

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

OBANDO MARTINEZ, ERLIN

Petitioner,

v.

Garret Ripa, Field Office Director of
Enforcement and Removal Operations, Miami
Field Office, Immigration and Customs
Enforcement; Markwayne Mullin, Secretary,
U.S. Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; David Hardin,
Warden of GLADES COUNTY DETENTION
CENTER

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner Erlin Obando Martinez is in the physical custody of Respondents at the
3 Glades County Detention Center. He now faces unlawful detention because the Department of
4 Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have
5 concluded Petitioner is subject to mandatory detention.

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

8 3. Based on this allegation in Petitioner's removal proceedings, DHS denied
9 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
10 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone
11 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
12 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
13 therefore ineligible to be released on bond.

14 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or
15 Board) issued a precedent decision, binding on all immigration judges, holding that an
16 immigration judge has no authority to consider bond requests for any person who entered the
17 United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
18 The Board determined that such individuals are subject to detention under 8 U.S.C. §
19 1225(b)(2)(A) and therefore ineligible to be released on bond.

20 5. The threshold question — one that has now divided the federal circuits — is which
21 provision governs a person who entered illegally, was briefly processed and released on
22 § 1182(d)(5) parole, lived in the United States for several years, and was then re-detained.
23 The statutory fulcrum is the definition of "applicant for admission" in § 1225(a)(1) 8
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USCA § 1225, which sweepingly provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States ... shall be deemed for purposes of this chapter an applicant for admission." Because the person in the question was never "admitted" — defined as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer" under 8 U.S.C.

§1101(a)(13)(A) — they are unquestionably an "applicant for admission." The more contested question is whether they are also currently "seeking admission" as §1225(b)(2)(A) additionally requires.

6. The Eleventh Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, --- F.4th --- (2026) held that §1225(b)(2)(A)'s mandatory detention provision "applies only to applicants for admission who are 'seeking admission'" and that §1226 "sets out [the] general rule of detention for aliens who are suspected of being unlawfully in [the] interior of the United States." *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, --- F.4th --- (2026). If "seeking admission" added no independent meaning, Congress's use of both terms would violate the canon against surplusage. The 2d, 6th, and 11th Circuits have all held the phrases are distinct, and the statute's present-tense language implies an ongoing, active pursuit of lawful entry.

7. Petitioner entered through the border, was processed, and then released on parole into the interior. He had no criminal records, filed an asylum application, and lived openly in Miami, Florida with his family including three children. He was unexpectedly detained in November, 2025 and was transferred to a detention center far from his home. The Petitioner was not "seeking admission" and therefore fall under §1226(a)'s discretionary detention framework, which entitles him to an individualized bond hearing before an

1 immigration judge. At such a hearing, the government bears the burden of justifying
2 detention.

3 8. Petitioner's detention violates the plain language of the Immigration and
4 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
5 previously entered, now residing in the United States and not "seeking admission". Instead, such
6 individuals are subject to a different statute, § 1226(a), that allows for release on conditional
7 parole or bond.

8 9. Respondents' new legal interpretation is plainly contrary to the statutory
9 framework and contrary to decades of agency practice applying § 1226(a) to people like
10 Petitioner. In addition, applying § 1225 mandatory detention to long-term interior residents with
11 no bond hearing available raises serious Fifth Amendment due process concerns.

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

14 JURISDICTION

15 11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
16 Glades Detention Center.

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

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

VENUE

14. 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.

15. 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.

REQUIREMENTS OF 28 U.S.C. § 2243

16. 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.*

17. 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

18. Petitioner Erlin Obando Martinez is a citizen of Nicaragua who has been in immigration detention since November 13th, 2025. After arresting Petitioner in Miami Dade,

1 Florida, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ,
2 pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

3 19. Respondent Garret Ripa is the Director of the Miami Field Office of ICE's
4 Enforcement and Removal Operations division. As such, Garret Ripa is Petitioner's immediate
5 custodian and is responsible for Petitioner's detention and removal. He is named in his official
6 capacity.

7 20. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
8 Security. She is responsible for the implementation and enforcement of the Immigration and
9 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
10 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

11 21. Respondent Department of Homeland Security (DHS) is the federal agency
12 responsible for implementing and enforcing the INA, including the detention and removal of
13 noncitizens.

14 22. Respondent Pamela Bondi is the Attorney General of the United States. She is
15 responsible for the Department of Justice, of which the Executive Office for Immigration Review
16 and the immigration court system it operates is a component agency. She is sued in her official
17 capacity.

18 23. Respondent Executive Office for Immigration Review (EOIR) is the federal
19 agency responsible for implementing and enforcing the INA in removal proceedings, including
20 for custody redeterminations in bond hearings.

21 24. Respondent David Hardin as Warden of the Glades County Detention Center,
22 where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his
23 official capacity.

LEGAL FRAMEWORK

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

26. 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 are 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).

27. 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).

28. 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).

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

30. 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).

31. 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

1 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
2 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3 32. Thus, in the decades that followed, most people who entered without inspection
4 and were placed in standard removal proceedings received bond hearings, unless their criminal
5 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
6 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
7 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
8 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
9 “restates” the detention authority previously found at § 1252(a)).

10 33. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
11 rejected well-established understanding of the statutory framework and reversed decades of
12 practice.

13 34. The new policy, entitled “Interim Guidance Regarding Detention Authority for
14 Applicants for Admission,”¹ claims that all persons who entered the United States without
15 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
16 policy applies regardless of when a person is apprehended, and affects those who have resided in
17 the United States for months, years, and even decades.

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

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24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

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

4 37. Even before ICE or the BIA introduced these nationwide policies, IJs in the
5 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
6 entered the United States without inspection and who have since resided here. There, the U.S.
7 District Court in the Western District of Washington found that such a reading of the INA is
8 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
9 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
10 1239 (W.D. Wash. 2025).

11 38. Subsequently, court after court has adopted the same reading of the INA's
12 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,
13 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
14 No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025);
15 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
16 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
17 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
18 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-
19 SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-
20 01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-
21 11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-
22 cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-
23 01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-
24

CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8 (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); *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).

39. On December 18th, 2025, the U.S. Central District Court of California vacated *Matter of Yahure Hurtado* and the Department of Homeland Security policy described in the July 8, 2025, “Interim Guidance Regarding Detention Authority for Applicants for Admission” under the Administrative Procedures Act as not in accordance with law. *Maldonado Bautista v. Santacruz*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) which held that the BIA's interpretation was contrary to the plain language of the INA. The Sixth Circuit in *Lopez-Campos* explicitly noted the government's "previously unbroken 29-year streak" of applying §1226(a) to such aliens before 2025. *Lopez-Campos v. Raycraft*, --- F.4th ---- (2026). *Hernandez Alvarez v. Warden*, Fed. Det. Ctr. Miami, 2026 WL 1243395 (11th Cir. 2026) *Hernandez Alvarez v. Warden*, Federal Detention Center Miami, --- F.4th ---- (2026) — The Eleventh Circuit held that §1225(b)(2)(A)'s mandatory detention provision applies only to applicants for admission "seeking lawful entry," not to aliens unlawfully present in the interior, and that §1226 is the default framework for the latter category.

1 40. Courts have uniformly rejected DHS's and EOIR's new interpretation because it
2 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
3 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

4 41. Section 1226(a) applies by default to all persons "pending a decision on whether
5 the [noncitizen] is to be removed from the United States." These removal hearings are held under
6 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

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

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

18 44. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
19 recently entered the United States. The statute's entire framework is premised on inspections at
20 the border of people who are "seeking admission" to the United States. 8 U.S.C.
21 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
22 applies "at the Nation's borders and ports of entry, where the Government must determine
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1 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
2 U.S. 281, 287 (2018).

3 45. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not
4 apply to people like Petitioner, who did not arrive at a U.S. port of entry, was processed, released
5 on parole, filed an asylum application, and were residing in the United States at the time he was
6 re-detained.

7 FACTS

8 46. Petitioner was born on  in Nicaragua.

9 47. On November 5th, 2021, Petitioner entered the U.S. without admission, he was
10 apprehended and released on Parole on November 15th, 2021.

11 48. Petitioner has resided in the United States since 2021 and lives in Miami, Florida
12 for over four years.

13 49. On November 13th, 2025, Petitioner was taken into custody during an ICE
14 operation. There are no criminal records associated with Petitioner. Petitioner is now detained at
15 the Glades Detention Center.

16 50. DHS placed Petitioner in removal proceedings before the Miami Immigration
17 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being
18 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States
19 without inspection.

20 51. Petitioner is married and a father of three children, one of them is a U.S. Citizen.
21 They are in the United States after fleeing persecution from the Nicaraguan Government.
22 Because Petitioner’s spouse must take care of the three children, they all are totally dependent on
23 Petitioner. Petitioner has no prior immigration record or history of nonappearance at immigration
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1 court proceedings. Since he arrived in the United States approximately four years ago, he has a
2 formal residence and work to support his family. Petitioner is neither a flight risk nor a danger to
3 the community.

4 52. Following Petitioner's arrest and transfer to Glades Detention Center, ICE issued
5 a custody determination to continue Petitioner's detention without an opportunity to post bond or
6 be released on other conditions.

7 53. Petitioner subsequently requested a bond redetermination hearing before an IJ.

8 54. Pursuant to *Matter of Yajure Hurtado*, the immigration judge did not consider
9 Petitioner's bond request for the lack of jurisdiction.

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

13 CLAIMS FOR RELIEF

14 COUNT I

15 Violation of the INA

16 56. Petitioner incorporates by reference the allegations of fact set forth in the
17 preceding paragraphs.

18 57. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
19 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
20 relevant here, it does not apply to those who previously entered the country and have been
21 residing in the United States and not "seeking admission". Such noncitizens are detained under §
22 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

3
4 **COUNT II**

5 **Violation of Due Process**

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

8 60. The government may not deprive a person of life, liberty, or property without due
9 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
10 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
11 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
12 (2001).

13 61. Petitioner has a fundamental interest in liberty and being free from official
14 restraint. Procedural due process requires bond hearings to avoid erroneous deprivation of
15 liberty, balancing private interests against government interests in detention.

16 62. The government’s detention of Petitioner without a bond redetermination hearing
17 to determine whether he is a flight risk or danger to others violates his right to due process.

18 **PRAYER FOR RELIEF**

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

- 20 a. Assume jurisdiction over this matter;
- 21 b. Order that Petitioner shall not be transferred outside the Middle District of Florida
- 22 while this habeas petition is pending;
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- 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 this 19th of May, 2026.

By:/s/Noelia M. Ramos
Noelia M. Ramos, Esq.
Florida Bar #1002776
P.O. Box 940971
Miami, Florida 33194
Phone: 786-300-8117
Email: noelia@nramoslaw.com
Attorneys for Petitioner

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2 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**
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4 I represent Petitioner, Erlin Obando Martinez, and submit this verification on his behalf. I
5 hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas
6 Corpus are true and correct to the best of my knowledge.

7 Dated this 19th day of May, 2026.

8 s/Noelia M Ramos

9 Noelia M. Ramos
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LIST OF EXHIBITS

EXHIBIT 1	Notice to Appear (NTA)
EXHIBIT 2	Immigration Judge Order
EXHIBIT 3	Petitioner's Parole
EXHIBIT 4	Petitioner's Police Clearance