if the Respondents/Defendant fail to provide a constitutionally adequate bond hearing within the time prescribed by the Court;
- H. Declare that the continued detention of the Plaintiff/Petitioner without access to bond hearing violates Due Process Clause of the Fifth Amendment, the INA, the APA, and regulations;
- I. Award the Plaintiff/Petitioner reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, as he satisfies the net-worth threshold for eligibility and has had no income since he was detained in December 2025;
- J. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 28th day of April 2026.

/s/ Jose Antonio Leon

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APPENDIX: LIST OF EXHIBITS

1. **Exhibit 1: Notice to Appear and Parole**
2. **Exhibit 2: Form 797C Notice of Receipt for Form I-485 Application for Adjustment of Status and USCIS Case Status Print out**
3. **Exhibit 3: Petitioner/Plaintiff's Motion to Reopen**
4. **Exhibit 4: Order of removal**
5. **Exhibit 5: Order denying Motion to Reopen**
6. **Exhibit 6: EOIR-26, Notice of Appeal with Addendum**
7. **Exhibit 7: list of cases finding detention for long-time residents in the United States unlawful under 8 U.S.C. § 1225 and applying 8 U.S.C. § 1226(a)**

Respectfully submitted,

S/ Jose Antonio Leon

Jose Antonio Leon, Esq.
Attorney for Plaintiff/Petitioner

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

Pursuant to 28 U.S.C. § 2242 and 28 U.S.C. § 1746, the undersigned counsel certifies under penalty of perjury that I represent JUANIER DIAZ HERNANDEZ, in his removal proceedings and make this verification on his behalf; that I have discussed the facts and allegations within this Petition with the Petitioner; and that based upon these discussions and a review of the underlying records, the facts set forth in the foregoing Petition are true and

accurate to the best of our knowledge, information, and belief, and the attachments thereto are true and correct copies of the originals.

Dated this 28th day of April 2026.

S/ Jose Antonio Leon
Jose Antonio Leon, Esq.