

Corpus and Petition for Writ of Mandamus corpus to remedy his unlawful immigration detention by Respondents and agency delay. Mr. Tabarakifard is being held despite the USCIS has substantively approved his asylum application and DHS has represented in Immigration Court that USCIS is waiting only for a completion of background checks before issuing a decision and releasing him. Respondents' continued detention is without statutory authority, violates the Immigration and Nationality Act ("INA"), the Administrative Procedures Act ("APA"), and the Fifth Amendment, and their failure to complete the background checks and issue a written decision violates a clear, nondiscretionary duty. Petitioner seeks immediate release and a writ of mandamus compelling USCIS and DHS to complete all remaining background checks, issue the asylum decision, and release him without further delay.


I. CUSTODY

1. Petitioner Pouria Tabarakifard is in the physical custody of U.S. Immigration and Customs Enforcement ("ICE"), currently detained at Delaney Hall Detention Facility in Newark, New Jersey.
2. Respondent Ricardo Velasquez, Newark Field Office Director for Enforcement and Removal Operations, exercises custodial authority over Petitioner.
3. Respondent Luis Soto, Warden/Superintendent of Delaney Hall Detention Facility, has immediate physical custody of Petitioner pursuant to a contract with DHS/ICE.
4. ICE continues to detain Petitioner despite USCIS's substantive approval of his asylum application and DHS's representation in Immigration Court that USCIS is waiting only for completion of background checks before issuing the final decision and releasing him.

II. JURISDICTION & VENUE

5. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq, the APA, 5 U.S.C. §§ 701-06, and the Mandamus Act, 28 U.S.C. § 1361.
6. This Court has jurisdiction over the habeas claims under 28 U.S.C. § 2241, because Petitioner is “in custody in violation of the Constitution or laws... of the United States.”
7. This Court also has jurisdiction over the mandamus and APA claims under 28 U.S.C. § 1331, 28 U.S.C. § 1361, and 5 U.S.C. § 702 as this action arises under federal law and seeks to compel federal officers to perform nondiscretionary duties and to review unlawful agency action. .
8. Venue is proper in this Court under 28 U.S.C. § 1391(e), because Petitioner is detained in this District and Respondents reside or operate here.

III. PARTIES

9. Petitioner, POURIA TABARAKIFARD (A# ) is a native and citizen of Iran who entered the United States as a minor, applied for asylum as an unaccompanied child, and is currently detained in immigration custody in New Jersey.
10. Respondent, LUIS SOTO, Warden/Superintendent of Delaney Hall Detention Facility in Newark, New Jersey, has immediate physical custody of Petitioner and is a proper respondent in this habeas action.
11. Respondent Ricardo Velasquez is the Field Office Director for Enforcement and Removal Operations (“ERO”), U.S. Immigration and Customs Enforcement (“ICE”), Newark Field Office. He has authority over Petitioner’s detention and is a proper respondent.
12. Respondent, JOSEPH B. EDLOW, Director of U.S. Immigration and Customs Enforcement (“ICE Director”) is responsible for the overall administration and

enforcement of the immigration detention system, including policies and practices governing the detention and release of noncitizens such as Petitioner.

13. Respondent, KRISTI NOEM, Secretary of the U.S. Department of Homeland Security (“Secretary of DHS”) is the highest official of DHS, the federal department that oversees ICE and USCIS, and is responsible for enforcing the immigration laws of the United States, including detention and release decisions affecting Petitioner.

14. Respondent, PAM BONDI, Attorney General of the United States is the chief legal officer of the United States and has ultimate authority over the interpretation of the immigration laws and over the Executive Office for Immigration Review (“EOIR”), which conducts removal proceedings and interacts with DHS in cases such as Petitioner’s.

15. Each Respondent is sued in his or her official capacity only.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Petitioner has no administrative remedies to challenge ICE’s continued detention in this posture, where USCIS retains initial jurisdiction, has substantively approved his asylum application, and is allegedly awaiting only background checks before issuing a decision.. No statute or regulation provides an administrative mechanism to contest this prolonged detention or to compel completion of the background checks.

17. Habeas relief and mandamus/APA relief are thus the only available avenues to secure Petitioner’s release and compel agency action.

V. STATEMENT OF FACTS

18. Petitioner, Pouria Tabarakifard, is a native and citizen of Iran who entered the United States on or about March 3, 2023, while he was under the age of eighteen.

19. On or about August 8, 2023, Petitioner filed an affirmative Application for Asylum (Form I-589) with U.S. Citizenship and Immigration Services (“USCIS”).
20. Petitioner has documented, stable employment awaiting him upon release. As confirmed in Exhibit F, Petitioner is employed by The Rockleigh Country Club in Rockleigh, New Jersey, where he began working on June 3, 2024. His employer, General Manager Fred Puccio, describes Petitioner as reliable, punctual, hardworking, respectful, and “a trusted and valued member of the team,” and confirms that Petitioner is welcome to resume his employment immediately upon release. This evidences Petitioner’s stability, community ties, accountability, and lack of flight risk. *See also* Exs. A-E (Providing further documentation of character, asylum process, and witnesses).
21. Exhibit F also describes Petitioner’s work ethic, his consistent willingness to cover shifts, his professionalism under pressure, and his tutoring of Mr. Puccio’s teenage son—strong evidence of his character, responsibility, and strong integration into the local community. These facts underscore that Petitioner’s detention serves no public-safety or flight-risk purpose.
22. Because Petitioner entered the United States as a minor and was designated an unaccompanied child (“UAC”), USCIS retains initial jurisdiction over his asylum claim pursuant to the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and 8 U.S.C. § 1232(b)(3).
23. Petitioner has no criminal history, has never been convicted of any crime, and has consistently complied with all immigration requirements, including reporting and attending all scheduled hearings.

24. Despite his complete compliance and lack of criminal history, on or about June 24, 2025, Immigration and Customs Enforcement (“ICE”) took Petitioner into custody without a warrant and without articulating any individualized basis for detention.
25. Petitioner’s Master Calendar Hearing in Immigration Court took place on July 7, 2025, at which time counsel re-submitted asylum-related filings and clarified that, because Petitioner is a UAC, USCIS retained initial jurisdiction over his asylum claim and EOIR could not adjudicate the asylum application unless and until USCIS formally referred the case.
26. The Immigration Judge, Judge Rastegar, has repeatedly convened Master Calendar status hearings not to adjudicate asylum on the merits, but to inquire into the status of USCIS’s adjudication and background checks.
27. Because of Petitioner’s UAC status, Judge Rastegar has no jurisdiction to grant asylum on the defensive application while USCIS retains initial jurisdiction. USCIS must first take final action or refer the case to EOIR before the Immigration Court can consider asylum on the merits.
28. USCIS, through the New Jersey Asylum Office and Acting Chief Jorge A. Supelano, requested and received Petitioner’s full case file from counsel, including declarations, exhibits, and EOIR filings. Counsel also provided the agency with a 120-page email thread with the Asylum Office Chief, which documents USCIS’s handling of the case.
29. USCIS scheduled Petitioner for an affirmative asylum interview on or about October 1, 2025, which Petitioner attended while detained at Delaney Hall.
30. Several days after the interview, the assigned Asylum Officer informed counsel by telephone that she and her supervisor had approved Petitioner’s asylum application, and

that the only remaining step before issuance of the formal decision was the completion of routine background and security checks.

31. During multiple Master Calendar Hearings, counsel informed Judge Rastegar on the record that USCIS had substantively approved the asylum application, and counsel for the Department of Homeland Security confirmed this representation in open court.
32. Because initial jurisdiction rests with USCIS, Judge Rastegar never granted asylum and could not do so unless and until USCIS formally refers the case. The Immigration Court has therefore treated the case as a status-only matter, waiting for USCIS to finalize and issue its decision.
33. On December 3 and December 5, 2025, DHS counsel represented to Judge Rastegar that USCIS is “waiting for background checks” on Petitioner and that completion of those checks is the only remaining step before issuance of the written asylum decision and Petitioner’s release.
34. On December 2, 2025, USCIS issued a memorandum announcing a temporary pause on certain asylum adjudications. That memorandum does not apply to Petitioner’s case because USCIS had already completed the substantive adjudication and indicated approval before December 2, and DHS has confirmed that the only remaining step is background-check clearance—not re-adjudication.
35. Petitioner has now been detained in ICE custody since June 24, 2025—more than six months—solely because USCIS has not completed routine background checks, despite indicating that it has approved the asylum application.

36. Petitioner is a very young former UAC (approximately 19-20 years old), has no criminal history in the United States or abroad, and there is no evidence of any derogatory background. DHS has never alleged that he is a danger or a flight risk.
37. Despite USCIS's substantive approval, DHS counsel's confirmation that only background checks remain, Petitioner's youth and clean record, and the Immigration Judge's concern about unnecessary detention, USCIS has failed to issue a written asylum decision or formally refer the case to EOIR, and ICE continues to detain Petitioner without a removal order, without an IJ custody order, and without any clear statutory basis.
38. Petitioner remains detained at Delaney Hall Detention Facility in Newark, New Jersey, in a posture where:
- a. USCIS has approved his asylum claim pending only background checks;
 - b. EOIR lacks jurisdiction to adjudicate the asylum merits;
 - c. No final removal order exists; and
 - d. No immigration statute authorizes indefinite, warrantless detention solely because USCIS has not yet issued a formal written decision.
39. This limbo—where USCIS has substantively approved asylum but not issued a decision, EOIR has no jurisdiction, and ICE continues to detain Petitioner without a warrant or articulated legal basis—is the context in which this First Amended Petition for Habeas Corpus and Mandamus is brought.

VI. CLAIMS FOR RELIEF

COUNT I – VIOLAION OF THE FIFTH AMENDMENT’S SUBSTANTIVE DUE PROCESS PROTECTIONS (ARBITRARY AND UNLAWFUL DETENTION)

40. Petitioner incorporates paragraphs 1–39 as though fully set forth herein.
41. Respondents’ continued detention of Petitioner violates the Due Process Clause of the Fifth Amendment because it is arbitrary, punitive, unauthorized by statute, and unsupported by any legitimate governmental interest.
42. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. This protection applies fully to noncitizens in immigration detention.
43. Civil immigration detention is constitutionally permissible only when it serves a legitimate and lawful government purpose, such as securing a noncitizen’s appearance at proceedings or protecting the community, and only when such detention is authorized by statute.
44. Petitioner is detained even though no immigration statute authorizes his detention at this stage of proceedings. He is:
 - a. A UAC whose asylum application remains within USCIS’s initial jurisdiction under 8 U.S.C. § 1232(b)(3);
 - b. An asylum applicant who has been substantively approved by both the Asylum Officer and her supervisor, pending only background checks;
 - c. A detainee without a final order of removal; and
 - d. A detainee for whom EOIR lacks jurisdiction to decide the asylum application on the merits until USCIS issues a decision or makes a referral.

45. At multiple Master Calendar Hearings, Judge Rastegar deferred adjudication of asylum because USCIS retains initial jurisdiction over Petitioner's claim, and the Immigration Court cannot proceed unless and until USCIS issues a final decision or makes a formal referral to EOIR.

46. Because USCIS has substantively approved Petitioner's asylum application, and because EOIR cannot act absent a USCIS referral, ICE is detaining Petitioner in a legal vacuum—a posture that serves no lawful immigration purpose.

A. Substantive Due Process

47. Substantive due process prohibits government action that is arbitrary, punitive, or unrelated to any legitimate governmental purpose.

48. Respondents' detention of Petitioner serves no legitimate government interest, because:

- a. Petitioner's asylum claim has been approved pending background checks;
- b. There is no removal proceeding to secure attendance for, as EOIR cannot adjudicate asylum on the merits;
- c. There is no removal order for DHS to effectuate; and
- d. DHS has not alleged danger or flight risk.

49. Petitioner's continued detention is especially arbitrary because he has stable employment and strong community connections in New Jersey, as documented in Exhibit F. Upon release, Petitioner will immediately return to his prior position at The Rockleigh Country Club, where he has been described as an exemplary employee.

50. With no statutory authority and no regulatory purpose, Respondents' detention of Petitioner is purely punitive, which is categorically impermissible in civil immigration detention.

51. Detaining a young asylum applicant solely because USCIS has not completed background checks, despite substantive approval and a clean record, is arbitrary and shocks the conscience, violating the core guarantees of substantive due process protections.

Absence of Any Legitimate Government Interest

52. Petitioner is caught in an unconstitutional posture where:

- a. USCIS has substantively approved asylum but has not issued the written decision;
- b. EOIR lacks jurisdiction to adjudicate the merits;
- c. ICE claims authority to detain, but cannot identify any statute authorizing that detention; and
- d. Petitioner has no forum through which to challenge his continued detention.

53. The Constitution does not permit the government to detain an individual indefinitely simply because USCIS has not yet completed background checks.

54. Respondents' continued custody of Petitioner is therefore arbitrary, punitive, and a violation of both substantive and procedural due process under the Fifth Amendment.

COUNT II – VIOLATION OF THE FIFTH AMENDMENT'S PROCEDURAL DUE PROCESS PROTECTIONS (ARBITRARY AND UNLAWFUL DETENTION)

55. Petitioner incorporates paragraphs 1–39 as though fully set forth herein.

56. Respondents' continued detention of Petitioner violates the Due Process Clause of the Fifth Amendment because it is arbitrary, punitive, unauthorized by statute, and unsupported by any legitimate governmental interest.

57. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. This protection applies fully to noncitizens in immigration detention.

58. Civil immigration detention is constitutionally permissible only when it serves a legitimate and lawful government purpose, such as securing a noncitizen's appearance at proceedings or protecting the community, and only when such detention is authorized by statute.

59. Petitioner is detained even though no immigration statute authorizes his detention at this stage of proceedings. He is:

- a. A UAC whose asylum application remains within USCIS's initial jurisdiction under 8 U.S.C. § 1232(b)(3);
- b. An asylum applicant who has been substantively approved by both the Asylum Officer and her supervisor, pending only background checks;
- c. A detainee without a final order of removal; and
- d. A detainee for whom EOIR lacks jurisdiction to decide the asylum application on the merits until USCIS issues a decision or makes a referral.

60. At multiple Master Calendar Hearings, Judge Rastegar deferred adjudication of asylum because USCIS retains initial jurisdiction over Petitioner's claim, and the Immigration Court cannot proceed unless and until USCIS issues a final decision or makes a formal referral to EOIR.

61. Because USCIS has substantively approved Petitioner's asylum application, and because EOIR cannot act absent a USCIS referral, ICE is detaining Petitioner in a legal vacuum—a posture that serves no lawful immigration purpose.

B. Procedural Due Process

62. Procedural due process requires that the government provide lawful authority, notice, meaningful review, and an opportunity to be heard before depriving a person of liberty.

63. Petitioner has been provided no custody determination, no bond hearing, no explanation, and no formal notice justifying continued detention following USCIS's effective approval of his asylum application.

64. Because EOIR lacks jurisdiction while USCIS retains initial jurisdiction, Petitioner has no mechanism to challenge ICE's decision to continue holding him.

65. ICE is therefore detaining Petitioner without any process at all — no warrant, no statutory authority, no removal order, no bond hearing, and no administrative avenue for review.

66. The government's refusal to release Petitioner, or even provide a justification for his detention, constitutes an ongoing violation of procedural due process. **Absence of Any Legitimate Government Interest**

67. Petitioner is caught in an unconstitutional posture where:

- a. USCIS has substantively approved asylum but has not issued the written decision;
- b. EOIR lacks jurisdiction to adjudicate the merits;
- c. ICE claims authority to detain, but cannot identify any statute authorizing that detention; and
- d. Petitioner has no forum through which to challenge his continued detention.

68. The Constitution does not permit the government to detain an individual indefinitely simply because USCIS has not yet completed background checks.

69. Respondents' continued custody of Petitioner is therefore arbitrary, punitive, and a violation of both substantive and procedural due process under the Fifth Amendment.

**COUNT III – VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (INA)
(Detention Without Statutory Authority Under Any INA Provision)**

70. Petitioner incorporates paragraphs 1–39 as though fully set forth herein.

71. Respondents' continued detention of Petitioner violates the Immigration and Nationality Act ("INA") because no statutory authority exists under any INA provision to detain Petitioner in his current posture.
72. Petitioner is a designated UAC, and under the TVPRA, USCIS retains initial jurisdiction over his affirmative asylum application. 8 U.S.C. § 1232(b)(3).
73. Because USCIS has initial—and exclusive—jurisdiction over Petitioner's asylum claim, the Immigration Judge cannot adjudicate the application unless and until USCIS issues a final decision or affirmatively refers the case to EOIR. USCIS has not done so.
74. USCIS has already substantively approved Petitioner's asylum claim, the Immigration Judge cannot adjudicate the application unless and until USCIS issues a final decision or affirmatively refers the case to EOIR. USCIS has not done so. .
75. Because no referral has been made and UAC initial jurisdiction remains with USCIS, EOIR lacks jurisdiction to adjudicate asylum on the merits, and Petitioner is not in active removal proceedings.
76. In this posture, no removal order exists. Petitioner is not detained under 8 U.S.C. § 1231, which applies only after a final order of removal.
77. Nor is Petitioner detained under 8 U.S.C. § 1226, which governs detention during EOIR removal proceedings, because no such merits proceedings are pending and no IJ custody order has been entered.
78. Petitioner is likewise not detained under 8 U.S.C. § 1225(b), which permits detention pending inspection and initial asylum adjudication; here, USCIS has completed substantive adjudication and is withholding only issuance of the formal written decision.

79. Accordingly, none of the INA's detention statutes—§§ 1225, 1226, or 1231—apply to Petitioner. Congress did not authorize ICE to detain a UAC whose asylum claim has been substantively approved and remains solely in background-check limbo.

80. Because Respondents' continued detention of Petitioner is not authorized by any provision of the INA, that detention is unlawful and must be immediately terminated.

**COUNT IV – VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (APA)
(Unlawfully Withheld Agency Action * Unreasonable Delayed Final Decision * Arbitrary
and Capricious Detention)**

81. Petitioner incorporates paragraphs 1–39 as though fully set forth herein.

82. Respondents' actions violate the APA, 5 U.S.C. §§ 701–706, because USCIS has unlawfully withheld and unreasonably delayed issuance of Petitioner's final asylum decision, and ICE is detaining Petitioner in excess of statutory authority and in an arbitrary and capricious manner.

A. USCIS Has Unlawfully Withheld and Unreasonably Delayed Final Agency Action.

83. USCIS retains initial jurisdiction over Petitioner's asylum application because he entered the United States as an unaccompanied child. 8 U.S.C. § 1232(b)(3).

84. USCIS conducted Petitioner's asylum interview on October 1, 2025, and shortly thereafter the Asylum Officer and her supervisor informed counsel that the asylum application had been approved, pending only completion of routine background checks.

85. Despite having substantively approved the claim, USCIS has failed to issue the required written decision or to take final action on the asylum application.

86. Under 5 U.S.C. § 706(1), a federal court must “compel agency action unlawfully withheld or unreasonably delayed.” USCIS's failure to issue a decision—despite completing all discretionary adjudicatory steps—constitutes agency action unlawfully withheld and unreasonably delayed.

87. The delay is unreasonable because:

- e. USCIS has completed substantive adjudication and background checks are routine and ministerial;
- f. USCIS has acknowledged approval;
- g. Petitioner has been detained for over six months solely due to the agency's delay;
- h. EOIR cannot act until USCIS issues a decision or refers the case; and
- i. Each day of delay prolongs unlawful detention.

88. USCIS's inaction has created a procedural and jurisdictional limbo that Congress did not intend, and which the APA forbids.

B. ICE Is Acting in Excess of Statutory Authority.

89. ICE continues to detain Petitioner even though no provision of the INA authorizes detention in his circumstances:

- j. Petitioner has no removal order (so § 1231 does not apply);
- k. Petitioner is not in merits proceedings before EOIR for his asylum claim as it was intentionally not referred to the Immigration Court and Has been in Limbo in the USCIS initial jurisdiction review (so § 1226 does not apply); and
- l. Petitioner's asylum application has been substantively approved (so § 1225(b)'s detention rationale has been exhausted).

90. Under 5 U.S.C. § 706(2)(C), agency action must be set aside where it is "in excess of statutory jurisdiction, authority, or limitations." ICE's detention of Petitioner in the absence of statutory authority is ultra vires and must be vacated.

C. Respondents' Conduct Is Arbitrary, Capricious, and an Abuse of Discretion.

91. Respondents' conduct is arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because:

- m. USCIS has substantively approved asylum but refuses to issue a written decision;
- n. ICE continues to detain Petitioner with no lawful purpose and without identifying any statutory basis;
- o. EOIR cannot adjudicate the asylum claim due to lack of jurisdiction;
- p. Petitioner has no mechanism to challenge his detention through the immigration system; and
- q. Respondents' actions contradict their own regulations and practices.

92. Respondents' actions are inconsistent with DHS practice, under which similarly situated individuals are typically released within 24–48 hours of substantive approval of asylum once background checks are pending.

93. Respondents have failed to provide any reasoned explanation for:

- r. the prolonged delay in issuing Petitioner's asylum decision;
- s. the refusal to release him during that delay; and
- t. the use of detention in a posture where no removal, no EOIR proceeding, and no statutory detention authority exists.

94. Together, USCIS's failure to issue a decision and ICE's continued detention constitute arbitrary, capricious, and abusive agency conduct that must be set aside under the APA.

D. Relief Is Required Under the APA.

95. Because Respondents' actions constitute unlawful withholding, unreasonable delay, ultra vires detention, and arbitrary and capricious agency conduct, the Court must set aside

Respondents' actions and order Petitioner's immediate release pursuant to 5 U.S.C. § 706.

COUNT V – WRIT OF MANDAMUS (28 U.S.C. § 1361)

96. Petitioner incorporates paragraphs 1-39 as though fully set forth herein.
97. This Count is brought pursuant to 28 U.S.C. § 1361, which grants district courts original jurisdiction over “any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”
98. To obtain mandamus relief, a petitioner must demonstrate: (1) a clear and indisputable right to the relief sought; (2) a clear, nondiscretionary duty on the part of the respondent to perform the act in question; and (3) the absence of an adequate alternative remedy. *Temple Univ. Hosp. v. Sec’y U.S. HHS*, 2 F.4th 121, 134 (3d Cir. 2021); *Bobrick Washroom Equip., Inc. v. Scranton Prods.*, 152 F.4th 507, 515 (3d Cir. 2024).
99. USCIS has a clear, nondiscretionary duty to adjudicate properly filed asylum applications and to “conclude matters presented to [it]” “within a reasonable time.” 5 U.S.C. § 555(b). Courts have consistently recognized that agencies may not delay adjudications indefinitely and that unreasonable delays are subject to judicial correction. *See* 5 U.S.C. § 706(1); *Kaplan v. Chertoff*, 481 F. Supp. 2d 370 (E.D. Pa. 2007); *Han Cao v. Upchurch*, 496 F. Supp. 2d 569 (E.D. Pa. 2007).
100. In *Kaplan*, the court held that USCIS does not have unfettered discretion to delay adjudication of immigration applications and that “within a reasonable time” has real meaning—agencies cannot invoke discretion as a shield for indefinite stalling. 481 F. Supp. 2d at 400–01. In *Han Cao*, the court found that a delay of several years in adjudicating an application was presumptively unreasonable and actionable under the

APA and mandamus where the agency failed to provide adequate justification. 496 F. Supp. 2d at 576–78.

101. Here, USCIS has already substantively approved Petitioner’s asylum application. The assigned Asylum Officer and her supervisor informed counsel that the claim had been granted, and DHS counsel confirmed this on the record in Immigration Court. The only remaining steps are completion of routine background checks and issuance of the written asylum decision.

102. Petitioner has now been detained in ICE custody for over six months while USCIS claims to be “waiting for background checks.” Given that substantive adjudication is complete, these incomplete background checks are a purely ministerial step and cannot justify further delay—particularly where a young, non-criminal UAC remains in custody solely because the agency has not finished its own internal processing. Under the APA and cases such as *Kaplan* and *Han Cao*, this delay is unreasonable.

103. Courts have held that prolonged agency delay resulting in continued detention may support mandamus relief. *See, e.g., A.L. v. Oddo*, 761 F. Supp. 3d 822 (M.D. Pa. 2020) (compelling agency action where prolonged governmental inaction resulted in continued custody); *Kaplan*, 481 F. Supp. 2d 370; *Han Cao*, 496 F. Supp. 2d 569. The delay here—six months of detention after substantive approval—is precisely the type of unreasonable inaction mandamus was designed to address.

104. Petitioner has no adequate alternative remedy. There is no administrative process by which he can compel USCIS to complete background checks or issue the final decision. EOIR cannot assert jurisdiction over the asylum application while USCIS retains initial jurisdiction under 8 U.S.C. § 1232(b)(3), and the Immigration Judge has no

authority to order USCIS to act. In such circumstances, the Third Circuit recognizes mandamus as an appropriate and necessary vehicle. *Temple Univ. Hosp.*, 2 F.4th at 134; *Bobrick*, 152 F.4th at 515.

105. USCIS's and DHS's failure to act also constitutes a violation of a clear duty to act. Mandamus may issue where an agency's failure to perform a legally required act is contrary to law or an abuse of discretion. *Naporano Metal & Iron Co. v. Sec'y of Labor*, 529 F.2d 537, 542 (3d Cir. 1976). Here, USCIS's refusal to complete the final, ministerial steps in the asylum adjudication process—despite acknowledging that the case has been substantively approved—is contrary to the APA's command that matters be concluded within a reasonable time, and is an abuse of its limited discretion under the INA and APA.
106. Petitioner therefore satisfies all three elements for mandamus: (1) he has a clear and indisputable right to a timely decision on his substantively approved asylum application and to release from detention that is premised solely on agency inaction; (2) USCIS and DHS have a clear, nondiscretionary duty to complete background checks, issue a written decision, and effectuate the result of the asylum grant; and (3) no adequate alternative remedy exists to compel this action.
107. Mandamus relief is thus appropriate and necessary. Petitioner respectfully requests that this Court issue a writ of mandamus under 28 U.S.C. § 1361 ordering USCIS and DHS to: (a) immediately complete all outstanding background and security checks; (b) issue the final written asylum decision; and (c) direct ICE to release Petitioner from custody without further delay.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. **Assume jurisdiction** over this matter;
2. **Issue an Order to Show Cause** directing Respondents to explain why the writ should not be granted;
3. **Issue a writ of habeas corpus ordering** Respondents — including the Warden/Superintendent of Delaney Hall Detention Facility, the ICE Newark Field Office Director, the Director of ICE, the Secretary of Homeland Security, and the Attorney General of the United States — to immediately release Petitioner from immigration custody;
4. **Declare** that Petitioner’s continued detention is unlawful because:
 - a. USCIS retains initial jurisdiction over Petitioner’s asylum application under 8 U.S.C. § 1232(b)(3);
 - b. USCIS has substantively approved the asylum application pending only ministerial background checks;
 - c. EOIR lacks jurisdiction to adjudicate asylum on the merits until USCIS issues a final decision or refers the case; and
 - d. No detention provision of the INA — including §§ 1225, 1226, or 1231 — authorizes Petitioner’s continued custody;
5. **Declare** that USCIS has unlawfully withheld and unreasonably delayed final agency action under 5 U.S.C. § 706(1);
6. **Set aside** Respondents’ continued detention of Petitioner as arbitrary, capricious, and in excess of statutory authority under 5 U.S.C. § 706(2)(A)–(C);

7. **Issue a writ of mandamus under 28 U.S.C. § 1361** compelling USCIS and DHS to immediately:
 - a. Complete all remaining background and security checks;
 - b. Issue the written asylum decision; and/or
 - c. Direct ICE to release Petitioner forthwith;
8. **Order** Respondents to release Petitioner so that he may immediately resume his lawful employment at The Rockleigh Country Club in Rockleigh, New Jersey, as confirmed in Exhibit F;
9. **Enjoin Respondents** from re-detaining Petitioner based on the same facts or posture absent clear statutory authority and an individualized determination consistent with due process;
10. **Award attorney's fees and costs** under the Equal Access to Justice Act, 28 U.S.C. § 2412, if applicable; and
11. **Grant such other and further relief** as the Court deems just, equitable, and proper.

Respectfully Submitted

/s/ Derek A. DeCosmo
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