

Martin W. Chow, Esq. (MC2013)
Martin C. Liu & Assoc., PLLC
135 Bowery, 4th Floor
New York, NY 10012

Attorneys for Petitioner

UNITED STATE DISTRICT COURT
DISTRICT OF NEW JERSEY

UBALDO JIMENEZ PINEDA,)
)
 Petitioner,)
)
 v.)
)
 LUIS SOTO, Director, Delaney Hall;)
 TODD M. LYONS, Acting/Director,)
 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, in their official capacities)
)
 Respondents.)

Case No. _____

PETITION FOR WRIT OF
HABEAS CORPUS

ORAL ARGUMENT
REQUESTED

INTRODUCTION

1. The Petitioner, Ubaldo Jimenez Pineda is a 43-year-old native, and citizen of Mexico, who last entered the United States without inspection in 2002 at the U.S.-Mexico border and has continuously resided in the United States for over 23 years.

2. The Petitioner was detained on September 17, 2025 at the U.S. Citizenship and Immigration Service office, in Newark, NJ by DHS (Department of Homeland Security)/ICE (Immigration and Customs Enforcement), during a previously scheduled asylum interview. that the Petitioner was required to attend pursuant to INA

208 et. seq., 8 U.S.C. 1158 et seq., and in accordance with his previously filed Form I-589, Application for Asylum, Withholding of Removal and Relief Under the U.N Convention Against Torture, as an applicant for asylum, and refugee status, as defined in 8 U.S.C. §1101(a)(42)(A), filed on, October 27, 2018.

3. The Petitioner is currently languishing in detention without the opportunity for a bond hearing at Delaney Hall detention facility, in Newark, NJ., pursuant to a recently issued BIA (Board of Immigration Appeals) decision, *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which stripped bond jurisdiction from Immigration Judges over “applicants for admission” processed under INA §235, 8 U.S.C. §1225.

4. Petitioner’s only criminal history – over fifteen years ago – in a 2008 cocaine charge which was dismissed after successful completion of two years’ probation and pre-trial diversionary intervention program.

5. Petitioner is not a danger to the community or a national security risk

6. The Petitioner is married and has three U.S. citizen children under 21-years old.

7. The Petitioner’s detention is unconstitutional, pursuant to the Fifth Amendment to the United States Constitution’s right to Due Process and is unlawful pursuant to a long standing statutory and regulatory practice of DHS releasing from detention noncitizens under 8 U.S.C. §1226 for a bond hearing.

8. The Petitioner previously filed an application for asylum under INA § 208 et. seq., 8 U.S.C. §1158 on October 27, 2018 . Petitioner is also eligible for

cancellation of removal pursuant to INA § 240A(b), 8 U.S.C. § 1229b(b).

9. The Petitioner's release from custody is not reasonably foreseeable and is futile because the DHS is and has recently changed its policy from releasing noncitizens from detention pursuant to 8 U.S.C. § 1226 to a policy of asserting mandatory detention, nationwide, pursuant to 8 USC §1225 without a right to a bond hearing. *See, Yajure Hurtado, Id.*

10. Moreover, on September 29, 2025, at an initial master calendar hearing before Immigration Judge Ramin Rastegar, who is presiding over the Petitioner's removal case, indicated to the undersigned that the Immigration Court does not have jurisdiction for a redetermination of custody proceeding (bond hearing) in the Petitioner's case based on *Matter of Yajure Hurtado, Id.*¹

11. Therefore, exhaustion would be futile and is not required.

12. Habeas corpus review is necessary and a temporary and permanent injunction is requested enjoining Respondents from detaining Petitioner unless provided a bond hearing by an Immigration Judge; or in the alternative, releasing Petitioner from custody on his own recognizance; and enjoining the Respondents from transferring, moving, relocating the Petitioner to another location or detention facility, pending a hearing on this matter.

13. Accordingly, to vindicate the Petitioner's rights to Due Process and

¹ At the September 29th hearing Immigration Judge Rastegar further said that the undersigned can make a motion for a bond hearing but the Immigration Court did not have jurisdiction under *Matter of Yajure Hurtado, Id.*

unlawful custody pursuant to the U.S. Constitution, and in violation of federal statutes and regulations, this Court should grant the instant petition for a writ of habeas corpus. Absent an order from this Court, the Petitioner will be unlawfully and mandatorily detained, for the foreseeable future, in violation of his due process rights, and in violation of federal statute and regulation.

14. Petitioner has not previously sought or requested a bond hearing from the Immigration Judge, in which an initial master calendar hearing had been held on September 29, 2025, before Immigration Judge Ramin Rastegar, because the same would be futile. *See, Matter of Yajure Hurtado*, 29 I&N Dec. (BIA 2025).

JURISDICTION

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

17. 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).

18. 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

19. Venue is proper because Petitioner is detained at Delaney Hall, detention facility in Newark, New Jersey, which is within the jurisdiction of this District.

20. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District, Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

21. The Court must grant the petition for writ of habeas corpus and issue an order to show cause (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief.

22. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

23. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

24. Petitioner is a native and citizen of Mexico, who last entered the U.S. without inspection at the U.S.-Mexico border, in 2002. Petitioner has continuously resided in the U.S. for over 23 years. Petitioner is currently detained at the Delaney Hall detention facility, in Newark, New Jersey, since September 18, 2025. Delaney Hall is located in Newark, New Jersey. The Petitioner is a resident of Ocean County, New

Jersey. Petitioner is in the custody, and under the direct control, of Respondents and their agents.

25. Respondent Luis Soto is the Director of Delaney Hall detention facility, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Luis Soto has authority to release Petitioner. He is sued in his official capacity.

26. Respondent Tom M. Lyons is sued in his official capacity as the Acting Director, United States Immigration and Enforcement.

27. 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, U.S. Customs and Border Protection, the component agency responsible for Petitioner's detention/custody. Respondent Noem is a legal custodian of Petitioner.

28. 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 Noem is a legal custodian of Petitioner.

STATEMENT OF FACTS

29. Petitioner is a 43-year-old native and citizen of Mexico. The Petitioner

last arrived in the United States in 2002 and has continuously resided in the United States for over 23 years.

30. Petitioner is married to a non-US citizen. He has three U.S. born children ages, 9, 17 and 20-years-old.

31. The Petitioner was detained by DHS (Department of Homeland Security)/ICE (Immigration and Customs Enforcement) at his previously scheduled asylum interview at the US Citizenship & Immigration Services (USCIS) field office, in Newark, New Jersey, that he was required to attend, pursuant to INA § 208 et. seq., on Form I-589 Application for Asylum, Withholding of Removal and Relief Under the U. N. Convention Against Torture, on September 17, 2025.

32. The Petitioner was served with an NTA (Form 862, Notice to Appear), charging him with removability under INA § 212(a)(6)(A)(i) as an alien present in the U.S. without being admitted or paroled or who arrived in the U.S. at any time or place other than as designated by the Attorney General and INA § 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card or other suitable travel document.

33. Petitioner is eligible for relief from removal from the United States under INA § 208 et. seq. as a refugee for asylum 8 U.S.C. § 1158, Form I-589. The Petitioner is also eligible for relief from removal under INA §240A(b), 8 U.S.C. §1229b(b) cancellation of removal for certain non-permanent residents of the United States, as the Petitioner has three qualifying, U.S. citizens children, under 21-years-old

and Petitioner has resided continuously in the U.S. for at least ten years.

34. Immigration Judges across the country have been denying custody redetermination requests for noncitizens similarly situated as the Petitioner, based on lack of jurisdiction, and relying on, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(IJ properly held he lacked authority to hear the respondent's request for a bond as an applicant for admission and is subject to mandatory detention under § 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A).

35. *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) has been held to be unlawful in numerous petitions for review in cases very similar to the Petitioner's case, including in this district, U.S. District Court of New Jersey. *See, Rivera Zumba v. Pam Bondi*, 25-c-14626 (D.N.J. Sept. 26, 2025) Katharine S. Hayden, U.S.D.J. decision and other cases across the country.

36. Therefore, Petitioner seeks habeas corpus relief that is necessary for adjudication of his request for a bond hearing and release from unlawful custody and for a custody redetermination, from Delaney Hall, the facility where he is currently being detained before he is transferred or removed out to another location.

LEGAL FRAMEWORK

37. This Court possesses jurisdiction to issue a writ of habeas corpus and an order to show cause, to order the release of Respondent on bond pursuant to § 236(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a), when in violation of the U.S Constitution's Due Process Clause and violations of federal statute and regulation.

38. Respondent is a noncitizen who entered the United States without inspection or parole in 2002 at the U.S.-Mexico border and was not detained by the DHS/ICE or CBP (U.S. Customs & Border Patrol) until September 17, 2025, at an asylum interview, in Newark, N.J., on an application he previously filed on Form I-589 Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); INA § 208 *et. seq.*, 8 U.S.C. §1158 *et. seq.* (asylum), INA § 241(b)(3), 8 U.S.C. §1231(b)(3)(withholding of removal), and 8 C.F.R. § 208.16-208.18 (CAT).

39. For decades, DHS took the position that noncitizens like Respondent were eligible for release on bond pursuant to INA § 236(a), 8 U.S.C. § 1226(a), unless they fell under the mandatory detention provisions of INA § 236(c).

40. However, on July 8, 2025, DHS issued an internal memo that abruptly changed its longstanding position. DHS now takes the position that *all* noncitizens who entered the U.S. without inspection or parole are actually “applicants for admission” pursuant to INA § 235(b), 8 U.S.C. § 1225(b) and therefore are ineligible for release on bond regardless of how long they have resided in the United States.

41. DHS’ new position is without legal support, and this Court should find that DHS’s new interpretation of INA § 235(b), 8 U.S.C. § 1225(b) violates the Respondent’s right for a bond hearing under the U.S. Constitution’s Due Process Clause, and that a Writ of Habeas Corpus and an Order to Show Cause should issue and show cause why the Petitioner should not be immediately released from custody or in the alternative hold a bond hearing.

42. The Writ of Habeas Corpus and an Order to Show Cause to order the immediate release or order a bond hearing is necessary to vindicate the Petitioner's Due Process rights, based on the following reasons.

43. First, as the Supreme Court has previously noted, INA § 236, 8 U.S.C. § 1226 is the default rule for discretionary detention. It applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." *See, Jennings v. Rodriguez*, 138 S. Ct. 830, 200 L. Ed.2d 122 (2018).

44. Noncitizens detained under INA § 236, 8 U.S.C. § 1226 are eligible for custody redetermination hearings unless they fall under the mandatory detention provisions of INA § 236(c), 8 U.S.C. § 1226(c).

45. The carve out under § 236(c), 8 U.S.C. § 1226(c), including the most recent passage of the Laken Riley Act ("LRA"), illustrates that Congress intended § 236, 8 U.S.C. § 1226 to serve as the default detention authority for individuals like Respondent. When Congress creates specific exceptions to a statute's applicability, it proves that absent those exceptions, the statute generally applies.

46. Second, canons of statutory interpretation, legislative history, and longstanding agency practice clearly demonstrate that Congress *did not* intend noncitizens like Respondent to be subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

47. DHS' position runs contrary to how INA § 235(b), 8 U.S.C. § 1225(b) has been consistently applied in the past and finds no basis in the context of the statutory schemes governing immigration detention.

48. To find otherwise would render significant parts of INA § 236(a), 11 U.S.C. § 1226(a) obsolete, redundant or superfluous, which clearly Congress did not intend to do.

49. Third, DHS' position is not supported by any precedential Board of Immigration Appeals ("BIA" or "Board") case law. *Matter of Q. Li* concerned a noncitizen who was detained shortly after crossing the border and who was subsequently released on parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), but later re-detained.

50. Under those circumstances, the Board found that the noncitizen was an applicant for admission and subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b).

51. Crucially, the Board's holding reiterated the well-established understanding that INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border.

52. This interpretation is also supported by the Supreme Court's decision in *Jennings v. Rodriguez* and several recent district court decisions that have granted preliminary injunctive relief and enjoined the application of INA § 235(b), 8 U.S.C. § 1225(b) to individuals similarly situated to Respondent.

53. The Respondents position is further undercut by *Matter of Akhdemov*, 29 I&N Dec. 166 (BIA 2025) in which in circumstances much like the Petitioner, applied INA §

236(a), 8 U.S.C. § 1226(a) to noncitizens already in the U.S. and afford them a bond hearing.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

54. The allegations in the above paragraphs 1- 53 are realleged and incorporated herein.

55. The Petitioner is currently being detained at the Delaney Hall detention facility in Newark, New Jersey, since September 17, 2025, in violation of the Petitioner's rights to seek a bond hearing pursuant to INA § 236(a), 8 U.S.C. §1226(a).

56. If Petitioner were to make a motion for a bond hearing, it would be denied based on the Immigration Court's lack of jurisdiction.

57. On September 29, 2025, the undersigned had a discussion at a master calendar hearing with Immigration Judge Ramin Rastegar, who is currently presiding over the Petitioner's removal case, in Immigration Court, in Newark, NJ.

58. Judge Rastegar explained to the undersigned in reference to Petitioner's removal case that the Immigration Court did not have jurisdiction to rule on a bond hearing request, referring the undersigned to the decision in *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025)(Immigration Judge lacks jurisdiction to hear Respondent's bond request because Respondent was subject to mandatory detention under INA § 235(b)(2) or in the alternative was a flight risk).

59. Thus, it would be futile to pursue continued administrative remedies in

this case, the Petitioner would be prejudiced if bond hearing relief were not immediately granted, and Petitioner would be irreparably be harmed.

60. Consequently, for these reasons, Petitioner's unlawful detention without the right to a bond hearing violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of 8 U.S.C. § 1226(a), INA § 236(a) and Implementing Regulations

61. The allegations in the above paragraphs 1-60 are realleged and incorporated herein.

62. INA § 236(a), 8 U.S.C. § 1226(a) applies to noncitizens already present in the United States, while INA § 235(b), 8 U.S.C. § 1225(b), applies primarily to noncitizens seeking entry into the United States and authorizes DHS to detain them without a warrant at the border.

63. Because the Petitioner entered the U.S. in 2002, and has been present in the U.S. for over 23 years, and was detained in the interior, the Petitioner should be afforded a bond hearing.

64. Petitioner's detention is unlawful in violation of 8 U.S.C. § 1226(a), INA § 236(a) and the writ of habeas corpus and an order to show cause should be granted for the immediate release of the Petitioner or in the alternative order a bond hearing.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, 8 U.S.C. § 1226(a), INA §236(a).
- (4) Issue a Writ of Habeas Corpus ordering Respondents release Petitioner immediately or in the alternative;
- (5) Schedule a bond hearing before an Immigration Judge and, at such hearing, and afford Petitioner to be released from custody;
- (6) That this Court retain jurisdiction of this matter;
- (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Martin W. Chow
Counsel for Petitioner

Dated: October 2, 2025
New York, NY

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

I represent Petitioner, Ubaldo Jimenez-Pineda and submit this verification on his 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 2nd day of October 2025.

/s/ Martin W Chow
Martin Chow, Esq.

JIMENEZ-PINEDA, UBALDO

CERTIFICATE OF SERVICE

On October 2, 2025, I, Martin W. Chow, Esq., certify that I served a copy of this Petition for a Writ of Habeas Corpus and an Order to Show Cause For a Preliminary Injunction and Temporary Restraining Order, upon the U.S. Attorney's Office, at the following address: U.S. Attorney's Office, 970 Broad Street, Suite 700, Newark, NJ 07102, by ecf and regular mail.

Dated: 10/02/2025

/s/ Martin W. Chow
Martin W. Chow, Esq. (MC2013)
Martin C. Liu & Associates, PLLC
135 Bowery, 4th Floor
New York, NY 10002
T: (212) 255-8833
F: (212) 226-0036