



UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WASHINGTON MURILLO-CASTILLO :
 :
 Petitioner, :
 :
 -against- :
 :
 JONATHAN FLORENTINO, ACTING NEWARK FIELD :
 OFFICE DIRECTOR, ENFORCEMENT AND REMOVAL :
 OPERATIONS, U.S. IMMIGRATION AND CUSTOMS :
 ENFORCEMENT (ICE); :
 :
 TODD LYONS, In His Official Capacity As :
 Acting Director, United States Immigration and :
 Customs Enforcement (ICE); :
 :
 KRISTI NOEM, IN HER OFFICIAL CAPACITY AS :
 SECRETARY OF THE UNITED STATES DEPARTMENT OF :
 HOMELAND SECURITY; :
 Respondents. :
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**PETITION FOR
WRIT OF HABEAS CORPUS**

Case No.

INTRODUCTION

1. Petitioner, Washington Murillo-Castillo (“Mr. Murillo-Castillo”), is a citizen and national of Ecuador.
2. Mr. Murillo-Castillo entered the United States on October 13, 2022, after he fled Ecuador due to 

3. Mr. Murillo-Castillo has been present in the United States for 3 years.
4. On or about October 13, 2022, Mr. Murillo-Castillo was encountered by Customs and Border Protection (“CBP”) in Laredo, Texas. After stating that he would be harmed if returned to Ecuador, he was processed and traveled to New Jersey.
5. Mr. Murillo-Castillo was not initially placed into removal proceedings.

6. Mr. Murillo-Castillo filed pro-se for asylum with the U.S. Citizenship and Immigration Services (“USCIS”) sometime in 2023. He was fingerprinted in connection with that application in 2024.
7. Despite living in the United States for over two year, Mr. Murillo-Castillo was made to undergo a credible fear interview on August 1, 2025, with USCIS in Newark, New Jersey.
8. On August 1, 2025, Mr. Murillo-Castillo was given a positive credible fear determination.
9. USCIS in Newark also issued Mr. Murillo-Castillo a Notice to Appear pursuant to 8 U.S.C. §1229(a), ordering him to appear at the Newark Immigration Court located at 970 Broad Street, Room 1200, in Newark, New Jersey on September 2, 2025.
10. Enforcement and Removal Operations (“ERO”) detained him on August 1, 2025, and he was taken to the Delaney Hall Detention Center in Newark, New Jersey.
11. He has been unlawfully detained there since August 1, 2025.
4. On July 8, 2025, DHS issued a new policy memorandum to all employees of Immigration and Customs Enforcement (Hereinafter “ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter “DOJ”), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” Memorandum, U.S. Immigration & Customs Enf’t, *Interim Guidance Regarding Detention Authority for Applications for*

Admission (July 8, 2025), available at AILA Doc. No. 25071607,

<https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1. Through his pending asylum application, Mr. Murillo-Castillo will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.
2. On October 7, 2025, Mr. Murillo-Castillo requested a custody re-determination from an immigration judge. However, it was denied as the immigration judge found it did not have jurisdiction to review his custody redetermination due to a new policy memo and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that everyone present in the United States who did not enter with a valid visa is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).
3. Petitioner's detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Rather, he should be detained pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for Mr. Murillo-Castillo when he was released in 2022.
4. Through this petition, Mr. Murillo-Castillo asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A), that his detention is appropriate under § 1226(a), which DHS initially processed him under, and immediately release Mr. Murillo-Castillo from custody in accordance with the initial custody determination made in 2022. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

JURISDICTION & VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*
6. Venue is proper because the Petitioner is detained at the Delaney Hall Detention Center, 451 Doremus Ave, Newark, New Jersey 07105 and now remains detained. *See* ICE Detainee Locator; *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, “[w]henver a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States,” he must file the petition in the district of confinement and name his immediate custodian as the respondent).

PARTIES

7. Petitioner Mr. Murillo-Castillo is a thirty-eight-year old citizen and national of Ecuador. He resides with his common-law wife and their two minor children at 194 N 15th Street, Bloomfield, New Jersey. He has been in ICE custody for over two months at the Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, New Jersey, 07105.
8. Respondent Jonathan Florentino is named in his official capacity as the Acting Director of the Newark, NJ Field Office of Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE). Respondent Florentino is a legal custodian of the Petitioner and has the authority to release him.
9. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of New Jersey, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times

relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

10. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

LEGAL BACKGROUND

10. Section 2241 of 28 United States Code provides in relevant part that “[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions” when a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).
11. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).
12. Habeas corpus “entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting, St. Cyr*, 533 U.S. at 302).

13. The Fifth Amendment’s Due Process Clause protects the right of all persons to be free from “depriv[ation] of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
14. “It is well established that the Fifth Amendment entitles aliens to due process of law[.]” *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).
15. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.
16. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post-final order detention.
17. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).
18. Following the enactment of the IIRIRA, the U.S. Department of Justice’s Executive Office of Immigration Review (“EOIR”) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or

paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).

19. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge (“IJ”), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

20. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

21. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with**

deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original).

22. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).” *Id.*
23. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS’s own forms.
24. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee “demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding.” 8 C.F.R. § 36.1(c)(8). “[T]he immigration judge is authorized to exercise the authority . . . to detain

the alien in custody, release the alien, and determine the amount of bond.” *Id.* § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will “be considered only upon a showing that the alien’s circumstances have changed materially.” *Id.* § 1003.19(e).

STATEMENT OF THE FACTS

25. Mr. Murillo-Castillo is a thirty-eight-year-old male with no criminal history.
26. On October 13, 2022, Mr. Murillo-Castillo entered the United States by presenting himself at the port of entry and requesting asylum. He gave a sworn statement and was released from custody.
27. Mr. Murillo-Castillo was authorized, in accordance with 8 U.S.C. § 1226, §236 of the Immigration and Nationality Act, for Release on Recognizance.
28. Sometime in 2023, Mr. Murillo-Castillo filed Form I-589, Application for Asylum and for Withholding of Removal with USCIS because he was not yet issued a Notice to Appear in the immigration court.
29. In the summer of 2025, instead of adjudicating Mr. Murillo-Castillo's Form I-589, USCIS dismissed it and required him to undergo a credible fear interview.
30. On August 1, 2025, Mr. Murillo-Castillo completed a credible fear interview in Newark, New Jersey. He was given a positive fear determination.
31. On August 1, 2025, ICE apprehended Mr. Murillo-Castillo after his credible fear determination. He was then transferred into ICE custody.
32. The officers did not disclose the basis for arresting or detaining Mr. Murillo-Castillo.
33. Mr. Murillo-Castillo requested a bond redetermination and the Newark Immigration Court.

34. On October 7, 2025, the Immigration Judge denied Mr. Murillo-Castillo's request for bond, holding that it did not have jurisdiction to grant bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

35. Mr. Murillo-Castillo's common law partner, and their two minor children are dependent on him.

36. Without relief from this Court, Mr. Murillo-Castillo faces continued detention without the possibility of an individualized bond hearing.

CLAIM FOR RELIEF

I. VIOLATION OF 8 U.S.C. § 1226(a) , UNLAWFUL DENIAL OF RELEASE ON BOND

37. Petitioner restates and realleges all paragraphs as if fully set forth here.

38. Mr. Murillo-Castillo was initially detained in October 2022. At that time, he was processed and released.

39. On August 1, 2025, about three years after arrival, Mr. Murillo-Castillo was required to undergo a credible fear interview. This is because USCIS dismissed his Form I-589, Application for Asylum. DHS subjected him to detention under § 1225, stating that he is subject to mandatory detention.

40. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

41. DHS has already made an initial custody determination under 8 U.S.C. § 1226(a) and ordered his release from detention.

42. Petitioner's continuing detention is therefore unlawful.

II. CONTINUED DETENTION CONSTITUTES A VIOLATION OF DUE PROCESS

43. Petitioner incorporates all factual allegations as though restated here.

44. ICE detained Mr. Murillo-Castillo without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.
45. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.
46. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.
47. Mr. Murillo-Castillo’s detention violates his Fifth Amendment rights for at least three related reasons.
48. First, immigration detention must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).
49. Whereas here, the government has ordered release on recognizance; detention is not reasonably related to its purpose.
50. Second, the Due Process Clause requires that any deprivation of Mr. Murillo-Castillo’s liberty be narrowly tailored to serve a compelling government interest. See *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”); *Demore*, 538 U.S. at 528 (applying less rigorous standard for “deportable aliens”).
51. Petitioner’s ongoing imprisonment does not satisfy that rigorous standard, as he did not commit any crime, was released from custody, and has a pending asylum case. If not for detention, his asylum case would be joined with his partner and children.

52. Third, “the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).
53. Detaining Mr. Murillo-Castillo was arbitrary because he had been initially processed for detention under § 1226, released on recognizance, has authorization to work in the United States, and has no criminal arrests or convictions.
54. Mr. Murillo-Castillo was initially detained under § 1226(a), but for a new policy memorandum now subjecting everyone present in the United States who entered without a valid visa to mandatory detention, he is deprived the Petitioner of an individualized bond determination.

PRAYER FOR RELIEF

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

- A. Assume jurisdiction over this matter;
- B. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;
- C. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;
- D. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment;
- E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
- F. Award reasonable attorney’s fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- G. Grant any further relief this Court deems just and proper.

Dated: October 18, 2025

Respectfully Submitted,

/s/ Veronica Cardenas
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