


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

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Dipeshkumar Rameshchandra PATEL (A#  -X  
*Petitioner,*  
v.  
John TSOUKARIS, in his official capacity as Newark, NJ  
Field Office Director, Immigration and Customs  
Enforcement, Enforcement and Removal Operations;  
Luis SOTO, in his official capacity as Director, Delaney  
Hall Detention Facility;  
Kristi NOEM, in her official capacity  
as United States Secretary of Homeland Security; and  
Pamela BONDI, in her official capacity as United States  
Attorney General,  
*Respondents.*

Case No. 25-16951

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

1. Petitioner, Dipeshkumar Rameshchandra Patel (“Petitioner” or “Mr. Patel”), by his undersigned counsel, respectfully petitions this Honorable Court to order Respondents to release him from his unlawful confinement in the Delaney Hall Detention Facility, where he is currently confined. Mr. Patel is being held without bond pursuant to an erroneous legal theory set out in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), regarding purportedly mandatory detention of aliens who have lived in the United States for many years but were never inspected and admitted, that has already been rejected by several judges in this District and many other judges of many other District Courts across the United States. In support of this Petition, Petitioner alleges as follows:

## **JURISDICTION**

2. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 and Art. 1, § 9, Cl. 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is subject to immediate detention and custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws or treaties of the United States.
3. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) which provides, “(t)he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises pursuant to the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, in conjunction with the Administrative Procedures Act (“APA”), 5 U.S.C. § 701 *et seq.*, and the regulations implemented pursuant thereto (Title 8 of the Code of Federal Regulations (“C.F.R.”)).
4. This Court may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
5. To the extent that any portion of 8 U.S.C. § 1252 would preclude the exercise of jurisdiction under the above statutory provisions, it would be unconstitutional as applied to Petitioner, because it would violate the Suspension Clause and Petitioner’s right under the Fifth Amendment to the U.S. Constitution not to be deprived of liberty without due process of law.

## **VENUE**

6. Venue is proper in this District because, at the time this petition is being filed, Petitioner is, on information and belief, detained in the Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, NJ 07105, within this District; because Respondent

Soto, in his official capacity as director of the Delaney Hall Detention Facility, is located within this District; and because Respondent Tsoukaris, in his official capacity as Director of the Newark, New Jersey Field Office of ICE Enforcement and Removal Operations (“ERO”), at whose direction Respondent is confined in the Delaney Hall Detention Facility, is located within this District.

**PARTIES**

7. Petitioner, Dipeshkumar Rameshchandra Patel, is a native and citizen of India. He is in removal proceedings before an Immigration Judge and has a pending Form EOIR-42B application for cancellation of removal and adjustment of status for certain nonpermanent residents under 8 U.S.C. § 1229b(b). As of October 23, 2025, when the undersigned last spoke with him, he was confined in the Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, NJ 07105, a facility operated by Respondent Soto, at the direction of the Newark, New Jersey ERO Field Office and Respondent Tsoukaris, and on information and belief, he remains confined in that same facility at the direction of those same respondents. (His records oddly seem to have temporarily disappeared from the ICE Detainee Locator system as of the approximate time of this filing, but that system does not report him as being located anywhere other than the Delaney Hall Detention Facility.)
8. Respondent John Tsoukaris is, on information and belief, the Field Office Director of the Newark, New Jersey Field Office of ICE ERO, located at 970 Broad Street, 11th Floor, Newark, NJ 07102. We would submit that he is currently the immediate custodian of Petitioner, because he is the official with the authority to direct the release of Petitioner. On information and belief, he will retain the authority to direct the release of Petitioner even if and after Petitioner is transferred to a detention facility other than Delaney Hall.

9. Respondent Luis Soto is, on information and belief, the Director of the Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, NJ 07105. He is, in the alternative, arguably the immediate custodian of Petitioner.
10. Respondent Kristi Noem is the United States Secretary of Homeland Security. She is responsible for the administration of the Department of Homeland Security (“DHS”) and the implementation and enforcement of the immigration laws of the United States. In that capacity, she oversees ICE ERO and is the indirect custodian of Petitioner.
11. Respondent Pamela Bondi is the United States Attorney General. She is responsible for the administration of the Department of Justice (“DOJ”) and its component the Executive Office for Immigration Review (“EOIR”). In this capacity, she oversees the Immigration Judge who determined that Petitioner was not eligible for bond because of *Matter of Yajure Hurtado*.

**V. FACTUAL AND PROCEDURAL BACKGROUND**

12. Mr. Patel entered the United States from Canada in 1999, more than a quarter-century ago. He was not inspected and admitted or paroled.
13. Mr. Patel’s children, M [REDACTED] and P [REDACTED] are U.S. citizens, as are his parents, Gitaben Patel and Rameshchandra Kalidas Patel. Copies of Mr. Patel’s children’s birth certificates are annexed as **Exhibit A**, and copies of Mr. Patel’s parents’ U.S. passport biographical pages are annexed as **Exhibit B**.
14. On August 19, 2025, Mr. Patel was arrested on a charge of contempt for allegedly violating a domestic violence restraining order, pursuant to N.J. 2C:29-9B(2). On September 9, 2025, the complaint was dismissed with immediate expungement, as documented by the disposition order at **Exhibit C**. On information and belief, the

dismissal and expungement occurred after the prosecutor became convinced that the factual allegations underlying the complaint were inaccurate and could be proven by video footage to be inaccurate.

15. Upon Mr. Patel's release from the criminal custody relating to the ultimately dismissed charges against him, he was detained by DHS personnel and a Notice to Appear ("NTA") dated August 19, 2025, was issued against him. A copy of the NTA is annexed as **Exhibit D** hereto.

16. The NTA charged Mr. Patel as inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), that is, 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I).

17. On September 9, 2025, the Board of Immigration Appeals ("BIA) held in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), that "just as Immigration Judges have no authority to redetermine the custody of arriving aliens who present themselves at a port of entry, they likewise have no authority to redetermine the custody conditions of an alien who crossed the border unlawfully without inspection, even if that alien has avoided apprehension for more than 2 years." *Matter of Yajure Hurtado*, 29 I&N Dec. at 228.

18. Mr. Patel sought release on bond from an immigration judge, but on September 11, 2025, Immigration Judge Shana Chen issued an order indicating that Mr. Patel had "entered without inspection and [was] therefore ineligible for bond redetermination under *Matter of Hurtado*." A copy of the order is annexed as **Exhibit E**.

19. Mr. Patel remains detained by DHS in the Delaney Hall Detention Facility, never having had the necessity of his detention determined by an Immigration Judge unconstrained by *Matter of Yajure Hurtado* or by any other neutral decisionmaker.

20. This Petition is filed to seek relief from Mr. Patel’s unlawful detention by DHS.

21. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. § 2243 (Order to show cause why a petition for a writ of habeas corpus should not be granted should be “returned within three days unless for good cause additional time, not exceeding twenty days, is allowed”).

## VI. CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

#### **(Violation of 8 U.S.C. § 1226(a)(2) and Erroneous Reliance on 8 U.S.C. § 1225(b)(2)(A) – Statutory Right to Consideration of Release on Bond )**

22. Petitioner restates and realleges the allegations contained in paragraphs 1 through 21 as though fully contained herein.

23. Section 236(a) of the INA, 8 U.S.C. § 1226(a), provides in relevant part:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole;

8 U.S.C. § 1226(a).

24. Petitioner is not subject to 8 U.S.C. § 1226(c), which provides for mandatory detention of noncitizens with certain criminal convictions.

25. Section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), relied upon heavily by

*Matter of Yajure Hurtado*, provides: “[I]n the case of an alien who is an applicant for

admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A).

26. Petitioner is not subject to 8 U.S.C. § 1225(b)(2)(A), as he is not an arriving alien seeking admission, despite his long-ago entry into the United States without inspection.

27. The provisions of 8 U.S.C. § 1226(c), specifically 8 U.S.C. § 1226(c)(1)(E), specifically contemplate that some aliens inadmissible under 8 U.S.C. § 1182(a)(6)(A), that is, for being present in the United States without admission or parole or arriving at a time and place other than designated by the Attorney General, will be eligible for bond under 8 U.S.C. § 1226(a) unless excluded from it due to their record of certain criminal convictions, charges, or arrests. The BIA’s position that INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), applies to those present without admission would render superfluous these portions of INA § 236(c).

28. Petitioner is not subject to 8 U.S.C. § 1226(c)(1)(E), as he has not been convicted of any crime listed in that subsection and is not charged with any crime listed in that subsection. Indeed, the dismissed charge under N.J. 2C:29-9B(2) would not trigger 8 U.S.C. § 1226(c)(1)(E) even if it had remained pending, since it does not concern “any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,” 8 U.S.C. § 1226(c)(1)(E)(ii).

29. Petitioner is a noncitizen within the United States who has been “arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a).

30. Even if there is any ambiguity in the statute, “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).
31. By statute, Petitioner is entitled to consideration of release on bond or conditional parole pursuant to 8 U.S.C. § 1226(a)(2).
32. Petitioner’s detention without consideration of such release on bond or conditional parole, pursuant to *Matter of Yajure Hurtado*, violates 8 U.S.C. § 1226(a)(2) and relies on a misinterpretation of 8 U.S.C. § 1225, as courts in this District and across the United States have already concluded under analogous circumstances. *See, e.g., De Fatima Lomeu v. Soto*, No. 25cv16589 (EP) (D.N.J. Oct. 23, 2025) (Padin, U.S.D.J.), at \*4-\*8; *Bethancourt Soto v. Soto*, No. 25-cv-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025) (O’Hearn, U.S.D.J.), at \*2-\*7; *Macancela Buestan v. Chu*, Civil Action No. 25-16034 (MEF), 2025 WL 2972252 (D.N.J. Oct. 21, 2025) (Fabiarz, U.S.D.J.), at \*1; *Castillo v. Lyons*, No. 25-cv-16219 (MEF), 2025 WL 2940990 (D.N.J. Oct. 10, 2025) (Fabiarz, U.S.D.J.), at \*1; *Zumba v. Bondi*, Civ. No. 25-cv-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, U.S.D.J.), at \*5-\*9; *Puga v. Ass’t Field Office Dir., Krome North Svc. Processing Ctr.*, CASE NO. 25-24535-CIV-ALTONAGA, 2025 WL 2938369 (S.D. Fla Oct. 15, 2025), at \*3-\*5; *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025), at \*5-\*8; *Chavez v. Kaiser*, Case No. 25-cv-06984-LB, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025), at \*4-\*5; *Buenrostro-Mendez v. Bondi*, Civil Action No. H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025), at \*3; *Hyppolite v. Noem*, 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025), at \*7-\*12; *Lepe v.*

*Andrews*, \_\_\_ F.Supp.3d \_\_\_, , No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910 (E.D.Cal. Sept. 23, 2025), at \*3-\*7; *Chogllo Chafila v. Scott*, 2:25-cv-00437-SDN, 2:25-cv-00438-SDN, 2:25-00439-SDN, 2025 WL 2688541 (D. Me. Sept. 22, 2025), at \*5-\*9; *Barrera v. Tindall*, Civil Action No. 3:25-cv-541-RGJ, 2025 WL 2690565 (W.D.Ky. Sept. 19, 2025), at \*2-\*5; *Sampaio v. Hyde*, No. 1:25-cv-11981-JFK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025), at \*8 n.11; *Pizarro Reyes v. Raycraft*, Case No. 25-cv-12546, 2025 WL 2609245 (E.D. Mich. Sept. 9, 2025), at \*4-\*8.

## SECOND CLAIM FOR RELIEF

### **(Violation of *Accardi* Doctrine – Failure to Abide by Governing Regulations)**

33. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 21 as though fully set forth herein.
34. Respondents' detention of Petitioner without bond relies in part on the claim made in *Matter of Yajure Hurtado* that a noncitizen in Petitioner's position is subject to mandatory detention under 8 C.F.R. § 235.3(b)(1)(ii).
35. In actuality, 8 C.F.R. § 235.3(b)(1)(ii) applies only to certain aliens subjected to expedited removal proceedings under INA § 235, 8 U.S.C. § 1225, on the basis that they "have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility." 8 C.F.R. § 235.3(b)(1)(ii). This description cannot reasonably apply to Petitioner, who has been living in the United States continuously for more than 30 years and is not in expedited removal proceedings.

36. The relevant regulatory exclusion from an Immigration Judge's authority to grant bond is 8 C.F.R. § 1003.19(h)(2)(B), which applies to "Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act".
37. Petitioner was not charged as an arriving alien in his removal proceedings. The arriving alien designation is a separate option on the NTA (**Exhibit D**) that was not applied to Petitioner. (Oddly, no designation is checked on Petitioner's NTA at all.)
38. Petitioner could not properly have been charged as an arriving alien in his removal proceedings, because he had been present in the United States for over twenty-five years when his removal proceedings were initiated. He was not arriving in the United States at that time, under any sensible definition of the term, but rather had long since arrived.
39. Other regulations governing removal proceedings would have nonsensical and deeply troubling consequences if someone who was alleged to have entered the United States many years ago without inspection were treated as an arriving alien. "In the case of a respondent charged as being in the United States without being admitted or paroled, the Service must first establish the alienage of the respondent." 8 C.F.R. § 1240.8(c). The regulation governing arriving aliens places no such burden on the government, but rather states that "In proceedings commenced upon a respondent's arrival in the United States or after the revocation or expiration of parole, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged." 8 C.F.R. § 1240.8(b). A U.S. citizen arriving from outside the United States is required by law to have a passport or other equivalent document, *see* 8 U.S.C. § 1185(b), but no such requirement applies to a U.S. citizen inside the United States. If alleged entrants without inspection were treated as "arriving aliens", then the

burden could be placed on U.S. citizens within the United States, not required to have or carry documentation of their citizenship, to prove their citizenship on pain of removal.

40. For all of these reasons, no coherent interpretation of the existing regulations governing removal proceedings and release on bond would treat Petitioner and others like him as subject to mandatory detention.

41. Respondents are required to follow their agency's own regulations. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This is particularly so where failure to follow those regulations prejudices the party subject to them, or when the regulations were promulgated to protect fundamental statutory or constitution rights, both of which are the case here. *See Leslie v. Att'y Gen.*, 611 F.3d 171, 178 (3d Cir. 2010).

42. By following *Matter of Majure Hurtado* rather than following a reasonable interpretation of their own governing regulations, Respondents violate the *Accardi* doctrine.

### **THIRD CLAIM FOR RELIEF**

#### **(Deprivation of Liberty Without Due Process of Law – Fifth Amendment)**

43. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 21 as though fully set forth herein.

44. The Fifth Amendment to the Constitution of the United States provides that

“no person shall . . . be deprived of life, liberty, or property, without due process of law.”

45. Given his long residence in the United States, Petitioner is entitled to the protection of the Fifth Amendment's Due Process Clause. Indeed, “the Due Process Clause applied to all “persons” within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citing cases).

46. Petitioner is being detained without any true opportunity for a hearing before a neutral adjudicator to determine whether he should be temporarily released while his removal proceedings continue because he is neither a flight risk nor a danger to the community. His request for release on bond was denied by an IJ on the basis of his purported ineligibility under *Matter of Yajure Hurtado*, rather than the individual merits of his case.
47. Petitioner's continued detention under these circumstances constitutes deprivation of liberty without due process of law in violation of the Fifth Amendment. *See, e.g., Ballestros v. Noem*, Civil Action No. 325-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025), at \*4-\*5; *Hyppolite*, 2025 WL 2829511 at \*7-\*12; *Chiliquina Yumbillo v. Stamper*, 2025 WL 2783642 (D. Me, Sept. 30, 2025), at \*4.

#### VI. PRAYER FOR RELIEF

48. **WHEREFORE, Petitioner, Dipeshkumar Rameshchandra Patel, respectfully prays that the Court:**
- (a) Order that Respondents release Petitioner from custody, and not re-detain him until and unless he is provided with a bond hearing before an immigration judge not constrained by the legally erroneous rule of *Matter of Yajure Hurtado*;
  - (b) In the alternative, order Petitioner released from custody on a reasonable bond following a hearing before the Court;
  - (c) In the further alternative, order that Petitioner be provided with a bond hearing before an immigration judge not constrained by *Matter of Yajure Hurtado*, and that if no such hearing is provided within seven days of the Court's order, Respondents release Petitioner from custody;
  - (d) Grant such other and further relief at law and in equity as justice may require; and
  - (e) Grant attorney's fees and costs of Court to Petitioner under the Equal Access to Justice Act..

Respectfully submitted,

/s/ David A. Isaacson  
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**VERIFICATION**

David A. Isaacson, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

I represent the Petitioner in these habeas corpus proceedings. The Petitioner, Dipeshkumar Rameshchandra Patel, is being held in detention, on information and belief at the Delaney Hall Detention Facility, at the time of filing this Petition. Therefore, he has not been able to appear in my office to sign this Verification. I have discussed this matter with the Petitioner. I verify that the information contained in the Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, which is being submitted to the Court contemporaneously herewith, is true and correct to the best of my knowledge and belief.

David A. Isaacson  
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Dated: October 27, 2025