

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
CASE NO. 3:26-cv-1215**

**FABIANO HENRIQUE BESSA
SILVESTRE,**

Petitioner,

v.

WARDEN, in the official capacity as Warden of
Florida Baker Correctional Institute;

KELIE WALKER, in her official capacity as
Field Office Director of U.S. Immigration and
Customs Enforcement Miami Field Office;

Respondents.

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

The Petitioner, Fabiano Henrique Bessa Silvestre (“Petitioner”), submits this
petition for writ of habeas corpus and related relief and alleges as follows:

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner, who is
currently in the custody of Immigration and Customs Enforcement (“ICE”) at the
Florida Baker Correctional Institute.

2. Petitioner is a native and citizen of Brazil who entered the United States without being admitted or paroled as a minor at the age of thirteen.

3. Petitioner is the beneficiary of an approved Form I-360 petition for Special Immigrant Juvenile Status.

4. This Court should order Petitioner's immediate release because Respondents have not identified any lawful present basis for detention. In the alternative, if detention is authorized at all, it arises under 8 U.S.C. § 1226(a), pursuant to which Petitioner is entitled to a prompt individualized bond hearing at which the government bears the burden to justify continued detention.

EXIGENCY

5. Petitioner requests time-sensitive relief under Middle District of Florida Local Rule 3.01(f). The exigency is Petitioner's ongoing civil immigration detention after ICE detained him, despite no final order of removal, no § 1226(c) criminal predicate, and no access to an individualized custody determination. Each day of detention is a continuing deprivation of liberty, and transfer outside this District could impair effective habeas relief. Petitioner therefore requests an order to show cause requiring Respondents to respond within three days and a ruling on the motion for order to show cause within seven days.

PARTIES

6. Petitioner is a native and citizen of Brazil. Petitioner is currently detained at the Florida Baker Correctional Institute. *See Exhibit A* (ICE Online Detainee Locator).

7. Respondent WARDEN is sued in the official capacity as the Warden of Florida Baker Correctional Institute. In that capacity, Respondent is Petitioner's immediate custodian and can produce Petitioner before this Court. Therefore, Respondent is Petitioner's immediate custodian for purposes of habeas relief and is a proper respondent in this case. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004); *Maratuech Arenas v. Noem*, No. 2:26-cv-00617-SPC-DNF, slip op. at 1–2 (M.D. Fla. Mar. 18, 2026).

8. Respondent Kelie Walker is sued in her official capacity as the Field Office Director of ICE Miami Field Office. In this capacity, Respondent has jurisdiction over the detention facility where Petitioner is held, is authorized to release Petitioner, has the power to produce Petitioner, and is a legal custodian of Petitioner. *See Munaf v. Geren*, 553 U.S. 674, 686 (2008).

JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody in violation of the Constitution or laws of the United States. Federal courts exercise habeas jurisdiction to review the legality of immigration detention, including challenges to the statutory basis for detention and the adequacy of

procedural safeguards. *See Jennings v. Rodriguez*, 583 U.S. 281, 294, 306 (2018).

10. This Court has jurisdiction under the Suspension Clause of the Constitution because this action is a habeas corpus petition, and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., and the Fifth Amendment to the United States Constitution.

11. Petitioner’s continued detention constitutes a severe restraint on liberty that is neither authorized by statute nor consistent with constitutional requirements. Because no adequate alternative remedy exists to challenge his confinement, habeas corpus is the proper and necessary vehicle for relief.

12. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this action. 8 U.S.C. § 1252(g) is narrow and applies only to three discrete actions: the “decision or action to commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quotations omitted). *See also Jennings*, 583 U.S. at 294. When determining whether § 1252(g) applies, courts focus on the action being challenged. *Canal A Media Holding, LLC v. U.S. Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020). This Petition challenges detention, not the commencement of proceedings, the adjudication of a case, or the execution of a removal order.

13. Venue is proper in the Middle District of Florida because Petitioner is

detained within this District and Respondents are federal and local officials acting in their official capacities in connection with Petitioner's detention. *See* 28 U.S.C. § 1391(b)(2), (e)(1).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

14. On August 18, 2019, Petitioner entered the United States without inspection at the age of thirteen. *See Exhibit B* (Notice to Appear).

15. On or about February 20, 2025, Petitioner filed Form I-360 with United States Citizenship and Immigration Services ("USCIS"), seeking Special Immigrant Juvenile ("SIJ") classification. USCIS approved the petition on June 30, 2025. *See Exhibit C* (Form I-360 Approval Notice).

16. On May 5, 2026, Petitioner was taken into the custody of U.S. Immigration and Customs Enforcement ("ICE"), where he has remained detained without an individualized custody determination or bond hearing. He was then taken to Florida Baker Correctional Institute. *See Exhibit A*.

17. On May 8, 2026, Petitioner filed applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT").

18. Petitioner has not been convicted of any offense rendering him subject to mandatory detention under 8 U.S.C. § 1226(c).

19. Petitioner does not challenge in this action the underlying allegations of removability, nor does he seek review of any discretionary immigration

determination. Rather, Petitioner challenges only the legality of his present physical detention and the Government's failure to provide constitutionally adequate custody process.

TRANSFER WOULD FRUSTRATE HABEAS REVIEW AND SHOULD BE ENJOINED

20. Petitioner requests an injunction prohibiting Respondents from transferring him outside the Middle District of Florida while this habeas action is pending absent notice to Petitioner and leave of Court.

21. Petitioner is detained in this District, his immediate custodian is located here, and this Court is the proper court to adjudicate the legality of his present detention. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35, 443 (2004). A transfer during this action would impair meaningful habeas review by disrupting access to counsel, creating jurisdictional and remedial complications, and risking transfer to a forum that does not apply the same controlling law governing Petitioner's detention.

22. The risk of transfer is especially prejudicial here because Petitioner seeks habeas relief under controlling Eleventh Circuit law governing the legality of his present detention. Transfer to another jurisdiction could force Petitioner to litigate access to custody review in a forum that does not apply the same controlling authority, despite the fact that Petitioner is presently detained in this District and this Court has jurisdiction over his custodian. Habeas relief must be "swift and

imperative,” not subject to manipulation or frustration through custodial transfer. *Fay v. Noia*, 372 U.S. 391, 400 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977).

23. Federal courts have authority to preserve their habeas jurisdiction and prevent custodial action that would impair effective review. *Ex parte Endo*, 323 U.S. 283, 304–07 (1944). The requested injunction would preserve the status quo, protect access to counsel, and ensure that this Court can decide the legality of Petitioner’s detention before Respondents alter the custodial facts on which jurisdiction and effective relief depend.

24. The equities favor temporary transfer protection. Petitioner faces irreparable harm from transfer because it would impair attorney-client communication, disrupt preparation of this habeas action, and risk forcing Petitioner to seek relief in a less favorable or procedurally uncertain forum while he remains detained. Respondents will suffer minimal burden from maintaining Petitioner at his current facility while the Court resolves this expedited habeas action. The public interest favors preserving meaningful judicial review of allegedly unlawful detention and preventing transfer from frustrating habeas relief.

25. For these reasons, the Court should enjoin Respondents from transferring Petitioner outside the Middle District of Florida while this action is pending absent notice to Petitioner and leave of Court.

GROUND FOR RELIEF

GROUND ONE

Unlawful Detention in Excess of Statutory Authority

26. Petitioner incorporates paragraphs 14 through 19.

27. Respondents' continued detention of Petitioner without access to an individualized custody determination is unlawful because it exceeds federal statutory detention authority.

28. The Immigration and Nationality Act distinguishes between mandatory detention under 8 U.S.C. § 1225(b) and discretionary detention under 8 U.S.C. § 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 287–89, 296–97 (2018).

29. Section 1226(a) governs the arrest, detention, and release of noncitizens pending a decision on whether they are to be removed. Section 1226(a) permits discretionary detention, but it also permits release on bond or conditional parole. 8 U.S.C. § 1226(a).

30. Respondents may not deny Petitioner all access to custody review by treating him as subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner was not detained upon arrival at the border. He entered the United States as a minor, lived in the United States for years, and was taken into ICE custody in the interior of the United States.

31. Under controlling Eleventh Circuit authority, § 1225(b)(2)(A) does not

authorize mandatory no-bond detention for every unadmitted noncitizen found in the interior of the United States. *Hernandez Alvarez v. Warden*, Fed. Det. Ctr. Miami, No. 25-14065, slip op. (11th Cir. May 6, 2026).

32. Petitioner is also not subject to mandatory detention under § 1226(c), § 1225(b)(1), or § 1231. Petitioner has not been convicted of any offense rendering him subject to mandatory detention under § 1226(c), is not detained pending a credible-fear determination or review of such a determination under § 1225(b)(1), and does not have a final order of removal triggering detention authority under § 1231.

33. If Respondents have any present statutory authority to detain Petitioner while DHS pursues removal, that authority arises, at most, under 8 U.S.C. § 1226(a). *Hernandez Alvarez*, No. 25-14065, slip op. at __; *Vazquez-Benitez v. Garland*, 999 F.3d 1305, 1308–10 (11th Cir. 2021).

34. As a noncitizen detained under § 1226(a), Petitioner is entitled to an individualized custody determination. *See Jennings*, 583 U.S. at 306; 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), 1236.1(d)(1).

35. Respondents must certify the true cause of Petitioner's detention. *See* 28 U.S.C. § 2243. Respondents should therefore be required to produce any Form I-200 warrant, custody determination, Notice to Appear, proof of service, and any other custody or charging documents necessary to establish the asserted statutory

basis for Petitioner's arrest and detention.

36. Because Respondents have detained Petitioner as if he were subject to mandatory no-bond detention, and because any present detention authority arises at most under § 1226(a), Petitioner is entitled to immediate release or, in the alternative, a prompt individualized custody determination under § 1226(a).

GROUND TWO
Violation of Procedural Due Process Under the Fifth Amendment

37. Petitioner incorporates paragraphs 14 through 19.

38. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

39. Procedural due process requires the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Under *Mathews*, courts determine what process is due by balancing the private interest, the risk of erroneous deprivation, the value of additional safeguards, and the Government's interest. 424 U.S. at 335.

40. Petitioner has been detained without a meaningful opportunity to contest whether his detention is authorized, necessary, or justified by flight risk or danger.

41. Petitioner's liberty interest is substantial. He entered the United States as a minor at the age of thirteen, has lived in the United States for years, is the

beneficiary of an approved Form I-360 petition for Special Immigrant Juvenile Status, and has not been convicted of any offense rendering him subject to mandatory detention.

42. The risk of erroneous deprivation is substantial because Respondents have detained Petitioner without providing access to an individualized custody determination, despite the absence of any statutory basis for mandatory detention.

43. The Government's interest does not justify continuing to detain Petitioner without any meaningful custody process. Appearance at future proceedings and community safety can be addressed through bond or conditions of supervision.

44. To the extent the Court orders a custody determination under § 1226(a), due process requires the Government to bear the burden of justifying continued detention by clear and convincing evidence of dangerousness or flight risk. See *U.S. Castro v. Assistant Field Office Director, Krome North Service Processing Center*, No. 26-cv-20422-BLOOM, slip op. at 11–12 (S.D. Fla. Mar. 18, 2026).

45. If Respondents do not provide a constitutionally adequate custody determination within the time ordered by the Court, the Court should order Petitioner's immediate release under appropriate conditions. See *Nardella Mago v. Rogers*, No. 2:26-cv-278-SPC-NPM, slip op. at 6 (M.D. Fla. Feb. 25, 2026).

46. For these reasons, if the Court concludes that Respondents have

statutory authority to detain Petitioner, continued detention without a meaningful opportunity to contest whether detention is justified violates procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause directing Respondents to respond to this Petition within three days and to produce all documents purporting to authorize Petitioner's present detention, including all charging documents, custody determinations, detainers, warrants, Notices to Appear, and records relating to any asserted statutory basis for custody;
- c. Enter a temporary restraining order and preliminary injunction prohibiting Respondents from transferring Petitioner outside the Middle District of Florida during the pendency of this action absent notice to Petitioner and leave of Court;
- d. Declare that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b), § 1226(c), or § 1231 on the present record, and that any present statutory authority to detain Petitioner arises, at most, under 8 U.S.C. § 1226(a);
- e. Declare that Petitioner's continued detention without access to an individualized custody determination violates the Immigration and Nationality Act, 28 U.S.C. § 2241, and the Due Process Clause of the Fifth Amendment;

- f. Order Respondents to immediately release Petitioner from custody;
- g. Alternatively, order Respondents to provide Petitioner with a prompt individualized custody determination under 8 U.S.C. § 1226(a) before an Immigration Judge within seven days, at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is necessary because Petitioner presents a danger to the community or a serious risk of flight;
- h. Order that Petitioner be released under appropriate conditions of supervision if Respondents fail to provide a constitutionally adequate custody determination within the time ordered by this Court;
- i. Enjoin Respondents from re-detaining Petitioner absent lawful statutory authority and constitutionally adequate process;
- j. Award such additional relief as the Court deems just and proper.

Respectfully submitted,

Dated: May 8, 2026
/s/ Samantha Topper Berns
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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

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

that I am submitting this verification on behalf of Petitioner because I am Petitioner's habeas counsel; that I have discussed with Petitioner the events described in this Petition; and that, based on those discussions and the records available to me, the factual statements in this Petition are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Dated: May 8, 2026
/s/ Samantha Topper Berns
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LOCAL RULE 3.01(g) CERTIFICATE

Because this filing initiates the action and Respondents have not yet appeared, Petitioner has not been able to confer with Respondents before filing. Petitioner will diligently attempt to confer with Respondents after filing and will supplement this certificate if required by Local Rule 3.01(g)(3).

Respectfully submitted,

Dated: May 8, 2026
/s/ Samantha Topper Berns
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Counsel for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I filed the foregoing with the Clerk of Court using CM/ECF. Petitioner understands that, upon issuance of an order to show cause, the Court ordinarily directs service of the petition and order as appropriate. Petitioner will comply with any service instructions in the Court's order and will file proof of service if directed.

Respectfully submitted,

Dated: May 8, 2026
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