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Attorney for Petitioner

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

FRANKLIN OCHOA MOLINA,

Petitioner,

v.

LUIS SOTO,

**in his official capacity as Warden of
Delaney Hall Detention Facility;**

KRISTI NOEM,

**in her official capacity as Secretary, U.S.
Department of Homeland Security;**

TODD M. LYONS,

**in his official capacity as Acting Director of
Immigration & Customs Enforcement; and**

PAMELA BONDI,

**in her official capacity as Attorney General,
U.S. Department of Justice,**

Respondents.

Case No. 25-CV-16880

**VERIFIED PETITION
FOR WRIT OF HABEAS
CORPUS PURSUANT TO
28 U.S.C. § 2241**

Petitioner, Franklin Ochoa Molina (“Mr. Ochoa Molina”) is a twenty-three-year-old who petitions for a writ of habeas corpus under 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement (“ICE”). Mr. Ochoa Molina is

married to a U.S. citizen, has a 6 year-old U.S. citizen son, and is in the process of applying for permanent residency. On October 8, 2025, ICE detained him during a street stop without an individualized assessment that he posed a flight risk or a danger to the community and, therefore, without due process. Since then, he has remained detained without the ability to present himself at a bond hearing. He therefore seeks immediate release from custody, or, in the alternative, the opportunity for a bond hearing.

STATEMENT OF FACTS

1. Mr. Ochoa Molina legally entered the United States December 24, 2017, as a 16 year-old, with his mother, pursuant to the Visa Waiver Program. He has not left the United States since then.
2. Mr. Ochoa Molina is married to a U.S. citizen and has a U.S. citizen 6-year old son.
3. Mr. Ochoa Molina is in the process of applying for permanent residency based on his U.S. citizen wife's petition, which remains pending.
4. Mr. Ochoa Molina has no criminal history.
5. On October 8, 2025, ICE detained Mr. Ochoa Molina during a street stop without an individualized assessment that he posed a flight risk or a danger to the community and, therefore, without due process. Since then, he has remained detained without the ability to present himself at a bond hearing.
6. As of the date of this habeas corpus filing, Mr. Ochoa Molina is being detained at the Delaney Hall Detention Facility, in Newark, New Jersey.

PARTIES

7. Petitioner Mr. Ochoa Molina is a resident of Pennsylvania who normally resides at



8. Respondent Luis Soto is the warden of Delaney Hall Detention Facility, where Petitioner is presently located, and is therefore the immediate legal custodian of Mr. Ochoa Molina. He is sued in his official capacity.
9. Respondent Kristi Noem is named in her official capacity as the Secretary of DHS. In this capacity she is responsible for the administration of the immigration laws pursuant to Section 402 of the Homeland Security Act of 2002. 107 Pub. L. 296 (November 25, 2003); *see also* 8 U.S.C. § 1103(a); routinely transacts business in the District of New York; and is legally responsible for Mr. Ochoa Molina's incarceration and removal. She is therefore a custodian of Mr. Ochoa Molina. Respondent Noem's office is located at DHS headquarters in Washington, DC, 20528.
10. Respondent Todd M. Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to detaining and removing certain noncitizens. Director Lyons is a legal custodian of Mr. Ochoa Molina.
11. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. She is responsible for the administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of New Jersey, and is legally responsible for administering Mr. Ochoa Molina's removal proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Mr. Ochoa Molina. Respondent Bondi's office is at DHS of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530.

JURISDICTION AND VENUE

12. Respondents incarcerated Mr. Ochoa Molina on October 8, 2025, and he is under the direct control of Respondents and their agents.
13. This action arises under the Constitution of the United States, and the Immigration and Nationality Act (“INA”).
14. Federal courts have subject matter jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus) to determine whether people imprisoned in federal custody are held in violation of law. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001).
15. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 28 U.S.C. § 1346 (original jurisdiction); Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; and 28 U.S.C. §§ 2201-2202 (Declaratory Judgement Act).
16. Further, the Court has jurisdiction to grant injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, 1651, 2241, and the All Writs Act, 28 U.S.C. § 1651. Mr. Ochoa Molina’s detention constitutes a “severe restraint[] on his individual liberty” interest such that Mr. Ochoa Molina is “subject to restraints not shared by the public generally” and “in custody in violation of the . . . laws . . . of the United States.” *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).
17. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

18. Venue properly lies in the District of New Jersey. 28 U.S.C. §§ 1391(b)(2), (e). This petition is filed while Mr. Ochoa Molina is physically present within the district, as he is incarcerated in Newark, NJ.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Exhaustion is not necessary because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus exhaust administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (“Where Congress specifically mandates, exhaustion is required... But where Congress has not clearly required exhaustion, sound judicial discretion governs.”) (citation omitted).
20. Further, exhaustion of remedies is unnecessary if futile. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.) (as amended) (judicial exhaustion may be excused when “available remedies provide no genuine opportunity for adequate relief” or exhaustion “would be futile”). Here, exhaustion would be futile because the Board of Immigration Appeals, in the precedential decision of *Matter of A-W-*, 25 I&N Dec. 45, 47-48 (BIA 2009) (“*Matter of A-W-*”), held that a non-citizen admitted to the United States pursuant to the Visa Waiver Program who has not been served with a Notice to Appear pursuant to 8 C.F.R. Part 1240 is not entitled to a custody hearing before an Immigration Judge.
21. Finally, even if meaningful administrative remedies were promptly available, Mr. Ochoa Molina, as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust those remedies under 8 U.S.C. § 2241. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010).

ARGUMENT

COUNT ONE

FIFTH AMENDMENT – DUE PROCESS

DENIAL OF OPPORTUNITY TO CHALLENGE CONTINUED DETENTION

22. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
23. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
24. Procedural due process requires that the government be constrained before it acts in a way that deprives individuals of liberty interests protected under the Due Process Clause of the Fifth Amendment.
25. Mr. Ochoa Molina is indisputably entitled to the protections of the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”). Mr. Ochoa Molina has lived in the United States continuously since 2016 and has significant ties to this country.
26. Respondents have deprived Mr. Ochoa Molina of his liberty interest protected by the Fifth Amendment by detaining him since October 8, 2025, without any hearing to determine whether his ongoing detention is justified.
27. To the extent that Respondents claim that Mr. Ochoa Molina is precluded from challenging his detention because of the operation of the Visa Waiver Program, DHS’s interpretation of the law is incorrect. Numerous federal district courts, including at

least four from this District, have rejected the rationale of *Matter of A-W-*, and have instead ruled that Visa Waiver Program overstays are entitled to bond hearings pursuant to 8 USC § 1226(a). *See Romance v. Warden York County Prison*, 3:20-cv-00760 (JFS), 2020 WL 6054933 at *4 (M.D. Pa. July 28, 2020) (finding [8 U.S.C. § 1226\(a\)](#) governs the detention of VWP violators who made an entry into the United States and have not been convicted of a crime which would give rise to mandatory detention); *Gjergj G. v. Edwards*, No. 19-5059 (SDW), 2019 WL 1254561, at *2 (D.N.J. March 18, 2019) (same); *Emila N. v. Ahrendt*, No. 19-5060 (SDW), 2019 WL 1123227, at *3 (D.N.J. March 12, 2019) (same); *Szentkiralyi v. Ahrendt*, No. 17-1889 (SDW), 2017 WL 3477739, at *3-*5 (D.N.J. Aug 14, 2017) (same); *Sutaj v. Rodriguez*, 16-5092 (JMV), 2017 WL 66386, at *5 (D.N.J. Jan. 5, 2017) (same). *See also Neziri v. Johnson*, 187 F. Supp. 3d 211, 213 (D. Mass 2016) (“Defendants ask the court to defer to the BIA's decision in [Matter of A–W–, 25 I. & N. Dec. 45 \(BIA 2009\)](#), where the BIA held that an Immigration Judge did not have jurisdiction to re-determine the conditions of custody of an alien admitted pursuant to the Visa Waiver Program Here, [8 U.S.C. § 1226](#) explicitly provides for detention and release of aliens during their removal proceedings. Although the relevant statutory sections refer to the Attorney General’s authority, the Homeland Security Act of 2002 . . . transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. Accordingly, Congress has directly spoken to the precise question at issue, giving the Secretary of Homeland Security the authority to detain and release aliens under [8 U.S.C. § 1226](#). The regulations implementing [8 U.S.C. § 1226\(a\)](#) provide for a bail hearing for a detained

alien in front of an Immigration Judge. 8 C.F.R. § 1236.1(d).”) (citation omitted) (*dicta*).

28. Respondents’ actions in detaining Mr. Ochoa Molina without any procedure to contest his ongoing unlawful detention violate the Fifth Amendment.

COUNT TWO
FIFTH AMENDMENT – SUBSTANTIVE DUE PROCESS

29. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

30. Petitioners’ continued detention of Mr. Ochoa Molina violates his right to substantive due process protected by the Fifth Amendment.

31. “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. Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a “sufficiently strong special justification” to outweigh the significant deprivation of liberty. *Id.*

32. Mr. Ochoa Molina should not be detained. He is neither a flight risk, nor a risk to public safety or national security. Accordingly, Respondents cannot show any valid justification—let alone a “sufficiently strong special justification”—for depriving Mr. Ochoa Molina of his fundamental rights.

33. For all of the foregoing reasons, Mr. Ochoa Molina’ continued detention is in violation of his substantive due process rights.

COUNT THREE
ADMINISTRATIVE PROCEDURE ACT

34. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
35. The Administrative Procedure Act (“APA”) provides a right to sue when an individual has been “aggrieved” by a “final agency action for which there is no other adequate remedy in court.” 5 U.S.C. § 704.
36. Respondents have violated procedural and substantive requirements of the Fifth Amendment and the Immigration and Nationality Act by detaining and seeking to deport Mr. Ochoa Molina on the basis of an alleged waiver of rights that Mr. Ochoa Molina, as a minor, could not have knowingly and voluntarily executed.
37. Respondent DHS’ actions in detaining and seeking to remove Mr. Ochoa Molina were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A)-(D).

PRAYER FOR RELIEF

WHEREFORE, Mr. Ochoa Molina prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Enjoin Respondents from transferring Mr. Ochoa Molina outside of the jurisdiction of the District of New Jersey pending the resolution of this case;
- 3) Issue a writ of habeas corpus directing Respondents to provide his immediate release from custody, or, in the alternative, a bond hearing.

- 4) Award Mr. Ochoa Molina attorney's fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 5) Grant any other and further relief that this Court deems just and proper.

Dated: October 23, 2025

Respectfully submitted,

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Attorney for Petitioner

VERIFICATION

I, /s/ Michael Z. Goldman, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: October 23, 2025

CERTIFICATE OF SERVICE

I, Michael Z. Goldman, certify that on October 23, 2025, I electronically filed the attached the foregoing Petition for Habeas Corpus with the Clerk of the Court for the United States District Court for the District of New Jersey using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Michael Goldman

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