

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

ARMANDO DAVID CRUZ LOPEZ,

Petitioner,

v.

RANDI BORGEN, in his official capacity as
Field Office Director, Newark Field Office, U.S.
Immigration & Customs Enforcement;

KRISTI LYNN NOEM, in her official capacity
as Secretary, U.S. Department of Homeland
Security;

PAMELA JO BONDI, in her official capacity as
Attorney General, U.S. Department of Justice;
and

ERIC RAKOSKY, in his official capacity as
Warden, Elizabeth Contract Detention Facility.

Respondents.

Civil Action No. 25-17850

Agency No. _____

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Oral Argument Requested

I. INTRODUCTION

1. Petitioner Armando David Cruz Lopez petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents. Respondents have detained him in immigration custody since November 21, 2025, without the opportunity to seek release at a bond hearing. He challenges his detention as a violation of the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and as a violation of the Due Process Clause of the Fifth Amendment.

2. Petitioner has no other remedy at law than to petition this Court and request the Court order Respondents to either immediately release him from immigration custody, or to order an individualized bond hearing within seven days before an immigration judge at which the government must bear the burden of proving by clear and convincing evidence that continued detention remains justified. In such a bond hearing, to satisfy due process, an adjudicator must also consider the ability to pay bond and the availability of alternatives to detention, including conditions of supervision that would mitigate any concerns as to flight risk and danger.

3. In the alternative, Petitioner asks the Court to order Respondents to “show cause why the writ should not be granted” within three days as prescribed by 28 U.S.C. § 2243.

4. Petitioner is a young man who has lived in the United States for nearly nine years after fleeing his native Honduras. Petitioner is the sole financial provider for his long-term domestic partner and their newborn United Citizen child, Noah David Cruz Arango, born on July 12, 2025. Petitioner has been detained by ICE since November 21, 2025, in a county jail where he is unable to work and provide for his family.

II. CUSTODY

5. Petitioner is in the physical custody of Respondents and is being detained at Elizabeth Contract Detention Facility, 625 Evans Street, Elizabeth, NJ 07201. He is under the direct control of Respondents and their agents.

III. JURISDICTION

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the Constitution; and the All Writs Act, 28 U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner’s current detention as

enforced by Respondents constitutes a “severe restraint[]” on [Petitioner’s] individual liberty,” such that he is “in custody in violation of the . . . laws . . . of the United States.” *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

7. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

8. The Supreme Court held that it had jurisdiction to review statutory claims by noncitizens subject to mandatory detention pursuant to, *inter alia*, § 1226(c), concluding that neither 8 U.S.C. § 1252(b)(9) nor § 1226(e) deprived the federal courts of jurisdiction to review the noncitizens’ claims. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

IV. VENUE

9. Venue is proper in the U.S. District Court for the District of New Jersey because at least one Respondent is in this district, the Petitioner is currently physically present and detained in this District at Elizabeth Contract Detention Facility, 625 Evans Street, Elizabeth, NJ 07201, and the Petitioner’s immediate physical custodian is in this District. 28 U.S.C. § 1391(b).

10. The place of employment of Respondent Eric Rakosky is also located within the district, at 625 Evans Street, Elizabeth, NJ. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493-94 (1973) (laying out traditional venue factors).

V. REQUIREMENTS OF 28 U.S.C. § 2243

11. Unless Petitioner is wholly ineligible for relief, the Court must either grant the instant petition for writ of habeas corpus or order the Respondents to show cause as to why it

should not be granted. 28 U.S.C. § 2243. If so ordered, Respondents must file a response within three days.

12. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift and imperative remedy* in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). “The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time.” *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

13. Due to the nature and urgency of this proceeding, Petitioner asks this Court to expedite the proceedings in this case as necessary and practicable for justice.

VI. PARTIES

14. Respondent Randi Borgen is named in his official capacity as the Acting Director of the Newark Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations for individuals under the jurisdiction of the Newark Field Office. As such, he is the custodian of Petitioner. Respondent Borgen’s office is located at 970 Broad Street, Newark, NJ 07102.

15. Respondent Kristi Lynn Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the District of New Jersey; she supervises Respondent Borgen; and she is legally responsible for the pursuit of Petitioner’s detention and removal. As such, she is a legal custodian of Petitioner. Respondent Noem’s office is located in the United States Department of Homeland Security, Washington, District of Columbia 20528.

16. Respondent Pamela Jo Bondi is named in her official capacity as the Acting Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review (“EOIR”), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of New Jersey and is legally responsible for administering Petitioner’s removal proceedings and the standards used in those proceedings. As such, she is a legal custodian of Petitioner. Respondent Bondi’s office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530.

17. Respondent Eric Rakosky is employed as the Warden of the Elizabeth Contract Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity. Respondent Rakosky’s office is located at 625 Evans Street, Elizabeth, NJ, 07201.

VII. LEGAL FRAMEWORK

Statutory Authority for Petitioner’s Detention

18. Congress authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings*, 138 S. Ct. at 833; *Demore*, 538 U.S. 510; *Zadvydas*, 533 U.S. at 690. Detention is either discretionary and provides for a bond hearing pursuant to the statute, *see* 8 U.S.C. § 1226(a), or is “mandatory,” in that the statute does not provide for a bond hearing, *see* §§ 1225(b), 1226(c), 1231(a).

19. Under the discretionary detention statute, a noncitizen may request a bond hearing at any time to contest whether he is a danger or a flight risk and thus properly detained during the pendency of his removal proceedings. *See* § 1226(a). Conversely, § 1226(c) authorizes DHS to indefinitely detain noncitizens without the opportunity to request that the immigration judge

review whether detention is necessary. *See Jennings*, 138 S. Ct. at 833, 846 (holding that nothing in the statutory language of § 1226(c) limits “the length of detention” authorized by the statute). The Supreme Court, however, has left open the question of whether the Constitution requires bond hearings for noncitizens subject to mandatory, prolonged detention. *Id.* at 851.

20. Section 1226(c)(1) of title 8 of the United States Code provides, in relevant part: “The Attorney General shall take into custody any [noncitizen] who . . . is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,” 8 U.S.C. § 1226(c)(1)(D), “when the [noncitizen] is released, without regard to whether the [noncitizen] is released on parole, supervised release, or probation, and without regard to whether the [noncitizen] may be arrested or imprisoned again for the same offense.” *Id.*

21. Sections 1182(a)(3)(B) and 1227(a)(4)(B) in turn describe noncitizens who “engage” in “terrorist activities,” which includes affording material support to terrorism under Section 1182(a)(3)(B)(iv)(VI).” (Terrorism-Related Inadmissibility Grounds). This provision is known as the TRIG Bar.

22. DHS can exempt the application of the material support bar in certain circumstances under its waiver authority from § 1182(d)(3)(B)(i), but the Immigration Court does not. *Id.* at 308-309.

23. Paragraph (c)(4) of § 1226 provides that the Attorney General may only release a noncitizen “described in paragraph (1)” under narrow circumstances not applicable here.

VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

27. There is no statutory requirement for exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 341 (W.D.N.Y.

2018). No exhaustion requirement applies to the claims raised in this petition because the Immigration Court and Board of Immigration Appeals (“BIA”) lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994). Due to the nature and urgency of this proceeding, Petitioner asks this Court to expedite the proceedings in this case as necessary and practicable for justice. *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

28. Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes*, 35 F. Supp. 3d at 538-39; *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-7 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009).

29. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

IX. STATEMENT OF FACTS AND PROCEDURAL HISTORY

30. Petitioner Armando David Cruz Lopez was born in 2000 and is a citizen of Honduras.

31. Armando and his family faced religious persecution and feared for their lives because of gang threats in Honduras. Men went to his house to force Armando to join their gang, and after he refused the men threatened to burn him and his family members alive. The police did not assist him and his family after reporting the threats.

32. On or about May 11, 2016, Armando entered the United States near Hidalgo, Texas to seek asylum. Respondents arrested him, detained him, and then, based on the individualized facts in his case, Respondent DHS released Petitioner from its custody on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a).

33. Armando applied for asylum before the U.S. Asylum Office within the U.S. Citizenship and Immigration Services on March 17, 2017. 8 C.F.R. § 208.2(a)(1)(i).

34. DHS placed Armando in removal proceedings before the New Jersey immigration court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(1) as someone who entered the United States without inspection.

35. Armando's master hearing for his removal proceeding is scheduled for May 23, 2029.

36. Waiting for the master hearing, Armando regularly complied with and appeared for ICE check-ins as scheduled on Form I-220A.

37. On November 21, 2025, Petitioner was arrested during his regular ICE check-in appointment in Newark. Petitioner is now detained at the Elizabeth Contract Detention Facility, 625 Evans Street, Elizabeth, NJ, 07201.

38. Petitioner has a four-month-old son named N [REDACTED], born on [REDACTED] [REDACTED], who is a United States citizen. Petitioner is the sole financial provider for his child and long-term domestic partner, is authorized to work in the United States and has steady employment, pays taxes, and attends church regularly. Petitioner fled from Honduras because of the religious persecution and threats of gang violence against him and his family. Petitioner is neither a flight risk nor a danger to the community.

39. While Armando has prior arrests, he has no pending or current charges. All but one charge was dropped. On the charge that was not dropped, he successfully complied with his probation requirements.

40. Armando has not applied for bond before the Immigration Court because doing so would be futile based on the BIA's decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025).

X. CLAIM FOR RELIEF

FIRST CAUSE OF ACTION

PETITIONER'S PROLONGED MANDATORY DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE CONSTITUTION

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

42. The government may not deprive a person 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 the clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. Petitioner has a fundamental interest in liberty and being free from official restraint.

44. The government's detention of Petitioners without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates their right to due process.

SECOND CAUSE OF ACTION

PETITIONER'S DETENTION UNLAWFULLY VIOLATES THE IMMIGRATION AND NATIONALITY ACT

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

46. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.
47. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

THIRD CAUSE OF ACTION

RESPONDENTS' VIOLATED ADMINISTRATIVE PROCEDURE ACT REGARDING PETITIONER'S DETENTION

48. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
49. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
50. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
51. The INA provides that Respondents may, as they did years ago in Petitioner's case, release an individual from custody based on an individualized determination of their

danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a release decision is made, a revocation of the custody determination may be made only when warranted by an individual's specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 1236.1(c)(9).

52. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
53. By categorically detaining Petitioner revoking Petitioner's release without consideration of Petitioner's individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.
54. On information and belief, Respondents have made no finding that Petitioner is a flight risk because, in fact, Petitioner's was arrested while appearing at Petitioner's ICE check-in.
55. On information and belief, by detaining Petitioner, Respondents have further abused their discretion because, since the agency made its initial custody determination, on information and belief, there have been no changes to Petitioner's facts or circumstances that support the revocation of Petitioner's release from custody.
56. Respondents have already considered Petitioner's facts and circumstances and determined Petitioner was not a flight risk or danger to the community. Moreover, Petitioner regularly appeared for his ICE check-ins which cannot be a basis to find that Petitioner is a flight risk.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays the Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the Newark Field Office and the District of New Jersey pending resolution of this case;
- (c) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on his own recognizance or under parole, bond, or reasonable conditions of supervision, or in the alternative, ordering Respondents to provide Petitioner with a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered;
- (d) Issue an order to show cause to be returned within three days;
- (e) Grant any other and further relief this Court deems just and proper.

Dated: November 22, 2025

Respectfully submitted,

By: /s/ Jessica Greer Griffith

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VERIFICATION

I, Toni Ann Kruse, state the following under penalty of perjury:

1. I am a Partner at McDermott Will & Schulte LLP, which is filing the foregoing Petition for Writ of Habeas Corpus on behalf of Armando David Cruz Lopez.
2. The facts stated in this Petition are true and correct to the best of my information, knowledge, and belief.

Dated: November 22, 2025

/s/ Toni Ann Kruse

Toni Ann Kruse