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

Case No.: _____

Pablo Adrian Perez Arreaga

Petitioner

v.

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

Respondents.

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241.**

INTRODUCTION

1. Petitioner, Pablo Adrian Perez Arreaga, (A#  ("Petitioner" or "Mr. Perez Arreaga"), is a native and citizen of Guatemala who entered the United States for the first and only time on or about November 16, 2023 as a minor, and has been residing in the United States continuously since that date.
2. When the U.S. Department of Homeland Security ("DHS") inspected Petitioner at the border, it correctly identified him as an "Undocumented [Noncitizen] Child" ("UC"), as defined in the Homeland Security Act of 2002 ("HSA") and the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). See 6 U.S.C. § 279(g)(2)); 8 U.S.C. § 1232(g)).
3. Pursuant to the HSA and TVPRA, the DHS transferred custody of Petitioner to the Department of Health and Human Services ("HHS"), Office of Refugee Resettlement ("ORR"), to whom Congress has authorized custody determinations over UCs. See 6 U.S.C. §§ 279(b)(1), (1)(C); 8 U.S.C. § 1232(b)(3).
4. After considering the "[g]eneral principles that apply to the care and placement of" Petitioner, which includes whether he was a danger to the community or a flight risk, the ORR released him to the care of his uncle. See 8 U.S.C. § 1232(c)(2)(a); 45 CFR § 410.1003(f). Exhibit A Office of Refugee Resettlement Verification of Release.

5. There has been no change in Petitioner's circumstances, such as accruing a criminal history in the United States, that disturb the ORR's determination.
6. On May 29, 2024, the Judicial Circuit Court of Hillsborough County, Florida determined that Petitioner's parents had abused, neglected, or abandoned Petitioner, and that it was not in Petitioner's best interest to return to Guatemala. The Florida court then ordered the Petitioner placed in the sole custody of his uncle, Donaldo William Arreaga Morales.
7. Pursuant to the Judicial Circuit Court of Hillsborough County's ruling, Petitioner was qualified for and sought Special Immigrant Juvenile Status ("SIJS") by filing Form I-360 (Petition for Special Immigrant Juvenile Status) with U.S. Citizenship and Immigration Services ("USCIS") on July 15, 2024.
8. Petitioner's Form I-360 was approved on October 3, 2024, with a grant of Deferred Action for a period of four years from the date of the approval, which is until October 2, 2028. Exhibit B for the grant of SIJS and Deferred Action.
9. An SIJS recipient is eligible to adjust their status to that of a Lawful Permanent Resident (LPR) once a visa becomes available to them. 8 U.S.C. §1255(h).
10. On March 06, 2025, Petitioner filed an Application for Asylum and Withholding of Removal before the United States Citizenship and Immigration Services (USCIS). Exhibit C Form I-797C Notice of Action on

Forms I-589 Application for Asylum and Withholding of Removal.

11. On April 15, 2026, Petitioner was a passenger in a car that was stopped. The Petitioner has a valid Employment Authorization Document (EAD) and a valid Florida driver's license. ICE detained him at North Florida Detention Center, ("Baker"). Petitioner remains at Baker to this day.

12. As of the date of this filing the Petitioner does not have a case open with the Executive Office of Immigration Review (EOIR) and therefore does not appear to be in immigration court proceedings. Exhibit D EOIR Case Information. After more than two weeks of detention, the Petitioner's case does not appear on the online EOIR Case Information Portal. The circumstances of Petitioner's arrest and the reason for his detention remain a mystery given that the Petitioner has an EAD, a valid driver's license, a pending SIJS application with a grant of Deferred Action, and a pending asylum application.

13. We do possess a Notice to Appear ("NTA") which was issued when Petitioner first came into the U.S. but no superseding NTA or any other documents from Respondents that were filed with the EOIR/Immigration Court. We can only guess that Respondents have arrested and detained Petitioner based on an erroneous understanding of relevant federal statutes. This petition for a writ of habeas corpus challenges the legal basis for Respondents continued

detention of Petitioner without affording him an individualized custody determination on the theory that he is subject to mandatory detention under 8 U.S.C. § 1225(b), notwithstanding his prior classification as an unaccompanied child, his grant of SIJS Deferred Action, and his membership in the J.O.P class. *J.O.P. v. U.S. Dep't of Homeland Sec.*, 338 F.R.D. 33, 42–43 (D. Md. 2020).¹

14. Petitioner entered the United States as a UC, was later released into the community, has no criminal record, has a pending asylum application, has been issued a valid Employment Authorization Document (EAD), and is a member of the J.O.P. settlement class.

15. To the best of our knowledge, DHS and ICE are unlawfully detaining Petitioner under INA § 235 / 8 U.S.C. § 1225, treating Petitioner as though Petitioner were subject to mandatory detention as an ordinary applicant for admission.

16. Petitioner was not “seeking admission” at the time of his most recent arrest by ICE, after having resided in the United State since 2023 and is therefore

¹ See USCIS Notice of Final Class Action Settlement at [https://www.uscis.gov/sites/default/files/document/legal-docs/J.O.P. v. DHS Final Class Notice 11.25.2024 English 508Accessible.pdf](https://www.uscis.gov/sites/default/files/document/legal-docs/J.O.P._v._DHS_Final_Class_Notice_11.25.2024_English_508Accessible.pdf). See U.S. Department of Homeland Security, USCIS Memorandum, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children and Implementation of the J.O.P. Settlement Agreement* (January 30, 2025).

outside the ambit of § 1225(b)(2)(A)'s mandatory detention provision.

17. That detention is unlawful for at least three independent reasons: a. Congress enacted a more specific statutory framework governing UCs and youths who age out of UAC status, including 8 U.S.C. § 1232(c)(2)(B), which requires consideration of the least restrictive setting and alternatives to detention; b. Petitioner's status as a J.O.P. class member with a pending USCIS asylum application places Petitioner in a specialized procedural posture inconsistent with ordinary § 1225 mandatory detention treatment; and c. Even if DHS possessed some detention authority, Petitioner's re-detention without meaningful individualized process violates the Due Process Clause of the Fifth Amendment.
18. Petitioner seeks immediate release from unlawful custody. In the alternative, Petitioner seeks a prompt individualized custody hearing under the correct legal framework before a neutral decisionmaker.
19. Because Petitioner remains detained now, suffers ongoing loss of liberty, and faces irreparable harm each day this unlawful detention continues, emergency temporary and preliminary injunctive relief is warranted.

JURISDICTION AND VENUE

20. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner

is in custody in violation of the Constitution and laws of the United States.

21. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act ("INA"), the Trafficking Victims Protection Reauthorization Act ("TVPRA"), the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706.
22. This Court has habeas jurisdiction because Petitioner challenges the legality of present executive detention, not the merits of any final order of removal.
23. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 2241 because Petitioner is detained at the North Florida Detention Center, ("Baker"), Sanderson, Florida under the jurisdiction of the ICE Miami Field Office.

EXHAUSTION

24. Administrative exhaustion, which is a prudential doctrine in habeas cases, does not apply in this case due to futility. *Puga*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *2 ("Since the result of Petitioner's custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements are excused for futility."). "A petitioner need not

exhaust administrative remedies if "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148, 112 S. Ct. 1081, 117 L. Ed. 2d 291 (1992)." *Lara-Reyes v. Woodall* 2026 U.S. Dist. LEXIS 53142 * 4 (M.D. Fla. March 16 2026).

25.No exhaustion is statutorily required for the Petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F. 3d 467, 474 (CA11 2015). Exhaustion in the habeas context is at most a "non-jurisdictional," *id.*, at 475, "judicially-created . . . doctrine," *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (CA11 1989) (HRC v. Nelson), *aff'd sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U. S. 479 (1991), subject to various exceptions. See *Jaimes v. United States*, 168 Fed. Appx. 356, 359, n. 4 (CA11 2006) ("judicially-created exhaustion requirements may be waived by the courts for discretionary reasons") (quoting *Gallo Cattle Co. v. U. S. Dep't of Agric.*, 159 F. 3d 1194, 1197 (CA9 1998)); *Richardson v. Reno*, 162 F. 3d 1338, 1374 (CA11 1998) (Richardson I), *cert. granted*, judgment vacated on other grounds, 526 U.S. 1142 (1999) ("judicially developed exhaustion requirements might be waived for discretionary reasons by courts").² For

² In a revised opinion following remand, the Eleventh Circuit "readopt[ed] and reaffirm[ed]"

example, “a petitioner need not exhaust his administrative remedies ‘where the administrative remedy will not provide relief commensurate with the claim.’ ” *Boz v. United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogation on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (quoting *HRC v. Nelson*, 872 F. 2d, at 1561).

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 the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

27. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

the reasoning in *Richardson I* except to the extent it relied on INA § 242(g) to support its holding.” *Richardson v. Reno*, 180 F. 3d 1311, 1313 (CA11 1999) (*Richardson II*).

PARTIES

28. Petitioner, Pablo Adrian Perez Arreaga, is a native and citizen of Guatemala who last entered the United States as a child on November 16, 2023, has an approved SIJS with Deferred Action, and has a pending application for Asylum with USCIS. He is currently detained in ICE custody at the North Florida Detention Center, (“Baker”), Sanderson, Florida. Exhibit E ICE Detainee Locator.

29. Respondent WARDEN, North Florida Detention Center, (“Baker”), under a federal contract with U.S. Immigration and Customs Enforcement, is the official responsible for overseeing Baker, the facility where Petitioner is currently detained.

30. Respondent FIELD OFFICE DIRECTOR, Jacksonville Sub Field Office, U.S. Immigration and Customs Enforcement. The individual who occupies this position is not publicly disclosed. The Jacksonville Field Office is the Field Office that oversees Baker in Sanderson, Florida, where Petitioner is currently detained.

31. Respondent GARRETT RIPA, is the Field Office Director for the Miami Field Office, U.S. Immigration and Customs Enforcement. The Miami Field Office is the Field Office that oversees the Jacksonville Sub Field Office.

32. Respondent TODD LYONS is the Acting Director for U.S. Immigration and

Customs Enforcement. Respondent Lyons has authority over the actions of Respondent Ripa and ICE in general.

33. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner's detention and custody.

34. Respondent TODD BLANCHE is the Deputy Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

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

LEGAL FRAMEWORK FOR IMMIGRATION DETENTION OF SPECIAL IMMIGRANT JUVENILE

36. When Congress established Special Immigrant Juvenile Status, it exempted SIJS recipients from several grounds of removability from the United States. See 8 U.S.C. § 1227(c) ("Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) . . . shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed

before the date the [non-citizen] was provided such special immigrant status.”).

37. Although we do not have a copy of the NTA, we surmise that the only removability ground with which Petitioner is charged, and indeed the only removability ground with which has ever been charged, is 8 U.S.C. § 1182(a)(6)(A)(i), which renders inadmissible non-citizens who are present in the United States “without being admitted or paroled.” But this is one of the grounds that “shall not apply to a special immigrant.” See 8 U.S.C. § 1227(c) (including “Paragraph[] (1)(A)” among grounds that “shall not apply”); *id.* § 1227(a)(1)(A) (describing inadmissible non-citizens).

38. Accordingly, “although a juvenile with SIJ status can be removed on certain grounds, such as having been convicted of a serious criminal offense, he cannot be removed for having entered the country illegally.” *Rodriguez v. Perry*, No. 1:24-cv-651, 2024 WL 4024047, at *4 (E.D. Va. Sept. 3, 2024) (“[A] juvenile with SIJS status...cannot be removed for having entered the country illegally.”). Petitioner has been granted deferred action on account of his SIJS.

39. Deferred action reflects DHS’s determination that removal and by extension, civil immigration detention, is not in the government’s interest. As multiple courts have now recognized, ICE may not detain SIJS recipients who have

been granted deferred action. In *Guerra Leon v. Noem*, No. 25-01495 (W.D. La. Oct. 30, 2025), the court held that ICE lacked authority to detain a SIJS recipient who had been granted deferred action. The court reasoned that since he could not be removed given unexpired deferred action, his detention was unlawful. The court stated “[T]he operative factor precluding removal is his deferred action that remains in effect until December 9, 2026.” *Id.*

40. In *F.R.P. v. Wamsley*, No. 25-01917, 2025 WL 3037858 (D. Ore. Oct. 30, 2025), the court ordered immediate release of noncitizen with VAWA deferred action and enjoined the government from re-detaining him without providing notice to the noncitizen’s counsel and the court and holding pre-detention hearing: “As the Supreme Court recently reiterated, “[t]he defining feature of deferred action is the decision to defer removal (and to notify the affected alien of that decision).” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1911 (2020). Decades prior, the Supreme Court described deferred action as meaning that “‘no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigr. L. & Proc.* § 72.03 [2][h] (1998)). The Ninth Circuit has consistently upheld that understanding. *See, e.g., Lee v. Holder*, 599 F.3d 973,

975 (9th Cir. 2010) (per curiam) (describing deferred action as a “form of parole” and “stay[] of removal”); *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001) (“Deferred action refers to an exercise of administrative discretion by the [Immigration and Naturalization Services (“INS”)] district director under which the INS takes no action to proceed against an apparently deportable alien based on a prescribed set of factors generally related to humanitarian grounds.”) (internal quotations and citation omitted). Without a particularized finding that petitioner is a flight risk or danger to the community, there is a serious risk that he will face erroneous deprivation of a protected interest.” *Id.*

41. ICE’s detention of a SIJS recipient with deferred action is ultra vires. The INA authorizes detention only in connection with removal proceedings or specific statutory mandates. Where DHS has affirmatively chosen not to pursue removal through deferred action, detention loses its statutory footing. Moreover, continued detention violates due process. SIJS recipients are particularly vulnerable individuals whom Congress intended to protect, not incarcerate.

42. Special Immigrant Juveniles are a hair’s breadth away from adjusting status to that of a legal permanent resident, and therefore, they are entitled to enjoy at least minimum due process rights. *Lopez Sarmiento v. Perry*, No. 1:25-CV-

01644-AJT-WBP, 2025 WL 3091140, at *3 (E.D. Va. Nov. 5, 2025). To further protect SIJ designees, Congress enacted legislation to remove barriers to adjustment of status, like waiving certain grounds of inadmissibility and conferring parole under 8 U.S.C § 1255(h). Specifically, SIJs are exempt from inadmissibility for being present without admission or parole and having entered without the appropriate entry documents. *Id.*

43. To the extent that ICE lacks legal authority to continue pursuing removal proceedings against it also lacks the authority to detain him “pending a decision” in those invalid removal proceedings. 8 U.S.C. § 1226(a).

LEGAL FRAMEWORK FOR IMMIGRATION DETENTION

44. The Homeland Security Act defines an unaccompanied alien child (“UAC”) as a child who lacks lawful immigration status, has not attained 18 years of age, and has no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

45. Under the TVPRA, the care and custody of UACs, including responsibility for detention where appropriate, is assigned to HHS/ORR. 8 U.S.C. § 1232(b).

46. Under 8 U.S.C. § 1232(c)(2)(A), a UAC in HHS custody must be placed in the least restrictive setting that is in the child’s best interest, subject to danger and flight-risk considerations.

47. Congress also specifically addressed minors who age out of UAC status.

Under 8 U.S.C. § 1232(c)(2)(B), if a minor described in subparagraph (A) reaches 18 years of age and is transferred to DHS custody, DHS shall consider placement in the least restrictive setting available after taking into account danger to self, danger to the community, and risk of flight, and such individuals shall be eligible for alternatives to detention.

48. The INA also contains detention provisions at 8 U.S.C. §§ 1225 and 1226.

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

50. But Congress separately enacted specific protections for UACs and aged-out UACs in the TVPRA, and those provisions govern persons like Petitioner more specifically than generic border-detention provisions.

51. Petitioner also remains within the framework of the *J.O.P. Settlement*, under which USCIS retains initial jurisdiction over class members' asylum applications and DHS may not proceed as if class members were ordinary noncitizens in routine removal processing divorced from the pending USCIS merits adjudication. DHS reopening of removal proceedings against Petitioner violates the *J.O.P. Settlement*, *A.C.J. v Hermosillo* 2026 U.S. Dist. LEXIS 4388 (W.D. WA January 29, 2026).

52. Federal Habeas Corpus lies to test the legality of executive detention. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018); *Lopez v. Sessions*,

18 Civ. 4189 (RWS) (S.D. N.Y. Jun 12, 2018).

53. Courts have recognized substantial statutory and constitutional limits on detention of persons who entered as UACs or who were released and later re-detained without adequate process. *See Lopez v. Sessions; Ramirez v. U.S. Immigration & Customs Enforcement*, 471 F. Supp. 3d 88 (D.D.C. 2020); *Torres v. Wamsley* 807 F. Supp. 3d 1266 2025 WL 2855379; *A.C.J. v. Hermosillo*.

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

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

56. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals detained under the authority of § 1226(a) are entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

57. 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).

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

59. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an Immigration Judge or other hearing

officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

60. Respondents’ new policy turns this well-established understanding on its head and violates the statutory scheme. Indeed, prior to the BIA’s change in position, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was already rejected by a District Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240 TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

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

62. On September 5, 2025, the BIA issued an opinion adopting this approach to the detention statutes, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220, further entrenching the government’s interpretation of the governing detention statutes. Because this decision is precedential, it is binding on

immigration judges (absent contrary instructions from a federal court sitting in habeas).

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

64. 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, which “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

65. 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). 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.

66. 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).

67. The government's interpretation subjects all inadmissible noncitizens to 8 U.S.C. § 1225 and its mandatory detention provisions. But such a reading renders superfluous significant portions of 8 U.S.C. § 1226(c) that reference inadmissible noncitizens, including 8 U.S.C. § 1226(c)(1)(E) that Congress enacted just months ago by passing the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

68. The new subsection makes a noncitizen subject to mandatory detention if he (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (the "inadmissibility criterion"); "and" (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the "criminal conduct criterion"). 8 U.S.C. § 1226(c)(1)(E) (emphasis added). By using the conjunction "and," the provision mandates detention only where the inadmissibility criterion and the criminal conduct criterion are both satisfied.

69. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who entered the United States as a UAC. The TVPRA and the HSA work together with 8 U.S.C. § 1226(a) to demonstrate that the Petitioner is not a mandatory detainee based on his manner of entry, as he was already released from government custody and then re-detained years later.

70. On April 28th 2026, the Second Circuit decided that § 1225(b)(2)(A) does not

authorize mandatory detention of any long-term interior resident, even those who entered without inspection. The Court held that § 1225(b)(2)(A) does not apply to noncitizens who are present in the United States after entering without inspection and who were not apprehended at or near the border at the time of entry. Their detention is governed by Section 1226(a), which permits bond. The court explicitly disagreed with the Fifth Circuit's decision in *Buenrostro-Mendez* and the Eighth Circuit's decision in *Avila v. Bondi*, finding the statutory analysis in both "unpersuasive." *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026).

71. The 11th Circuit Court of Appeals has yet to issue a decision on this issue.

The Fifth Circuit Court of Appeals and the Eighth Circuit Court of Appeals concluded, although not unanimously, that an alien present in the U.S. for a period of time without admission is subject to mandatory detention under § 1225(b)(2). However, these decisions are not binding here. See *Palma v. Charles*, 1:26-cv-21923-GAYLES (S.D. Fla. Apr 09, 2026), footnote 4: "The Court acknowledges the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), which agreed with the government's position here. But that decision "distort[s] the statutory text, abstract[s] it from its context and history, ignore[s] the Supreme Court's clearly stated understanding of the statutory scheme, and wave[s] away the [government's]

previous failure to detain millions of noncitizens as if it were a rounding error.” Id. at 509 (Douglas, J., dissenting). Indeed, the Fifth Circuit's decision “is not binding here, and it contradicts the vast majority of district court opinions addressing the issue.” *Lobovillalobos v. Hardin*, No. 2:26-cv-00446, 2026 WL 621380, at *2 n.1 (M.D. Fla. Mar. 5, 2026).”

72. This court and an ever-growing line of cases where courts have rejected these very same arguments. See *Lara-Reyes v. Woodall*.³

FACTUAL ALLEGATIONS AND RELEVANT BACKGROUND

73. Upon arrival to the United States, the DHS identified Petitioner as a UC from Guatemala.

74. Shortly thereafter, the DHS transferred Petitioner to the ORR, who determined that Petitioner was not a flight risk or danger to the community, and released him from federal custody.

75. There have been no changes to Petitioner's circumstances, such as accrued criminal history, undermining this determination.

76. Petitioner does not have a case with EOIR and does not appear to be in

³ Petitioner acknowledges that a minority of other courts in this District have agreed with the government's position. See *Rocha Vargas v. Miami Federal Detention Center*, No. 25-CV-25966-RAR, 2026 WL 911291, at *2 (S.D. Fla. Apr. 2, 2026) (concluding that habeas petitioner was an applicant for admission because he entered the country without inspection); *Gomez Varela v. Nunez*, 26-60414-CIV-SINGHAL (S.D. Fla. Apr 08, 2026) (same); *Briceno v. Warden, Fed. Det. Ctr., Miami*, 25-CV-25586-RAR (S.D. Fla. Apr 14, 2026) (same).

removal proceedings, has a pending Asylum application, has an approved SIJS application with a grant of Deferred Action, has a valid work authorization document, and has a valid driver's license.

77. On April 15, 2026, Petitioner was a passenger in a car that was stopped apparently for no reason. Despite presenting his valid Employment Authorization Document (EAD) and valid Florida driver's license, he was arrested and delivered to ICE. ICE detained him at North Florida Detention Center, ("Baker"). After two weeks Petitioner still does not have a case open in EOIR and does not appear to be in immigration proceedings. Petitioner remains at Baker to this day.

CAUSES OF ACTION

COUNT ONE

Violation of 8 U.S.C. § 1232(c)(2)(B) and the TVPRA

Unlawful Detention

78. Petitioner incorporates paragraphs 1 to 77 as if fully stated herein.

79. Petitioner entered the United States as a UAC. His manner of entry and treatment at the border is governed by the TVPRA.

80. Congress specifically legislated for that exact circumstance in 8 U.S.C. § 1232(c)(2)(B).

81. Under that statute, DHS was required to consider the least restrictive setting

available and Petitioner's eligibility for alternatives to detention. DHS failed to apply the correct statutory framework.

82.DHS instead treated Petitioner as categorically subject to detention under 8 U.S.C. § 1225, as though the TVPRA aged-out-UAC provision did not exist.

83.The TVPRA is the more specific statute governing Petitioner's entry and detention posture.

84.Respondents' contrary interpretation would largely nullify 8 U.S.C. § 1232(c)(2)(B) by allowing DHS to bypass that provision whenever a former UAC turns 18.

85.Because Petitioner has no criminal history, strong community ties, SIJS deferred action, and a pending asylum application, secure detention without a lawful least-restrictive-setting analysis is contrary to federal law.

86.Petitioner is therefore in custody in violation of the laws of the United States and is entitled to habeas relief under 28 U.S.C. § 2241.

COUNT TWO

Violation of J.O.P Class-Member Status

87. Petitioner incorporates paragraphs 1 to 77 as if fully stated herein.

88. Petitioner is a member of the *J.O.P. Settlement* class as Petitioner's asylum application remains pending with USCIS.

89.Under the J.O.P. settlement, class members' asylum applications remain

within USCIS's initial merits-adjudication framework. *See J.O.P. v. U.S. Dep't of Homeland Sec.*, 779 F. Supp. 3d 570 (D. Md. 2025).

90. Respondents cannot lawfully treat Petitioner as though Petitioner were merely an ordinary applicant for admission moving through standard § 1225 mandatory-detention processing while the J.O.P.-governed USCIS asylum process remains pending.

91. Petitioner's J.O.P. class-member status strongly confirms that Respondents are using the wrong detention framework.

92. Petitioner is therefore in custody in violation of the laws of the United States.

COUNT THREE

Violation of Procedural Due Process

93. Petitioner incorporates paragraphs 1 to 77 as if fully stated herein.

94. The Fifth Amendment protects Petitioner from deprivation of liberty without due process of law.

95. Petitioner has a profound liberty interest in freedom from physical restraint.

96. Petitioner had previously been released into the community and permitted to live in the United States.

97. Petitioner has no criminal history and substantial indicia of stability, identity verification, and compliance, including a valid EAD, a driver's license, and community ties.

98. Respondents re-detained Petitioner without meaningful notice and opportunity to be heard before a neutral decisionmaker regarding danger, flight risk, changed circumstances, or less restrictive alternatives.

99. The risk of erroneous deprivation is high where the government detains a previously released former UAC without an individualized neutral process.

100. The INA authorizes detention only in connection with removal proceedings or specific statutory mandates. Where DHS settled not to pursue removal per *J.O.P.*, detention loses connection with removal and its statutory footing. Furthermore, removal proceedings have not been initiated. Therefore, detention that is not in connection with, or not serving, removal proceedings exceed the constitutional justification recognized in *Demore v. Kim*, 538 U.S. 510 (2003). In this case, Petitioner's detention falls into the category of impermissible detention identified in *Zadvydas v. Davis*.

101. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, courts must weigh (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the

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

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

103. Furthermore, under the balancing framework of *Mathews v. Eldridge*, 424 U.S. 319 (1976), the private liberty interest is substantial, the risk of error is high, and additional safeguards would impose little burden on the government.

104. Petitioner’s detention therefore violates procedural due process.

COUNT FOUR

Violation of Substantive Due Process

105. Petitioner incorporates paragraphs 1 to 77 as if fully stated herein.

106. Civil immigration detention must bear a reasonable relation to legitimate nonpunitive purposes.

107. Petitioner is not in removal proceedings.

108. Petitioner has no criminal history and no individualized evidence supports the conclusion that secure detention is necessary to protect the public or ensure appearance.

109. Respondents' categorical use of § 1225 to detain Petitioner, notwithstanding the TVPRA, SIJS and Deferred Action, J.O.P., and Petitioner's individualized circumstances, is arbitrary.

110. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)); accord *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025) (" 'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings.") (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

111. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a neutral decision-maker.

112. Petitioner's continued detention therefore violates substantive due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a) Assume jurisdiction over this matter;

- b) Grant the writ of habeas corpus and order that Respondents to immediately release Petitioner from immigration detention.
- c) Alternatively, order a prompt individualized custody redetermination hearing before a neutral decisionmaker under the correct legal framework, with consideration of the TVPRA, SIJS with Deferred Action, J.O.P. status, danger, flight risk, and less restrictive alternatives;
- d) Enjoin the Respondents from transferring Petitioner outside the jurisdiction of the U.S. District Court for the Middle District of Florida;
- e) Enjoin Respondents from removing Petitioner while this action is pending, absent prior order of the Court;
- f) Enjoin Respondents from re-detaining Petitioner absent lawful authority, meaningful notice, and constitutionally adequate process;
- g) Award petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- h) Grant any additional relief that this Court deems just and proper.

Respectfully submitted,

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Counsels for Petitioner

Dated: May 1, 2026

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

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

Dated this 1st day of May 2026.

/s/ Vanessa McCarthy

Vanessa McCarthy, Esq.
Florida Bar 109072