

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JAVIER GIMENEZ RIVERO,

Petitioner,

vs.

Case No. 6:26-cv-66-RBD-NWH

LOUIS QUINONES, JR.,

et al.,

Respondents.

_____ /

RESPONSE TO ORDER TO SHOW CAUSE

United States Attorney Gregory W. Kehoe and Assistant United States Attorney Joy Warner hereby respond to the order to show cause (Doc. 15; “OTSC”) entered in this matter on January 26, 2026, and respectfully request the OTSC be discharged with no sanctions imposed.¹

At the outset, Respondents acknowledge that, while the response to the petition for habeas corpus did not cite prior contrary district court decisions, this oversight was unintentional, was not from a lack of candor, and will not re-occur. AUSA Warner has the support of the U.S. Attorney and other managers.

¹ The United States respectfully requests a hearing and oral argument on this motion. Pursuant to Local Rule 3.01(i), we will be filing a motion for that relief contemporaneously with our filing of this response.

The filing in question resulted, in part, from the extremely high volume and expedited timelines in the current Orlando habeas corpus docket.

I. FACTUAL BACKGROUND

The petition for habeas corpus was filed on January 12, 2026. Doc. 1.² A motion for a temporary restraining order (“TRO”) was filed on the following day, Doc. 4, which this Court granted on January 14, 2026, and directed the Respondents to maintain the Petitioner in the Orange County Jail. Doc. 5. The Court entered a further order on that same day, Doc. 7, ordering a response to the motion for TRO and petition on January 20, 2026, by noon. Doc. 8.

In granting the TRO, the Court stated,

[C]ourts have determined that aliens, like Petitioner, who are present in the United States and have TPS [Temporary Protected Status] and active applications for asylum, are not subject to mandatory detention without a bond hearing under 8 U.S.C. § 1225(b)(2). *See, e.g., Reyes v. Rose*, No. CV-25-1738, 2026 WL 75816, at *1 n.1 (E.D. Pa. Jan. 9, 2026) (concluding the petitioner was detained under 8 U.S.C. § 1226(a) and entitled to habeas relief by the way of a bond hearing and noting that “[a]s of January 5, 2026, ‘308 judges have ruled against the [Government’s] mass detention policy—ordering release or bond hearings in more than 1,600 cases—while just 14 judges ... have sided with the [Government’s] position.’”). Rather, these courts have held that such individuals are subject to detention under 8 U.S.C. § 1226(a), and thus, entitled to a bond hearing. *See id.*

² Petitioner did not state whether he was being detained pursuant to 8 U.S.C. § 1225 or 8 U.S.C. § 1226, nor was any legal analysis regarding § 1225 or § 1226 included in the petition.

The likelihood of Petitioner’s success on the merits largely is contingent on whether he has TPS and/or is detained under 8 U.S.C. § 1226(a). The Court recognizes that “there is ongoing litigation about the future of Venezuela’s TPS designation.” Nevertheless, from Petitioner’s allegations, he is currently protected by TPS and/or appears to be entitled to a bond hearing. Consequently, his detention appears to be unlawful or warranting of a bond hearing, and he has demonstrated a likelihood of success on the merits.

Doc. 7 at 4–5 (some citations omitted). The government timely filed its response. Doc. 11.

The Court held a hearing the following day; the transcript is attached as Exhibit A. The Court ordered the immediate release of the Petitioner on the day of the hearing. Doc. 13. On January 26, 2026, the Court entered a further order that (among other things) ordered U.S. Attorney Kehoe and AUSA Warner to show cause why they should not be sanctioned due to lack of candor to the Court. Doc. 15.

II. RESPONSE

Respectfully, U.S. Attorney Kehoe and AUSA Warner ask that they not be sanctioned under the circumstances. The Court expressed serious concerns at Doc. 15 about the quality of the government’s response to the petition. At the outset, we wish the Court to know that the U.S. Attorney’s Office takes such concerns seriously. We acknowledge the shortcomings of the filing in question in several respects. First, the Court’s order granting the TRO signaled the

Court's interest in the application of 8 U.S.C. § 1226, and the response focused solely on the application of 8 U.S.C. § 1225(b). We concede that we did not fully respond to the § 1226 issue highlighted by the Court's order and focused solely on § 1225. That was an unintentional oversight, and we regret the omission.

Second, and perhaps more centrally, the Court expressed concerns about lack of candor, noting that our response did not bring to the Court's attention the authority in opposition to our position. While the Court was aware of the § 1226 jurisprudence, this was also an unintentional mistake, and we regret it. Respectfully, though, AUSA Warner was neither intentionally evading the issue nor knowingly ignoring the previous cases in which the government's position had been rejected. While not an excuse, based upon the Court's Order (Doc. 7 at 4–5), the Court was also well versed on the legal arguments governing the application of § 1225 versus § 1226 and knew that the United States' position had been rejected by many Courts.

By way of explanation, there is no controlling authority in the Eleventh Circuit or Supreme Court on these issues.³ Although the majority rule is

³ The Fifth Circuit recently held in *Buenrostro-Mendez v. Bondi*, et al., No. 25-20496, --- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026), that aliens who have not been legally admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of whether the alien is already present in the United States.

contrary to the government's position, the legal question remains unsettled. Compare *Lopez v. Director of Enforcement, et al*, Case no. 3:25-cv-1313-JEP-SJH (M.D. Fla.) (Doc. 9) with *Guaiquiere v. Quinones*, Case no. 6:26-cv-169-RBD-RMN (M.D. Fla.) (Doc. 19). However, at no time did AUSA Warner intend to misrepresent the present state of the law or seek to mislead the Court. Nonetheless, AUSA Warner apologizes for mistakenly and unintentionally not having cited prior contrary court decisions.

This Court was also critical of the United States's position on subject matter jurisdiction. We acknowledge the Court's criticism and will provide more responsive and specific argument on this issue in the future. Again, in our modest defense, there is arguably support for our position elsewhere. See *Munoz Nataren v. Raycraft*, No. 4:26-cv-212, 2026 WL 214368, at *2 (N.D. Ohio Jan. 28, 2026); see also *Torres v. Quinones*, Case no. 6:26-cv-184-AGM-LHP (M.D. Fla.) (Doc. 4 at 6-7) (allegations of petition leave jurisdiction in doubt). Even one Court disagreeing with the United States notes this "statutory-interpretation issue is difficult and close." *Ahmed v. Bondi*, No. 25-cv-4711 (ECT/SGE), 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026). While the filing as a whole was not up to our usual high standards, we take the Court's comments to heart and ask that the Court forbear from entering sanctions.

The lack of guidance from the Eleventh Circuit or Supreme Court to date

supports the conclusion that the Government’s positions—although rejected by this Court and many others—are still arguable. “Federal Rule of Civil Procedure 11 provides that sanctions may be imposed against a party who files a pleading that: (1) has an improper purpose; (2) has no reasonable legal basis; or (3) has no reasonable factual basis.” *Walther v. McIntosh*, No. 6:13-cv-472-Orl-37GJK, 2013 U.S. Dist. LEXIS 144730, at *5 (M.D. Fla. Oct. 4, 2013). “The court must determine ‘whether a reasonable attorney in like circumstances could believe his actions were factually and legally justified.’” *Id.* (citing *Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003)). While the government’s position has been rejected by this Court and many others, it is a nonfrivolous argument with a reasonable legal basis endorsed by some district courts and a Circuit Court. *See Buenrostro-Mendez v. Bondi, et al.*, No. 25-20496, --- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). “[A] district court may grant sanctions when a party files a pleading ‘based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law.’” *Accelerant Specialty Ins. Co. v. Small*, No. 8:25-cv-425-KKM-AAS, 2026 U.S. Dist. LEXIS 1072, at *3 (M.D. Fla. Jan. 6, 2026) (citing *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998)). While only a minority of district courts and one Circuit Court have agreed with the United States’ arguments, they are nevertheless legal theories that are nonfrivolous and

have a chance of success.

Similar reasoning applies to Fla. Bar R. 4-3.1, R. 4-3.3, and R. 4-8.4. As evidenced by a small number of district court decisions and now the Fifth Circuit Court of Appeals, there is an arguable basis for the government's positions, and as such, the arguments are not frivolous pursuant to Fla. Bar R. 4-3.1. As there is no binding precedent from the Eleventh Circuit or Supreme Court, there was no failure to disclose controlling legal authority in this jurisdiction that would violate Fla. Bar R. 4-3.3. AUSA Warner did not engage in any dishonesty or misrepresentation, and the Court was aware of the legal landscape even before the United States filed its response. Accordingly, there was no violation of Fla. Bar R. 4-8.4.

We wish to assure the Court that we continue to have a high degree of confidence in AUSA Warner, who has been with our office as a civil AUSA since December 2024 and has been an attorney on behalf of the United States since 2019. She has been an excellent and reliable public servant, and this is the first time we have fielded concern from a judge about her work.⁴ We continue to believe AUSA Warner to be a diligent and responsible lawyer. While she

⁴ Shortly after the events leading to the OTSC here, Judge Byron entered an order reprimanding AUSA Warner, also in a habeas case. *Rosamilia v. Mina*, Case no. 6:26-cv-209-PGB-LHP (MDFL), Doc. 14. We will address Judge Byron's concerns at a later date, but respectfully, our initial assessment is that it may be premised on a misunderstanding that can be explained, if we are given an opportunity. There was no opportunity to do so prior to the issuance of Judge Byron's Order.

has no expertise in immigration law (few civil AUSAs in our district do), she has shown an admirable willingness to assist with this difficult docket and defend it to the best of her ability. The attached Declaration of Civil Division Management attached as Exhibit B describes the views of Civil Chief and Deputy Civil Chief of AUSA Warner's professionalism and legal talent.

In closing, we also ask that the Court understand the challenging context in which this particular case and filing arose. The Middle District of Florida is currently experiencing an unprecedented onslaught of habeas corpus petitions. In a typical year, this District sees 150 to 180 civil immigration cases of all kinds. This year we are on track to receive perhaps ten times that number. The week of January 12, 2026, the week that the instant petition was filed, there were approximately 34 petitions filed in the Middle District of Florida. All of these habeas petitions were placed on expedited response schedules, and many also had expedited hearings scheduled.

The Civil Division of the United States Attorney's Office has endeavored to timely respond to these filings with quality legal responses. By way of explanation and not excuse, we are short staffed in the Orlando Civil Division, which exacerbates our ability to confront this challenging docket. That is obviously not the Court's concern, and we offer it neither as a defense nor

justification to what has concerned the Court.⁵ On the other hand, it is certainly a factor to consider as the Court considers sanctions, insofar as it paints a picture of an extremely challenging (indeed, unprecedented) environment for civil AUSAs to operate in.

III. CONCLUSION

For all these reasons, we thank the Court for giving us the opportunity to explain how this situation unfolded. In addition, we respectfully request that the Court discharge the OTSC and impose no sanctions upon either U.S. Attorney Kehoe or AUSA Warner.

Date: February 9, 2026

Respectfully submitted,

/s/ Gregory W. Kehoe

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⁵ Also, we are addressing the staffing issues.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of the filing to the following CM/ECF participant:

Phillip Arroyo, Esq.

/s/ Joy Warner
Assistant United States Attorney

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
CASE NUMBER 6:26-cv-66-RBD-NWH

JAVIER GIMENEZ RIVERO, :
 :
 Petitioner, :
 : Orlando, Florida
 v. : January 21, 2026
 : 10:04 a.m.
 SHERIFF JOHN MINA, ET AL., :
 :
 Respondents. :

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE ROY B. DALTON, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Counsel for Petitioner: Phillip H. Arroyo

Counsel for Respondent: Joy Warner

Court Reporter: Amie R. First, RDR, CRR, CRC, CPE
Federal Official Court Reporter
401 West Central Boulevard, Suite 4600
Orlando, Florida 32801
AmieFirst.CourtReporter@gmail.com

Proceedings recorded by Realtime Stenography.

Transcript produced by Computer-Aided Transcription.

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P R O C E E D I N G S

(Court called to order.)

THE COURT: Good morning, everyone.

Call the case, please, Ms. Melians.

THE DEPUTY CLERK: In the interest of Javier Gimenez Rivero versus U.S. Immigration and Customs Enforcement, et al., Case Number 6:26-cv-66.

Appearances for the record starting with the petitioner.

ATTORNEY ARROYO: Phillip Arroyo on behalf of Mr. Javier Gimenez.

THE COURT: Good morning.

ATTORNEY WARNER: Good morning, Your Honor. AUSA Joy Warner on behalf of the United States.

OFFICER ANNOTTI: Deportation Officer Mark Annotti, Your Honor.

THE COURT: Good morning.

OFFICER ANNOTTI: Good morning, Your Honor.

THE COURT: Mr. Arroyo, before we get underway, I understand that your client speaks some English but would prefer to have the opportunity to have the proceedings or at least have a translator in Spanish. We don't have a certified Spanish translator available, as I think my courtroom deputy told you, because of the exigent nature of

1 the proceedings.

2 It's my understanding that you're prepared to go
3 forward and waive your client's right to have a certified
4 interpreter.

5 Is that correct?

6 ATTORNEY ARROYO: That is correct, Your Honor.

7 And co-counsel can interpret as well.

8 THE COURT: All right. Do either you or -- either
9 Mr. Arroyo or Ms. Warner, do either of you plan to have any
10 witnesses that you want to call to testify?

11 Let's start with the petitioner.

12 ATTORNEY ARROYO: On behalf of the petitioner, no.

13 THE COURT: All right. Ms. Warner.

14 ATTORNEY WARNER: Your Honor, we have the
15 deportation officer here if needed. But at this time I
16 don't plan to.

17 THE COURT: Okay. Well, I've had an opportunity
18 to review your papers, so I'm reasonably well-informed
19 about your respective positions.

20 I think probably the most efficient way to go
21 forward, Ms. Warner, is to give you the opportunity to make
22 your argument as to why it is that you think the Court
23 lacks jurisdiction and that Mr. Rivero is properly
24 detained.

25 And looking at your papers, I know the

1 Government's position is that he was properly detained
2 pursuant to the mandatory provisions of 1225.

3 I don't know if you want to add something to your
4 written papers, but I want to give you an opportunity to do
5 that.

6 ATTORNEY WARNER: Sure, Your Honor.

7 May I approach?

8 THE COURT: Yes, please.

9 ATTORNEY WARNER: May it please the Court.

10 THE COURT: Yes, ma'am.

11 ATTORNEY WARNER: Counsel.

12 Your Honor, this is a very simple case and nothing
13 out of the ordinary fact pattern.

14 The petitioner, Gimenez Rivero, is a national of
15 Venezuela who entered the United States back in 2021
16 without inspection. He was encountered about a mile
17 north of Eagle Pass back in 2021 and was paroled under
18 INA 212(d)(5)(A).

19 At the current time, petitioner is an alien
20 present in the United States who has not been admitted.

21 I kind of want to tie in the issue on preliminary
22 injunctive relief into the jurisdictional issue on habeas.

23 Pursuant to your order, Your Honor, at Document 7,
24 you stated that the elements of the likelihood of success
25 on the merits, the first element for this preliminary

1 injunction, is contingent on whether petitioner has TPS
2 and/or is detained under 8 U.S.C. 1226a.

3 In accordance with petitioner's counsel's own
4 statement in Document Number 9 that he submitted after he
5 filed the petition in this matter, the petitioner does not
6 presently have an approved temporary protected status
7 Pursuant to Document Number 9, he is pending an
8 application.

9 But I would also like to point out, as I did in
10 the response brief in Document 11, that the temporary
11 protected status from Venezuela has been terminated and
12 that has been effective October 3rd, 2025. So even if
13 the petitioner were to have any sort of temporary protected
14 status, that has been terminated at this time.

15 THE COURT: The critical question is whether or
16 not he was properly retained under 1225.

17 ATTORNEY WARNER: Right.

18 And so under 1225 --

19 THE COURT: So whether or not he's an applicant
20 seeking admission pursuant to 1225 which would result in a
21 mandatory detention or whether he's subject to
22 discretionary detention under 1226, that's really the
23 issue --

24 ATTORNEY WARNER: Yeah.

25 THE COURT: -- that's now crystallized in light of

1 Mr. Arroyo's clarification that the TPS status was not
2 issued but is application pending.

3 ATTORNEY WARNER: Yes, Your Honor.

4 And he is being detained under 1225. He is an
5 alien who was detained while awaiting a removal decision.
6 As I stated previously, he came into the United States
7 without an inspection. And pursuant to the petitioner's
8 attachments and argument, he is pending application of --

9 THE COURT: He's not an applicant seeking
10 admission.

11 ATTORNEY WARNER: Sorry?

12 THE COURT: He's not an applicant seeking
13 admission.

14 ATTORNEY WARNER: Yes. He's waiting removal of a
15 deportation --

16 THE COURT: So 1225 is not the appropriate statute
17 under which to detain the petitioner.

18 ATTORNEY WARNER: No --

19 THE COURT: The Government has made this argument
20 in hundreds of cases. You've made the 1252(g) argument in
21 hundreds of cases. You've lost in almost every one.

22 I have a couple of issues with your filing.
23 You're an officer of the court. And I have no problem
24 whatsoever with the Government taking the position that
25 these prior determinations are incorrectly decided, but I

1 do have a problem with officers of the court not bringing
2 those cases to my attention. Right?

3 Those cases should be cited in your papers.
4 They're not. You rely on Gupta for the assertion that
5 1252(g) strips the Court of jurisdiction. It does not
6 stand for that proposition under these circumstances. So
7 as an officer of the court, you have a responsibility to
8 brief this matter in a way that is correct and clear.

9 You have every right to take a contrary position
10 and to assert that the prior determinations of judges of
11 this court are not correct, but the proper way to pursue
12 relief is to take an appeal, not to misrepresent the state
13 of affairs.

14 And so I wanted to put that on the table at the
15 outset of the hearing, that I found your briefing on this
16 to be less than candid. And you have a responsibility to
17 be candid with the Court in your briefing.

18 All of these other cases, you cannot possibly
19 presume that we're not going to find them. And they should
20 have been disclosed in the Government's briefing.

21 ATTORNEY WARNER: Yes, Your Honor.

22 Would you like me to continue on?

23 THE COURT: Well, I mean, I know the Government's
24 position.

25 ATTORNEY WARNER: Okay.

1 THE COURT: I know that your assertion is that
2 1252(g) strips the Court of jurisdiction. That's not
3 correct. And the Gupta case doesn't stand for that
4 proposition. So I'm not persuaded that I don't have
5 jurisdiction.

6 I do have jurisdiction to address the petitioner's
7 claims here where he's not challenging the decision by
8 immigration to commence deportation or removal proceedings
9 against him. He's challenging the unlawful nature of his
10 detention, which is properly within the purview of the
11 Court. And 1252(g) does not deprive the Court of
12 jurisdiction on that basis.

13 So then the next question on the merits is whether
14 or not 1225 is the proper statute for him to be detained
15 under. Again, I don't agree with the Government's position
16 on that.

17 Mr. Rivero is not an applicant seeking admission.
18 He's been in the country for some three or four years. The
19 proper way to proceed would be to proceed under 1226.

20 And, you know, it just looks like -- it is a
21 simple case, I think. But unfortunately for the
22 Government's position, it's simple in the other direction
23 because he's not detained lawfully, he's being deprived of
24 his constitutional rights.

25 And he was entitled under 1225 -- I mean under

1 1226, if he had been apprehended under 1226 and detained
2 under 1226, which he was not, he would have been entitled
3 to a bond hearing. And that is, I think, crystal clear.

4 So I think it is a simple case. I just think,
5 unfortunately, for the Government's position it's simple in
6 the other direction.

7 ATTORNEY WARNER: Okay. Yes, Your Honor.

8 Just briefly, I would like to mention that
9 pursuant to 12 -- I'm sorry -- 236, U.S.C. 1226, that
10 governs the process for arresting and detaining aliens who
11 were inadmissible at the time of entry or have been
12 convicted of a certain criminal offense.

13 You know, that's not the situation that we're
14 dealing with here. We are dealing -- the Government's
15 position is that we are dealing with it pursuant to 1225
16 and that he is an applicant for admission.

17 THE COURT: So, again, I apologize for
18 interrupting you. But I know -- I know that in the
19 summertime that the immigration service reversed its
20 position on whether or not 1225 or 1226 was the appropriate
21 way to proceed.

22 But, you know, what the United States Supreme
23 Court has taught us, at least in *Loper Bright*, is that what
24 the service, what the agency thinks is the interpretation
25 of the statute is not entitled to any deference whatsoever

1 because that's the Court's function to decide what does the
2 statute say.

3 The statute is clear as could possibly be, is that
4 1225 does not apply to this petitioner. 1226 applies to
5 this petitioner.

6 ATTORNEY WARNER: Okay. Thank you, Your Honor.

7 THE COURT: You're welcome.

8 Mr. Arroyo.

9 ATTORNEY ARROYO: May I approach, Your Honor?

10 THE COURT: Yes.

11 ATTORNEY ARROYO: May it please the Court.

12 Counsel.

13 Judge, I'm going to be brief. We stand by our
14 arguments in our pleadings. We do agree with the Court.
15 Mr. Javier Gimenez has been held unlawfully,
16 unconstitutionally at the Orange County Jail.

17 What's very striking in this matter, Your Honor,
18 is that he wasn't even given a notice to appear, there was
19 no NTA, no probable cause for arrest, no criminal charge.

20 And, interestingly, an NTA was not given to him
21 until two days after Your Honor ordered -- issued an order
22 on our injunction petition and our habeas.

23 So the Government seems to be trying to go back in
24 time and believes that filing an NTA at this moment can
25 cure a constitutional violation in the past. We would

1 argue that that is improper.

2 Judge, the Government's assertion that the
3 petitioner provided no evidence of TPS, we're not here to
4 resolve whether he's entitled to TPS. We're here on
5 strictly the issue of unlawful detention.

6 THE COURT: You know, I got on the Government's
7 lawyer a little bit about the quality of the Government's
8 briefing and the lack of candor to the Court.

9 I would offer the same thing to you, Mr. Arroyo,
10 in terms of when you file an emergency application, you
11 need to make sure your facts are correct. Because you're
12 asking the Court to take an ex parte action without the
13 appearance of the Government on the other side. I rely
14 upon the statements that are contained because they're
15 provided under your obligation as well to be candid with
16 the Court.

17 So when you make a representation in your filing
18 that your client has TPS status, I take that as fact. It
19 turns out, not true.

20 ATTORNEY ARROYO: I understand, Judge. That's why
21 as soon as we identified it, we immediately filed a
22 clarification.

23 THE COURT: And a clarification is great, but it's
24 not what's required. What's required is get your facts
25 straight when you file your application.

1 ATTORNEY ARROYO: Understood, Your Honor.

2 The Government's next argument is that transfer
3 would cause -- wouldn't cause irreparable harm by
4 undermining judicial review.

5 We would argue that if action is not taken, this
6 would impair petitioner's access to the court and to
7 counsel. We have seen in other cases where they are
8 transported to other states. At that point, counsel was
9 cut off.

10 It would frustrate the Court's ability to afford
11 effective relief. This Court would lose jurisdiction if he
12 is taken to another state. And it would perpetuate an
13 ongoing deprivation of liberty without individualized
14 findings.

15 And, finally, Your Honor, we would argue that the
16 equities and public interests favor immediate release. And
17 the reason we're concerned about -- yes, Your Honor does
18 have the option of ordering an immigration court to carry
19 out a bond hearing. But the issue that we're very
20 concerned about, Your Honor, is that increasingly we are
21 seeing immigration judges declare that they lack
22 jurisdiction in cases of immigrants such as my client
23 entering through the border.

24 So there is a pretty big risk of potentially
25 continuing this limbo of he remaining in custody. So that

1 is our concern.

2 THE COURT: What is Mr. Rivero's living status now
3 in terms of if he's not in custody? Where does he reside?

4 ATTORNEY ARROYO: He's currently living with his
5 mother, Your Honor, in Central Florida.

6 As we stated in our pleadings, he was paroled. He
7 didn't go into the shadows and try to hide. He went and
8 got a work permit, Social Security card. He did everything
9 in his power to be here lawfully. He applied for TPS,
10 which is pending. He has a hearing in March. He has
11 abided by the law. So there's nothing within his history
12 here that would stand for the proposition that he's a
13 danger to society, he's a flight risk, none of that,
14 Your Honor.

15 We've heard time and time again the argument that
16 immigrants should come here but the right way. Yes,
17 Mr. Gimenez was fleeing political persecution from
18 Venezuela, a country we just invaded. But that's besides
19 the fact.

20 He came here fleeing political persecution. He
21 sought to be here lawfully, the way it's supposed to be.
22 He has a hearing in March. He's abiding by the law. He's
23 going to school. He's working.

24 THE COURT: Where is he in school?

25 ATTORNEY ARROYO: Oak Ridge High School, Judge.

1 He's here to pursue the American dream. He's not
2 subject to mandatory detention, Your Honor. He's done
3 everything he's supposed to do as an immigrant of this
4 country, which was founded by immigrants, to be here
5 lawfully.

6 Judge, we would, in closing, request that the
7 Court grant the petition, order petitioner's immediate
8 release on appropriate conditions.

9 In the alternative, if Your Honor is inclined to
10 order an immigration court to provide a bond hearing, we
11 would ask that the injunction remain in place until we are
12 able to confirm whether or not that judge is going to
13 declare that they don't have jurisdiction as we are
14 increasingly seeing with people who enter through the
15 border.

16 And that would be a very bad scenario because my
17 client will remain in limbo. This Court will probably lose
18 jurisdiction, and he will be detained for God knows how
19 long.

20 THE COURT: All right. Thank you, Mr. Arroyo.

21 ATTORNEY ARROYO: Thank you, Judge.

22 THE COURT: Ms. Warner, is there anything you want
23 to add? I'll give you an opportunity if you'd like to do
24 that.

25 ATTORNEY WARNER: One moment, Your Honor.

1 THE COURT: Sure.

2 (Brief pause.)

3 ATTORNEY WARNER: Nothing further, Your Honor.

4 Thank you.

5 THE COURT: All right. Thank you.

6 So I am going to grant the petition. I'm going to
7 find that Mr. Gimenez Rivero was unlawfully detained
8 pursuant to 1225. I'm going to extend the temporary
9 restraining order orally pending the issuance of a written
10 order.

11 I am going to order Mr. Gimenez Rivero's immediate
12 release from custody.

13 I'm going to enjoin the Government from
14 rearresting Mr. Gimenez Rivero for a period of 10 days. If
15 he is redetained pursuant to the appropriate statute, 1226,
16 I'm going to require that he be provided with a bond
17 hearing no later than 10 days after the date that he's
18 taken into detention.

19 I'm going to leave the file in an inactive status.
20 And, Mr. Arroyo, if Mr. Gimenez Rivero is redetained
21 pursuant to 1226 and a bond hearing is not secured for him
22 within 10 days of his detention, you can reapply for habeas
23 relief and I'll consider your petition at that time.

24 Anything further from the petitioner, Mr. Arroyo?

25 ATTORNEY ARROYO: Nothing further, Your Honor.

1 THE COURT: Anything further from the Government?

2 ATTORNEY WARNER: No, Your Honor.

3 THE COURT: All right.

4 So, Mr. Gimenez Rivero, I'm going to give you some
5 admonitions, some restrictions with respect to your
6 release. I'm going to give you some temporary conditions.

7 I'm going to require that you continue to remain
8 at your residence with your mother. And that Mr. Arroyo --
9 that you provide your lawyer with information if you change
10 your residence address or have any plans to leave the area,
11 you notify your lawyer.

12 Mr. Arroyo, you'll be required to notify the
13 immigration individuals if you receive information from
14 Mr. Gimenez Rivero that he intends to change his location.

15 Otherwise, I think that's a sufficient restraint
16 on his liberty. And I don't think any additional
17 conditions for his release are required. But I will
18 require that.

19 And then as I said already, if he's taken back
20 into custody pursuant to the appropriate statute, 1226, a
21 bond hearing within 10 days. And if no bond hearing
22 occurs, come back and see me.

23 ATTORNEY ARROYO: Thank you, Your Honor.

24 THE COURT: We'll be in recess.

25 (Proceedings adjourned at 10:23 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

February 3, 2026

s\ Amie R. First

Amie R. First, RDR, CRR, CRC, CPE
Federal Official Court Reporter
United States District Court
Middle District of Florida

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

JAVIER GIMENEZ RIVERO,

Petitioner,

v.

Case No. 6:26-cv-66-RBD-NWH

SHERIFF JOHN MINA, LOUIS A.
QUINONES, JR., and ICE/U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondents.

**JOINT DECLARATION OF LACY R. HARWELL, JR., CIVIL CHIEF AND
YOHANCE A. PETTIS, DEPUTY CIVIL CHIEF**

We, Randy Harwell and Yohance Pettis, jointly declare as follows pursuant to the authority of 28 U.S.C. § 1746:

1. I, Randy Harwell, am the Civil Division Chief for the U.S. Attorney's Office, Middle District of Florida. I have been employed with the U.S. Attorney's Office for the Middle District of Florida since 2004 and have served as the Civil Chief since 2011.

2. I, Yohance Pettis, am the Civil Division Deputy Chief for the U.S. Attorney's Office, Middle District of Florida. I have been employed with the U.S. Attorney's Office for the Middle District of Florida since 2011 and have served as the Deputy Civil Chief since 2018.

3. We have prepared this declaration in support of United States Attorney Kehoe's and Assistant United States Attorney (AUSA) Joy Warner's Response to this Court's Order to Show Cause (Doc. 15). What follows is based on our personal and professional knowledge, our collective supervision of AUSA Warner, as well as our collective observations of AUSA Warner's work and engagement with her colleagues within the U.S. Attorney's Office, Middle District of Florida, and her engagement before the judiciary within the Middle District of Florida. The following representations are also made based on our review of the pleadings filed in the above-styled case.

4. AUSA Joy Warner began her employment with the U.S. Attorney's Office, Middle District of Florida in December 2024. She has been a practicing attorney since 2018 with varying experience. Her entire professional career has been in government service.

5. Since joining the U.S. Attorney's Office, Middle District of Florida, AUSA Warner has handled a wide variety of legal matters including, but not limited to employment, Federal Tort Claims Act, bankruptcy, and immigration. AUSA Warner has represented the United States, as well as its agencies with the utmost professionalism. She has demonstrated a tremendous ability to engage in a professional manner with opposing counsel, as well as with this Court.

6. Throughout her time with the U.S. Attorney's Office, AUSA Warner has filed numerous motions, including dispositive motions on a wide variety of issues. She has also appeared before several judges in this Court. AUSA Warner has

never conducted herself in a manner that fails to comport with her professional and/or ethical obligations. AUSA Warner has been a zealous advocate for the United States and its agencies and, at no time, has she put forth arguments before any court that lack support in the law.

7. As the Court notes in its Order (Doc. 15), there have been a flood of cases, not only in the Middle District of Florida, but across the country, pertaining to the detention of non-citizens who are present in this country. Indeed, there have been numerous petitions for writs of habeas corpus and motions for temporary restraining orders filed in the Middle District of Florida on a daily basis, often with short response deadlines, understandably so, given the nature of the matters at hand. As the Court is certainly aware, this deluge of novel immigration litigation presents emergent and complex question of statutory interpretation; namely, whether an alien without lawful admission who has been living in the United States for some appreciable period of time is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) or instead is subject to discretionary detention and receive a bond hearing under 8 U.S.C. § 1226(a).

8. Among her many other cases, AUSA Warner has been tasked with assisting with the exploding immigration docket. She has handled this very complex and nuanced immigration docket the same way she handles any matter – with the utmost professionalism and high-level legal research and analysis. As evidenced by a nationwide split—albeit uneven—on the statutory interpretation at issue in this matter, and no existing binding precedent, the arguments presented by AUSA

Warner contained both evidentiary support and legal contentions that were warranted. While there exists judicial interpretations of the law that are contrary to the Government's position, interpretations also exist that fully support the Government's position.

9. As AUSA Warner's supervisors during her entire tenure with the U.S. Attorney's Office, we can state with confidence that AUSA Warner has consistently conducted herself in a way that comports with her professional obligations as an attorney. For any matter that we have assigned to her, it is because we have full faith and confidence in her ability to represent the United States with professionalism, good character, and sound judgment.

We declare that the foregoing is true and correct to the best of our knowledge and belief and is given under penalty of perjury pursuant to 28 U.S.C. § 1746.

Dated: February 9, 2026

/s/ Lacy R. Harwell, Jr.
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