

2. On August 11, 2025, Petitioner was detained by Immigration and Customs Enforcement (“ICE”). On August 27, 2025, Petitioner filed a motion to reopen his removal proceedings and a motion to stay his removal with the BIA. On September 10, 2025, the BIA denied the motion to stay removal. The BIA did not make a decision on the merits of the motion to reopen. The Petitioner timely filed a Petition for Review (“PFR”) and motion for a stay of removal with the Third Circuit Court of Appeals. On September 23, 2025, the Third Circuit temporarily granted the motion for a stay of removal.

3. Due to the fact that the Third Circuit granted a stay of removal, Petitioner’s detention status reverted from 8 U.S.C. § 1231 post-final order of removal to pre-final order under 8 U.S.C. § 1226(a). As such, Petitioner is eligible for release on bond. However, DHS is refusing to consider Petitioner as a pre-final order noncitizen and continues to treat him as a detainee subject to removal under section 1231. Furthermore, even if ICE agreed that Petitioner’s status has now reverted to pre-final order, ICE’s position is that noncitizens like Petitioner who entered without inspection or parole are subject to mandatory detention under 8 U.S.C. 1225(b)(2) instead of 8 U.S.C. 1226(a).

4. Petitioner’s continued detention violates Petitioner’s Fifth Amendment rights and the Immigration and Nationality Act (“INA”). As a result, the Court should grant habeas relief and order Petitioner’s release, or in the alternative direct that an IJ promptly hold a bond hearing at which ICE would bear the burden to establish the necessity for continued detention by clear and convincing evidence.

JURISDICTION

5. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

7. 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.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

8. Venue is proper because Petitioner is detained at Delaney Hall in Newark, New Jersey, which is within the jurisdiction of this District. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

PARTIES

9. Respondent Luis Soto is sued in his official capacity as Director of Delaney Hall. Respondent Soto is the physical custodian of Petitioner.

10. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

11. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

12. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (“EOIR”), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

13. Petitioner entered the United States on or about March 20, 2015 without being inspected or paroled. Petitioner was briefly detained by U.S. Border Patrol and released on an order of recognizance to the custody of a family relative pending his removal proceedings.

14. Petitioner was also served with a Notice to Appear (“NTA”) charging him with removability pursuant to section 212(a)(6)(A)(i) of the INA and designating him as a noncitizen who entered without inspection or parole.

15. On March 26, 2018, an IJ ordered Petitioner removed to El Salvador. On April 13, 2018, Petitioner filed an appeal of that decision with the BIA. On September 30, 2019, the BIA upheld the IJ’s removal order.

16. On August 11, 2025, Petitioner was arrested by ICE and detained for purposes of effectuating his order of removal.

17. On August 27, 2025, Petitioner filed a motion to reopen his removal proceedings with the BIA. He also filed a motion to stay his removal. The motion argued that since the BIA’s September 30, 2019 order, Petitioner’s circumstances have materially changed and that he is now eligible for a new form of relief. He continuously resided in the United States for more than 10 years as of March 20, 2025, thereby satisfying the statutory physical presence requirement for cancellation of removal under INA 240A(b)(1). In addition, Petitioner is the father of two U.S.

citizen children, including a daughter born in 2022 who suffers from autism spectrum disorder, global developmental delay, mixed-receptive-expressive language disorder, and sensory processing disorder. Petitioner contended in his motion that this made his daughter dependent on him for caregiving, emotional stability, and financial support, thereby satisfying the hardship element required for cancellation of removal relief. In addition, Petitioner's motion contended that reopening was warranted because the NTA was defective.

18. On September 10, 2025, a "Temporary Appellate Immigration Judge" sitting with the BIA denied the motion to stay removal in a four-sentence order that did not cite to any facts or law. *See* Ex. A, BIA Denial of Motion for Stay of Removal.

19. On September 23, 2025, Petitioner filed a PFR and motion for stay of removal with the Third Circuit. The PFR contended that the BIA violated due process by issuing an unexplained denial of a stay of removal consisting of nothing more than a check-box order without explanation, analysis, or reference to the legal framework under *Nken v. Holder*, 556 U.S. 418 (2009). In other words, Petitioner contended that the decision foreclosed any meaningful judicial review. The Petitioner also alleged that the BIA abused its discretion by failing to apply the governing standard for stays of removal under *Nken*. *See* Ex. B, Petition for Review.

20. On the same date, the Third Circuit granted the stay of removal. The order stated that:

The foregoing emergency motion by Petitioner to stay removal is temporarily granted; removal is stayed until such time as a full panel of the Court can consider the foregoing motions, including, in view of Petitioner's challenge to "the government's very authority" to remove him if he qualifies for mandatory withholding of removal, the applicability of the All Writs Act to preserve the Court's jurisdiction to review the BIA's disposition of the pending motion to reopen. *Garcia v. Att'y Gen.*, 553 F.3d 724, 729 (3d Cir. 2009); *see also Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020); Lucas Guttentag, *The 1996 Immigration Act: Federal Court Jurisdiction-Statutory Restrictions and Constitutional Rights*, Interpreter Releases (Federal Publications), Feb. 10, 1997,

at 254 (“Section 1651 [of the All Writs Act] allows courts to issue[] writs to preserve their own prospective jurisdiction to review the eventual decision on the motion to reopen or final order of removal.”).

Ex. C, Third Circuit Stay of Removal.

21. By virtue of the Third Circuit entering a stay of removal, Petitioner’s detention reverted to pre-final order of removal pursuant to 8 U.S.C. § 1226(a).

22. However, ICE has continued to treat Petitioner as subject to post-final order detention under 8 U.S.C. § 1231(a)(6). On October 23, 2025, ICE served Petitioner with a Decision to Continue Detention that acknowledged the stay of removal entered by the Third Circuit, but stated that “[b]ased on the above, you are to remain in ICE custody pending your removal from the United States. *Your case will be reviewed 90 days after the date the stay is lifted or one year from the date of this decision.* You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE’s efforts to remove you by taking whatever actions ICE requests to affect your removal.” Ex. D, October 23, 2025 Decision to Continue Detention (emphasis original).

LEGAL FRAMEWORK

23. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

25. Finally, the INA also provides for detention of noncitizens who are subject to final orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

26. “Once an alien is subject to an administratively final removal order, his detention is authorized by 8 U.S.C. § 1231(a) unless and until the alien seeks judicial review of his removal order and the court of appeals having jurisdiction over his petition for review grants him a stay of removal.” *Jean A. v. Dep’t of Homeland Sec.*, Civil Action No. 19-13951 (SDW), 2019 U.S. Dist. LEXIS 204986, at *4 (D.N.J. Nov. 26, 2019); *See, e.g.*, 8 U.S.C. § 1231(a)(1)(B)(ii) (delaying start of § 1231 detention where “the removal order is judicially reviewed and . . . a court orders a stay of the removal of the alien”); *Leslie v. Attorney General of the United States*, 678 F.3d 265, 268-70 (3d Cir. 2012); *Brodyak v. Davies*, No. 14-4351, 2015 U.S. Dist. LEXIS 31898, 2015 WL 1197535, at *2 (D.N.J. March 16, 2015).

27. “If the alien seeks, and is granted, a stay by the Court of Appeals, his detention reverts to pre-final order status, and the alien returns to detention pursuant to 8 U.S.C. § 1226.” *Jean A.*, 2019 U.S. Dist. LEXIS 204986, at *5 (D.N.J. Nov. 26, 2019).

28. This is “because the statutory language on which the Third Circuit based its decision in *Leslie* is clear that the start of the removal period, and in turn the onset of § 1231 detention will only be delayed if an alien’s removal order is judicially reviewed and ‘a court orders a stay of the removal order.’” *Id.* (quoting 8 U.S.C. § 1231(a)(1)(B)(ii)).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process

29. The allegations in the above paragraphs are realleged and incorporated herein.

30. Petitioner is challenging DHS' unlawful detention of Petitioner without eligibility for release on bond, which violates Petitioner's right to substantive due process of law afforded him through the Fifth Amendment to the United States Constitution.

31. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

32. Petitioner is clearly detained pursuant to 8 U.S.C. § 1226(a) and is eligible for release on bond. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b) or under 8 U.S.C. § 1231(a). Respondents have violated Petitioner's due process rights under the Fifth Amendment by detaining him without the possibility of release on bond.

33. As a remedy, the Court should order him released from detention, or alternatively direct that an IJ hold a constitutionally adequate bond hearing.

COUNT TWO

Violation of Petitioner's Procedural Due Process Rights

34. The allegations in the above paragraphs are realleged and incorporated herein.

35. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The *Mathews* factors are as follows: First, the private interest that will be affected by the official action; [S]econd, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

36. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private interest known to personkind short of life itself: bodily freedom." *Leal-Hernandez*, 2025 LX 327685, at *34.

37. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) or 1231(a) as DHS claims.

38. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody.

COUNT THREE

Violation of the Immigration and Nationality Act ("INA")

39. The allegations in the above paragraphs are realleged and incorporated herein.

40. Application of 8 U.S.C. § 1225(b) or 1231(a) to Petitioner is a violation of the INA because he is instead subject to discretionary detention under 8 U.S.C. § 1226(a).

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
- (3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;
- (4) Order Petitioner released from detention;
- (5) Grant Equal Access to Justice Act ("EAJA") fees and costs; and
- (6) Grant any other further relief this Court deems just and proper.

Onal Gallant Bayram & Amin

By: /s/ Enes Hajdarpasic
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Attorney for Petitioner

Dated: November 15, 2025

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

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained at Delaney Hall and immediate relief is sought, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 15th day of November, 2025.

/s/Enes Hajdarpasic
Enes Hajdarpasic