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

GABRIELA CAJAVILCAL SALAS,)
)
 Petitioner,)
)
 v.)
)
 LUIS SOTO Director, Delaney Hall,)
 TODD M. LYONS, Acting Director, U.S.)
 Immigration and Customs Enforcement)
 U.S. Immigration and Customs Enforcement,)
 KRISTI NOEM, Secretary of the U.S.)
 Department of Homeland Security; and)
 PAM BONDI, Attorney General of the United)
 States)
)
 Respondents.)
 _____)

Case No. _____

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Gabriela Cajavilca Salas, is a New Jersey resident who came to the United States at the age of 18 with her father to 

2. After crossing the United States border, Petitioner and her father were briefly detained by the Department of Homeland Security (“DHS”). On April 22, 2022, Petitioner and her father were released from custody. *See* Ex. A, Notice of Parole. The father was released on parole pursuant to section 212(D)(5) of the Immigration and Nationality Act (“INA”) (8 U.S.C.

§ 1182(d)(5)(A)). Shortly thereafter, Petitioner's father timely filed a Form I-589 Application for Asylum with U.S. Citizenship and Immigration Services ("USCIS") and included Petitioner as a derivative on the application. *See* Ex. B, I-589 Receipt Notice

3. On or about May 7, 2022, Petitioner's older sister and mother also entered the United States. Soon after, the mother joined the father's I-589 asylum application as a derivative spouse.¹

4. On June 13, 2025, USCIS issued a notice dismissing the I-589 asylum application, indicating that the applicants had been previously apprehended by DHS, placed in expedited removal, and issued a Form I-860 notice and order of expedited removal. *See* Ex. C, Dismissal Notice.

5. In doing so, DHS unlawfully terminated Petitioner father's parole and determined that the father was subject to expedited removal from the United States. The INA does not authorize designation for expedited removal of any noncitizen who has, at any point in time, been paroled into the United States.

6. But even if the termination of the I-589 and the institution of expedited removal proceedings was proper, DHS unlawfully detained Petitioner after only interviewing her for a Credible Fear Interview ("CFI"). Under normal circumstances, once DHS determines that someone is subject to expedited removal, it must schedule a CFI to determine if the applicant has a credible fear of return to their home country. Crucially, USCIS must schedule family units together for an interview. *See* 8 C.F.R. 208.30(c). "The regulations at 208.30(c) provide that a spouse or child of a principal alien who arrived in the United States concurrently with the

¹ The older sister, being over 21 at the time she entered the U.S., was not a derivative on the father's asylum application.

principal alien shall be included in that alien's positive credible fear evaluation and determination, unless the principal applicant or the spouse or child declines such inclusion.” Ex. D, USCIS Credible Fear Manual p. 18.² “The procedures that follow have been designed to preserve the right to individual choice and protect all potential asylees.” *Id.* If the accompanying family members decline to have a separate asylum claim, the officer is obligated to begin “by interviewing the principal applicant.” *Id.* at 19. “If the principal is found to have a credible fear of persecution or torture, then no separate credible fear determination is made for the other family unit members. Each family member is included in the principal's positive credible fear determination.” *Id.* “If the principal is not found to have a credible fear of persecution or torture, then the APSO [Asylum Pre-Screening Officer] must interview the other family unit members to determine if any other family unit member can establish a credible fear. If the APSO finds any family unit member positive for credible fear, then the APSO does not interview the remaining family unit members except to screen for mandatory bars.” *Id.* “The other family members do not need separate credible fear determinations and may be included in the positive family member's determination in the officer's discretion for purposes of family unity on a case-by-case basis, unless the family member indicates that he or she wishes to receive a separate determination.” In other words, “[f]or purposes of family unity, the positive finding may be used as the basis for finding positive credible fear for every other member of the accompanying family unit that arrived concurrently.” *Id.* “If no member of the family unit is found to have a credible fear, then the APSO processes each credible fear case separately and issues a negative credible fear determination to each person in the family unit. The APSO follows procedures for preparing,

² Also available at:

<https://www.uscis.gov/sites/default/files/document/guides/CredibleFearProceduresManual.pdf>
(last accessed September 14, 2025).

serving, and processing each family member's decision for a negative credible fear determination as set forth in this Manual.”

7. Here, rather than schedule the father, mother, and Petitioner for a CFI as required, DHS *only* scheduled the Petitioner for a CFI. On August 27, 2025, Petitioner appeared before USCIS and an asylum officer conducted the interview and found that Petitioner had a negative credible fear of return to Peru. The asylum officer did not consider the fact that Petitioner was only a derivative on her father’s application and that her entire fear of return was based on her father’s fear of return.

8. Respondents immediately detained Petitioner following the negative credible fear finding and transferred her to Delaney Hall. Petitioner sought review of the decision with an IJ, but the IJ summarily affirmed the decision of the asylum officer. The IJ did not consider—and could not—consider the fact that Petitioner should never have been interviewed separately from her father and mother in the first place.

9. Due to DHS violations of Petitioner’s rights, Petitioner is now unlawfully separated from her family, detained under prison like conditions, and is subject to potential removal to Peru at any moment. DHS actions are even more egregious when viewed in context of the remaining family members. Petitioner’s father (lead applicant) and mother are stuck in administrative limbo because USCIS summarily dismissed the I-589 asylum application and have failed to either schedule a CFI or issue them Notices to Appear (“NTA”) to appear in immigration court where they would be able to pursue their immigration applications. In other words, DHS has trapped them in a Kafkaesque administrative quagmire while their daughter faces potentially imminent removal.

10. This Court is empowered to grant habeas relief in this matter and order Petitioner's release. Absent habeas relief, Petitioner will be subject to either indefinite detention or removal to Peru in violation of her rights.

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Venue is proper because Petitioner is detained at Delaney Hall in Newark, New Jersey, which is within the jurisdiction of this District. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

PARTIES

15. Petitioner is currently detained at Delaney Hall and is in the custody, and under the direct control, of Respondents and their agents.

16. Respondent Luis Soto is the Director of Delaney Hall, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and

Customs Enforcement (“ICE”) to detain noncitizens and is a legal custodian of Petitioner. Respondent Soto is a legal custodian of Petitioner.

17. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of the Newark, New Jersey Field Office of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release Petitioner.

18. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner’s detention and custody. Respondent Noem is a legal custodian of Petitioner.

19. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

20. Petitioner is a native and citizen of Peru. She entered the United States at the age of 18 with her father.

21. Upon entering the United States, Petitioner and her father were detained by DHS. Shortly thereafter, Petitioner and her father were released from detention. Petitioner’s father was released on parole pursuant to section 212(d)(5) of the INA. *See* Ex. A, Notice of Parole.

22. On or about May 7, 2022, Petitioner's mother and older sister entered the United States. After a brief detention, they were also released from DHS custody upon information and belief.

23. DHS did not issue a NTA to Petitioner or her father, mother, or older sister.

24. On February 13, 2023, Petitioner's father filed a I-589 asylum application with USCIS based on his fear of return to Peru based on political persecution. *See* Ex. B, I-589 Receipt Notice. Petitioner's father was arrested, detained, and even falsely imprisoned, beaten, and tortured in Peru by the Peruvian government due to perceived political opinion. In addition, he has received credible threats to his life by armed terrorist groups that the Peruvian government is unable to control due to his perceived cooperation.

25. Petitioner's father added Petitioner and his spouse as accompanying derivative applicants.³

26. On June 13, 2025, USCIS issued a notice dismissing the I-589 asylum application, indicating that the applicants had been previously apprehended by DHS, placed in expedited removal, and issued a Form I-860 notice and order of expedited removal.

27. USCIS scheduled Petitioner to appear for a CFI on August 27, 2025. *See* Ex. E. Credible Fear Interview Notice. USCIS never scheduled Petitioner's father or mother for a CFI. USCIS also never issued a NTA or initiated removal proceedings in immigration court.

³ At the time of the application, Petitioner was still under 21 years of age. Even though she is now over 21, she remains eligible to derive asylum status as a child of the principal applicant. *See* USCIS Practice Manual (“[a]s of August 6, 2002, any derivative asylee child who had . . . [a] principal's asylum application (Form I-589) on or after that date had his or her age ‘frozen’ as of the date the application was filed. This allows the alien's continued classification as a child for purposes of both asylum and adjustment of status.”), available at <https://www.uscis.gov/policy-manual/volume-7-part-m-chapter-2#S-C-2> (last accessed September 14, 2025).

28. Petitioner appeared for the CFI on August 27, 2025. The asylum officer conducting the interview did not inquire about the presence of the Petitioner's father or mother. During the interview, Petitioner was repeatedly asked questions about the nature of her fear of return to Peru, and she repeatedly emphasized that her fear was related to the political persecution and continued threats that her father faced. *See* Ex. F, CFI Interview Notes. At no point did the asylum officer consider the father or mother's fear, or that the nature of Petitioner's fear is based on the father's past persecution and fear of future persecution.

29. Upon conclusion of the interview, the asylum officer found that the Petitioner did not have a credible fear of return to Peru. Petitioner was immediately detained and transferred to Delaney Hall.

30. Soon thereafter, the negative credible fear determination was reviewed by an IJ. The IJ affirmed USCIS decision finding no credible fear.

31. Meanwhile, her father and mother have been left in administrative limbo as they were never called into a CFI and have never been placed in removal proceedings in immigration court.

LEGAL FRAMEWORK

Right to Seek Asylum

32. "Seeking asylum—protection from a fear of persecution on account of a protected ground—is a right enshrined in United States statutes that implement international agreements and reflect widely accepted principles of international law." *M.A.N.H. v. United States*, No. EDCV 23-0372 JGB (KKx), at *3 (C.D. Cal. Sep. 22, 2023).

33. Spouses and unmarried children under the age of 21 can accompany a lead principal asylum applicant as derivatives on the asylum application. *See* 8 C.F.R. 208.3(a)(1) ("

. . . an asylum applicant must file Form I-589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States.”).

34. A child who was included on a parent’s I-589 asylum application is protected from aging out after turning 21 by the 21 by the Child Status Protection Act (“CSPA”). *See* <https://www.uscis.gov/policy-manual/volume-7-part-m-chapter-2#S-C-2> (last accessed September 14, 2025).

Removal of Noncitizens

35. Congress established two main processes for removing noncitizens deemed ineligible to enter or remain in the United States. *See* IIRAIRA, Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996). The first are removal proceedings, also known as Section 240 removal proceedings due to the section of the INA under which they appear. These proceedings take place before an Immigration Judge (“IJ”). 8 U.S.C. § 1229a(a)(1), (b)(1). They are adversarial proceedings in which the noncitizen has the right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). The hearings are recorded, and a transcript is made available if a party appeals the decision. *Id.* § 1229a(b)(4)(C). Upon a decision by the IJ, either party may appeal to the Board of Immigration Appeals (“BIA”). 8 C.F.R. §§ 1240.15, 1003.1. If the BIA upholds a removal order, the noncitizen may then appeal that decision to a U.S. court of appeals. *See* 8 U.S.C. § 1252.

36. Congress also included a second proceeding known as expedited removal. Relative to section 240 removal, “[e]xpedited removal lives up to its name.” *Make the Rd. New York v. Wolf*, 962 F.3d 612, 619 (D.C. Cir. 2020). An immigration officer, not an IJ, conducts the

initial fact-finding. *See* 8 C.F.R. 235.3(b)(2)(i). If a noncitizen is eligible for expedited removal, an immigration officer asks them a short series of questions to determine (a) their “identity, alienage, and inadmissibility,” and (b) whether they intend to apply for asylum, fear persecution or torture, or fear returning to their country of origin. *Id.* § 235.3(b)(2)(i), (b)(4).

37. If the noncitizen indicates a fear, the inspecting officer must refer them to a CFI to be conducted by an asylum officer. *See* 8 C.F.R. § 235.3(b)(4). If that asylum officer finds the noncitizen to have a credible fear of persecution, the noncitizen will be moved either to full section 240 removal proceedings or to USCIS administrative asylum proceedings. *Id.* § 208.30(f). If, however, the officer makes a negative credible fear determination, a supervisory officer will review the determination. *Id.* § 208.30(e)(8). And if the supervisor agrees, the noncitizen can request review by an IJ. *Id.* § 208.30(g). The IJ’s review “is meant to conclude within 24 hours” and is final. *Make the Rd.*, 962 F.3d at 619.

Credible Fear Interviews and Family Unity

38. The governing regulations require that family members be treated together as a family unit for purposes of a CFI. 8 C.F.R. § 208.30(c) states:

(c) Treatment of family units.

- (1) A spouse or child of a principal alien who arrived in the United States concurrently with the principal alien shall be included in that alien's positive credible fear evaluation and determination, unless the principal alien or the spouse or child declines such inclusion. Any alien may have his or her evaluation and determination made separately, if that alien expresses such a desire. The option for members of a family unit to have their evaluations and determinations made separately shall be communicated to all family members at the beginning of the interview process.
- (2) The asylum officer in the officer's discretion may also include other accompanying family members who arrived in the United States concurrently with a principal alien in that alien's positive fear evaluation and determination for purposes of family unity.
- (3) For purposes of family units in credible fear determinations, the category of “child” includes only unmarried persons under 21 years of age.

39. USCIS' Credible Fear Procedures Manual implementing the regulation states that "[t]he procedures that follow have been designed to preserve the right to individual choice and protect all potential asylees." *See* Ex. D p. 18. "For credible fear cases involving family units, the APSO must inform the aliens at the beginning of the credible fear interview that he or she may be processed individually if he or she prefers, and document it in the interview notes. The APSO must not attempt to influence the decision." *Id.*

40. "When family unit members do not decline to be included in the principal's positive credible fear determination, then the APSO begins by interviewing the principal applicant." *Id.* "If the principal is found to have a credible fear of persecution or torture, then no separate credible fear determination is made for the other family unit members. Each family member is included in the principal's positive credible fear determination." *Id.*

41. "If the principal is not found to have a credible fear of persecution or torture, then the APSO must interview the other family unit members to determine if any other family unit member can establish a credible fear. If the APSO finds any family unit member positive for credible fear, then the APSO does not interview the remaining family unit members except to screen for mandatory bars. The other family members do not need separate credible fear determinations and may be included in the positive family member's determination in the officer's discretion for purposes of family unity on a case-by-case basis, unless the family member indicates that he or she wishes to receive a separate determination. Special attention should be paid to the privacy of each family member and the possibility that victims of domestic abuse, rape, and other forms of persecution might not be comfortable speaking in front of other family members." *Id.*

42. “If no member of the family unit is found to have a credible fear, then the APSO processes each credible fear case separately and issues a negative credible fear determination to each person in the family unit. The APSO follows procedures for preparing, serving, and processing each family member's decision for a negative credible fear determination as set forth in this Manual.”

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

43. The allegations in the above paragraphs are realleged and incorporated herein.

44. Petitioner’s continued detention violates her procedural due process right to seek asylum.

45. Petitioner should never have been placed in expedited removal proceedings to begin with since her father (the lead applicant) was paroled into the United States pursuant to INA 212(d)(5) and has been present in the United States for more than two years. Therefore, USCIS’ June 13, 2025 dismissal of the I-589 due to the fact that Petitioner’s father had been “apprehended by DHS officials, placed in expedited removal, and issued a Form I-860, Notice and Order of Expedited Removal” is in violation of the governing statutes. USCIS should have either adjudicated his asylum application or referred it to the immigration court. Instead, they dismissed the I-589 and only subjected Petitioner to a CFI and detention, thereby destroying Petitioner’s right to seek asylum.

46. Even if DHS had authority to dismiss the I-589 and seek expedited removal, Respondents violated Petitioner’s due process rights by separating her from her family and

interviewing her alone, without consideration of her father and mother's fear of return to Peru. USCIS was mandated to consider the claims of the family unit as a whole.

47. As a remedy, the Court should order Petitioner's release on her own recognizance.

COUNT TWO

Violation of the Administrative Procedure Act ("APA")

48. The allegations in the above paragraphs are realleged and incorporated herein.

49. Dismissal of the I-589 asylum application and the implementation of expedited removal proceedings violates the Administrative Procedure Act ("APA").

50. In addition, the negative credible fear determination violates the APA due to the fact that DHS never considered the claims of the entire family unit.

COUNT THREE

Violation of the *Accardi* Doctrine

51. The allegations in the above paragraphs are realleged and incorporated herein.

52. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

53. When agencies fail to adhere to their own policies as required by Accardi, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (“It is clear, moreover, that [Accardi] claims may arise under the APA”), or as a due process violation, *see Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual’s constitutional right to due process.”) (internal quotations omitted).

54. To remedy an Accardi violation, a court may direct the agency to properly apply its policy, *see Damus*, 313 F. Supp. 3d at 343 (“[T]his Court is simply ordering that Defendants do what they already admit is required.”), or a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners’ custody under ICE’s standards because “it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure”).

55. Respondents have violated the Accardi doctrine by dismissing the asylum application and only scheduling Petitioner for a CFI, thereby separating her from her family unit and the family’s asylum claims.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Petitioner during the pendency of the instant action;

- (3) Enjoin Respondents from removing Petitioner from the United States;
- (4) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); the Administrative Procedure Act; the *Accardi* doctrine, and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- (5) Order Petitioner's immediate release Petitioner from detention;
- (6) Fees and costs under the Equal Access to Justice Act; and
- (7) Grant any other further relief this Court deems just and proper.

/s/ Jill S. Westerberg

Jill S. Westerberg, Esq.

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Counsel for Petitioner

Dated: September 16, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Gabriela Cajavilca Salas, and submit this verification on her behalf.

I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this ___ day of ____, 2025.

/s/ Jill S. Westerberg

Jill S. Westerberg, Esq.

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