UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FADI OSAMA ERSHID

Petitioner,

v.

MARY DE ANDA-YBARRA, in her official capacity as Director of the El Paso Field Office of Immigration and Customs Enforcement;

MARCOS CHARLES, in his official capacity as Acting Executive Associate Director of Enforcement and Removal Operations;

TODD M. LYONS, in his official capacity as Acting Director for Immigration and Customs Enforcement,

MADISON SHEAHAN, in her official capacity as Deputy Director of Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as Secretary of Homeland Security;

PAMELA BONDI, in her official capacity as United States Attorney General,

Respondents.

Civil Action No.: 3:25-CV-00557

Alien No: [redacted]

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Petitioner, FADI OSAMA ERSHID, by and through his own and proper person, and through his attorney, OMAR ABUZIR, of KHALAF & ABUZIR, LLC, petitions this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention, contrary to 8 U.S.C. § 1226, which usually allows for release on bond during the pendency of

immigration proceedings. The Petitioner is a citizen of Jordan and lawful permanent resident of the United States since June 21, 2021. Petitioner was detained by Customs and Border Protection (CBP) officers in Chicago, Illinois on October 17, 2025, following a brief trip overseas, despite presenting his valid lawful permanent resident card and passport. Since that date, Respondent was transferred to the El Paso, Texas Immigration and Customs Enforcement Processing Center where he remains detained. To date, the Respondent-Defendants have failed to issue any charging documents with the Executive Office of Immigration Review (EOIR), thus prolonging his detention without the initiation of removal proceedings.

INTRODUCTION

1. It is believed that Petitioner is presently being detained by Immigration and Customs Enforcement ("ICE") by the El Paso Field Office of ICE, at Camp East Montana. *See* Ex. A.

2. Since his apprehension, Petitioner has requested to be released with on a bond. On November 4, 2025, the immigration judge in El Paso, Texas denied the respondent's bond, however, could not move to his removal proceedings since the Respondents-Defendant's failed to serve the Notice to Appear (NTA) on the EOIR. *See* Ex. B, IJ's Decision to Deny Bond Request. As a result, he has not had a meaningful opportunity to present his defensive relief claim before the Immigration Court.

3. Petitioner is entitled to a removal hearing before an Immigration Judge, who will determine his ultimate removability and any applications for relief. However, for approximately one month, Defendants have unlawfully failed to serve the Petitioner's NTA. *See* Ex. C, Screenshot from ECAS – Immigration Court Web Portal.

JURISDICTION AND VENUE

4. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. section 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. section 701 *et seq.*

5. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

6. This action is brought to compel the Defendants, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution. Specifically, "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206, 212 (1953) ("Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

7. This Court may grant relief pursuant to 28 USC § 2241, the Declaratory Judgments Act, 28 USC § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and the All Writs Act, 28 USC §1651.

8. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e). This is because Petitioner is detained by ICE under the control of the El Paso Field Office in El Paso, Texas, and because the processing facility where he is detained is located in the El Paso Division of this District.

PARTIES

9. Petitioner, FADI OSAMA ERSHID, is a citizen and national of Jordan and lawful permanent resident of the United States and presently in the custody of ICE. *See* Ex. D. He is a resident of the State of Florida and maintains residence in Florida.

10. Defendant MARY DE ANDA-YBARRA is being sued in her official capacity only, as the Field Office Director of the El Paso Field Office of Immigration and Customs Enforcement. As such, she is charged with the detention and removal of aliens which fall under the jurisdiction of the El Paso Field Office. The El Paso Field Office has direct control over Petitioner's detention and removal.

11. Defendant TODD M. LYONS is being sued in his official capacity only, as the Acting Director of Immigration and Customs Enforcement. As such, he is charged with the detention and removal of all aliens.

12. Defendant MADISON SHEAHAN is being sued in his official capacity only, as the Acting Deputy Director of Immigration and Customs Enforcement. As such, he is charged with the detention and removal of all aliens.

13. Defendant KRISTI NOEM is being sued in her official capacity only, as the Secretary of the Department of Homeland Security ("DHS").

14. Defendant PAMELA BONDI is being sued in her official capacity only, as the Attorney General of the United States and administers the Department of Justice, including EOIR, the BIA, and the Immigration Courts.

FACTUAL AND PROCEDURAL BACKGROUND

15. Petitioner, Fadi Osama Ershid is present in the United States along with his spouse. The Petitioner has been a lawful permanent resident of the United States since June 21, 2012. *See* Ex. D, Petitioner's Lawful Permanent Resident Card.

16. Petitioner's was detained by CBP officers in Chicago, Illinois on October 17, 2025, following a brief overseas trip, despite presenting a valid lawful permanent resident card and passport. On October 24, 2025, he was personally served a Notice to Appear ("NTA") which places him in removal proceedings pursuant to 8 U.S.C. § 1229a and charged him with being present in the United States without admission and therefore removable pursuant to *inter alia* 8 U.S.C. § 1182(a)(6)(A)(i). He was subsequently transferred to the El Paso ICE processing center where he remains to date. *See* Ex. A, Proof of Detention in ICE Custody.

17. On October 31, 2025, the Petitioner requested a bond before a immigration judge. At a hearing scheduled on November 4, 2025, the immigration judge denied the Petitioner's request for bond. *See* Ex. B, IJ's Order Denying Bond Request.

18. After the completion of the bond hearing, the immigration judge could not proceed with the Petitioner's removal proceedings since the Respondent-Defendant's failed to serve the NTA on the EOIR.

19. Petitioner's continued detention without charge or hearing is contrary to law and longstanding Department of Homeland Security and EOIR regulations.

CAUSES OF ACTION

Count I – Writ of Habeas Corpus

20. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

21. The Respondent-Defendant's are detaining the Petitioner under authority it does not possess, as the Petitioner is subject to detention under 8 U.S.C. §1226(a), which affords a right to a bond hearing.

22. Petitioner's prolonged detention without initiation of removal proceedings constitutes a deprivation of liberty without due process of law in violation of the Fifth Amendment Due Process Clause.

23. Because the petitioner is in federal custody, and there is no adequate remedy through the immigration courts due to the absence of a filed NTA, federal habeas relief is proper under 28 U.S.C. §2241.

24. If Petitioner prevails, he requests attorney's fees and costs pursuant to the Equal Access to Justice Act, as amended 28 U.S.C. § 2412.

Count II – Unlawful Agency Withholding Under the Administrative Procedure Act

25. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

26. Respondents' continued detention of Petitioner without affording him a bond hearing also constitutes unlawful agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706. The abrupt departure from longstanding precedent without reasoned explanation violates the Administrative Procedure Act.

27. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a), including those who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *see also* Ex. E, Pre-2025 Unpublished BIA Bond Decisions. That framework allowed for individualized custody determinations consistent with both statutory text and constitutional principles. These cases include, without limitation, the following:

- *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing criteria of danger to community and flight risk as factors for immigration bond requests);
- *In re L-E-V-H-*, AXXX-XXX-504 (BIA, Dec. 21, 2018) (despite noncitizen's testimony he had "turned himself in to officials at the border," held noncitizen had entered without inspection and was therefore not "arriving alien");
- *In re A-R-S-*, AXXX-XXX-161 (BIA, June 25, 2020) (remanding to develop record where noncitizen who had DACA alleged he had entered without inspection but had been misclassified as "arriving alien");
- *In re M-D-M-*, AXXX-XXX-797 (BIA, Aug. 24, 2020) (despite recent arrest, granted bond to noncitizen who had lived in the U.S. for over 20 years); and
- *In re F-P-J-*, AXXX-XXX-699 (BIA, Oct. 22, 2020) (where noncitizen had a pending circuit court appeal and IJ failed to consider alternatives to detention, granted bond to noncitizen who had lived in the U.S. for over 17 years).

28. The APA requires agencies to engage in reasoned decision-making, and prohibits arbitrary or capricious action. 5 U.S.C. § 706(2)(A). The BIA's reversal of decades of established law without acknowledging or adequately explaining its departure is the very definition of arbitrary and capricious action. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

29. Although Petitioner properly filed a bond application after entering ICE custody, the immigration judge denied the bond request, determining that Petitioner's criminal conviction under Florida Statute § 827.03(1)(b) amounts to a crime involving moral turpitude under immigration law.

30. By treating individuals such as Petitioner as subject to mandatory detention under Section 235(b), Respondents have applied an unlawful, arbitrary interpretation of the statute that is inconsistent with the plain language of Section 236(a) and unsupported by reasoned analysis.

REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

31. Petitioner respectfully requests that this Court grant injunctive relief directing Respondents to order his immediate release under reasonable conditions of supervision, or in the alternative, to provide him with an individualized custody redetermination hearing under INA § 236(a) within seven (7) days. Petitioner intends to seek a Temporary Restraining Order through a separate motion that is forthcoming, and upon a final hearing, Petitioner asks for any further injunctive relief as appropriate.

32. The Supreme Court has made clear that such extraordinary relief depends on a four-factor test: likelihood of success on the merits, irreparable harm, the balance of equities, and the public interest. *Nken v. Holder*, 556 U.S. 418, 434–35 (2009). As explained below, Petitioner satisfies each of these factors.

A. Mr. Ershid Is Likely to Succeed on the Merits of His Petition.

33. Mr. Ershid has a strong likelihood of success on the merits of his claims. Numerous district courts, including some from within the Fifth Circuit, have already determined that ICE has been detaining noncitizens unlawfully, in violation of their rights to procedural due process, just like Mr. Ershid. Repeatedly, federal courts have concluded that noncitizens who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge. *See, e.g., Hernandez-Fernandez v. Lyons*, No. 5:25-CV-773-JKP (W.D. Tex. Oct. 21, 2025); *Lopez-Arevelo v. Ripa*, No. 3:25-CV-337-KC (W.D. Tex Sept. 22, 2025).

34. Additionally, Mr. Ershid has raised a constitutional claim under the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violates due process.

35. Taken together, these statutory and constitutional grounds present not merely a plausible claim, but a compelling one. Under *Nken v. Holder*, 556 U.S. 418, 434 (2009), likelihood of success is the most critical factor in evaluating interim relief. Here, Petitioner's claim is exceptionally strong.

B. Mr. Ershid Will Suffer Irreparable Harm If an Injunction Does Not Issue.

36. If this Court does not grant immediate relief, Mr. Ershid will continue to suffer irreparable harm. The Supreme Court has recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Every day Mr. Ershid remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

37. Even if Mr. Ershid were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—loss of liberty, disruption of family life, psychological strain, and reputational damage—could never be undone. As *Nken* instructs, irreparable harm cannot be speculative; it must be actual and concrete. 556 U.S. at 435. Mr. Ershid's ongoing imprisonment without a lawful hearing meets that standard.

C. Balance of Equities Weighs in Mr. Ershid's Favor.

38. The balance of equities tips decisively in Petitioner's favor. On his side lies the interest in safeguarding one of the most fundamental rights recognized in our legal system—the right not to be arbitrarily detained without process. On the government's side, the only asserted interest is

administrative convenience in applying the BIA's recent, and in this Circuit nonbinding, precedents.

39. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and the dismissal of his recent criminal indictment further diminishes any legitimate basis for continued detention. In contrast, every additional day of unlawful confinement inflicts significant harm on Petitioner. When weighed against each other, the equities clearly support granting immediate relief.

D. There Is Strong Public Interest In Maintaining the Pre-2025 Status Quo.

40. Finally, the public interest strongly supports the grant of injunctive relief. The Supreme Court in *Nken* explained that when the government is the opposing party, the balance of equities and the public interest merge. 556 U.S. at 435. The public has no interest in perpetuating unlawful detention; rather, the public's interest is served by ensuring that government agencies act within the bounds of statutory and constitutional authority.

41. Granting Petitioner's release, or in the alternative, granting him an individualized bond hearing, promotes confidence in the integrity of the immigration system, reinforces respect for the rule of law, and prevents the arbitrary deprivation of liberty. Protecting fundamental due process rights is not just in Petitioner's interest, but in the interest of the public at large.

42. Each factor of the equitable test weighs heavily in Mr. Ershid's favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(a) by various federal district courts and the Due Process Clause; he faces irreparable harm each day he remains detained without lawful process; the equities tilt overwhelmingly toward protecting his liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

43. For these reasons, this Court should grant injunctive relief as soon as practicable, requiring Respondents immediately to release Mr. Ershid or provide him with a bond hearing in accordance with INA § 236(a), 8 U.S.C. § 1226(a).

RELIEF REQUESTED

WHEREFORE, Petitioner Fadi Osama Ershid, respectfully request this Honorable Court:

A. Assume jurisdiction over this action;

B. Grant declaratory relief by rendering findings of fact and conclusions of law that Respondents have acted contrary to law and have abused Petitioner's due process rights;

C. Grant the writ of habeas corpus, or in the alternative, compel Respondents to file the NTA with EOIR within five (5) days of the Court's order;

D. Grant any other relief that is equitable and just.

DATE: November 17, 2025.

Respectfully submitted,

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* *Application for admission* pro hac vice *is forthcoming*

VERIFICATION

I, Omar Abuzir, declare as follows:

I am an attorney admitted to practice law in the State of Illinois.

Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November 17, 2025.

/s/Omar Abuzir
OMAR ABUZIR
Khalaf & Abuzir LLC
Attorney for Petitioner