

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Case No. _____
(Agency No.: A )

LEONARDO SUAREZ HIDALGO

Petitioner,

v.

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,
U.S. DEPARTMENT OF HOMELAND SECURITY,
NEWARK FIELD OFFICE,**

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

Franklin S. Montero, Esq.
THE LAW OFFICES OF FRANKLIN S. MONTERO, LLC
451 Clifton Avenue
Clifton, NJ 07011
Phone: (973) 777-8718
Email: Montero@FMonterolaw.com
Attorney for Petitioners

RECEIVED

MAY 29 2025

AT 8:30 10:16 M
CLERK, U.S. DISTRICT COURT - DNJ *am*

TABLE OF EXHIBITS

A. Notice and Order of Expedited Removal dated November 30, 2023.....	2-3
B. Interim Notice Authorizing Parole dated March 28, 2024.....	5-6
C. Email Confirmation of May 6, 2026, ICE Check-In.....	8
D. I-589 Application Receipt Notice dated December 28, 2024.....	10-11
E. Form I-797C, Notice of Action - Stamped Biometric Appointment Notice.....	13
F. Order of the Immigration Judge Dated December 27, 2025.....	15-16
G. Form I-246 Application for Stay of Deportation or Removal Filed.....	18-19
H. Certificate of Service	
I. Proposed Order to Show Cause and Temporary Stay of Removal	

PRELIMINARY STATEMENT

Petitioner Leonardo Suarez Hidalgo respectfully submits this Memorandum of Law in support of his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. This case presents an urgent situation where a non-citizen is being unlawfully detained despite possessing valid documentation authorizing his presence in the United States, and despite having a pending asylum application with U.S. Citizenship and Immigration Services (USCIS).

At its core, this case involves the fundamental question of whether an immigration agency can arbitrarily disregard its own formal parole authorization for reasons of administrative convenience, detain an individual who has fully complied with all conditions of release, and seek to remove him while his statutorily authorized asylum application remains pending.

FACTUAL BACKGROUND

1. Petitioner is a native and citizen of Venezuela who entered the United States on November 30, 2023, by crossing the Rio Grande River near Eagle Pass, Texas.
2. On November 30, 2023, Petitioner was issued a Notice and Order of Expedited Removal under Section 235(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1225(b)(1)), which determined he was inadmissible under section 212(a)(7)(A)(i)(I) of the Act. This order was served on Petitioner on December 21, 2023. (See **Exhibit A**).
3. Despite the existence of this removal order, Petitioner expressed a fear of return to his home country, and his asylum case was referred to USCIS for full adjudication on the merits.
4. On March 28, 2024, ICE issued Petitioner an Interim Notice Authorizing Parole (**attached as Exhibit B**) valid for a one-year period pursuant to its authority under section 212(d)(5)(A) of the Immigration and Nationality Act. This document explicitly

stated: "Your parole authorization is valid for one year beginning from the date on this notice and will automatically terminate upon your departure or removal from the United States or at the end of the one-year period unless ICE provides you with an extension at its discretion."

5. Following this parole grant, Petitioner resided in Elizabeth, New Jersey, and fully complied with all conditions of his release, including reporting to ICE as required and notifying ICE of any changes of address.
6. Petitioner has an asylum application pending before USCIS, as evidenced by his I-589 Application Receipt Notice dated December 28, 2024. (See **Exhibit D**).
7. Petitioner was scheduled for and successfully completed a biometric appointment on January 23, 2025, (See **Exhibit E**), at the USCIS Application Support Center located in Elizabeth, New Jersey, after his case was referred to USCIS by an Immigration Judge on December 27, 2023 (See **Exhibit F**).
8. At a routine ICE check-in on April 30, 2025, in Newark, New Jersey, Petitioner was taken into custody and detained without any prior notice, despite his valid parole document which remained in effect until March 28, 2025.
9. The Petitioner is now held at the ICE Port Isabel Service Center in Los Fresnos, Texas, far from his residence, legal counsel, and the venue of his pending asylum application.
10. Following Petitioner's detention, counsel promptly filed Form I-246 (Application for a Stay of Deportation or Removal attached as **Exhibit G**) with ICE, requesting that any removal action be stayed pending the adjudication of Petitioner's asylum application. Despite this good faith effort to follow administrative procedures and seek agency review

of the detention decision, the application for stay of removal remains pending without decision.

11. ICE's Deportation Officer assigned to Petitioner's case at the ICE Newark Field Office communicated to Petitioner's counsel that the detention was based on ICE's error in providing Petitioner with interim parole in place of putting him under supervision. The agency is now seeking to utilize its own admitted administrative error to justify detention and removal.

JURISDICTION

This Court has jurisdiction over this petition for habeas corpus under 28 U.S.C. § 2241.

While Petitioner is physically detained at the Port Isabel Service Center of Los Fresnos, Texas, this Court has jurisdiction because:

1. The ICE Newark Field Office (located within this district) maintains control over Petitioner's case and made the detention decision being challenged;
2. Petitioner resided in Elizabeth, New Jersey prior to detention;
3. All relevant events leading to the detention occurred within this district, including:
 - o Petitioner's parole was issued by the ICE Newark Field Office;
 - o Petitioner reported for ICE check-ins in Newark, New Jersey;
 - o Petitioner's asylum application is pending with USCIS in Newark, New Jersey;
 - o The detention decision was made during a check-in at the ICE Newark Field Office.

The Supreme Court has recognized that habeas jurisdiction may lie in a district other than where a petitioner is confined when the custodian with legal authority over the case is found within the district. See *Rumsfeld v. Padilla*, 542 U.S. 426, 438 (2004) (recognizing exceptions to

the immediate custodian rule); *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495 (1973).

Petitioner's transfer to a facility outside this district after his detention in New Jersey does not deprive this Court of jurisdiction where the decision-makers and substantial connections to the case remain within this district. See *Reese v. Warden Philadelphia FDC*, 904 F.3d 244, 255 (3d Cir. 2018) (recognizing jurisdictional flexibility in extraordinary circumstances).

ARGUMENT

I. PETITIONER'S DETENTION VIOLATES DUE PROCESS UNDER THE FIFTH AMENDMENT

A. Legal Standard

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law, and this protection extends to non-citizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). In immigration contexts, due process requires, at minimum, that the government's actions are not arbitrary, capricious, or contrary to law. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 277 (3d Cir. 2018).

B. Petitioner's Detention Is Arbitrary and Capricious

Petitioner's detention violates due process for several reasons:

First, ICE deliberately issued Petitioner a formal parole document on March 28, 2024, which by its express terms remains valid for one year. This parole document was issued *after* and with full knowledge of the expedited removal order from November 30, 2023. By detaining Petitioner while his parole remains valid, ICE has acted contrary to its own formal, written authorization without any changed circumstances or violation of conditions by Petitioner.

Second, the reason provided for Petitioner's detention – that ICE made an "error" in issuing parole instead of supervision – is arbitrary. The parole decision was a deliberate exercise

of ICE's discretion under 8 U.S.C. § 1182(d)(5)(A) to allow Petitioner to remain in the United States for a specified period. ICE cannot now characterize its own discretionary decision as an "error" to justify detention.

Third, ICE had scheduled Petitioner for a future check-in appointment on May 6, 2026, (See Exhibit C) demonstrating that even after the decision to detain him was made, the agency itself believed he would be in the United States under supervision well beyond his current detention date.

The Third Circuit has recognized that where the government "flip-flops" its position after an individual has reasonably relied on a prior government decision, due process concerns are implicated. *Leslie v. Att'y Gen.*, 611 F.3d 171, 180-81 (3d Cir. 2010) (noting the unfairness of allowing the government to "have it both ways").

II. ICE'S ACTIONS VIOLATE THE ADMINISTRATIVE PROCEDURE ACT

A. Legal Standard

Agency action must be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious when the agency "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

B. ICE's Contradictory Actions Are Arbitrary and Capricious

ICE's decision to detain Petitioner constitutes arbitrary and capricious agency action for several reasons:

First, ICE's contradictory actions demonstrate a lack of rational decision-making:

1. ICE issued an expedited removal order on November 30, 2023
2. ICE then deliberately issued an Interim Notice Authorizing Parole on March 28, 2024
3. ICE scheduled future check-in appointments, including one for May 6, 2026
4. ICE then detained Petitioner on April 30, 2025, despite the valid parole document

Second, as the Supreme Court held in *Judulang v. Holder*, 565 U.S. 42, 53 (2011), immigration agencies may not take actions that lack "a rational explanation" or are "unmoored from the purposes and concerns" of the immigration laws. Here, there is no rational explanation for ICE's decision to detain someone who has fully complied with all conditions of parole and who has a pending asylum application.

Third, courts have recognized that when the government takes inconsistent positions to the detriment of an individual, such action constitutes arbitrary and capricious conduct. See *Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (noting that unexplained inconsistency in agency policy is a reason for holding an interpretation to be arbitrary and capricious).

III. PETITIONER'S DETENTION INTERFERES WITH HIS STATUTORY RIGHT TO SEEK ASYLUM

A. Legal Standard

The Immigration and Nationality Act establishes that "[a]ny alien who is physically present in the United States or who arrives in the United States... irrespective of such alien's status, may apply for asylum." 8 U.S.C. § 1158(a)(1). This right to seek asylum is a statutory entitlement that must be respected by all government agencies.

B. ICE's Actions Impermissibly Interfere with Petitioner's Pending Asylum Claim

Despite having an expedited removal order, Petitioner expressed a fear of return to his home country, which triggered referral to the asylum process. USCIS has accepted jurisdiction over his asylum application, as evidenced by the I-589 receipt notice and the scheduling of biometrics.

ICE's decision to grant parole on March 28, 2024, represented a recognition of Petitioner's right to remain in the United States to pursue his asylum claim. The subsequent detention and threat of removal directly interferes with this statutory process.

Petitioner has made good-faith efforts to follow proper procedures to preserve his right to seek asylum. Following his detention, counsel filed Form I-246 (Application for a Stay of Deportation or Removal) with ICE, specifically requesting that any removal action be stayed pending the adjudication of his asylum claim. ICE's failure to adjudicate this application for stay demonstrates a disregard for Petitioner's statutory rights.

As the Third Circuit recognized in *Guzman Orellana v. Att'y Gen.*, 956 F.3d 171, 178-79 (3d Cir. 2020), interference with statutory immigration procedures can constitute a due process violation. Here, ICE's actions would effectively nullify USCIS's statutory jurisdiction over Petitioner's asylum claim.

IV. EQUITABLE ESTOPPEL SHOULD PREVENT ICE FROM RELYING ON ITS OWN ERROR

A. Legal Standard

While equitable estoppel against the government is limited, the Supreme Court has left open the possibility of estoppel in cases involving "affirmative misconduct" by government officials. See *Office of Personnel Management v. Richmond*, 496 U.S. 414, 421-22 (1990). Courts have recognized that where an individual detrimentally relies on government

representations, fundamental fairness may require relief. See *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1184 (9th Cir. 2001).

B. Estoppel Is Appropriate in This Case

This case presents extraordinary circumstances that warrant application of equitable principles:

First, Petitioner reasonably relied on an official government document that explicitly stated it was valid for one year, governing his ability to remain in the United States.

Second, there has been no change in circumstances that would justify revocation of parole - Petitioner has complied with all conditions, has no criminal history, and continues to pursue his asylum claim in good faith.

Third, ICE's attempt to characterize its own deliberate exercise of discretion as an "error" is disingenuous. The parole decision was made with full knowledge of Petitioner's immigration status and expedited removal order.

As the Third Circuit recognized in *Leslie v. Att'y Gen.*, 611 F.3d 171, 180-81 (3d Cir. 2010), when an agency confers an immigration benefit, it cannot arbitrarily revoke that benefit without proper procedures and substantive justification.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Issue a writ of habeas corpus directing Respondents to show cause why the writ should not be granted;
2. Order Petitioner's immediate release from detention under appropriate conditions of supervision pending the outcome of these proceedings;
3. Declare that Petitioner's detention despite holding valid parole documentation constitutes a violation of procedural due process under the Fifth Amendment;

4. Order Respondents to refrain from removing Petitioner from the United States pending adjudication of his asylum application by USCIS;
5. Order a stay of removal pending resolution of this petition;
6. If necessary, order Petitioner's return to the District of New Jersey, where his case originated and where his asylum application is pending;
7. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



Franklin S. Montero, Esq.
THE LAW OFFICES OF FRANKLIN S. MONTERO, LLC
451 Clifton Avenue
Clifton, NJ 07011
Phone: (973) 777-8718
Fax: (973) 777-1710
Email: Montero@FMonterolaw.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Franklin S. Montero, Esq., hereby certify that on May 27, 2025, I filed the **MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241** with the Clerk of the Court for the United States Court of Appeals for the Third Circuit via U.S. Mail.

I further certify that I caused the required number of paper copies of the foregoing brief to be mailed to the Clerk of Court and paper copies to be served by first-class mail on the following:

Enforcement & Removal Operations (ERO)

Field Office Location
970 Broad St. 11th Floor
Newark, NJ 07102
United States
(862) 445-9200

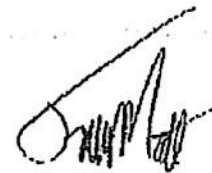
Office of Immigration Litigation

Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

U.S. Immigration and Customs Enforcement (ICE)

Port Isabel Service Center
27991 Buena Vista Blvd.
Los Fresnos, TX 78566
(956) 547-1700

Respectfully submitted,



Franklin S. Montero, Esq.
Attorney for Petitioner

Dated: May 27, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Case No. _____
(Agency No.: A )

ORDER TO SHOW CAUSE AND TEMPORARY STAY OF REMOVAL

THIS MATTER having been brought before the Court by Petitioner Leonardo Suarez Hidalgo, by and through his counsel, by way of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241; and the Court having considered the Petition, the Memorandum of Law in Support thereof, and all accompanying exhibits and documents; and for good cause shown;

IT IS on this _____ day of _____, 2025, ORDERED that:

1. Respondents shall SHOW CAUSE on the _____ day of _____, 2025, at _____ o'clock, or as soon thereafter as counsel may be heard, before the Honorable _____, United States District Judge, at the United States Courthouse in Newark, New Jersey, why a Writ of Habeas Corpus should not be issued;
2. Respondents shall file and serve an Answer to the Petition no later than _____, 2025;
3. Petitioner may file and serve a Reply to the Answer no later than _____, 2025;
4. Respondents are hereby TEMPORARILY RESTRAINED from removing Petitioner from the United States pending the resolution of this matter;
5. Pending resolution of this matter, Respondents shall IMMEDIATELY RELEASE Petitioner from detention under reasonable conditions of supervision to be determined by U.S. Immigration and Customs Enforcement;
6. If Respondents transfer Petitioner to another detention facility, they shall notify the Court and Petitioner's counsel within 24 hours of such transfer;
7. A copy of this Order and all other papers shall be served on Respondents and the U.S. Attorney for the District of New Jersey within _____ days of the date hereof; and
8. In the event Petitioner is released from custody, he shall promptly notify the Court.

HON. _____

UNITED STATES DISTRICT JUDGE

ORIGIN ID:JPJA (973) 777-8718
FRANKLIN MONTERO
THE LAW OFFICES OF FRANKLIN S.
451 CLIFTON AVE

SHIP DATE: 28 MAY 25
ACTWGT: 1.00 LB
CAD: 110463935/NET4535

CLIFTON, NJ 07011
UNITED STATES US

BILL SENDER

TO U.S. DISTRICT COURT
COURT FOR DISTRICT OF NEW JERSEY
50 WALNUT STREET
SUITE 4015
NEWARK NJ 07102

(973) 645-3730

REF:

INV:

DEPT:

PO:



THU - 29 MAY 10:30A
PRIORITY OVERNIGHT

TRK# 8815-6821 6294
0201

E2 VAKA

07102

NJ-US EWR



This envelope is only for FedEx Express® shipments.
You can help us get your package safely to its destination by packing your items securely. Need help? Go to [fedex.com/packaging](https://www.fedex.com/packaging) for packing tips.
Check your FedEx Express shipping document, the current FedEx Service Guide, or the conditions of carriage for complete terms, conditions, and

Insert shipping document here.

REMOVED

01/14/25 10:33