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

**VLADIMIR RICARDO HERNANDEZ,**

**Petitioner,**

**v.** **Case No. ____________________**

**GARRETT J. RIPA, Field Office Director of Enforcement and Removal Operations, Miami Field Office, Immigration and Customs Enforcement;**
**MARKWAYNE MULLIN, in his official capacity as the Secretary of Homeland Security;**
**TODD BLANCHE, in his official capacity as the United States Acting Attorney General;**
**TODD M. LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;**
**Warden of Florida Baker Correctional Institute, in his official capacity,**

**Respondents.**
________________________________________________/

**PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR ORDER TO SHOW CAUSE**

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VLADIMIR RICARDO HERNANDEZ, hereinafter "Mr. Ricardo Hernandez" or "Petitioner", by and through undersigned counsel, files this Petition for Writ of Habeas Corpus, and in support thereof, alleges as follows:

## INTRODUCTION

1. Petitioner VLADIMIR RICARDO HERNANDEZ is in the physical custody of Respondents at the Florida Baker Correctional Institute. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that a person who entered the United States without admission, like Petitioner, is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. On May 15, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b) (2018), and is ineligible for any

subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018)." See *Matter of Q. Li*, 29 I & N. Dec. 66 (BIA 2025).

5. Similarly, on September 5, 2025, the Board issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who were detained upon their entry, processed and released pursuant to 8 U.S.C. § 1226(a), and are re-arrested years later. Instead, such individuals are subject to § 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without being admitted or paroled.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

8. More importantly, the Government itself has made an abrupt about-face on this issue. Respondents should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation. As explained in New Hampshire v. Maine, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under §1226(a), and not

§1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and assert that such individuals are subject to mandatory detention under §1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process and imposes unfair detriment on Petitioner who relied on the prior interpretation. Accordingly, Respondents should be estopped from asserting this inconsistent position.

9. Furthermore, the Government's own issuance of a Notice of Custody Determination, releasing Petitioner under 8 U.S.C. § 1226(a) reflects discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. This legal determination squarely contradicts the Government's current position – adopted wholesale by the Board of Immigration Appeals – that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in B&B Hardware, Inc. v. Hargis Indus., Inc., 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusions are met.

10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

11. Petitioner further requests this court to order Respondents to show cause demonstrating why he should not be released within three days given his unlawful detention. 28 U.S.C. § 2243.

## JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Florida Baker Correctional Institute in Sanderson, Florida.

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

14. Jurisdiction of the Court is predicated upon 28 U.S.C. §§ 1331 and 1346(a)(2) in that the matter in controversy arises under the Constitution and laws of the United States, and the United States in a Defendant.

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

16. Federal Courts also have federal question jurisdiction, through the Administrative Procedures Act (APA), to "hold unlawful and set aside agency action" that is "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law". 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action". 5 U.S.C. § 702. Respondents' continued detention of Petitioner despite him having pending forms of relief has adversely and severely affected Petitioner's liberty and freedom.

**VENUE**

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

18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial

part of the events or omissions giving rise to the claims occurred in the Middle District of Florida.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19. Administrative exhaustion of remedies in a § 2241 proceeding is not a jurisdictional requirement. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015) (abrogating *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001)).

20. Further, there is no statutory exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. Cf. 8 U.S.C § 1252(d)(1) (requiring exhaustion of administrative remedies only were requesting review of a final order of removal).

21. "[W]here Congress has not clearly required exhaustion, sound judicial discretion governs". *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1297 (N.D. Ga. 2007) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). As a matter of discretion, exhaustion of administrative remedies should therefore be waived "(1) where prejudice to the prisoner's subsequent court action 'may result, for example, from an unreasonable or indefinite timeframe for administrative action'; (2) where the administrative agency may not have the authority 'to grant effective relief'; or (3) 'where the administrative body is shown to be biased or has otherwise predetermined the issue before it.'" *Jones*, 495 F. Supp. 2d at 1297 (citing *McCarthy*, 503 U.S. at 146-48). See also *Woodford v. Ngo*, 548 U.S. 81, 103 (2006) (Breyer, J. concurring) (noting "well-established exceptions to exhaustion" that include constitutional claims, futility, hardship to the petitioner, and where administrative remedies are inadequate or unavailable) (citations omitted)).

22. In making its discretionary decision, the Court should also consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the need for collateral review is most pressing . . . In this context the need for habeas corpus is more urgent". *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive

detainees).

23. Petitioner's constitutional challenge to his detention is exempt from administrative exhaustion requirements. *See Woodford v. Ngo*, 548 U.S. 81, 103 (Breyer, J. concurring) (constitutional claims are exempt form administrative exhaustion); see also Khan v. Atty. Gen. of U.S., 448 F. 3d 226, 236 n.8 (3d Cir. 2006) (internal quotation omitted)("Due process claims generally are exempt from exhaustion requirements because the BIA does not have jurisdiction to adjudicate constitutional issues."); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002) ("'[T]he BIA does not have jurisdiction to adjudicate constitutional issues . . . .'"(quoting *Vargas v. U.S. Dep't of Immigration & Naturalization*, 831 F. 2d 906, 908 (9th Cir. 1987)).

24. Further, administrative exhaustion before the immigration judge and the BIA would be futile. Exhaustion is futile where the agency has "predetermined the issue before it". *McCarthy*, 503 U.S. at 148. The BIA had predetermined the issue here. The BIA has held that immigration judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision is binding on immigration courts across the country. Therefore, exhaustion would be futile, and the Court should waive its requirement as a matter of discretion.

25. A request for release on humanitarian parole under 8 U.S.C. 1182 (d)(5)(A) would also be futile. Parole review is conducted informally by DHS officers – the jailing authority – by checking a box on a form that contains no factual findings, no specific explanation, and no evidence of deliberation. There is no hearing, no record, and no administrative appeal from a negative parole decision, even to correct manifest errors. *See Rodriguez v. Robbins*, 804 F. 3d 1060, 1081 (9th Cir. 2015), *cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489, 195 L. Ed. 2d 821 (2016) (identifying denials of parole "based on blatant errors: In two separate cases . .

. officers apparently denied parole because they had confused Ethiopia with Somalia. And in third case, an officer denied parole because he had mixed up two detainee's files."); *Nadarajah v. Gonzalez*, 443 F.3d 1069, 1082 (9th Cir. 2006) (finding that DHS abused its authority by denying parole). In the absence of administratively enforceable standards, and in light of recent guidance from the Department of Homeland Security, humanitarian parole is nearly nonexistent at this point. *See* DHS Memorandum: Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025).

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

**PARTIES**

28. Petitioner VLADIMIR RICARDO HERNANDEZ is a 32-year-old native and citizen of Cuba, with no criminal record. Petitioner entered the United States on July 30, 2019, through El Paso, TX. Petitioner has resided continuously in the country for over five years since he was admitted on March 24, 2021. During this time, he maintained stable employment and

established strong family ties.

29. Respondent, Garrett Ripa, is the ICE Field Office Director for the Miami, Florida of Responsibility. As such, Garrett Ripa is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

31. Respondent, Todd Blanche, is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

32. Respondent, Todd Lyons, is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is sued in his official capacity.

33. Respondent, the Warden of the Florida Baker Correctional Institute, where Petitioner is currently detained. He is an immediate custodian of Petitioner. He is sued in his official capacity.

## LEGAL FRAMEWORK

34. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 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).

36. Second, 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).

37. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

39. The detention provisions at § 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. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

40. Following the 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).

41. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). 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 IJ 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)).

42. In *Jennings v. Rodriguez*, DHS explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border wo within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). *Jennings v. Rodriguez*, 583 U.S. 281 (2018). During oral argument on November 30, 2016, then-Solicitor General Ian Gershengorn stated: "If they are not detained within 100 miles of the border or within 14 days . . . then they are under 1226(a) and not 1226(c)". In response to a question regarding "an alien who has come into the United States illegally without being admitted [and] who takes up residence 50 miles from the border", the Government confirmed, "The answer is they are held under 1226(a) and that they got a bond hearing . . ." Transcript of Oral Argument at 7-8. DHS further reiterated that such individuals "would be held under 1226(a)" and cited the administrative record to support that position. *Id.* These statements reflect DHS's prior litigation position that § 1226(a) governs detention for noncitizens who have entered and are residing in the United States – a position directly contrary to the agency's current interpretation extending § 1225(b)(2)(A) to those same individuals. Having prevailed in *Jennings* after taking this position, they should be now estopped from reversing course simply due to a shift in political or litigation strategy. Estoppel in this case is necessary to preserve the predictability inherent in the rule of law and due process under the Fifth Amendment, as well as to uphold the integrity of the judicial system.

43. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of

practice.

44. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

45. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

46. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

47. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

48. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. See, e.g., Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); Diaz Martinez v. Hyde, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); Rosado v. Figueroa,

No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); Maldonado v. Olson, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); Arrazola-Gonzalez v. Noem, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); Romero v. Hyde, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); Samb v. Joyce, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); Ramirez Clavijo v. Kaiser, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); Leal-Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Kostak v. Trump, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); Jose J.O.E. v. Bondi, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) Lopez-Campos v. Raycraft, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Vasquez Garcia v. Noem, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); Pizarro Reyes v. Raycraft, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., Palma Perez v. Berg, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); Jacinto v. Trump, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); Anicasio v. Kramer, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

49. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the

statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

50. "Courts have noted that Respondents' interpretation of the phrase 'seeking admission' 'violates the rules against surplusage and negates the plain meaning of the text'". *Santana-Rivas*, No. 3:25-cv-01896-JPW, at *27-28 (citing *Soto v. Soto*, et. al., No. 25-16200, 2025 U.S. Dist. LEXIS 207818, at *9 (D.N.J. Oct. 22; *Martinez v. Hyde*, No. 25-11613, 2025 U.S. Dist. LEXIS 141724, at *6 (D. Mass. July 24, 2025); *Zumba v. Bondi*, No. 25-14626, 2025 U.S. Dist. LEXIS 190052, at *8; *Benitez v. Francis*, No. 25-5937, 2025 U.S. Dist. LEXIS 157214, at *16 (S.D.N.Y. Aug. 8, 2025). "The phrase 'seeking admission' in § 1225(b)(2)(A) necessarily connotes some affirmative, present-tense action". *Santana-Rivas*, No. 3:25-cv-01896-JPW, at *28. "The verb 'seeking' is a present participle, and the 'present participle is used to signal present and continuing action'". *Id.* (quoting *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022); *D.L. Markham DDS, MSD, Inc. 401(K) Plan v. Variable Annuity Life Ins. Co.*, 88 F. 4th 602, 610 (5th Cir. 2023) ("The word 'providing' used here as a present participle, most commonly describes a person who is currently providing services".) (*emphasis in original*); *United States v. Hull*, 456 F.3d 133, 145 (3d Cir. 2006) (Ackerman, Sr. Dist. J., sitting by designation, concurring) ("Congress's use of the present participle 'committing' connotes present, continuing action").

51. "The INA defines the term 'admission' as, 'with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.'" *Santana-Rivas*, No. 3:25-cv-01896-JPW, at *28-29 (quoting 8 U.S.C. § 110l(a)(l3) (A)). "Thus, the INA's own definition of the term 'admission' supports the limited application of§ 1225 to encounters with aliens along the borders and at ports of entry." *Id.* at *29.

52. Here, Petitioner cannot be said to be "seeking admission" as defined in § 110l(a)(l3)

(A). Petitioner '"has already 'entered' the country'- [he] is no longer seeking to enter the United States (lawfully or otherwise)." *Santana-Rivas*, No. 3:25-cv-01896-JPW, at *29 (quoting *Jimenez*, 2025 U.S. Dist. LEXIS 176165, at *22, citing *Benitez*, 2025 U.S. Dist. LEXIS 157214, at* 19). Like the Middle District of Pennsylvania found in *Santana-Rivas*, "while Petitioner "has applied for asylum, that application does not seek '"lawful entry" to the United States, but [rather] a lawful means to remain here."' *Id.*

53. Indeed, according to the Notice of Custody Determination, issued to Petitioner on July 30, 2019 upon his initial encounter with ICE, as well as the DHS's own factual allegations contained in the Notice to Appear, the DHS itself determined that Petitioner is an alien present in the United States without being admitted or paroled, and thus falls under§ 1226(a), not§ 1225(b).

54. Section 1226(a) applies by default to all persons "pending a decision on whether the noncitizen is to be removed from the United States." These removal hearings are held under § 1229a, to "decide the inadmissibility or deportability of a noncitizen."

55. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

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

parole.

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

58. In *Jennings*, the Supreme Court describes section 1226 as governing "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including noncitizens "who were inadmissible at the time of entry." *Jennings*, 583 U.S. at 288. In harmonizing sections 1225 and 1226, the Supreme Court explains "in sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(l) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).'" *Id.* at 289 (emphasis added).

59. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered, were processed and released previously under 8 U.S.C. § 1226 and were already residing in the United States at the time they were re-apprehended. Petitioner was previously released after a quasi-judicial determination by an immigration official on a Notice of Custody Determination that he falls under the discretionary arrest provision of§ 1226(a). The Government's own issuance of a Notice of Custody Determination, releasing him pursuant to § 1226, reflects a discretionary, fact-based determination

that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). This is significant because mere days after his entry to the U.S., the Government had already recognized that Petitioner was no longer "seeking admission" as described in § 1225, and itself applied the provisions of § 1226 and released Petitioner. This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. This legal determination squarely contradicts the Government's current position-adopted wholesale by the Board of Immigration Appeals-that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

60. The issuance of a Notice of Custody Determination releasing Petitioner under § 1226 is not a ministerial act but a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 1226 rather than the mandatory detention provisions of § 1225(b). The Supreme Court has "long favored application of the common law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). As the Court explained in *Utah Construction*, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." 384 U.S. at 422. This presumption applies because "Congress is understood to legislate against a background of common-law adjudicatory

principles." *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Jsbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, DHS's prior § 236 determination-memorialized in the Notice of Custody Determination constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

61. Therefore, 8 U.S.C. § 1226 is the appropriate governing framework in this case.

**UNDERLYING FACTS AND PROCEDURAL HISTORY OF THE CASE**

62. Petitioner entered the United States at El Paso, TX on July 30, 2019. *See Exhibit A.* He was returned to Mexico and placed into the Migrant Protection Protocol. *See Exhibit B.* He complied with all of his scheduled court appearances on February 10, 2020, and May 19, 2020. He had a third hearing scheduled on July 14, 2021. However, this hearing was cancelled, and Petitioner did not receive any further Notice of Hearing after that. *See Id.*

63. After his second appearance, Petitioner was paroled into the United States and allowed entry on March 24, 2021. He was issued a Form I-94. *See Exhibit C.*

64. On December 2, 2025, Petitioner was detained by ICE agents when he attended his I-485 Interview after he was informed by the interviewing officer that he had an "in absentia" deportation order. Respondent filed a Motion to Reopen his Removal Proceedings and Rescind the Order of Removal, and this matter remains pending before the Miami Krome Immigration Court. *See Exhibit D*[1].

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[1] An order of removal entered in absentia or in removal proceedings pursuant to section 240(b)(5) of the Act may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal, if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act. An order entered in absentia pursuant to section 240(b)(5) may be rescinded upon a motion to reopen filed at any time upon the alien's demonstration of lack of notice in accordance with section 239(a)(1) or (2) of the Act, or upon the alien's demonstration of the alien's Federal or State custody and the failure to appear was through no fault of the alien. However, in accordance with section 240(b)(5)(B) of the Act, no written notice of a change in time or place of proceeding shall be required if the alien has failed to provide the address required under section 239(a)(1)(F) of the Act. The filing of a motion under this paragraph (b)(4)(ii) shall stay the removal of the alien pending disposition of

66. From the time of his initial parole in 2021 to his re-detention in 2025, Petitioner committed no criminal offenses, committed no new immigration violations, and remained in compliance with all reporting requirements.

68. Petitioner has significant ties to the United States, including his partner and close relatives. He poses no danger to the community. He maintains a stable residence, a history of consistent employment, and demonstrates strong moral character. Further, Respondent qualifies for I-485, Application to Register Permanent Residence or Adjust Status demonstrating a viable and bona fide avenue of relief.

70. Petitioner is currently detained at the Florida Baker Correctional Institute. *See Exhibit E.* Without intervention from this Court, he faces the prospect of prolonged detention lasting months or even years, separated from her family and community, despite his full compliance with prior release conditions and absence of any new basis for custody.

## CLAIMS FOR RELIEF

### COUNT I

### Violation of the INA

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

72. 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 here, it does not apply to those who previously entered the country and have been residing

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the motion by the immigration judge. An alien may file only one motion pursuant to this paragraph (b)(4)(ii). See 8 C.F.R. § 1003.23(b)(4)(ii).

in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

## COUNT TWO

### Violation of Fifth Amendment Right to Procedural Due Process - Unlawful Detention Without a Pre-Deprivation Hearing

74. The allegations in the above paragraphs are realleged and incorporated herein.

75. It has long been established that aliens, even if in the United States unlawfully, are entitled to due process of law under the Fifth Amendment. See *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause]"); see also *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent").

76. The Due Process Clause of the Fifth Amendment prohibits the government from depriving individuals of liberty without notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

77. When the Government interferes with a liberty interest, it must provide constitutionally sufficient procedures. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The adequacy of these procedures is determined by weighing three factors: (1) the private interest

that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substantive procedures would entail. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

78. Applying these factors here demonstrates that the procedures attendant upon Petitioner's detention are constitutionally insufficient.

79. First, Petitioner has a significant interest at stake. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner is being held at the Florida Baker Correctional Institute and is far from his family and community.

80. Second, the risk of erroneous deprivation is extraordinarily high. Petitioner has already been found not to be a danger to the community or a flight risk upon his initial entry, when ICE reviewed his custody and issued paperwork releasing him on parole. Nevertheless, despite not incurring any new criminal or immigration violations, he was summarily re-detained without a bond hearing and without the government identifying any new facts or changed circumstances. Absent a pre-deprivation hearing, there was no safeguard to prevent ICE from arbitrarily re-arresting Petitioner in direct contradiction of the prior determination that release was warranted.

81. Third, the government's interest in detaining Petitioner without a hearing is minimal, if it exists at all. The government has already determined that Petitioner does not pose a risk to the community or a risk of flight. Providing a bond hearing before re-arrest would impose little to no fiscal or administrative burden, while simultaneously protecting core constitutional rights. Respondents' decision to re-detain Petitioner without such a hearing contravenes federal law and violates his procedural due process rights. Petitioner filed a Motion to Reopen Removal

Proceedings and Rescind Order of Removal and this matter is pending before the Miami Krome Immigration Court.

82. This arbitrary deprivation of liberty without a pre-deprivation hearing violates the constitutional requirement that detention be accompanied by due process safeguards. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (holding that immigration detention is subject to constitutional limits); *Demore v. Kim*, 538 U.S. 510, 532 (2003) (emphasizing limited scope and justification for immigration detention).

83. By taking Petitioner back into custody without notice, new facts, or opportunity to be heard, Respondents deprived him of liberty in a manner inconsistent with due process and the fundamental fairness required by the Fifth Amendment.

**COUNT THREE**

**Violation of Fifth Amendment Right to Substantive Due Process**

84. The allegations in the above paragraphs are realleged and incorporated herein.

85. The Fifth Amendment's Due Process Clause not only guarantees procedural safeguards but also protects individuals against governmental conduct that "shocks the conscience" or interferes with rights implicit in the concept of ordered liberty. *County of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998).

86. Here, Petitioner had been affirmatively determined not to be a danger to the community or a flight risk upon his initial entry, when ICE conducted a custody review and issued paperwork releasing him on parole.

87. Despite these findings, Petitioner was re-detained without cause. This re-detention occurred without any new facts or changed circumstances that could justify depriving him of liberty.

88. The government's conduct is arbitrary and capricious, amounting to punishment rather than regulation. It transforms ICE's discretionary authority into an unchecked power to re-incarcerate noncitizens at will, untethered to legitimate governmental objectives.

89. By subjecting Petitioner to renewed detention without justification, Respondents violated Petitioner's substantive due process rights under the Fifth Amendment. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (immigration detention is constitutionally limited and must bear a reasonable relation to its purposes); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (continued confinement is impermissible absent a legitimate basis such as dangerousness or flight risk).

90. Respondents' actions shock the conscience because they reflect arbitrary government conduct that disregards both prior determinations and Petitioner's fundamental right to be free from unjustified physical confinement.

## COUNT IV

### Violation of the Bond Regulations

91. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

92. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite 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." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its

implementing regulations.

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

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

**COUNT V**

**Violation of the Administrative Procedure Act ("APA")**

95. The allegations in the above paragraphs are realleged and incorporated herein.

96. The Administrative Procedure Act ("APA") provides the framework for judicial review of agency action. While § 70l(a)(2) precludes review where "agency action is committed to agency discretion by law," this limitation is narrowly construed considering the language of § 702. *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64-65 (2004); 5 U.S.C. § 551(13). Namely, § 702 expressly authorizes review by any person "suffering legal wrong because of agency action" or "adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702; 5 U.S.C. § 551(13).

97. Moreover, in *Southern Utah Wilderness Alliance*, the Supreme Court clarified that "agency action" encompasses discrete action, or failure to act when mandated by statute, rather than broad challenges to an agency's overall program management. *Southern Utah Wilderness Alliance*, 542 U.S. at 64-65; 5 U.S.C. § 551(13) (agency action includes the whole or part of an agency's order, relief, or denial of relief).

98. When reviewing the erroneous agency action, section 706 directs courts to resolve all relevant questions of law, interpret statutory provisions, and "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1)-(2). Courts must also "hold unlawful and

set aside" agency actions that are arbitrary, capricious, contrary to law, in excess of statutory authority, procedurally defective, unsupported by substantial evidence, or unwarranted by the facts. *Id.*

99. To invoke judicial review of an agency action, and hold unlawful or set aside arbitrary or capricious actions under § 706, a plaintiff must demonstrate Article III standing-an injury in fact, traceable to the challenged action, and redressable by a favorable decision-and must show that the interest asserted is "arguably within the zone of interests" protected by the statute invoked. *Ass 'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970); *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399 (1987); *Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998). This zone-of-interests requirement is not demanding, and any doubt is resolved in the plaintiff's favor. *Nat'l Credit Union Admin.*, 522 U.S. at 492 (reaffirming the standard established by *Sec. Indus. Ass'n*, 479 U.S. 388 (1987)).

100. Finally, to overcome the allegation of an agency's erroneous actions under § 702, the agency must prove to the satisfaction of the reviewing court, that its actions were not arbitrary and capricious under § 706. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983); 5 U.S.C. § 702; 5 U.S.C. § 706(1)-(2). In *State Farm Mut. Auto. Ins. Co.*, the Court defined the arbitrary and capricious standard of § 706 as requiring the agency to show it engaged in reasoned decision-making when deciding the matter at issue. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 52; 5 U.S.C. § 706(1)-(2).

101. The APA framework squarely applies to Petitioner's case. ICE's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission," adopted "in coordination with" DOJ, and EOIR's implementation of that guidance-together with the Board's published decision in *Matter of Yajure Hurtado* (Sept. 5, 2025)-constitute "final agency action"

because they mark a consummation of the agencies' decision-making process and determine legal rights and obligations by categorically placing noncitizens like Petitioner under 8 U.S.C. § 1225(b)(2)(A) and denying access to IJ bond hearings. *See* 5 U.S.C. § 704.

102. These agency actions are contrary to law and in excess of statutory authority because they disregard the statutory text, structure, and history establishing that detention of noncitizens already within the United States and placed in § 1229a proceedings is governed by § 1226(a), not § 1225(b)(2). *See* 8 U.S.C. §§ 1226(a), 1229a. Following *Loper Bright Enterprises v. Raimondo*, courts do not defer to an agency's interpretation merely because the statute is ambiguous; rather, courts must exercise independent judgment in interpreting the INA. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The agencies' interpretation fails on that independent review.

103. The agencies' actions are also arbitrary and capricious under § 706(2)(A) because they (a) represent an unexplained reversal of decades of settled practice and regulatory interpretation without reasoned analysis; (b) fail to consider important aspects of the problem, including Congress's UAC framework in 8 U.S.C. § 1232 and 6 U.S.C. § 279; (c) ignore serious reliance interests of noncitizens and the adjudicatory system, which had long afforded IJ bond review under § 1226(a); and (d) apply a border-inspection scheme designed for "arriving" individuals to persons apprehended well after entry, which lacks a rational connection to the statute's purposes. *See State Farm*, 463 U.S. at 43; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (agency changing policy must provide a reasoned explanation and address reliance interests); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-26 (2020) (failure to consider reliance interests renders rescission arbitrary and capricious).

104. The July 8, 2025, guidance operates as a substantive rule with legal consequences

but was issued without notice-and-comment rulemaking as required by 5 U.S.C. § 553. It therefore is unlawful and must be set aside for "failure to observe procedure required by law." 5 U.S.C. § 706(2)(D). *See also Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96-97 (2015) (distinguishing interpretive from legislative rules and reaffirming § 553 requirements for the latter).

105. Independently, the agencies failed to follow their own binding regulations by denying Petitioner access to custody review and IJ bond procedures that apply under § 1226(a), violating the *Accardi* doctrine. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954); 8 C.F.R. §§ 236.1, 1236.1, 1003.19. Agency action taken in derogation of binding regulations is unlawful under § 706(2)(A), (C), and (D).

106. As applied to Petitioner, the agencies' actions (a) deprived him of an IJ bond hearing under§ 1226(a); (b) subjected him to mandatory detention under § 1225(b)(2)(A) without statutory basis; and (c) foreclosed individualized custody determinations despite a prior government finding that he is neither a danger nor a flight risk. This discrete deprivation is reviewable and unlawful under 5 U.S.C. § 706(2)(A)-(C), and the failure to provide the required bond process is "agency action unlawfully withheld" under § 706(1).

107. Petitioner has standing to challenge these actions: he suffers concrete and ongoing injury (continued detention without access to an IJ bond hearing), traceable to Respondents' policies and decisions, and redressable by vacatur and injunctive relief requiring custody to be governed by § 1226(a) and the implementing regulations. His interests are plainly within the INA's zone of interests, which protects access to § 1226(a) custody determinations for noncitizens in § 1229a proceedings.

108. For all of these reasons, Respondents' actions are arbitrary, capricious, an abuse of discretion, contrary to law, and in excess of statutory authority, and must be set aside under 5

U.S.C. § 706(2).

**Judicial Estoppel**

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

110. Respondents are judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7-8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

**PRAYER FOR RELIEF**

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the current jurisdiction while this habeas petition is pending;

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

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

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

g. Grant any other and further relief that this Court deems just and proper.

Dated: April 29, 2026

Respectfully submitted,

**TOCADO'S LAW FIRM**

/s/Lissette Tocado

______________________________

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

Pursuant to the provisions of 28 U.S.C. § 2242 and 28 U.S.C. § 1746, I declare under penalty of perjury:

I, Lissette Tocado, am submitting this verification on behalf of the Petitioner because I am his attorney. I have discussed with the Petitioner the events described in this petition, reviewed papers and declarations provided by him, and have reviewed Freedom of Information Act productions relating to his immigration files. On the basis of those discussions and reviews, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus and Request for Order to Show Cause are true and correct to the best of my knowledge.

**TOCADO'S LAW FIRM**

/s/Lissette Tocado

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**INDEX OF EXHIBITS**

| Exhibit | Description |
|---|---|
| A | Petitioner's Notice to Appear |
| B | Notices of Hearings during the MPP Program |
| C | Copy of Petitioner's I-94 |
| D | Motion to Reopen Removal Proceedings and Rescind in Absentia Order of Removal, and DHS Opposition |
| E | Printout of ICE Detainee Portal indicating Respondent's current location |