

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

ALEXIS J. DIAZ :
RUDECINDO :

Petitioner, :

-against- :

JONATHAN FLORENTINO, ACTING NEWARK FIELD :
OFFICE DIRECTOR, ENFORCEMENT AND REMOVAL :
OPERATIONS, U.S. IMMIGRATION AND CUSTOMS :
ENFORCEMENT (ICE); :

**PETITION FOR
WRIT OF HABEAS CORPUS**

TODD LYONS, ACTING DIRECTOR, U.S. IMMIGRATION :
AND CUSTOMS ENFORCEMENT (ICE); :

Case No.

KRISTI NOEM, IN HER OFFICIAL CAPACITY AS :
SECRETARY OF THE UNITED STATES DEPARTMENT OF :
HOMELAND SECURITY; :

Respondents. :

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INTRODUCTION

1. Petitioner, Alexis Jonathan Diaz Rudecindo (“Mr. Diaz Rudecindo”), is a national of the Dominican Republic.
2. Mr. Diaz Rudecindo entered the United States on November 26, 2022, after he fled the Dominican Republic due to harm suffered.
3. Mr. Diaz Rudecindo has been present in the United States for about three years.
4. On or about November 26, 2022, Mr. Diaz Rudecindo was encountered by Customs and Border Protection (“CBP”) in San Luis, Arizona. He was arrested and detained.
5. On November 27, 2022, Mr. Diaz Rudecindo was issued a humanitarian parole pursuant to 8 U.S.C §1182(d)(5), section 212(d)(5) of the Immigration and Nationality Act (“INA”).
6. Mr. Diaz Rudecindo was also issued a Form I-94, affirming his admission as a parolee, with an issuance date of November 26, 2022.
7. Mr. Diaz Rudecindo was not placed into removal proceedings. He filed Form I-589, Application for Asylum with the U.S. Citizenship and Immigration Services (“USCIS”) on November 20, 2023.
8. Despite living in the United States for about three years, and despite having been issued humanitarian parole in 2022, Mr. Diaz Rudecindo was arrested pursuant to section 8 U.S.C. § 1225(b).
9. Mr. Diaz Rudecindo went to a routine Immigration and Customs Enforcement (“ICE”) check in at 26 Federal Plaza in New York City on October 24, 2025. Despite having a pending Form I-589 with USCIS, work authorization, and medical issues, ICE detained him.
10. Based on information and belief, Mr. Diaz Rudecindo was transferred from New

York to New Jersey. Although the ICE locator still shows zero results for Mr. Diaz Rudecindo, counsel was able to speak to Mr. Diaz Rudecindo on October 27, 2025, who stated that he was in New Jersey. Further, counsel communicated with ICE-ERO in New York, who stated that they believed Mr. Diaz Rudecindo was within ICE-Newark's area of responsibility.

11. Mr. Diaz Rudecindo has been unlawfully detained in New Jersey since October 24, 2025.
12. Expedited removal is an extraordinary procedure that allows removal from the United States with little to no due process. While expedited removal has historically been used only for people in the process of seeking admission at a port of entry or for people encountered in the country a short time after entry and within 100 miles of a land border who had "not been admitted or paroled into the United States," on January 21, the administration decided to expand the scope of expedited removal to include individuals throughout the United States who have been continuously present here for less than two years.
13. Once apprehended on October 24, 2025, ICE-ERO in New York issued Mr. Diaz Rudecindo a Notice to Appear dated October 24, 2025. The Notice to Appear, pursuant to 8 U.S.C. § 1229(a), charges Mr. Diaz Rudecindo as someone who has not been admitted or paroled, who entered the United States without "admission or parole," under section 8 U.S.C. § 1182.
14. Although the NTA orders Mr. Diaz Rudecindo to appear at the Immigration Court in Varick, New Jersey, Mr. Diaz Rudecindo is no longer in New York's area of responsibility.
15. 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>.

16. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act (“INA”). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who had lived in the U.S. for many years and were apprehended by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges (“IJs”). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has no opportunity for release on bond while his removal proceedings are pending.
17. Through his pending asylum application, Mr. Diaz Rudecindo will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.
18. 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. Diaz Rudecindo when he was released in 2022.

19. Through this petition, Mr. Diaz Rudecindo 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

20. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 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.
21. 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., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

22. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).
23. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an OSC 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.*
24. Petitioner is “in custody” for the purpose of § 2241 because he was arrested and remains detained by Respondents.

VENUE

25. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the District of New Jersey. Petitioner is under the jurisdiction of ICE’s Newark Field Office, and he is currently detained in New Jersey. See Exhibit A.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

27. It would be futile for Petitioner to seek a custody redetermination hearing before an IJ because of the BIA recent decision holding that anyone who has entered the U.S. without inspection is now considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA’s decision in *Yajure Hurtado* renders exhaustion futile).

28. Additionally, the agency does not have jurisdiction to review Petitioner’s claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to review” constitutional claims).

29. Further, the Third Circuit excuses exhaustion where “administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury.” *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (citation omitted); *see also*

Woodall v. Fed. Bureau of Prisons, No. 05-1542, 2005 WL 1705777, at *5-6 (D.N.J. July 20, 2005), aff'd, 432 F.3d 235 (3d Cir. 2005) (excusing administrative exhaustion in case brought pursuant to 28 U.S.C. § 2241).

PARTIES

30. Petitioner Mr. Diaz Rudecindo is a thirty-four-year old citizen of the Dominican Republic. He has been in ICE custody since October 24, 2025, and is currently detained within ICE-Newark's area of responsibility in New Jersey.
31. 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.
32. 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.
33. 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

34. 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).
35. 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).
36. 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).
37. 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
38. “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)).
39. “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.
40. 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.

41. 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).
42. 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”).
43. Thus, the INA distinguishes between non-citizens seeking entry into the United States and those “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). 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)).

44. Section 1225(b)(1) provides for mandatory detention of non-citizens subject to its provisions—that is, a non-citizen “arriving in the United States” who seeks to apply for admission. Applicants who indicate a fear of persecution if returned to their country of origin “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” § 1225(b)(1)(B)(iii)(IV). Applicants who do demonstrate a credible fear “shall be detained for further consideration of the application for asylum.” § 1225(b)(1)(B)(ii). Detention is “mandate[d] . . . throughout the completion of applicable proceedings and not just until the moment those proceedings begin.” *Jennings*, 583 U.S. at 302. Under the statute, applicants are not entitled to a bond hearing. *See id.* at 301.
45. There are limited exceptions to mandatory detention under § 1225. *Jennings*, 583 U.S. at 301. Applicants detained under § 1225 may be paroled into the country “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” *See* 8 U.S.C. § 1182(d)(5)(A). That “authority is not unbounded,” and “under the APA, DHS’s exercise of discretion within that statutory framework must be reasonable and reasonably explained.” *Biden v. Texas*, 597 U.S. 785, 806-07 (2022).
46. Parole under § 1182(d)(5)(A) does not affect an alien’s statutory or constitutional rights, as it “shall not be regarded as an admission of the alien.” § 1182(d)(5)(A). Such parole “employs a legal fiction whereby non-citizens are physically permitted to enter the country but are nonetheless ‘treated,’ for legal purposes, ‘as if stopped at the border.’” *Martinez v. Hyde*, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025) (quoting *Thuraissigiam*, 591 U.S. at 139).
47. In contrast, § 1226(a) governs the detention of non-citizens “already present in the United

States.” *Jennings*, 583 U.S. at 303. It includes non-citizens who have never been legally admitted. *See id.* at 287 (explaining that § 1226(a) governs “aliens who were inadmissible at the time of entry.” (citing 8 U.S.C. § 1227(a)). Under that provision, the Attorney General has the discretion to arrest and detain a non-citizen “[o]n a warrant . . . pending a decision on whether the alien is to be removed.” § 1226(a). The detainee may be released on bond or conditional parole, § 1226(a)(2), except if certain enumerated categories (not applicable here) apply, § 1226(c). Federal regulation further requires that § 1226(a) detainees “receive bond hearings at the outset of detention.” *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

48. 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).

49. As a result, according to DHS, all noncitizens who have entered the United States, including those who were issued humanitarian and conditional parole, are subject to the grounds of inadmissibility, including long-time U.S. residents, and are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS, “[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.*
50. 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 a humanitarian parole.
51. 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).
52. Furthermore, § 1225(b)(2) specifically applies only to those “seeking admission,” and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are “coming or attempting to come into the United States.” The use of the present progressive tense would

exclude noncitizens like Petitioner who are apprehended in the interior years after they entered, as they are no longer “seeking admission” or “coming [...] into the United States.” *See Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496, at *4 (D.N.J. Sept. 26, 2025)(describing Respondents’ change in statutory interpretation); *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in INA § 235(b)(1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

STATEMENT OF THE FACTS

53. Mr. Diaz Rudecindo is a forty-nine-year-old male with no criminal history. He is a native and citizen of the Dominican Republic.
54. On November 26, 2022, Mr. Diaz Rudecindo entered the United States by presenting himself at the San Luis, Arizona port of entry. He was released from custody under § 1182(d)(5)(A) parole on November 27, 2022.
55. On November 19, 2023, Mr. Diaz Rudecindo filed Form I-589, Application for Asylum and for Withholding of Removal, with USCIS because he had not been issued a Notice to Appear in the immigration court.
56. On October 9, 2025, Mr. Diaz Rudecindo appeared for an ICE check in at 970 Broad Street in Newark, NJ. He was told that because he had moved to New York, that he was to appear at 26 Federal Plaza, New York, NY.
57. On October 24, 2025, Mr. Diaz Rudecindo appeared at 26 Federal Plaza for his check in. He was

arrested ICE and processed under 8 U.S.C. § 1225(b)(1).

58. Mr. Diaz Rudecindo presented a lawful work authorization and driver's license.

He was nonetheless arrested, detained, and transferred into ICE custody.

59. Without relief from this Court, Mr. Diaz Rudecindo faces continued detention and under 8 U.S.C. § 1225(b) without the possibility of an individualized bond hearing.

CLAIM FOR RELIEF

COUNT I

Violation Of 8 U.S.C. § 1226(A) , Unlawful Denial Of Release On Bond

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

61. In November 2022, Mr. Diaz Rudecindo initially presented himself for inspection upon entry. CBP arrested and detained him. On November 27, 2022, Mr. Diaz Rudecindo was issued a humanitarian parole and was released from immigration custody.

62. Because DHS previously exercised its statutory parole authority under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), and issued Petitioner an I-94 reflecting parole, the government lacks authority to detain him under § 1225(b)'s mandatory provisions. Congress expressly limited expedited removal to arriving aliens in inspection and to certain noncitizens "who have not been admitted or paroled." 8 U.S.C. § 225(b)(1)(A)(iii)(II).

63. Petitioner's parole therefore removes him from § 1225(b), and any custody must proceed, if at all, under § 1226(a).

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

65. Petitioner's continuing detention is therefore unlawful.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

66. Petitioner restates and realleges all paragraphs as if fully set forth here.
67. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.
68. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Continued Detention Constitutes A Violation Of Due Process

69. Petitioner incorporates all factual allegations as though restated here.
70. ICE detained Mr. Diaz Rudecindo without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.
71. 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.
72. “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.

73. Mr. Diaz Rudecindo’s detention violates his Fifth Amendment rights for at least three related reasons.

74. 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).

75. Whereas here, the government has ordered humanitarian parole to apply for asylum, in which the Petitioner did, detention is not reasonably related to its purpose.

76. Second, the Due Process Clause requires that any deprivation of Petitioner’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”).

77. Petitioner’s ongoing imprisonment does not satisfy that rigorous standard as he did not commit any crime, was released from custody with a humanitarian parole, and had a pending asylum that remains pending.

78. 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).

79. Detaining Mr. Diaz Rudecindo was arbitrary because he had initially been issued a humanitarian parole, has authorization to work in the United States, and has no criminal arrests or convictions.

PRAYER FOR RELIEF

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

- A. Assume jurisdiction over this matter;
- B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within seventy-two hours;
- C. Declare that his detention is unlawful;
- D. Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- E. Issue an Order preventing Respondents from removing Petitioner outside of the district of New Jersey and outside the United States without notice and an opportunity to be heard;
- F. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
- G. 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
- H. Grant any further relief this Court deems just and proper.

Dated: October 27, 2025

Respectfully Submitted,

/s/ Veronica Cardenas

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

I, Veronica Cardenas, hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 27 day of October, 2025.

s/Veronica Cardenas

Veronica Cardenas, Esq.