


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

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Pascaly MEDARD (A#  :
:
Petitioner, :
:
v. :
:
John TSOUKARIS, in his official capacity as Newark, NJ :
Field Office Director, Immigration and Customs :
Enforcement, Enforcement and Removal Operations; :
:
Luis SOTO, in his official capacity as Director, Delaney :
Hall Detention Facility, :
:
Kristi NOEM, in her official capacity :
as United States Secretary of Homeland Security, and :
:
Pamela BONDI, in her official capacity as Attorney :
General of the United States, :
:
Respondents. :
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Case No. 25-15279

**FIRST AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Petitioner, Pascaly Medard (“Petitioner” or “Mr. Medard”), by his undersigned counsel, hereby amends his previously-filed petition within 21 days of Respondents’ response pursuant to 28 U.S.C. § 2242 and Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, and respectfully petitions this Honorable Court to order Respondents to release him from his unlawful confinement. Mr. Medard was detained without notice or an opportunity to respond despite a valid unexpired parole, was confined in the Delaney Hall Detention Facility at the direction of the Newark, New Jersey Field Office of Immigration and Customs Enforcement Enforcement and Removal Operations (“ICE ERO”) at the time of

the initial petition in this matter, and has now been confined by ICE ERO for more than six months without a bond hearing. In support of this Petition, Petitioner alleges as follows:

JURISDICTION

2. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 and Art. 1, § 9, Cl. 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is subject to immediate detention and custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws or treaties of the United States.

3. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) which provides, “(t)he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises pursuant to the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, in conjunction with the Administrative Procedures Act (“APA”), 5 U.S.C. § 701 *et seq.*, and the regulations implemented pursuant thereto (Title 8 of the Code of Federal Regulations (“C.F.R.”)).

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

5. To the extent that any portion of 8 U.S.C. § 1252 would preclude the exercise of jurisdiction under the above statutory provisions, it would be unconstitutional as applied to Petitioner, because it would violate the Suspension Clause and Petitioner’s right under the Fifth Amendment to the U.S. Constitution not to be deprived of liberty without due process of law.

VENUE

6. Venue is proper in this District because, at the time the initial petition in this matter was

filed, Petitioner was detained in the Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, NJ 07105, within this District, or at least was indicated in publicly available ICE records as being so detained; because Respondent Soto, in his official capacity as director of the Delaney Hall Detention Facility, is located within this District; and because Respondent Tsoukaris, in his official capacity as Director of the Newark, New Jersey Field Office of ICE ERO, is located within this District. *See Ozturk v. Hyde*, 136 F.4th 382, 393 (2d Cir. 2025) (rejecting government argument that habeas jurisdiction was affected by subsequent amendment of petition at a time when the petitioner was detained in a location different from that at the time of initial filing).

PARTIES

7. Petitioner, Pascaly Medard, is a native and citizen of Haiti. He is in removal proceedings, currently with an appeal pending before the Board of Immigration Appeals (“BIA”), and has a pending Form I-589 application for asylum, withholding of removal, and relief under the Convention Against Torture. At the time of filing of the initial Petition in this matter, he was confined in the Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, NJ 07105, a facility operated by Respondent Soto, at the direction of the Newark, New Jersey ERO Field Office and Respondent Tsoukaris. He remains in the custody of ICE ERO under the ultimate direction of Respondent Noem.
8. Respondent John Tsoukaris is the Field Office Director of the Newark, New Jersey Field Office of ICE ERO, located at 970 Broad Street, 11th Floor, Newark, NJ 07102. We would submit that he was the immediate custodian of Petitioner at the time of filing of the petition, because he was the official with the authority to direct the release of Petitioner at that time. On information and belief, he retains the authority to direct the release of

Petitioner even though Petitioner has subsequently been transferred to a detention facility other than Delaney Hall.

9. Respondent Luis Soto is, on information and belief, the Director of the Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, NJ 07105. He was, in the alternative, arguably the immediate custodian of Petitioner at the time of filing of the petition.
10. Respondent Kristi Noem is the United States Secretary of Homeland Security. She is responsible for the administration of the Department of Homeland Security (“DHS”) and the implementation and enforcement of the immigration laws of the United States. In that capacity, she oversees ICE ERO. She was the indirect custodian of Petitioner at the time of filing of the initial Petition in this matter, and she remains the indirect custodian of Petitioner to this day, with the authority to direct the release of Petitioner from custody.
11. Respondent Pamela Bondi is the Attorney General of the United States. She supervises the Executive Office for Immigration Review (“EOIR”) within the Department of Justice. Pursuant to EOIR regulations, a respondent charged as an arriving alien, as Petitioner has been, is not entitled to a bond redetermination hearing before an Immigration Judge within EOIR. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). Respondent Bondi is ultimately responsible for the continued existence and enforcement of these EOIR regulations.

V. FACTUAL AND PROCEDURAL BACKGROUND

12. Mr. Medard was born in 1984 in Haiti. He left Haiti in October 2023 seeking safety, and arrived in the United States at the Hidalgo, Texas Port of Entry, on or about September 27, 2024, after making an appointment using the CBP One app.

13. On September 27, 2024, Mr. Medard was issued a Notice to Appear (“NTA”) placing him in removal proceedings under section 240 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1229a. The NTA ordered Mr. Medard to appear before an Immigration Judge at 26 Federal Plaza, in New York, NY, on June 24, 2025. A copy of the NTA is annexed hereto as **Exhibit A**. It designates Mr. Medard as an “arriving alien”.
14. On September 27, 2024, Mr. Medard was paroled into the United States pursuant to section 212(d)(5) of the INA and 8 C.F.R. § 212.5. On information and belief, this parole occurred after, rather than before, the issuance of the NTA. The NTA alleges that “On September 27, 2024, you applied for admission into the United States at the Hidalgo, Texas Port of Entry”, but it does not mention Mr. Medard having been paroled.
15. Mr. Medard’s parole in the United States was valid until September 26, 2026, as reflected on the electronic Form I-94 then issued to him by U.S. Customs and Border Protection (CBP), a component of DHS. A copy of the Form I-94 is annexed hereto as **Exhibit B**.
16. On information and belief, the purpose of Mr. Medard’s parole was understood to be for Mr. Medard to seek asylum in the United States.
17. On June 20, 2025, Mr. Medard filed a Form I-589 Application for Asylum and Withholding of Removal with the NYC Immigration Court, that is, the Immigration Court located at 26 Federal Plaza.
18. On June 24, 2025, Mr. Medard appeared before the Immigration Court at 26 Federal Plaza as ordered by the NTA. The Immigration Judge held a “master calendar” hearing (where many different noncitizens appear in order to enter pleadings, discuss scheduling matters, and the like), and then set Mr. Medard’s next hearing date for April 19, 2027.

This was to be an “individual calendar” hearing at which Mr. Medard would be heard regarding the merits of his asylum case.

19. As he left the courtroom on June 24, 2025, Mr. Medard was detained by DHS agents.
20. On information and belief, DHS had not made any individual determination that there was a reason to revoke Mr. Medard’s parole, but rather were detaining Mr. Medard as part of a categorical policy regarding individuals paroled into the United States under the Administration of President Joseph Biden.
21. On information and belief, DHS did not provide any written notice to Mr. Medard revoking his parole at the time of his arrest.
22. On information and belief, DHS still has never provided any written notice to Mr. Medard revoking his parole.
23. ICE did not provide Mr. Medard any advance notice of their intent to detain him, and to revoke his parole if they have in fact done that, or any opportunity to respond and explain why his parole should not be revoked and he should not be detained, before detaining him.
24. Following his arrest, Mr. Medard spent a period of time detained by ICE in 26 Federal Plaza, and was then taken to the Delaney Hall Detention Facility located at 451 Doremus Avenue, Newark, NJ 07105.
25. During Mr. Medard’s detention in the Delaney Hall Detention Facility, he was provided with extremely low-quality food, of which he said that a dog would not eat it. The drinking water with which he was provided was foul, and he had to boil it in a microwave to make it drinkable. When he once put a cup of the water under his bed without microwaving it, it had maggots in it the next day.

26. Following his detention in the Delaney Hall Detention Facility, Mr. Medard's case appears to have been transferred to the Elizabeth Immigration Court in Elizabeth, NJ, although without any motion for change of venue pursuant to 8 C.F.R. § 1003.20(b).
27. DHS moved to change the venue of Mr. Medard's removal proceedings to the Varick detained docket of the New York Immigration Court, but the Elizabeth Immigration Court denied that motion, even though Mr. Medard's counsel did not oppose it (and in fact sought to support it, although the motion was denied quickly enough that the filing in support had not yet been made).
28. On July 18, 2025, the Elizabeth Immigration Court scheduled another master calendar hearing in Mr. Medard's case for July 29, 2025.
29. Following the July 29, 2025 hearing, another hearing notice was issued setting a new master calendar hearing for Mr. Medard on August 12, 2025.
30. Following the August 12, 2025, master calendar hearing, another hearing notice was issued setting a new hearing before the Elizabeth Immigration Court for October 17, 2025. This was to be an individual calendar hearing at which the merits of Mr. Medard's asylum application could be heard.
31. On or after August 26, 2025, a new hearing notice was issued, setting an individual calendar hearing in Mr. Medard's case for September 15, 2025, before the Elizabeth Immigration Court. This hearing notice indicated a different Immigration Judge than had been indicated on the prior hearing notice, listing a URL to access the online hearing that ended in "IJ.Kannellakos" (standing for Immigration Judge Thanos Kanellakos) rather than "IJ.Chen" (standing for Immigration Judge Shana Chen).

32. On September 4, 2025, Mr. Medard noticed that his commissary account at Delaney Hall was empty, which generally indicates that the detainee is going to be transferred to another facility or removed from the United States. He was extremely concerned, as he did not know where he was going to be sent. The initial petition in this matter was filed that same day.
33. As was observed in the initial petition in this matter, if Mr. Medard were transferred to another facility, this made it likely that his scheduled individual calendar hearing on September 15, 2025, before the Elizabeth Immigration Court will be cancelled, and that his detention by DHS would continue for a more extended period of time without a hearing on the merits of his asylum application.
34. Shortly after the filing of the initial petition in this matter, Mr. Medard was in fact transferred to another detention facility, a facility in the El Paso, Texas area, located on the premises of the Department of Defense's Fort Bliss and known both as El Paso Camp East Montana and as the Fort Bliss detention facility.
35. As of 9:40 pm on September 4, 2025, as well as 12:58 am on September 5 and 3:42 pm on September 5, the ICE Detainee Locator continued to indicate that Mr. Medard was detained in Delaney Hall Detention Facility in New Jersey. Copies of the ICE Detainee Locator printouts are annexed as **Exhibits C, D, and E**.
36. On September 7, 2025, DHS filed a Form I-830 in Mr. Medard's immigration court proceedings regarding his transfer, which they asserted had taken place on September 4 (although it appears from the ICE Detainee Locator printouts mentioned above that the transfer actually only took place in the afternoon or evening of September 5, at the

earliest). A copy of this Form I-830 is annexed as **Exhibit F**. It asserts that Mr. Medard was transferred to the El Paso Service Processing Center.

37. Although no subsequent Form I-830 has been filed in Mr. Medard's case indicating a different change of location, the ICE Detainee Locator indicates that he is in fact at the ICE Camp East Montana facility in El Paso, rather than the El Paso Service Processing Center itself, and has indicated this for some time. A printout from the ICE Detainee Locator as of today's date is annexed as **Exhibit G**, and a printout from the ICE Detainee Locator as of November 28, 2025 is annexed as **Exhibit H**. A copy of an ERO eFile notification sent to the undersigned on September 13, 2025, indicating Mr. Medard's transfer to the "DoD Detention Facility at Fo[rt Bliss]", another name for the Camp East Montana facility, is annexed as **Exhibit I**.

38. Following DHS's filing of the Form I-830 indicating Mr. Medard's relocation to El Paso, the previously-scheduled September 15, 2025 hearing took place, but Mr. Medard was not produced by televideo, likely due to his having been moved. The Immigration Judge then overseeing Mr. Medard's case, Immigration Judge Thanos Kanellakos entered an order on September 15, 2025, granting a motion for change of venue to El Paso which it appears from the recording of the proceedings that DHS had made orally. A copy of the order is annexed as **Exhibit J**.

39. On September 16, 2025, the Immigration Court issued a hearing notice scheduling Mr. Medard's next master calendar hearing for October 7, 2025. A copy of the notice is annexed as **Exhibit K**.

40. On October 8, 2025, the Immigration Court issued a hearing notice scheduling a master calendar hearing for Mr. Medard on October 17, 2025. A copy of the notice is annexed as **Exhibit L**.
41. On October 17, 2025, the Immigration Court issued a hearing notice scheduling an individual calendar hearing for Mr. Medard on November 12, 2025. A copy of the notice is annexed as **Exhibit M**. The individual calendar hearing took place on November 12 as scheduled, and Mr. Medard and one of his witnesses testified.
42. On November 13, 2025, following the initial individual calendar hearing for Mr. Medard on November 12, the Immigration Court issued a hearing notice scheduling an additional individual calendar hearing, on December 18, 2025, to allow time for additional witness testimony. A copy of the hearing notice is annexed as **Exhibit N**.
43. At the conclusion of the hearing on December 18, 2025, the Immigration Judge denied Mr. Medard's applications for asylum and related relief in an oral decision. A copy of the summary of oral decision is annexed as **Exhibit O**.
44. On December 26, 2025, Mr. Medard filed an appeal with the Board of Immigration Appeals ("BIA") against the denial of his applications for asylum and related relief. An official receipt has not yet been received from the BIA, but a copy of the automated email confirmation of the appeal filing that was sent to undersigned counsel is annexed as **Exhibit P**.
45. During the 30 days provided by regulation for Mr. Medard to file an appeal to the BIA from the Immigration Judge's decision, and during the pendency of that appeal to the BIA, the Immigration Judge's decision denying Mr. Medard's applications for asylum and related relief is not final. *See* 8 C.F.R. § 1003.6(a) (providing that, with exceptions

not relevant here, “ the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed”).

46. Over the course of Mr. Medard’s prolonged detention since June 24, 2025, he has not been eligible, according to the governing regulations, to seek a custody redetermination hearing, otherwise known as a bond hearing, before an Immigration Judge. The regulations provide that “an immigration judge may not redetermine conditions of custody imposed by the Service with respect to . . . Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act”. 8 C.F.R. § 1003.19(h)(2)(i)(B).
47. Mr. Medard does not present a danger to the community or a flight risk. He has no criminal record. There is no legitimate reason for him to have been detained for an extended period of time without even a bond hearing.
48. While detained in the Camp East Montana / Fort Bliss facility, Mr. Medard has continued to experience unacceptably harsh conditions, now more severe even than in Delaney Hall. Mr. Medard observed a fellow detainee be severely beaten by detention facility personnel, who fortunately refrained from assaulting Mr. Medard himself when he mentioned that he had a lawyer, although the experience of witnessing another detainee’s assault was nonetheless traumatic for Mr. Medard.
49. The conditions in the Camp East Montana facility have been detailed in a letter from the ACLU available at <https://www.aclu.org/documents/ice-letter-re-fort-bliss> and annexed for ease of reference as **Exhibit Q**, and a letter from Representative Veronica Escobar annexed as **Exhibit R**.

50. As of the filing of this Amended Petition, Mr. Medard has been detained for over six months, without access to a bond hearing before an immigration judge, with the length of his detention due in significant part to the government's arbitrary decisions to transfer him between multiple detention facilities and transfer his case between multiple immigration courts. His detention despite his valid parole has been unlawful since it began, and it is even more clearly unlawful now.
51. This amended Petition is filed to seek relief from Mr. Medard's prolonged and unlawful detention by DHS.
52. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. § 2243 (Order to show cause why a petition for a writ of habeas corpus should not be granted should be "returned within three days unless for good cause additional time, not exceeding twenty days, is allowed").

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of 8 U.S.C. § 1182(d)(5)(A) – Detention Without Individualized Determination that Purposes of Parole Have Been Served)

53. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 51 as though fully set forth herein.
54. The statutory provision under which Petitioner was paroled into the United States, 8 U.S.C. § 1182(d)(5)(A), provides:

The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion

of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

55. On information and belief, neither the Secretary of Homeland Security (Respondent Noem) nor any authorized delegate of hers made an individualized determination that the purposes of the parole of Petitioner had been served, prior to DHS taking Petitioner back into custody.
56. The parole statute’s termination provision ““is a grant of discretionary authority, but it has a mandatory requirement—parole may be terminated or revoked only when in the Secretary’s opinion the parole’s purposes have been met.” *Y-Z-L-H- v. Bostock*, 792 F. Supp. 3d 1123, 1138 (D. Or. 2025). That mandatory requirement was not met here.
57. Petitioner’s detention without an individualized determination that the purposes of his parole had been served violated 8 U.S.C. § 1182(d)(5)(A). *See Y-Z-L-H-*, 792 F. Supp.3d at 1138; *Mata Velasquez v. Kurzdorfer*, 794 F.Supp.3d 128, 145-146 (W.D.N.Y. 2025).

SECOND CLAIM FOR RELIEF

(Violation of 8 U.S.C. § 1182(d)(5)(A) – Revocation Without Hearing)

58. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 51 as though fully set forth herein.
59. To be consistent with the Fifth Amendment right to due process of law, 8 U.S.C. § 1182(d)(5) is best interpreted as requiring a hearing before revocation, at least in circumstances where the parolee has been invited to come to the United States. *See U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610, 614-615 (2d Cir. 1958) (construing a materially identical prior version of the statute).
60. Termination of Petitioner’s parole without a hearing violated 8 U.S.C. § 1182(d)(5)(A).

THIRD CLAIM FOR RELIEF

(Violation of 8 C.F.R. § 212.5 – Detention of Parolee Without Individualized Determination by Authorized Official and Without Notice of Termination)

61. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 51 as though fully set forth herein.

62. The regulation governing parole, 8 C.F.R. § 212.5, provides in relevant part as follows:

- (a) The authority of the Secretary to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Assistant Commissioner, Office of Field Operations; Director, Detention and Removal; directors of field operations; port directors; special agents in charge; deputy special agents in charge; associate special agents in charge; assistant special agents in charge; resident agents in charge; field office directors; deputy field office directors; chief patrol agents; district directors for services; and those other officials as may be designated in writing, subject to the parole and detention authority of the Secretary or his designees. The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.

....

(e) Termination of parole —

(1) Automatic. Parole shall be automatically terminated without written notice

(i) upon the departure from the United States of the alien, or,

(ii) if not departed, at the expiration of the time for which parole was authorized, and in the latter case the alien shall be processed in accordance with paragraph (e)(2) of this section except that no written notice shall be required.

(2)

(i) On notice. In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall

again be released on parole unless in the opinion of the official listed in paragraph (a) of this section the public interest requires that the alien be continued in custody.

8 C.F.R. § 212.5(a), (e).

63. On information and belief, Petitioner's parole was not automatically revoked under any of the circumstances referred to in 8 C.F.R. § 212.5(e)(1).

64. By regulation, absent automatic termination, parole may be terminated "upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States". 8 C.F.R. § 212.5(e)(2)(i).

65. The purpose of Petitioner's parole had not been accomplished when he was detained in June 2025, since his asylum application had not been adjudicated.

66. The purpose of Petitioner's parole still has not been accomplished, since there has been no final administrative determination regarding his asylum application.

67. On information and belief, no official listed in 8 C.F.R. § 212.5(a) made an individualized determination that neither humanitarian reasons nor public benefit warranted Petitioner's continued presence in the United States.

68. Even when the purposes of parole are accomplished or an official listed in 8 C.F.R. § 212.5(a) makes the relevant determination, "parole shall be terminated upon written notice to the alien". 8 C.F.R. § 212.5(e)(2)(i). No such notice was provided here.

69. Termination of Petitioner's parole without an individualized determination by an official listed in 8 C.F.R. § 212.5(a) and without written notice violated 8 C.F.R. § 212.5(e).

FOURTH CLAIM FOR RELIEF

(Violation of Administrative Procedure Act – Arbitrary and Capricious Change of Position by Agency)

70. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 51 as though fully set forth herein.

71. It is a violation of the Administrative Procedure Act for an agency to change its position without a reasoned explanation for its action. *See Y-Z-L-H*, 792 F. Supp.3d at 1146-1147.

72. In detaining Petitioner despite his valid parole, Respondents provided no reasoned explanation for their actions.

73. Detention of Petitioner despite his valid parole and without a reasoned explanation for the change in position violated the Administrative Procedure Act.

FIFTH CLAIM FOR RELIEF

(Deprivation of Liberty Without Due Process of Law – Fifth Amendment – Lack of Pre-Detention Process)

74. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 51 as though fully set forth herein.

75. The Fifth Amendment to the Constitution of the United States provides that “no person shall . . . be deprived of life, liberty, or property, without due process of law.”

76. Petitioner was not provided with any discernible pre-detention process to determine whether he should be detained by DHS despite his previous parole.

77. On information and belief, no individualized determination was made in support of Petitioner’s detention.

78. Petitioner was not provided with notice and an opportunity to respond before being detained.

79. Petitioner was not provided with a hearing before being detained.

80. Petitioner's detention without any individualized determination that this was appropriate, and without any notice and opportunity to respond, and without a hearing, constitutes deprivation of his liberty without due process of law in violation of the Fifth Amendment. *See Mata Velasquez*, 794 F.Supp.3d at 147-153; *Rojas Acevedo v. Almodovar*, 25-cv-7189 (LJL), 2025 WL 3034183 (S.D.N.Y. Oct. 30, 2025), at *5-*8.

SIXTH CLAIM FOR RELIEF

(Violation of 8 U.S.C. § 1225 and § 1226 – Detention Without Bond Hearing)

81. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 50 as though fully set forth herein.

82. The regulatory prohibition on an Immigration Judge holding a bond hearing and redetermining the custody an alien charged as an arriving alien, like Petitioner, explicitly includes those who have been paroled. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B).

83. As a statutory matter, a previously paroled alien, who is subsequently detained by DHS, should be provided with a discretionary bond hearing pursuant to 8 U.S.C. § 1226(a), rather than treated as subject to mandatory detention pursuant to 8 U.S.C. § 1225(b), because he is no longer seeking admission into the United States at the time of the subsequent detention. *See Campbell v. Almodovar*, Case No. 1:25-cv-09509 (JLR), 2025 WL 3538351 (S.D.N.Y. Dec. 10, 2025), at *6-*9.

84. As applied to someone who has been paroled into the United States and remained at liberty in the United States for a substantial period of time, 8 C.F.R.

§ 1003.19(h)(2)(i)(B) is inconsistent with the governing statutes.

85. Immigration Judges and the BIA are bound to follow the regulations that govern them, absent judicial intervention, even if those regulations violate the statute. Therefore, even in contexts where exhaustion is otherwise mandatory, one need not exhaust a claim that a regulation, either on its face or as applied to a particular situation, violates the statute. *See Qatanani v. Att’y Gen.*, 144 F.4th 485, 499 (3d Cir. 2025).

SEVENTH CLAIM FOR RELIEF

(Deprivation of Liberty Without Due Process of Law – Fifth Amendment – Prolonged Mandatory Detention Without Bond Hearing)

86. Pursuant to 8 C.F.R. § 1003.19(h)(2)(i)(B). Petitioner has now been detained for more than six months while ineligible for a bond hearing according to the governing regulation.

87. As the BIA has not yet even receipted Petitioner’s appeal, let alone issued a transcript and briefing schedule for that appeal, it is likely that Petitioner’s detention will continue for a significant amount of time into the future unless this Court intervenes.

88. The vast majority of the delay in adjudicating Petitioner’s removal proceedings, while he has been detained, has been the responsibility of Respondents and not of Petitioner.

89. The conditions of Petitioner’s confinement are not meaningfully different from criminal punishment, even though his detention is not the result of a conviction for any crime.

90. Under these circumstances, Petitioner’s Fifth Amendment right not to be deprived of liberty without due process of law requires that, if he is not simply released from custody, he must be provided with a bond hearing at which the government bears the burden of showing by clear and convincing evidence that he is a danger to the community or a

flight risk. *See German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 211-213 (3d Cir. 2020).

VI. PRAYER FOR RELIEF

91. WHEREFORE, Petitioner, Pascaly Medard, respectfully prays that the Court:

- (a) Order that Respondents release Petitioner from custody;
- (b) Enjoin Respondents from re-detaining Petitioner unless and until an individualized determination of the appropriateness of re-detention under the standards set out in 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e)(2)(i) is made by a duly authorized DHS official following notice to Petitioner, Petitioner is provided an opportunity to respond and a hearing, and Petitioner is provided written notice of the termination of parole;
- (c) Declare that Petitioner's legal and constitutional rights were violated by his detention in the absence of an individualized determination of the appropriateness of re-detention by an authorized DHS official following notice to Petitioner, an opportunity for Petitioner to respond, a hearing regarding the termination of parole, and written notice of the termination of parole;
- (d) In the alternative, provide Petitioner with a bond hearing before this Court at which Respondents must establish by clear and convincing evidence that Petitioner is a flight risk or a danger to the community, or else release him from custody;
- (e) In the further alternative, order that Petitioner be released from custody if not provided with a bond hearing before an Immigration Judge at which the Department of Homeland Security shall bear the burden to establish by clear and convincing evidence that Petitioner is a flight risk or a danger to the community;
- (f) Grant such other and further relief at law and in equity as justice may require; and
- (g) Grant attorney's fees and costs of Court to Petitioner under the Equal Access to Justice Act.

Respectfully submitted,

/s/ David A. Isaacson

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Attorney for Petitioner

VERIFICATION

David A. Isaacson, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: I represent the Petitioner in these habeas corpus proceedings. The Petitioner, Pascaly Medard, is being held in detention, on information and belief at the Delaney Hall Detention Facility, at the time of filing this Petition. Therefore, he has not been able to appear in my office to sign this Verification. I have discussed this matter with Kaitlyn Box, who also represents Petitioner in his removal proceeding, is familiar with the procedural details of those proceedings, and has spoken to Petitioner regarding the circumstances of his detention. I verify that the information contained in the Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, which is being submitted to the Court contemporaneously herewith, is true and correct to the best of my knowledge and belief.

David A. Isaacson
Attorney for Petitioner

/s/ David A. Isaacson
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Dated: December 29, 2025