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(Application For Pro Hac Vice Admission Pending)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HENRYS ELISEO **SANTOS-PINEDA**,

Petitioner,

v.

CHRISTOPHER J. **LAROSE**, Warden, Otay Mesa Detention Center; MARKWAYNE **MULLIN**, Secretary, United States Department of Homeland Security; PATRICK **DIVVER**, Field Office Director, United States Immigration and Customs Enforcement San Diego Field Office, Enforcement and Removal Operations; **UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT**; TODD **BLANCHE**, Acting Attorney General of the United States; DAVID J. **VENTURELLA**, Acting Director,

Case No. **'26CV4254 JO GC**

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE

United States Immigration and Customs Enforcement.

Respondents.

COMES NOW the Petitioner ("Petitioner"), HENRYS ELISEO SANTOS-PINEDA, by and through his undersigned counsel, and petitions this Honorable Court to issue a writ of *habeas corpus* to remedy his unlawful detention by United States Immigration and Customs Enforcement (ICE) and in support thereof respectfully alleges as follows:

CUSTODY

1. Petitioner is in the custody of Respondent CHRISTOPHER J. LAROSE, or his successor and/or assigns, in his official capacity as Warden of ICE's Otay Mesa Detention Center located at 3130 Oakland Street, San Diego, California 80010. *See* Exhibit No. 1.

2. Petitioner has been detained by Respondents since approximately June 24, 2026 even though the federal government has no significant likelihood of removing his from the United States.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and 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, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* and Article I, Section 9, Clause. 2 of the U.S. Constitution ("Suspension Clause"), as Petitioner is currently in custody under color of the authority of the United States in violation of the Constitution, laws, or treaties of the United States.

4. Venue for the complaint for injunctive relief is proper under 28 U.S.C. § 1391(e), as Respondents are officers or employees of the United States. Venue for the habeas action is proper under 28 U.S.C. §§ 2241 *et seq.*, as Respondents exercise control over Petitioner's custody.

PARTIES

5. Petitioner, HENRYS ELISEO SANTOS-PINEDA, is a citizen and national of El Salvador and is a resident of Palm Beach County, Florida.

6. Respondents are government agencies and officials as more fully set forth below.

7. Suit is brought against Respondent CHRISTOPHER J. LAROSE, in his official capacity as Warden of ICE's Otay Mesa Detention Center located in San Diego, California. In that capacity he controls the Otay Mesa Detention Facility and is a custodian of Petitioner.

8. Suit is brought against Respondent MARKWAYNE MULLIN in his official capacity as the Secretary of the Department of Homeland Security. In that

capacity, he has responsibility for the administration and enforcement of the immigration laws.

9. Suit is brought against Respondent PATRICK DIVVER in his official capacity as the Field Office Director of the ICE office in San Diego, California which controls the Otay Mesa Detention Facility in San Diego, California. In that capacity, he is the legal custodian of the Petitioner and has the power or ability to produce or release the Petitioner if directed to do so by this Court. *See Masingene v. Martin*, 424 F.Supp.3d 1289 (S.D. Fla. 2020); *C.M. v. Noem*, 796 F.Supp.3d 1198 (S.D. Fla. 2025).

10. Suit is brought against Respondent UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) as it is the agency responsible for administration of the Immigration and Nationality Act (INA), 8 U.S.C. §1101 *et. seq.*, including, but not limited to, the detention and removal of aliens from the United States.

11. Suit is brought against Respondent TODD BLANCHE in his official capacity as the Acting Attorney General of the United States. In that capacity he has responsibility for the administration and enforcement of the immigration laws and delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which is subject to his control and direction. Respondent BLANCHE is legally responsible for administering the Petitioner's removal proceedings.

12. Suit is brought against Respondent DAVID J. VENTURELLA in his official capacity as the Acting Director of ICE, an agency of the U.S. Department of Homeland Security. In that capacity he is responsible for the administration of ICE and the implementation of the immigration laws of the United States.

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. 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) (emphasis added).

15. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned

with efficient trial management than with the vindication of constitutional rights." *Id.*

STATEMENT OF THE FACTS

16. Petitioner is a 39-year-old male citizen and national of El Salvador and has been assigned file number A[redacted] by the Respondents. He resides in Palm Beach County, Florida.

17. On or about June, 2006, Petitioner entered the United States without being inspected by an immigration officer.

18. Petitioner is married and has two (2) United States citizen children.

19. On or about April 23, 2025, Petitioner was detained by ICE and served with a Notice to Appear (Form I-862) directing him to appear before the Immigration Court in Miami, Florida on November 12, 2025. That same day, ICE released Petitioner on an Order of Recognizance without bond.

20. Petitioner has been at liberty in the United States for over 20 years prior to his detention.

21. Petitioner is not a danger to the community and is not a flight risk.

22. Petitioner is a person of good moral character.

23. Cancellation of removal is available to nonpermanent residents who (a) have been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application; (b) have been

persons of good moral character during such period; (c) have not been convicted of certain disqualifying offenses; (d) establish that removal would result in exceptional and extremely unusual hardship to their spouse, parent, or child who is a citizen or lawful permanent resident. *See* 8 U.S.C. § 1229b(b).

24. Petitioner meets all eligibility requirements, namely, (a) he has been physically present for a continuous period of over 20 years; (b) he is a person of good moral character; (c) he has never been charged or convicted of any criminal offenses anywhere in the world; (d) his United States Citizen children will suffer exceptional and extremely unusual hardship in his absence.

25. Petitioner has appeared at all scheduled hearings before the Miami Immigration Court. Petitioner was next scheduled to appear before the Immigration Court on October 28, 2026.

26. Petitioner has complied with all terms and conditions of his Order of Recognizance.

27. On or about June 24, 2026, Petitioner was taken into custody by ICE without cause and detained at the Krome North Service Processing Center in Miami, Florida. Shortly thereafter, ICE transferred Petitioner to the Otay Mesa Detention Facility in San Diego, California where he is presently detained.

28. Petitioner's Removal Proceedings have now been transferred to the Otay Mesa Immigration Court and his next scheduled for a hearing is on August 6, 2026.

29. Petitioner has lived and worked in South Florida for more than 20 years without incident. No factors have changed to warrant a change in custody status.

30. While in the United States, Petitioner has worked to support himself and his family.

31. Petitioner is the beneficiary of an approved Immigrant Petition For Alien Worker. *See* Exhibit No. 2.

32. Petitioner is not a danger to the community nor a flight risk. Respondents have provided no reason for a change in custody status.

33. Petitioner's removal from the United States is not reasonably foreseeable in the immediate future.

34. Accordingly, to vindicate Petitioner's statutory, constitutional and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus to ensure his continued freedom. Petitioner asks this Court to find that the physical detention of the Petitioner is unlawful and order ICE to release him.

LEGAL FRAMEWORK

35. The Immigration and Nationality Act ("INA") prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

36. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge ("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 until their removal proceedings are concluded. *See* 8 U.S.C. § 1226(c).

37. 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).

38. Third, the INA also provides for detention of noncitizens who have received a final order of removal from the United Staes. *See* 8 U.S.C. § 1231(a)-(b).

39. Petitioner's case concerns the important distinctions between § 1226(a) and § 1225(b)(2). Those provisions 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 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, the Executive Office for Immigration Review ("EOIR)" drafted 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, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

41. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *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. On or about July 8, 2025, Respondents adopted an entirely new interpretation of the statute, concluding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are

therefore ineligible for bond hearings before an Immigration Judge under 8 U.S.C. § 1225(b)(2)(A). Around the same time, ICE "in coordination with the Department of Justice" announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. That policy claims that all persons who entered the United States without inspection shall now be deemed to be subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, the section of law under which they were previously released and affects those who have resided in the United States for years.

43. Cementing the policy and making it binding on all Immigration Judges, the Board of Immigration Appeals ("BIA") recently issued a precedent decision: *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA found that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under 8 U.S.C. § 1225(b)(2), not § 1226(a).

44. ICE and the DOJ have adopted this new and unprecedented position even though federal courts have rejected this exact conclusion. *See Rivero v. Mina,* 2026 WL 199319 (M.D. Fla. January 26, 2026); *Bethancourt Soto v. Soto,* 807 F. Supp.3d 397 (D. New Jersey) (collecting cases); *Paxtor Alvarez v. Ripa,* No. 25-cv-964-KCD-NPM (M.D. Fla. Nov. 13, 2025); *Barahona v. Warden, Florida Soft Side South,* 2026 WL 657080 (M.D. Fla. March 9, 2026); *Sampiao v. Hyde*, 2025 WL

2607924 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, ___ F.Supp.3d ___; 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025).

45. The BIA's contrary conclusion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), does not alter this result. Courts owe no deference to an agency interpretation that conflicts with the statute's unambiguous text. *Loper Bright Enters. v. Raimondo,* 603 U.S. 369, 400–01, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do").

46. DHS's and DOJ's interpretation defies the Immigration and Nationality Act. As the *Sampiao* and *Rodriguez Vazquez* courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like the Petitioner.

47. 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 "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

48. 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). Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, 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*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). 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.

49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very 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); *see also Diaz Martinez*, 2025 WL 2084238, at *8 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those

who are within the United States after an entry, irrespective of its legality.'" (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). 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).

50. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were detained.

IRREPARABLE INJURY

51. Petitioner's release from ICE custody on an order of recognizance after his initial apprehension reflected a determination by the government that he was neither a flight risk nor a danger to the community and Petitioner has a strong interest in remaining at liberty unless he no longer meets those criteria. *Pinchi v. Noem,*792 F.Supp.3d 1025, 1034-35 (N.D. Cal. 2025). *See also Barry v. Casey,* No. 3:26-cv-4937-JES-DEB (S.D. Cal. Jul. 21, 2026); *C.A.R.V. v. Wolford,* No. 1:25-cv-01295-JLT-SKO, 2025 WL 3059549 at 9* (E.D. Cal. Nov. 3, 2025 (finding due process violation where petitioner as originally released on an order of recognizance).

52. Petitioner has suffered, is suffering, and will continue to suffer irreparable injury unless equitable relief is ordered by this Honorable Court.

Respondents' conduct is depriving Petitioner of his liberty without providing him due process of law. The deprivation of his liberty is, in and of itself, irreparable harm.

53. Pursuant to 28 U.S.C. § 2243, this Court can order the Respondents to file a response within three days, unless they can show cause for additional time. ("The writ or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days is allowed.").

CLAIMS FOR RELIEF

COUNT I
(VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE)

54. Petitioner repeats and realleges each of the allegations in paragraphs 1 through 53 as if the same were incorporated herein in full.

55. The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property without due process of law."

56. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, "[t]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Id.* at 693.

57. Respondents' mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights.

58. Because Petitioner was detained without any determination that she poses a danger or flight risk, and because she in fact poses no danger or flight risk, her detention violates due process.

59. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

COUNT II
(VIOLATION OF 8 U.S.C. § 1226(A)
UNLAWFUL DENIAL OF RELEASE ON BOND)

60. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 53 as if the same were incorporated herein in full.

61. 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 in the United States prior to being detained by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

62. Nonetheless, the Department of Justice has issued a decision binding on all Immigration Judges, rendering Petitioner ineligible for a bond hearing. Given the

clear language in the *Hurtado* decision, there is no question that an IJ will find he or she does not have jurisdiction to consider Petitioner for release on bond.

63. As a result of Respondents actions, Petitioner suffered damages including, but not limited to, violation of his constitutional rights, loss of liberty, monetary damages, emotional distress and physical pain and suffering.

64. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

COUNT III
(VIOLATION OF BOND REGULATIONS AND UNLAWFUL DENIAL OF RELEASE ON BOND)

65. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 53 as if the same were incorporated herein in full.

66. 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 Immigration Judges under 8 U.S.C. § 1226 and its implementing regulations.

67. The application of 1225(b)(2) to Petitioner, who should be bond eligible, unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

68. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

COUNT IV
(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT)

69. Petitioner repeats and re-alleges each of the allegations in paragraphs 1 through 53 as if the same were incorporated herein in full.

70. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

71. 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 in the United States prior to being apprehended and placed in removal proceedings by Defendants. Such noncitizens are detained

under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

72. Nonetheless, the DHS and the Immigration Court will apply § 1225(b)(2) to Petitioner.

73. The application of that section to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

74. Petitioner has been forced to retain undersigned counsel to pursue the instant action and is indebted for a reasonable attorney's fee.

RELIEF REQUESTED

WHEREFORE, Petitioner, HENRYS ELISEO SANTOS-PINEDA, prays that this Honorable Court grant him the following relief:

1. Accept jurisdiction over this action.

2. Immediately issue an order directing Respondents to show cause why the writ should not be granted.

3. Issue a writ of *habeas corpus*, directed to Respondents, ordering Petitioner's immediate release from custody.

4. Order that Petitioner shall not be transferred outside the Southern District of California.

5. Order Respondents to provide this Honorable Court and counsel for the Petitioner with at least three days' notice prior any attempt to remove the Petitioner from the United States.

6. Order Petitioner's release on conditions the Court deems just and proper pending adjudication of this petition.

7. Declare as unlawful and unconstitutional Respondents' conduct because it violates Petitioner's substantive due process rights under the Due Process Clause of the Fifth Amendment of the United States Constitution.

8. Declare as unlawful and unconstitutional Respondents' conduct because it violates Petitioner's procedural due process rights under the Due Process Clause of the Fifth Amendment of the United States Constitution.

9. Award Petitioner his suit money, costs and attorney's fees incurred as a result of bringing this action.

10. Grant such further relief as Petitioner may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

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VERIFICATION

Pursuant to 28 U.S.C. § 2242 I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney and I have discussed with the Petitioner the facts and events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

By: s/ Jeffrey A. Devore

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