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8 UNITED STATES DISTRICT COURT
9 FOR THE MIDDLE DISTRICT OF FLORIDA

10 GONZALEZ-DIAZ, ELEAZAR,

11 Petitioner-Plaintiff,

12 v.

13 Warden, in his/her Official Capacity, of Florida Baker
14 Correctional Institute,

15 Todd M. LYONS, Acting Director, Immigration and
16 Customs Enforcement, U.S. Department of Homeland
17 Security;

18 Markwayne Mullin, in his Official Capacity,
19 Secretary, U.S. Department of Homeland Security;
20 and

21 Todd Blanch is his Official Capacity as the Acting
22 Attorney General of the United States;

23 Respondents-Defendants.
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Case No. _____

**PETITION FOR WRIT
OF HABEAS CORPUS**

INTRODUCTION

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- 2
- 3 1. The Petitioner, Eleazar Gonzalez-Diaz ("Petitioner"), Alien number [REDACTED], by and
- 4 through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus
- 5 pursuant to 28 U.S.C. § 2241 to compel his release from custody, as his current civil
- 6 immigration detention violates the Due Process Clause of the United States Constitution and
- 7 the Immigration and Nationality Act.
- 8

9 **FACTUAL BACKGROUND**

- 10 2. Petitioner, Mr. Gonzalez, by and through his undersigned counsel, hereby files this petition
- 11 for writ of habeas corpus pursuant to 28 U.S.C § 2241 to challenge the U.S. Department of
- 12 Homeland Security ("DHS"), U.S. Immigration and Customs Enforcement ("ICE") decision
- 13 to detain him in an immigration jail pending resolution of his removal case without first
- 14 providing him a due process hearing where the government bears the burden to demonstrate
- 15 to a neutral adjudicator that he is a danger to the community or a flight risk by clear and
- 16 convincing evidence.
- 17
- 18 3. As background, Petitioner is a national and citizen of Mexico. *See Exhibit A.* Petitioner
- 19 entered the United States on May 5, 2000. He has been in United States since then 2000 (over
- 20 26 Years).
- 21
- 22 4. Petitioner was detained on March 3, 2026, in Groveland, Florida, while he was a passenger in
- 23 a vehicle. ICE ERO conducted a Fugitive Operation with Florida Highway Patrol. Florida
- 24 Highway Patrol, Mackenzie ID [REDACTED] contacted ICE ERO stating he had encountered the
- 25 subject near Mount Pleasant RD Highway 50, Groveland, Florida pursuant to a traffic
- 26 enforcement stop. Mr. Gonzalez was just the passenger in the vehicle. *See Exhibit B.*
- 27
- 28

- 1 5. Petitioner has been charged with being in the United States as “an alien present in the United
2 States who has not been admitted or paroled, or who arrived in the United States at any time
3 or place other than as designated by the Attorney General.” *See Exhibit C.*
- 4 6. Petitioner is currently detained at Florida Baker Correctional Institute, 20706 US 90 W,
5 Sanderson, Florida 32087. *See Exhibit D.*
- 6 7. Petitioner lastly seeks his immediate release from detention in Florida where ICE unlawfully
7 detained and continues to imprison him without hearing and without demonstrating that he is
8 a flight risk or danger to the community, as required by the Due Process clause of the Fifth
9 Amendment.
- 10 8. Petitioner has no criminal records in the United States or in Mexico.
- 11 9. DHS has taken the position that, based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
12 2025)¹ and subsequent agency guidance, Petitioner is categorically ineligible for any custody

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16 ¹ The Government’s reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is misplaced. The decision
17 was issued in a bond appeal that (as argued in Respondent’s motion to reconsider) was moot before publication
18 because the respondent was already subject to a final removal order—making the Board’s choice to issue a published
19 merits ruling procedurally defective and, at minimum, of diminished persuasive value. *See also Matter of Valles*, 21
20 I&N Dec. 769, 773 (BIA 1997) (bond appeal rendered moot by subsequent custody
21 redetermination); *Matter of Luis*, 22 I&N Dec. 747, 753 (BIA 1999) (Board may dismiss as moot, “as a matter of
22 prudence,” when a controversy is deprived of practical significance).

23 In any event, *Yajure Hurtado* is ultra vires of the Board’s delegated authority because it effectively rewrites
24 binding

25 Attorney General custody regulations—without rulemaking—by converting a narrow, regulation-based “arriving
26 alien” bond bar into a sweeping prohibition for virtually all noncitizens charged as present without admission.
27 Compare 8 C.F.R. §§ 1236.1(d)(1), 1003.19(h)(2)(i)(B) (IJ bond jurisdiction before a final order; categorical bar
28 limited to “arriving aliens” and other enumerated classes) with 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (final
interim rule explaining that “inadmissible aliens, except for arriving aliens, have available to them bond
redetermination hearings before an immigration judge”). The Board has repeatedly stated that it lacks the authority
to invalidate or disregard Attorney General regulations. *See, e.g., Matter of Akram*, 25 I&N Dec. 874, 875 (BIA
2012). Basic administrative law likewise forbids an agency from accomplishing a de facto amendment of a binding
legislative rule through adjudication rather than notice-and-comment rulemaking. *See, e.g., Marseilles Land &
Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003).

Nor does *Yajure Hurtado* warrant deference in federal habeas proceedings. Under *Loper Bright Enters. v.
Raimondo*, 603 U.S. 369, 394, 413 (2024), courts must exercise independent judgment and may not defer to an
agency interpretation simply because a statute is ambiguous. Federal courts evaluating the same detention theory
have thus declined to treat *Yajure Hurtado* as controlling or persuasive and have ordered bond hearings under INA
§ 236(a), 8 U.S.C. § 1226(a).

1 redetermination before an immigration judge and may be detained for the duration of his
2 removal proceedings absent discretionary parole.

3 10. As a result of this categorical denial of custody review, Petitioner now faces prolonged and
4 potentially indefinite civil detention without any meaningful opportunity for an individualized
5 determination of whether his continued confinement is necessary or lawful DHS has not
6 conducted any neutral, individualized assessment of Petitioner's danger to the community,
7 risk of flight, or suitability for less restrictive alternatives to detention.
8

9 11. Petitioner has no criminal record and has consistently complied with all immigration
10 requirements. Petitioner has a pending application for I589, Application for Asylum and
11 Withholding of removal.
12

13 12. Petitioner continued detention is not based on any individualized finding that confinement is
14 necessary to serve a legitimate governmental purpose.

15 13. Petitioner's continued detention without any individualized custody determination violates
16 the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, the
17 Suspension Clause of the United States Constitution, and binding agency regulations. DHS's
18 reliance on a categorical jurisdiction bar has resulted in prolonged civil confinement without
19 adequate procedural safeguards or meaningful judicial review.
20

21 14. Therefore, at a minimum, in order to lawfully arrest Petitioner, government must first
22 establish, by clear and convincing evidence and before a neutral decision maker, that he is a
23 danger to the community or a flight risk, such that his detention is necessary. ICE's arrest on
24 March 3, 2026, while he was a passenger in a vehicle, has violated these regulations, laws,
25 and due process.
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1 15. Petitioner seeks *habeas* relief ordering his immediate release from ICE custody or, in the
2 alternative, an order directing Respondents to provide him with a prompt, constitutionally
3 adequate, and individualized custody determination before a neutral decisionmaker with
4 authority to order release. For the foregoing reasons, the Court should grant the *writ* and
5 restore Petitioner's liberty.
6

7 JURISDICTION

8 16. Petitioner is in physical custody of Respondents and is currently detained at Florida Baker
9 Correctional Institute, 20706 US 90W Sanderson, Florida 32087. *See Exhibit D*

10 17. This action arises under the Constitution of the United States and the Immigration and
11 Nationality Act ("INA").
12

13 18. This Court has jurisdiction over this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.
14 § 2241, which authorizes federal courts to review the legality of a noncitizen's detention.
15 Jurisdiction also lies under 28 U.S.C. § 1331, as this action presents federal questions arising
16 under the Constitution and laws of the United States. The Suspension Clause of the
17 Constitution, U.S. Const. art. I, § 9, cl. 2, protects Petitioner's right to seek habeas corpus relief.
18

19 19. Petitioner's continued detention by Respondents constitutes a severe restraint on his individual
20 liberty, rendering him "in custody in violation of the Constitution or laws ... of the United
21 States" within the meaning of 28 U.S.C. § 2241(c)(3). *See Hensley v. Municipal Court*, 411
22 U.S. 345, 351 (1973).
23

24 20. No prior petition for a writ of habeas corpus has been filed in any court challenging Petitioner's
25 detention.
26

27 21. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws
28 of the United States, jurisdiction is proper in this court.

VENUE

22. Petitioner is in physical custody of Respondents and is currently detained at Florida Baker

Correctional Institute, 20706 US 90W Sanderson, Florida 32087. *See Exhibit D*

23. Venue is proper in the Middle District of Florida, Pursuant to 28 U.S.C. § 2241(d), a petition for a writ of habeas corpus may be filed in the district in which the petitioner is in custody.

Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Petitioner's claims occurred within this District.

24. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district and are directly responsible for the confinement of Petitioner.

25. Because Petitioner is presently detained within this District, and because Petitioner unlawful detention decisions and related custody determinations affecting Petitioner occurred here, venue in the Middle District of Florida is proper.

REQUIREMENTS OF 28 U.S.C. § 2243

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

27. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. 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

1 who entertains it and receives prompt action from him within the four corners of the
 2 application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation modified).

3 EXHAUSTION OF ADMINISTRATIVE REMEDIES

4
 5 28. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. Any requirement of
 6 administrative exhaustion is therefore purely discretionary. In the Eleventh Circuit, the
 7 requirement to exhaust administrative remedies for 28 U.S.C. § 2241 habeas petitions is
 8 prudential rather than jurisdictional. *Christopher D. Cobb v. Warden*, No. 23-12416, 2025 WL
 9 340004, at 2 (11th Cir. Jan. 30, 2025) (per curiam) (unpublished).

10
 11 29. The BIA interprets § 1225(b) as mandating detention of arriving aliens pending removal
 12 proceedings. See *Matter of X-K-*, 23 I&N Dec. 731, at 732 (BIA 2005) (“There is no question
 13 that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have
 14 been placed in... removal proceedings...”). Exhaustion before the BIA would therefore be
 15 futile.

16
 17 30. Further, “the BIA [Board of Immigration Appeals] does not have jurisdiction to adjudicate
 18 constitutional issues...” (citation modified). *United States v. Gonzalez-Roque*, 301 F.3d 39, 48
 19 (2d Cir. 2002). Because petitioner raises a constitutional due process claim in his habeas
 20 petition, exhaustion of his due process claims would be futile.

21 PARTIES

22
 23 31. Petitioner is a citizen and national of Mexico who entered the U.S. on May 5, 2000.

24 32. Respondent is the Warden of Florida Baker Correctional Institute. In his/her official capacity,
 25 he/she is the legal custodian of Petitioner.

26 33. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
 27 capacity. Among other things, ICE is responsible for the administration and enforcement of
 28

1 the immigration laws, including the removal of noncitizens. In his official capacity as head of
2 ICE, he is the legal custodian of Petitioner.

3 34. Respondent Markwayne Mullin is the Secretary of DHS and is named in his official capacity.
4 DHS is the federal agency encompassing ICE, which is responsible for the administration and
5 enforcement of the INA and all other laws relating to the immigration of noncitizens. In his
6 capacity as Secretary, Respondent has responsibility for the administration and enforcement
7 of the immigration and naturalization laws. Respondent Mullin is the ultimate legal custodian
8 of Petitioner.
9

10 35. Respondent Todd Blanch is the Acting Attorney General of the United States and the most
11 senior official in the U.S. Department of Justice (DOJ) and is named in his official capacity.
12 He has the authority to interpret immigration laws and adjudicate removal cases. The Attorney
13 General delegates this responsibility to the Executive Office for Immigration Review (EOIR),
14 which administers the immigration courts and the BIA.
15

16 LEGAL BACKGROUND

17
18 36. Federal courts possess jurisdiction to review immigration detention claims through the writ of
19 habeas corpus under 28 U.S.C. § 2241. The statute explicitly allows challenges by individuals
20 who are “in custody in violation of the Constitution or laws or treaties of the United States”
21 Habeas review is particularly appropriate where detention is arbitrary, prolonged, or otherwise
22 unlawful.
23

24 37. Numerous courts have affirmed that immigration detainees may invoke § 2241 to test the
25 legality of their confinement. See *INS v. St. Cyr*, 533 U.S. 289 (2001) (recognizing habeas
26 jurisdiction for legal and constitutional claims of noncitizens); *Zadvydas v. Davis*, 533 U.S.
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678 (2001) (permitting habeas relief where detention exceeds statutory or constitutional limits). Because Petitioner is detained in this District, jurisdiction properly lies with this Court.

38. The Fifth Amendment's Due Process Clause applies broadly to "all persons" within the United States, including noncitizens regardless of their immigration status. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The protection of due process encompasses both liberty and bodily integrity and includes freedom from arbitrary civil detention.

39. The Fifth Amendment prohibits the federal government from imposing punishment without due process of law. This principle extends to immigration detention, which is civil, not criminal, in nature. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Conditions of confinement for civil detainees are unconstitutional when they rise to the level of punishment rather than regulation.

40. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge ("IJ"). 8 U.S.C. § 1229a. Individuals in § 1226(a) detention is generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

41. 8 U.S.C. § 1225 only applies to noncitizens actively seeking admission at the border or its immediate functional equivalent.

"To begin, the phrase 'seeking admission' is ambiguous in the context of the INA. Section 1225 defines an 'applicant for admission' as '[a]n alien present in the United States who has not been admitted or who arrives in the United States[.]' And 'admission' and 'admitted' are defined as 'the lawful entry of the

1 alien into the United States after inspection and authorization by an
 2 immigration officer.” *Garcia-Perez v. Walker*, 25-62639-CV-
 3 DIMITROULEAS, at *5 (S.D. Fla. Jan 07, 2026) (citation
 4 modified).

5 Garcia-Perez, goes on to state:

6 “[b]ut the INA does not define ‘seeking admission’. Some courts
 7 have noted that the phrase ‘implies action-something that is
 8 currently occurring, and . . . would most logically occur at the border
 9 upon inspection.” *Garcia-Perez v. Walker*, 25-62639-CV-
 10 DIMITROULEAS, at *5 (S.D. Fla. Jan 07, 2026) (citation modified)
 11 (citing *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL
 12 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

13
 14 42. Further, “the Court turns to the structure of § 1225 and § 1226, and their legislative history-
 15 which each support Petitioner's interpretation. Whereas § 1225 governs removal proceedings
 16 for arriving aliens, § 1226(a) serves as a catchall.” *Garcia-Perez v. Walker*, No. 25-62639-CV-
 17 DIMITROULEAS, at *6 (S.D. Fla. Jan. 7, 2026) (citation modified) (citing *Pizarro Reyes v.*
 18 *Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). “As the
 19 Supreme Court noted in *Jennings*, § 1226 ‘creates a default rule’ that ‘applies to aliens already
 20 present in the United States.’” *Garcia-Perez v. Walker*, 25-62639-CV-DIMITROULEAS, at
 21 *6. “The inclusion of a ‘catchall’ provision in § 1226, particularly following the more specific
 22 provision in § 1225, is ‘likely no coincidence, but rather a way for Congress to capture
 23 noncitizens who fall outside of the specified categories.’” *Garcia-Perez* at *6.
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26 43. The circumstances surrounding Petitioner's arrest align with § 1226(a), not § 1225(b)(2)(A).
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1 44. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a binding precedent
2 decision holding that an immigration judge lacks authority to consider bond requests for
3 individuals who entered the United States without admission. *Matter of Yajure Hurtado*, 29 I.
4 & N. Dec. 216 (BIA 2025). The Board concluded that such individuals are subject to detention
5 under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible for release on bond. As a result,
6 Petitioner has been categorically barred from seeking custody redetermination before an
7 immigration judge, leaving habeas corpus as his sole available remedy to challenge continued
8 detention.
9

10 45. Since then, dozens of federal district courts have rejected the BIA’s interpretation of the INA’s
11 detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts
12 the same reading of the statute as ICE.
13

14 46. Further, under *Loper Bright*, courts need not defer to the BIA’s interpretation of law simply
15 because the statute is ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413
16 (2024).
17

18 47. The Court in *Garcia-Perez*, found that “the statutory text, context, and scheme of § 1225 do
19 not support a finding that a noncitizen is ‘seeking admission’ when he never sought to do so.
20 Additionally, numerous courts that have examined the interpretation of § 1225 articulated by
21 Respondents-particularly following the BIA’s decision in *Matter of Yajure Hurtado*-have
22 rejected their construction and adopted Petitioner’s.” *Garcia-Perez v. Walker*, 25-62639-CV-
23 DIMITROULEAS, at *8 (S.D. Fla. Jan 07, 2026).
24

25 48. The Court in *Garcia-Perez* further found “[f]or these reasons, the Court finds that § 1226(a)
26 and its implementing regulations govern Petitioner’s detention, not § 1225(b)(2)(A).” *Id.*
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28

1 49. Moreover, in *Hernandez Lopez v. Hardin et al*, No. 2:2025cv00830 (M.D. Fla. 2025) the heart
2 of the case was a question of statutory interpretation involving the interplay between 8 U.S.C.
3 §1225 and §1226. Under the latter provision, “an alien may be arrested and detained pending
4 a decision on whether [he] is to be removed from the United States.” 8 U.S.C. § 1226(a). The
5 government “may continue to detain the arrested alien” during removal proceedings or “may
6 release” him on bond or conditional parole. *Id.* § 1226(a)(1)-(2). An alien detained under this
7 discretionary provision is entitled to a bond hearing. See 8 C.F.R. § 236.1(d)(1). *Id.* at 3
8

9 50. The core that case was if the Attorney General has misclassified Lopez as an “applicant for
10 admission” under § 1225 instead of a deportable alien under § 1226. Lopez falls into the former
11 category because he entered the United States without inspection. Lopez argues that he is not
12 an “applicant for admission” because he has been living in this country for years, so § 1226(a)
13 applies. *Id.* at 6
14

15 51. The Supreme Court analyzed the interplay between § 1225 and § 1226 in *Jennings v.*
16 *Rodriguez*. There, the Court observed that the decision of who may enter this country and who
17 may remain “generally begins at the Nation’s borders and ports of entry, where the
18 Government must determine whether an alien seeking to enter the country is admissible.”
19 *Jennings*, 583 U.S. at 287. As relevant here, the Court explained that § 1225 “applies primarily
20 to aliens seeking entry into the United States.” *Id.* at 297. By contrast, § 1226 “applies to aliens
21 already present in the United States.” *Id.* at 303. “Section 1226(a) creates a default rule for
22 those aliens by permitting—but not requiring—the Attorney General to issue warrants for their
23 arrest and detention pending removal proceedings.” *Id.* “Section 1226(a) also permits the
24 Attorney General to release those aliens on bond[.]” *Id.*
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52. The government followed this dichotomy “for the past three decades.” *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025). That is, until July 8, 2025, when the Department of Homeland Security announced a change:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.

ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA Doc. No. 25071607 (July 8, 2025).

53. Courts around the country have since rejected the government’s new interpretation. *See Pizarro Reyes*, 2025 WL 2609425, at *7 (collecting cases). Section 1225 is titled: “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.” *Id.* The use of “arriving” indicates that the statute governs incoming noncitizens, not those present already. This is supported by the text of the statute itself, which is focused on inspections for noncitizens when they arrive via “crewman” or as “stowaways.” 8 U.S.C. § 1225(b)(2). These limited and more specific methods of entry suggest that § 1225 applies to noncitizens arriving at a border or port and are presently “seeking admission” into the United States. *See Hernandez Lopez v. Hardin et al.* No. 2:2025cv00830 at 10 (M.D. Fla. 2025).

54. Interpreting § 1225 to govern all noncitizens present in the country who had not been admitted leaves § 1226 with no apparent application. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought,

1 upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word
2 shall be superfluous, void, or insignificant.”). *Hernandez Lopez* No. 2:2025cv00830 at 11.

3 55. It is undisputed that in *Hernandez Lopez*, Petitioner had been in the United States since at least
4 2013. His detention is thus governed by § 1226. And as a noncitizen detained under § 1226,
5 Lopez is entitled to a bond hearing. *See Jennings*, 583 U.S. at 306 (“Federal regulations provide
6 that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”).

7
8 56. Section 1226(a) applies by default to all persons “pending a decision on whether the
9 [noncitizen] is to be removed from the United States.” These removal hearings are held under
10 § 1229a, to “decid[e] the inadmissibility or deportability of a [] [noncitizen].”

11
12 57. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
13 inadmissible to the United States, including those who are present without admission or parole.

14 58. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered
15 the United States. The statute’s entire framework is premised on inspections at the border of
16 people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed,
17 the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s
18 borders and ports of entry, where the Government must determine whether a [] [noncitizen]
19 seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

20
21 59. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people
22 like Petitioner, who have already entered and were residing in the United States at the time
23 they were apprehended. Petitioner has resided in the United States since 2000, and lives in
24 Florida. Petitioner was never apprehended by CBP or by ICE in the past. This is the first time
25 Petitioner receives a Notice to Appear.
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STATEMENTS OF FACTS

60. Petitioner has resided in the United States since May 5, 2000, and lives in Florida.

61. Petitioner was detained on March 3, 2026, in Groveland, Florida, while he was a passenger in a vehicle. ICE ERO conducted a Fugitive Operation with Florida Highway Patrol. Florida Highway Patrol, Mackenzie ID  contacted ICE ERO stating he had encountered the subject near Mount Pleasant RD Highway 50, Groveland, Florida pursuant to a traffic enforcement stop. Mr. Gonzalez was just the passenger in the vehicle.

62. Respondent claims the Petitioner is subject to removal under INA § 212 (a)(6)(A)(i). INA § 212(a)(6)(A)(i) renders foreign nationals who enter the U.S. without inspection (EWI) or parole, or who are present without having been inspected, inadmissible. This ground applies to individuals who bypass official ports of entry.

63. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community

FIRST CAUSE OF ACTION

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (“INA”)

8 U.S.C. §§ 1226

64. Petitioner incorporates by reference all preceding paragraphs as it fully set herein.

65. The Immigration and Nationality Act authorizes immigration detention only for narrow, lawful purposes: to ensure attendance at removal proceedings and to protect the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention beyond those limited purposes violates both the statute and the Constitution.

66. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant

1 here, it does not apply to those who previously entered the country and have been residing in
2 the United States prior to being apprehended and placed in removal proceedings by
3 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to §
4 1225(b)(1), § 1226(c), or § 1231.

5 67. Petitioner is not subject to a final order of removal and therefore falls under §1226(a), which
6 does not authorize indefinite or punitive custody. Petitioner has resided in the United States
7 for over 20 years and has no criminal record.

8 68. The government has not shown that Petitioner's continued detention is necessary to secure
9 his appearance or to protect the public. Reasonable alternatives to detention—such as bond,
10 supervision, or release on recognizance— could achieve the same ends.

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

13 70. The Court must therefore order that ICE release Petitioner from his current unlawful custody.
14

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF IMMIGRATION BOND REGULATIONS**

17 71. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.
18

19 72. In 1997, after Congress amended the INA through Illegal Immigration Reform and Immigrant
20 Responsibility Act ("IIRIRA"), Executive Office for Immigration Review ("EOIR") and the
21 then Immigration and Naturalization Service issued an interim rule to interpret and apply
22 IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of
23 [Noncitizens]," the agencies explained that "[d]espite being applicants for admission,
24 [noncitizens] who are present without having been admitted or paroled (formerly referred to
25 as [noncitizens] who entered without inspection) will be eligible for bond and bond
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1 redetermination.” 62 Fed. Reg. 68 at 10323 (April 9, 1997) (emphasis added). The agencies
2 thus made clear that individuals who had entered without inspection were eligible for
3 consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its
4 implementing regulations.

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

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

10
11 **THIRD CAUSE OF ACTION**
12 **SUBSTANTIVE DUE PROCESS**

13 **U.S. Const. amend. V**

14 75. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

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

20 77. The Due Process Clause of the Fifth Amendment forbids the government from depriving
21 individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
22 amend. V.
23

24 78. [T]he Due Process Clause applies to all “persons” within the United States, including aliens,
25 whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533
26 U.S. at 693. While certain constitutional protections do not extend outside the “geographic
27
28

1 borders” of the United States, “legal circumstances change” as soon as a noncitizen “enters
2 the country.” Id.

3 79. Petitioner has a fundamental interest in liberty and being free from official restraint.

4 80. Respondent’s detention of Petitioner without an adequate bond redetermination hearing to
5 determine whether he is a flight risk or danger to others violates his right to due process.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner respectfully requests that the Court assume jurisdiction over
9 this Petition and Complaint and grant the following relief:

- 10 a. Assume jurisdiction over this matter;
11
12 b. Order that Petitioner shall not be transferred outside the Middle District of Florida
13 while this habeas petition is pending;
14
15 c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition
16 should not be granted within three days;
17
18 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the
19 alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a)
20 within seven days;
21
22 f. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
23 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
24 and
25 g. Grant any other and further relief that this Court deems just and proper.

26 Dated: April 29th, 2026,

27 Respectfully submitted,
28 */s/ Elena F. Orsi*
Elena Florencia Orsi, Esq.
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on April 29th, 2026, in Hollywood, Florida

Respectfully submitted,

/s/ Elena F. Orsi

Elena Florencia Orsi, Esq.
Attorney for Petitioner