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

10	<b>PABLO MARTINEZ RON,</b>	)	<b>CASE NO. 25-17359</b>
11	Petitioner	)	
12	vs.	)	<b>PETITION FOR WRIT OF HABEAS</b>
13		)	<b>CORPUS UNDER 28 U.S.C. § 2241 AND</b>
14		)	<b>COMPLAINT FOR INJUNCTIVE</b>
15		)	<b>AND DECLARATORY RELIEF</b>
16	<b>TODD LYONS,</b> Acting Director,	)	
17	Immigration and Customs	)	
18	Enforcement, <b>KRISTI NOEM,</b>	)	
19	Secretary of United States	)	
20	Department of Homeland Security,	)	
21	<b>RUBEN PEREZ,</b> Immigration and	)	
22	Customs Enforcement, Newark	)	
23	Field Office Director, <b>LUIS SOTO,</b>	)	
24	Director, Delaney Hall Detention	)	
25	Facility, <b>PAMELA BONDI,</b> United	)	
	States Attorney General,	)	
		)	
	Respondents	)	
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**I. INTRODUCTION**

1. Petitioner Pablo Martinez Ron (“Mr. Martinez”) or (“Petitioner”) is in the physical custody of Respondents at the Delaney Hall Detention Center. He now faces unlawful detention because the Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) have wrongfully concluded Petitioner is subject to mandatory detention merely because he entered without inspection.
2. Petitioner entered the United States on or about December 13, 2023. Subsequently, Respondents commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights under 8 U.S.C. § 1229a.
3. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).
4. Based on this allegation in Petitioner’s removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Similarly, on September 5, 2025, the Board of Immigration Appeals (“BIA or Board”) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to

1 detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on  
2 bond.

3 6. Petitioner’s detention on this basis violates the plain language of the Immigration and  
4 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner  
5 who previously entered and are now residing in the United States. Instead, such  
6 individuals are subject to a different statute, § 1226(a), that allows for release on  
7 conditional parole or bond. That statute expressly applies to people who, like  
8 Petitioner, are charged as inadmissible for having entered the United States without  
9 inspection.

10 7. Respondents’ new legal interpretation is plainly contrary to the statutory framework  
11 and contrary to decades of agency practice applying § 1226(a) to people like  
12 Petitioner.

13 8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released on  
14 the same conditions as he was previously released without any additional condition.

15 9. Petitioner asks this Court to find that Respondents’ detention and transfer of  
16 Petitioner are arbitrary and capricious and in violation of the law, and to immediately  
17 issue an order preventing Petitioner’s transfer out of this district.  
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20 **II. JURISDICTION AND VENUE**

21 10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. §  
22 1331 (federal question), and Article I, section 9, clause 2 of the United States  
23 Constitution (the Suspension Clause).

24 11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment  
25 Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

1 12. Venue is proper in the District of New Jersey because Petitioner is currently detained  
2 at the Delaney Hall Detention Center in Newark, New Jersey under color of the  
3 authority of the United States, in violation of the Constitution, laws or treaties thereof.  
4 28 U.S.C. §§ 1391, 2241.

5 13. Venue is further proper because a substantial part of the events or omissions giving  
6 rise to Petitioner’s claims occurred in this District, where Petitioner is now in  
7 Respondent’s custody. 28 U.S.C. § 1391(e).

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9 **III. REQUIREMENTS OF 28 U.S.C. § 2243**

10 14. The Court must grant the petition for writ of habeas corpus or order Respondents to  
11 show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. §  
12 2243. If an order to show cause is issued, Respondents must file a return “within three  
13 days unless for good cause additional time, not exceeding twenty days, is allowed.”  
14 *Id.*

15 15. Habeas corpus is “perhaps the most important writ known to the constitutional law . .  
16 . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or  
17 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The  
18 application for the writ usurps the attention and displaces the calendar of the judge or  
19 justice who entertains it and receives prompt action from him within the four corners  
20 of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation  
21 omitted).  
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1 **IV. PARTIES**

2 16. Petitioner Pablo Martinez Ron was detained by ERO on October 29, 2025. He  
3 remains in immigration custody at the Delaney Hall Detention Center in Newark,  
4 New Jersey.

5 17. Respondent Todd Lyons is the Acting Director of Immigration and Customs  
6 Enforcement. He is named in his official capacity.

7 18. Respondent Kristi Noem is the Secretary of Homeland Security and is Petitioner's  
8 ultimate legal custodian. She is sued in her official capacity.

9 19. Respondent Ruben Perez is the Field Office Director for Enforcement and Removal  
10 Operations in ERO's Newark Field Office. He is one of Petitioner's legal custodians,  
11 and is sued in his official capacity.

12 20. Respondent Luis Soto is employed as the Director of the Delaney Hall Detention  
13 Center, where Petitioner is detained. He has immediate physical custody of Petitioner.  
14 He is sued in his official capacity.

15 21. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of  
16 the Department of Justice. She is one of Petitioner's legal custodians.

17 **V. LEGAL FRAMEWORK**

18 22. Immigration detention should not be used as a punishment and should only be used  
19 when, under an individualized determination, a noncitizen is a flight risk because they  
20 are unlikely to appear for immigration court or a danger to the community. *Zadvydas*  
21 *v. Davis*, 533 U.S. 678, 690 (2001).

22 23. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth  
23 Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

1 24. The Immigration and Nationality Act (“INA”) establishes various procedures through  
2 which individuals may be detained pending a decision on whether the noncitizen is to  
3 be removed. 8 U.S.C. § 1226(a).

4 25. Removal proceedings described in section 240 of the INA are used to determine  
5 whether individuals, such as Petitioner, should be removed from the United States.  
6 *See* 8 U.S.C. § 1229a.

7 26. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right  
8 to apply for asylum to individuals seeking safe haven in the United States. The  
9 purpose of the Refugee Act is to enforce the “historic policy of the United States to  
10 respond to the urgent needs of persons subject to persecution in their homelands.”  
11 Refugee Act of 1980, § 101(a), Pub.L. No. 96-212, 94 Stat. 102 (1980).

12 27. The “motivation for the enactment of the Refugee Act” was the United Nations  
13 Protocol Relating to the Status of Refugees, “to which the United States had been  
14 bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The  
15 Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national  
16 commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d  
17 1338, 1340 n.2 (9th Cir. 1985).

18 28. The Refugee Act established the right to apply for asylum in the United States and  
19 defines the standards for granting asylum. It is codified in various sections of the  
20 INA.  
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22 29. The INA gives the Attorney General or the Secretary of Homeland Security discretion  
23 to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that  
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1 definition, individuals generally are eligible for asylum if they have experienced past  
2 persecution or have a well-founded fear of future persecution on account of race,  
3 religion, nationality, membership in a particular social group, or political opinion and  
4 if they are unable or unwilling to return to and avail themselves of the protection of  
5 their homeland because of that persecution or fear. 8 U.S.C. § 1101(a)(42)(A).

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7 30. Although a grant of asylum may be discretionary, the right to apply for asylum is not.  
8 The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who  
9 is physically present in the United States or who arrives in the United States[.]” 8  
10 U.S.C. § 1158(a)(1).

11 31. Immigration detention is a form of civil confinement that “constitutes a significant  
12 deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441  
13 U.S. 418, 4253 (1979).

14 32. Custody determinations for individuals in 1229a removal proceedings are governed  
15 by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not  
16 present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533  
17 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

18 33. Custody determinations under § 1226(a) are individualized and based on the facts  
19 presented in those cases. Unlike § 1226(c), which can provide for categorical  
20 determinations for detention regardless of flight risk or safety risks, § 1226(a)  
21 requires a case-by-case review of the facts and circumstances.  
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24 34. Once a determination to release an individual from custody is made, the release order  
25 may be revisited when the facts or circumstances warrant revocation or

1 reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the  
2 Attorney General may take that individual back into custody by revoking the  
3 individual's release when the facts and circumstances warrant it.

4 35. Revocation and return to custody is authorized only based on the individualized facts  
5 and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are  
6 limited in nature and may only be made by certain authorized officials. 8 C.F.R. §  
7 1236.1(c)(9).

8 36. The INA prescribes three basic forms of detention for the vast majority of noncitizens  
9 in removal proceedings.

10 37. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
11 proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are  
12 generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§  
13 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or  
14 convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. §  
15 1226(c).

16 38. Second, the INA provides for mandatory detention of noncitizens subject to expedited  
17 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
18 referred to under § 1225(b)(2).

19 39. Last, the INA also provides for detention of noncitizens who have been ordered  
20 removed, including individuals in withholding-only proceedings, see 8 U.S.C. §  
21 1231(a)-(b).

22 40. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).  
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1 41. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
2 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,  
3 Pub. L. No. 104--208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-  
4 583, 3009-585. Section 1226(a) was most recently amended earlier this year by the  
5 Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

6 42. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
7 that, in general, people who entered the country without inspection were not  
8 considered detained under § 1225 and that they were instead detained under §  
9 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of  
10 Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312,  
11 10323 (Mar. 6, 1997).

12 43. Thus, in the decades that followed, most people who entered without inspection and  
13 were placed in standard removal proceedings received bond hearings, unless their  
14 criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That  
15 practice was consistent with many more decades of prior practice, in which  
16 noncitizens who were not deemed “arriving” were entitled to a custody hearing before  
17 an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No.  
18 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention  
19 authority previously found at § 1252(a)).  
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21 44. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
22 rejected well-established understanding of the statutory framework and reversed  
23 decades of practice.  
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1 45. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
2 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States  
3 without inspection shall now be subject to mandatory detention provision under §  
4 1225(b)(2)(A). See Ex. 2. The policy applies regardless of when a person is  
5 apprehended, and affects those who have resided in the United States for months,  
6 years, and even decades.

7  
8 46. On September 5, 2025, the Board adopted this same position in a published decision,  
9 *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the  
10 United States without admission or parole are subject to detention under §  
11 1225(b)(2)(A) and are ineligible for IJ bond hearings.

12 47. Since Respondents adopted their new policies, dozens of federal courts have rejected  
13 their new interpretation of the INA’s detention authorities. Courts have likewise  
14 rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as  
15 ICE.

16 48. Even before ICE or the Board introduced these nationwide policies, IJs in the  
17 Tacoma, Washington, immigration court stopped providing bond hearings for persons  
18 who entered the United States without inspection and who have since resided here.  
19 There, the U.S. District Court in the Western District of Washington found that such a  
20 reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to  
21 noncitizens who are not apprehended upon arrival to the *United States*. *Rodriguez*  
22 *Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).  
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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 49. Subsequently, court after court has adopted the same reading of the INA's detention  
2 authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,  
3 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez*  
4 *v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass.  
5 July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL  
6 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-  
7 02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez*  
8 *v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025);  
9 *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn.  
10 Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx),  
11 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,  
12 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373  
13 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No.  
14 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v.*  
15 *Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak*  
16 *v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,  
17 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025  
18 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-  
19 12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia*  
20 *v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025);  
21 *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530  
22 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL  
23 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK,  
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1 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No.  
2 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he  
3 Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention);  
4 *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb.  
5 Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL  
6 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

7  
8 50. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it  
9 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain  
10 text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to  
11 people like Petitioner.

12 51. Section 1226(a) applies by default to all persons “pending a decision on whether the  
13 [noncitizen] is to be removed from the United States.” These removal hearings are  
14 held under § 1229a, to “decid[e] the inadmissibility or deportability of a[]  
15 [noncitizen].”

16 52. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
17 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).  
18 Subparagraph (E)’s reference to such people makes clear that, by default, such people  
19 are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court  
20 explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability,  
21 it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez*  
22 *Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v.*  
23 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at  
24 \*7.  
25

1 53. Section 1226 therefore leaves no doubt that it applies to people who face charges of  
2 being inadmissible to the United States, including those who are present without  
3 admission or parole.

4 54. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
5 recently entered the United States. The statute’s entire framework is premised on  
6 inspections at the border of people who are “seeking admission” to the United States.  
7 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this  
8 mandatory detention scheme applies “at the Nation’s borders and ports of entry,  
9 where the Government must determine whether a[] [noncitizen] seeking to enter the  
10 country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).  
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13 **VI. FACTS**

14 55. Petitioner entered the United States without inspection and has resided in the United  
15 States since December 13, 2023.

16 56. Upon his arrival, DHS placed Petitioner in removal proceedings before the Newark  
17 Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with,  
18 inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who  
19 entered the United States without inspection.

20 57. He was released pending removal proceedings subject only to the standard conditions  
21 of supervision.

22 58. Prior to his detention in 2025, Petitioner’s next Immigration Court master hearing is  
23 scheduled for February 26, 2029 at 1:00 PM. This date has not changed since his  
24 detention.  
25

1 59. On October 29, 2025, Petitioner was arrested by ICE ERO officers at the Savino Del  
2 Bene Warehouse at 34 Englehard Avenue, Avenel, NJ 07001. Petitioner is now  
3 detained at the Delaney Hall Detention Center.

4 60. Petitioner is currently unmarried but is in a committed relationship with a United  
5 States citizen who has begun in vitro fertilization (“IVF”) treatment. He is fully  
6 committed to marrying his girlfriend.

7 61. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider  
8 Petitioner’s bond request.

9 62. As a result, Petitioner remains in detention. Without relief from this court, he faces  
10 the prospect of months, or even years, in immigration custody, separated from his  
11 girlfriend and community.

12  
13 **VII. CLAIMS FOR RELIEF**

14 **COUNT ONE**

15 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Abuse of Discretion**  
16 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

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

18 64. Under the APA, a court shall “hold unlawful and set aside agency action” that is an  
19 abuse of discretion. 5 U.S.C. § 706(2)(A).

20 65. An action is an abuse of discretion if the agency “entirely failed to consider an  
21 important aspect of the problem, offered an explanation for its decision that runs  
22 counter to the evidence before the agency, or is so implausible that it could not be  
23 ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of*  
24 *Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*  
25 *Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

1  
2 66. To survive an APA challenge, the agency must articulate “a satisfactory explanation”  
3 for its action, “including a rational connection between the facts found and the choice  
4 made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

5 67. By categorically revoking Petitioner’s release and seeking to transfer him away from  
6 the district without consideration of his individualized facts and circumstances,  
7 Respondents have violated the APA.

8 68. By detaining and transferring the Petitioner categorically, Respondents have further  
9 abused their discretion because there have been no changes to his facts or  
10 circumstances since the agency made its initial custody determinations that support  
11 the revocation of his release from custody.

12 69. Respondents have already considered Petitioner’s facts and circumstances and  
13 determined that he was not a flight risk or danger to the community. There have been  
14 no changes to the facts that justify this revocation of his release on his own  
15 recognizance. The fact that Petitioner has already been granted release by  
16 Respondents under the same facts and circumstances shows that Respondents do not  
17 consider him, on an individualized basis, to be a danger to the community or a flight  
18 risk. Moreover, Respondents have even lessened the conditions of his release by  
19 relieving him of wearing an electronic ankle monitor device.  
20  
21

22 **COUNT TWO**

23 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance**  
24 **with Law and in Excess of Statutory Authority Violation of 8 U.S.C. § 1226(b), 8 C.F.R. §**  
25 **1236.1(c)(9)**

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

1 71. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in  
2 accordance with law;” “contrary to constitutional right;” “in excess of statutory  
3 jurisdiction, authority, or limitations;” or “without observance of procedure required  
4 by law.” 5 U.S.C. § 706(2)(A)-(D).

5 72. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke a  
6 bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen under  
7 the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9)  
8 clarifies that such revocations of release from custody may only be carried out in the  
9 “discretion of the district director, acting district director, deputy district director,  
10 assistant district director for investigations, assistant district director for detention and  
11 deportation, or officer in charge (except foreign).”  
12

13 73. It is a well-established administrative principle that “agency action taken without  
14 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442  
15 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79  
16 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550,  
17 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized  
18 official).  
19

20 74. On information and belief, Respondents have revoked or are revoking Petitioner’s  
21 prior custody determination as a result of a categorical policy prepared by and  
22 implemented by unidentified government officials in Washington, not through the  
23 individual exercise of discretion required by law or by the individuals enumerated by  
24 regulation to do so.  
25

1 75. Because Petitioner’s revocation of release from custody has been made or will be  
2 categorically directed by government officials not authorized by law to make this  
3 determination, Respondents’ detention of Petitioner is not in accordance with law and  
4 in excess of statutory authority.

5 **COUNT THREE**

6 **Violation of Fifth Amendment Right to Due Process Procedural Due Process**

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

8 77. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits  
9 the federal government from depriving any person of “life, liberty, or property,  
10 without due process of law.” U.S. Const. Amend. V. Due process protects “all  
11 ‘persons’ within the United States, including [non-citizens], whether their presence  
12 here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693;  
13 *accord Flores*, 507 U.S. at 306.

14 78. Due process requires that government action be rational and non-arbitrary. *See*  
15 *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

16 79. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a)  
17 and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not  
18 “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533  
19 U.S. at 698.

20 80. Here, Respondents have chosen to revoke Petitioner’s release in an arbitrary manner  
21 and not based on a rational and individualized determination of whether he is a safety  
22 or flight risk, in violation of due process. Because no individualized custody  
23 revocation has been made and no circumstances have changed to make Petitioner a  
24  
25

1 flight risk or a danger to the community, Respondents’ revocation of Petitioner’s  
2 release violates his right to procedural due process.

3  
4 **COUNT FOUR**  
**Violation of the INA**

5 81. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
6 paragraphs.

7  
8 82. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
9 noncitizens residing in the United States who are subject to the grounds of  
10 inadmissibility. As relevant here, it does not apply to those who previously entered  
11 the country and have been residing in the United States prior to being apprehended  
12 and placed in removal proceedings by Respondents. Such noncitizens are detained  
13 under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

14 83. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued  
15 detention and violates the INA.

16 **COUNT FIVE**  
**Violation of Due Process**

17  
18 84. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation  
19 in the preceding paragraphs as if fully set forth herein.

20 85. The government may not deprive a person of life, liberty, or property without due  
21 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from  
22 government custody, detention, or other forms of physical restraint—lies at the heart  
23 of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

24 86. Petitioner has a fundamental interest in liberty and being free from official restraint.  
25

1 87. The government’s detention of Petitioner without a bond redetermination hearing to  
2 determine whether he is a flight risk or danger to others violates his right to due  
3 process.  
4

5 **VIII. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully requests the Court to:

- 7 a. Assume jurisdiction over this matter;
- 8 b. Order that Petitioner shall not be transferred outside of New Jersey while  
9 this habeas petition is pending;
- 10 c. Issue an Order to Show Cause ordering Respondents to show cause why  
11 this Petition should not be granted within three days;
- 12 d. Declare that Petitioner’s detention without an individualized determination  
13 violates the Due Process Clause of the Fifth Amendment;
- 14 e. Declare that Petitioner’s revocation of parole from custody was made in  
15 violation of statute and regulation;
- 16 f. Issue a Writ of Habeas Corpus requiring that Respondents release  
17 Petitioner with no additional conditions of release that were not imposed  
18 prior to his detention in 2025 and that Petitioner shall not be re-detained  
19 without approval of this Court or evidence of violating the conditions of  
20 release;
- 21 g. Declare that Petitioner’s detention is unlawful;
- 22 h. Award Petitioner attorney’s fees and costs under the Equal Access to  
23 Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other  
24 basis justified under law; and  
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i. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

Date: November 11, 2025

By: /s/ Eric M. Mark  
Eric M. Mark, Esq.  
Attorney for Petitioner

**PROOF OF SERVICE**

I, the undersigned, declare that my office is in Newark, New Jersey. I am over the age of eighteen (18) years and not a party to the action within. My business address is 96 Summer Ave Newark, NJ 07104. On November 11, 2025, I served the following documents: **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** by placing a true and correct copy in a sealed envelope, each addressed as follows:

Kristi Noem  
U.S. Department of Homeland Security  
2707 Martin Luther King Jr Ave SE  
Washington, D.C. 20528

Todd Lyons  
U.S. Immigration and Customs Enforcement is:  
500 12th Street SW  
Washington, DC 20536

Ruben Perez  
Enforcement and Removal Operations  
Newark Field Office  
970 Broad St. 11th Floor  
Newark, NJ 07102

Luis Soto  
Delaney Hall Detention Facility  
451 Doremus Avenue  
Newark, New Jersey 07105

Pamela Bondi  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Civil Process Clerk  
U.S. Attorney's Office  
970 Broad Street, 7th Floor  
Newark, NJ 07102

