

I. INTRODUCTION

This motion seeks the immediate release of Petitioner, an unaccompanied child asylum applicant whose case remains under the exclusive initial jurisdiction of USCIS pursuant to 8 U.S.C. § 1232(b)(3). USCIS has substantively approved Petitioner's asylum application following his October 1, 2025, interview; both the Asylum Officer and her Supervisor approved the claim, leaving only routine background checks outstanding.

Despite this, Petitioner remains in ICE custody with no statutory basis for detention, no removal order, and no Immigration Judge jurisdiction to conduct a bond hearing or adjudicate asylum on the merits.

Petitioner is detained solely because USCIS has not yet issued the ministerial written approval — a circumstance for which the INA provides no detention authority. ICE's continued custody is therefore ultra vires, arbitrary, capricious, unconstitutional, and in violation of the APA.

II. FACTUAL POSTURE REQUIRING EMERGENCY RELIEF

1. Petitioner entered the United States as a minor on March 3, 2023, and applied for asylum on August 8, 2023.
2. He is a Unaccompanied Alien Child, and as such, USCIS retains initial jurisdiction over his asylum claim.
3. On October 1, 2025, he completed his affirmative asylum interview from detention.
4. Several days later, the Asylum Officer informed counsel that she and her supervisor approved the asylum claim; only background checks remain.
5. ICE continues to detain Petitioner despite:
 - a. No removal order;

- b. No EOIR jurisdiction over the merits;
 - c. No statutory detention authority under §§ 1225, 1226, or 1231;
 - d. USCIS’s substantive approval.
6. Petitioner has employment waiting for him upon release at The Rockleigh Country Club, where he has worked since June 2024 and is described as an exemplary employee.

Exhibit F.

Petitioner is thus held in a jurisdictional and statutory vacuum – a scenario the INA does not authorize and that the Constitution does not permit.

III. LEGAL STANDARD FOR EMERGENCY RELEASE

Federal courts possess clear authority—grounded in statute, the Constitution, and longstanding equitable powers—to order the immediate release of an individual whose detention is unlawful. This authority arises under multiple, independent legal bases.

A. Statutory and Constitutional Bases for Immediate Release.

1. 28 U.S.C. § 2241 – Federal Habeas Jurisdiction

28 U.S.C. § 2241 grants federal courts jurisdiction to issue writs of habeas corpus to individuals who are “in custody under or by color of the authority of the United States,” or who are “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(1), (c)(3). Courts have long recognized that § 2241 empowers federal courts to order immediate release when detention is unlawful, including in the immigration context and other forms of federal custody. *See Murphy v. Garrett*, 729 F. Supp. 461 (W.D. Pa. 1990).

2. 28 U.S.C. § 1651 – The All Writs Act

The All Writs Act authorizes federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions.” Although the Act does not itself confer jurisdiction, it empowers courts to issue orders—including immediate release—when necessary to effectuate their habeas authority or to prevent frustration of judicial review. *See United States v. Apple Mac Pro Computer*, 851 F.3d 238 (3d Cir. 2017).

3. 5 U.S.C. §§ 701-706 – The Administrative Procedure Act (APA)

Under the Administrative Procedure Act, federal courts may compel agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), and may set aside agency actions that are arbitrary, capricious, an abuse of discretion, or in excess of statutory authority, *id.* § 706(2). These provisions encompass unlawful detention resulting from agency inaction, prolonged delay, or ultra vires conduct. Accordingly, the APA provides an additional basis for immediate judicial relief where detention persists solely because USCIS has failed to issue a final asylum decision.

4. The Fifth Amendment – Constitutional Due Process

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. When detention becomes statutorily unauthorized, purposeless, or arbitrary, it violates both substantive and procedural due process, and federal courts have clear authority to remedy such unlawful detention through immediate release.

B. Standard for Emergency Relief

Courts evaluating emergency motions for release apply the traditional equitable four-factor test, which requires a petitioner to demonstrate: (1) a likelihood of success on the merits; (2) irreparable harm absent immediate relief; (3) that the balance of equities favors the petitioner;

and (4) that the public interest supports the requested relief. *See Transcontinental Gas Pipe Line Co., LLC v. Pa. Env't Hearing Bd.*, 108 F.4th 144 (3d Cir. 2024); *Reilly v. City of Harrisburg*, 858 F.3d 173 (3d Cir. 2017). In the Third Circuit, the first two considerations—likelihood of success and irreparable harm—operate as “gateway factors.” *Reilly*, 858 F.3d at 179; *Transcon. Gas Pipe Line*, 108 F.4th at 155. A court must find both gateway factors satisfied before turning to the remaining equitable considerations. Only after these threshold showings are made does the court weigh the balance of harms and the public-interest implications to determine whether emergency relief is warranted. Where these factors align, courts in this Circuit routinely exercise their equitable authority to order immediate release from unlawful detention. *See Boynes v. Limetree Bay Ventures LLC*, 110 F.4th 604 (3d Cir. 2024); *Trs. of the Gen. Assembly v. Patterson*, 527 F. Supp. 3d 722 (E.D. Pa. 2021).

IV. ARGUMENT

A. Petitioner is Likely To Succeed on the Merits.

Because Petitioner entered the United States as an unaccompanied alien child (“UAC”), USCIS retains exclusive initial jurisdiction over his asylum application under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The statute provides that “an asylum officer... shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child.” 8 U.S.C. § 1232(b)(3); see also 6 U.S.C. § 279 (defining “unaccompanied alien child” as a minor under 18 with no lawful immigration status and no parent or legal guardian available to provide care in the United States). The Board of Immigration Appeals has repeatedly reaffirmed this structure: in *Matter of M-A-C-O-*, 27 I. & N. Dec. 477 (BIA 2018), the BIA held that USCIS retains initial jurisdiction even when the applicant later turns 18; similarly, *In re Douglas Velasquez-Granadas*, 2018 Immig. Rptr. LEXIS

11128, and *In re Santos Geovany Padilla-Guzman*, 2016 Immig. Rptr. LEXIS 7242, confirm that Immigration Judges have no authority to adjudicate asylum applications filed by UACs unless and until USCIS formally refers the case to EOIR. USCIS has not referred Petitioner's case, meaning EOIR cannot proceed, and Petitioner remains squarely within USCIS's jurisdictional control.

USCIS's handling of the case confirms this posture: after Petitioner's October 1, 2025, interview, the assigned Asylum Officer and her Supervisor approved the asylum application, with only routine background checks outstanding. This unresolved delay is not a substantive adjudication but rather a ministerial gap—one squarely addressed by the Administrative Procedure Act (“APA”), which permits courts to compel agency action “unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). Courts have repeatedly held that prolonged procedural delays, especially after substantive approval, may warrant judicial intervention. *Han Cao v. Upchurch*, 496 F. Supp. 2d 569 (E.D. Pa. 2007), illustrates this principle: where agency delay exceeds reasonable expectations and impedes statutory rights, courts may order relief to prevent unlawful stagnation.

In this precise posture, no detention statute under the INA authorizes ICE custody. Section 1231 does not apply because Petitioner has no final order of removal, and the removal period has not begun. Section 1226 does not apply because Petitioner is not in active EOIR merits proceedings, as the Immigration Judge lacks jurisdiction until USCIS refers the case. Section 1225(b) detention is also fully exhausted because the asylum adjudication is effectively complete; as the BIA acknowledged in *Matter of Jonathan Javier Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), detention under § 1225(b) is tied to the pendency of asylum or credible-

fear adjudication, not to post-approval administrative delays. Once an asylum officer has approved the claim, the statutory purpose of § 1225(b) detention ends.

Thus, no provision of the INA—§§ 1231, 1226, or 1225(b)—authorizes ongoing detention in this jurisdictional limbo. ICE’s custody of Petitioner therefore exists outside statutory boundaries, in direct violation of the principle that immigration detention must be expressly authorized by statute. *Matter of Yajure Hurtado* reinforces that detention authority cannot be presumed or manufactured; it must be grounded in specific statutory text, which is entirely absent here. *See Matter of Hurtado*, 29 I. & N. Dec. 216. Petitioner is therefore detained without any statutory authority whatsoever, a defect that renders his custody unconstitutional, unlawful, and ripe for immediate judicial correction.

B. Ongoing Detention Violates the Fifth Amendment.

The Petitioner's ongoing detention violates the Fifth Amendment’s guarantees of both substantive and procedural due process because it serves no legitimate regulatory purpose, lacks any statutory basis, and deprives him of all meaningful procedural protections. Substantive due process prohibits arbitrary or punitive civil detention and requires that immigration detention remain reasonably related to a valid governmental objective, such as effectuating removal or protecting the public. *Luciano-Jimenez v. Doll*, 543 F. Supp. 3d 69 (M.D. Pa. 2021). Even excludable or noncitizen detainees are entitled to constitutional protection against detention that is purposeless or excessive. *Id.*

For detention to satisfy substantive due process, there must be a realistic prospect of removal, a demonstrated necessity to prevent flight or danger, and reasonable provisions for release or parole. None of those criteria are present here. Petitioner is not in active removal proceedings, has no removal order, and has had his asylum application substantively approved by

USCIS pending only routine background checks, again a nondiscretionary, ministerial task. The government has never alleged—let alone proven—danger or flight risk. In the absence of any valid regulatory justification, continued confinement is arbitrary and punitive rather than civil or regulatory in nature and therefore violates substantive due process.

Procedural due process is likewise violated because Petitioner has no mechanism whatsoever to challenge his detention. The Third Circuit has made clear that due process requires an individualized determination based on a disclosed record, the opportunity to present arguments, and a meaningful hearing at which the government bears the burden of showing, by clear and convincing evidence, that continued detention is necessary. *Contreras v. Att’y Gen.*, 665 F.3d 578 (3d Cir. 2012); *Luciano-Jimenez*, 543 F. Supp. 3d at 80. Here, Petitioner cannot access any custody review: EOIR lacks jurisdiction to provide a bond hearing because USCIS retains exclusive initial jurisdiction over his asylum claim; USCIS provides no custody review process; and ICE has offered no written authority or rationale for its continued detention. Detaining a person without a hearing, without a forum to contest custody, and without a burden on the government to justify confinement is the very definition of a procedural due process violation.

His detention is also arbitrary and indefinite, which the Fifth Amendment prohibits. In *Jennings v. Rodriguez*, the Supreme Court held that even where statutes appear to mandate detention, constitutional concerns arise when that detention becomes prolonged without individualized review. The Third Circuit has repeatedly held that months- or years-long detention without a bond hearing or procedural protections violates the Due Process Clause. *Sisiliano-Lopez v. Lowe*, 448 F. Supp. 3d 419 (M.D. Pa. 2020). Petitioner’s circumstances are more

extreme: he is detained without any underlying statutory detention authority, without a removal case pending, for nearly six months, and without any mechanism at all to challenge his detention.

Finally, the Fifth Amendment prohibits punitive detention—confinement that is unrelated to a legitimate governmental objective or excessive in relation to that objective. *Chi Thon Ngo v. INS* and *Luciano-Jimenez* both confirm that detention must be supported by current, individualized evidence of danger or flight risk. The government has produced none. With no pending removal proceeding, no lawful detention statute to rely on, no finding of danger or flight risk, and no procedural safeguards, ICE’s continued detention of Petitioner is not regulatory—it is punitive, arbitrary, and unconstitutional.

In sum, Petitioner’s detention violates the Constitution because it lacks a legitimate regulatory purpose, is unsupported by any statutory authority, is excessive and arbitrary, and deprives him of any procedural mechanism to challenge his confinement. The Fifth Amendment does not tolerate confinement under these circumstances, and immediate release is required.

C. Detention Violates the INA

The Immigration and Nationality Act authorizes immigration detention only within the narrow statutory circumstances expressly delineated by Congress, and ICE’s continued custody of Petitioner falls within none of them. Section 1225 governs the detention of arriving aliens and individuals apprehended at or near the border pending inspection or asylum adjudication. It mandates detention during processing only for those who are “not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b). Petitioner does not fall within this category: he is not an arriving alien, and his substantive asylum adjudication has already been completed by USCIS. Even where § 1225(b) applies, the Third Circuit has recognized that prolonged detention may raise serious due process concerns. *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435 (D.N.J.

2019). Thus, § 1225 provides no authority for continued detention in Petitioner's circumstances as he rapidly approaches six months of confinement.

Section 1226 authorizes detention only for individuals who are actually in removal proceedings before an Immigration Judge. It permits detention pending a decision on removability, except for a narrow class of criminal aliens subject to mandatory detention under § 1226(c). Petitioner is not in EOIR merits proceedings because USCIS retains exclusive initial jurisdiction over his asylum claim under the TVPRA, and no referral has occurred. Nor does Petitioner fall within any § 1226(c) mandatory detention category, as he has no criminal history whatsoever domestically or abroad. The Third Circuit has also held that prolonged detention under § 1226(a) without a bond hearing violates due process and requires the government to justify continued custody. *Tuser E.*, 370 F. Supp. 3d at 449. Because Petitioner is not in EOIR proceedings at all, § 1226 likewise furnishes no statutory authority for detention.

Section 1231 governs detention only after the issuance of a final order of removal and defines a 90-day "removal period" during which detention is mandatory. 8 U.S.C. § 1231(a)(2). Detention beyond that period is permitted only under specific conditions, such as when the individual is inadmissible, poses a danger to the community, or is unlikely to comply with removal. 8 U.S.C. § 1231(a)(6). Petitioner, however, has no removal order—indeed, no removal proceedings on the merits are even active—and therefore § 1231 does not even apply. Because the statutory removal period has never begun, ICE cannot rely on § 1231 as a lawful basis for detention.

The Third Circuit has repeatedly emphasized that immigration detention authority is strictly limited to the bounds set by Congress, and executive officials have no discretion to act *ultra vires*. *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177 (3d Cir. 2020). When an

agency detains a person outside the circumstances expressly authorized by §§ 1225, 1226, or 1231, that detention is unlawful and subject to judicial correction. The presumption favoring judicial review further reinforces that courts may intervene to restrain executive overreach where ICE exceeds statutory limits.

Finally, because detention outside the statutory framework constitutes detention “in violation of the Constitution or laws of the United States,” habeas relief under 28 U.S.C. § 2241 is available. *Hope v. Warden York Cty. Prison*, 972 F.3d 310 (3d Cir. 2020). Where detention is unauthorized under the INA, it necessarily violates due process, providing an independent constitutional basis for immediate release.

In short, Petitioner’s detention is unlawful because he does not fall within any of the three statutory detention categories set forth in the INA. The statutory framework, reinforced by binding judicial precedent, makes clear that ICE’s continued custody is ultra vires, unauthorized, and subject to immediate judicial remedy.

D. Detention and Delay Violate the APA

Petitioner’s continued detention also violates the Administrative Procedure Act because both USCIS and ICE are engaging in agency action that is unlawfully withheld, unreasonably delayed, arbitrary, capricious, and in excess of statutory authority. Under 5 U.S.C. § 706, courts are expressly empowered to compel agency action “unlawfully withheld or unreasonably delayed” (§ 706(1)) and to “hold unlawful and set aside” actions that are arbitrary, capricious, an abuse of discretion, or exceed statutory jurisdiction or authority (§ 706(2)(A), (C)). USCIS’s failure to issue Petitioner’s final written asylum decision—despite substantive approval by both the Asylum Officer and her supervisor—constitutes an unreasonable delay in violation of § 706(1).

The APA mandates that agencies conclude matters presented to them “within a reasonable time.” 5 U.S.C. § 555(b). Courts have repeatedly held that USCIS cannot relegate applicants to indefinite administrative limbo. In *Kaplan v. Chertoff*, 481 F. Supp. 2d 370 (E.D. Pa. 2007), the court held that USCIS has a mandatory, non-discretionary duty to adjudicate applications within a reasonable time and emphasized that the APA forecloses open-ended delays. Likewise, *Han Cao v. Upchurch*, 496 F. Supp. 2d 569 (E.D. Pa. 2007), recognized that § 706(1) authorizes courts to compel agency action where prolonged delays in routine processing violate the APA. And in *Geda v. Director, USCIS*, 126 F.4th 835 (3d Cir. 2025), the court reiterated that applicants waiting years for adjudication may pursue APA relief when agency inaction becomes unreasonable. The same principles apply here: USCIS has completed the substantive adjudication and is withholding only the ministerial issuance of the written decision — a classic example of agency action “unlawfully withheld.”

ICE’s continued detention of Petitioner independently violates § 706(2)(A) and (C) because it is arbitrary, capricious, and exceeds statutory authority. Under § 706(2)(A), agency decisions must be reasonable, supported by a rational explanation, and connected to the underlying statutory framework. *Trenton Threatened Skies, Inc. v. FAA*, 90 F.4th 122 (3d Cir. 2024). Here, ICE has provided no explanation for its continued detention—no removal order exists, no EOIR proceeding is active, and USCIS retains exclusive initial jurisdiction. Under § 706(2)(C), actions taken “in excess of statutory jurisdiction or authority” must be set aside. Courts have found prolonged detention without a bond hearing or statutory basis to be unreasonable and unlawful, particularly when the agency fails to follow its own policies or justify the detention. *A.L. v. Oddo*, 761 F. Supp. 3d 822 (M.D. Pa. 2020); *Kaplan*, 481 F. Supp. 2d at 396. The Third Circuit has also emphasized that executive officials may not engage in ultra

vires conduct, and detention authority is strictly confined to that granted by statute. *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177 (3d Cir. 2020). ICE's detention of Petitioner, who falls into none of the INA's detention categories, is therefore precisely the type of ultra vires agency action that § 706(2)(C) prohibits.

Applying the APA to these facts confirms that both USCIS's delay and ICE's detention contravene federal law. USCIS's prolonged failure to issue the final asylum decision is an unreasonable and unlawful delay under § 706(1). ICE's detention, unsupported by any statutory provision and unexplained by any agency rationale, is arbitrary, capricious, and in excess of statutory authority under § 706(2)(A) and (C). Courts in this Circuit have consistently held that agency obligations under the APA are enforceable through judicial review, and when agency action is unreasonably delayed or exceeds statutory authority, courts must intervene. *Kaplan; Han Cao; E.O.H.C.; Geda*. For these reasons, the APA requires that ICE's unlawful detention be set aside and that USCIS be compelled to complete the action it has unlawfully withheld.

E. Irreparable Harm, Equities, and Public Interest Favor Immediate Release.

Petitioner faces ongoing irreparable harm with every additional day of unlawful confinement, as the deprivation of liberty in violation of the Constitution cannot be remedied through post-hoc relief. Courts in the Third Circuit have long recognized that substantive due process imposes strict limitations on the government's power to detain individuals, and that unjustified or prolonged civil detention violates constitutional liberty interests. In *United States v. Perry*, 788 F.2d 100 (3d Cir. 1986), the court emphasized that detention is permissible only when supported by a legitimate governmental interest—typically dangerousness or risk of flight. Similarly, in *United States v. Accetturo*, 783 F.2d 382 (3d Cir. 1986), the court held that detention may become unconstitutional when its duration or circumstances exceed permissible bounds.

United States v. Gatto, 727 F. Supp. 903 (D.N.J. 1989), further underscores the “crucial liberty interest at stake” in all detention cases, holding that prolonged confinement without sufficient justification infringes upon due process. Moreover, detention unsupported by individualized findings—such as dangerousness or flight risk—is constitutionally inadequate, as recognized in *Chavez-Rivas v. Olsen*, 207 F. Supp. 2d 326 (D.N.J. 2002). Because Petitioner’s detention lacks any statutory basis, lacks any evidence of risk, and lacks any mechanism to challenge custody, the resulting constitutional injury is ongoing, grave, and irreparable.

The equities weigh overwhelmingly in Petitioner’s favor. Courts assessing release routinely consider factors such as the individual’s character, employment history, community ties, and the feasibility of supervision. See 18 U.S.C. § 3142(g). In *United States v. Coleman*, 777 F.2d 888 (3d Cir. 1985), the Third Circuit confirmed the importance of these personal characteristics in deciding whether detention is necessary. Petitioner exemplifies these factors: he has documented stable employment awaiting him at The Rockleigh Country Club, where he is praised as reliable, hardworking, and respected, as confirmed by Exhibit F. He has strong community ties, no criminal history, and a consistent record of compliance with immigration authorities. Like the defendant in *United States v. Rodriguez*, 451 F. Supp. 3d 392 (E.D. Pa. 2020), who was found not to be a danger under the § 3142(g) factors, Petitioner presents none of the risks that could justify continued custody. These equities demonstrate that Petitioner’s detention serves no legitimate purpose and that release would immediately restore his ability to work, support himself, and rejoin his community.

The public interest also strongly favors release. Courts have consistently recognized that the public interest is served by upholding constitutional protections and preventing unlawful detention. In *Thakker v. Doll*, and later in *United States v. Harris*, 453 F. Supp. 3d 690 (M.D. Pa.

2020), courts emphasized that constitutional guarantees apply equally to all individuals—including detainees—and that the public interest is best served by ensuring compliance with these fundamental principles. The Third Circuit in *Norris v. Frame*, 585 F.2d 1183 (3d Cir. 1978), held that the only legitimate governmental interest in civil detention is ensuring the detainee’s presence, and that any additional deprivation must be justified by compelling necessity. Petitioner’s continued custody, unsupported by statute, jurisdiction, or evidence of risk, undermines these constitutional benchmarks and erodes public confidence in the integrity of the immigration and judicial systems. Releasing an individual with a substantively approved asylum claim, no criminal history, an established employment record, and no evidence suggesting danger or flight risk squarely aligns with the public interest in fair, lawful, and humane enforcement of immigration laws.

V. REQUESTED RELIEF

Petitioner respectfully requests that this Court exercise its authority under 28 U.S.C. § 2241, the Administrative Procedure Act, and the All Writs Act to immediately remedy the ongoing constitutional and statutory violations arising from his unlawful detention. As demonstrated above, no provision of the Immigration and Nationality Act authorizes Petitioner’s continued confinement, and USCIS’s delay and ICE’s ultra vires detention have placed Petitioner in a legal and jurisdictional limbo that the Constitution does not tolerate. Petitioner therefore asks this Court to issue immediate relief to prevent further irreparable harm, protect his due process rights, and ensure the lawful administration of the immigration system. Specifically, Petitioner requests that the Court:

- **Grant** this Emergency Motion and order Petitioner’s immediate release from ICE custody;

- **Prohibit** Respondents from re-detaining Petitioner absent clear and specific statutory authority;
- **Direct** USCIS to promptly complete all remaining steps necessary to issue the final written asylum decision;
- **Grant** such other and further relief as the Court deems just and proper.

Given Petitioner's youth, lack of criminal history, stable employment, strong community ties, and the complete absence of lawful statutory authority for his detention, the relief requested is both necessary and firmly supported by law, equity, and the public interest.

Respectfully Submitted

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