

**JUDGE LEON SCHYDLOWER**

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3  
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**FILED**  
DEC 12 2025  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY *[Signature]*  
DEPUTY CLERK

6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

8 Kelvin Mendoza Palma  
9 Petitioner,

Case No.

10 v.

PETITION FOR WRIT OF HABEAS  
CORPUS

11 Mary de Anda Ybarra, Field Office Director of  
Enforcement and Removal Operations, El Paso  
12 Field Office, Immigration and Customs  
Enforcement; Todd M Lyons, Acting Director  
13 of U.S. Immigration and Customs Enforcement;  
Kristi NOEM, Secretary, U.S DEPARTMENT  
14 OF HOMELAND SECURITY; Pamela  
BONDI, U.S. Attorney General; EXECUTIVE  
15 OFFICE FOR IMMIGRATION REVIEW;  
Acquisition Logistics LLC, Warden of DOW  
16 Detention Facility at Fort Bliss (a.k.a. ERO EL  
Paso Camp East Montana).

17 Respondents.

**EP 25CV0661**

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1 INTRODUCTION

2 1. Petitioner Kelvin Mendoza Palma is in the physical custody of Respondents at  
3 ERO DOW Detention Facility at Fort Bliss (a.k.a. ERO El Paso Camp East Montana). Petitioner,  
4 Kelvin Mendoza Palma, fled to seek protection in the United States after receiving death threats  
5 in Nicaragua.

6 2. Petitioner was released into the United States on or about January 10, 2022, by  
7 Respondents; Respondents commenced removal proceedings against Petitioner in immigration  
8 court, entitling Petitioner to present an asylum claim with the due process rights under 8 U.S.C. §  
9 1229a.

10 3. Released on his own recognizance from immigration custody almost four years  
11 ago by Respondents, Petitioner has complied with every request, demand and requirement  
12 imposed by Respondents, in addition to complying with all court and legal timelines for his  
13 asylum case. Petitioner's next court date is scheduled for December 2, 2025, with the El Paso  
14 Immigration Court. After assisting his mother in attending her legally required ICE reporting  
15 appointment, Petitioner was arrested and detained by Respondents with his mother without  
16 reason.

17 4. On September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued  
18 a precedent decision, binding on all immigration judges, holding that an immigration judge has  
19 no authority to consider bond requests for any person who entered the United States without  
20 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board  
21 determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and  
22 therefore ineligible to be released on bond.



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

4 11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et.  
5 seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. §  
6 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2)

7 12. Because the Petitioner files this Petition for Habeas Corpus in the first instance,  
8 the Court would retain jurisdiction even if the Petitioner is transferred to a different jurisdiction.  
9 *Ross v. Mebane*, 536 F.2d 1199, 1201 (7th Cir. 1976). *See also, Stine v. Watson*, No.  
10 219CV00006JRS DLP, 2020 U.S. Dist. LEXIS 153555, 2020 WL 5016887, at \*4 (S.D. Ind. Aug.  
11 24, 2020) ("This Court has jurisdiction to rule on [the petitioner's] petition even though he has  
12 been transferred outside the Southern District of Indiana"); *Coburn v. Reno*, No. 98 C 1453, 1999  
13 U.S. Dist. LEXIS 2717, 1999 WL 138808, at \*2 (N.D. Ill. Mar. 5, 1999) ("It is well established  
14 that jurisdiction attaches on the initial filing for habeas corpus relief, and this jurisdiction, once  
15 established, is not destroyed by a transfer of the petitioner and the accompanying custodial  
16 change.").

#### 17 VENUE

18 13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
19 500 (1973), venue lies in the United States District Court for the Western District for Texas, the  
20 judicial district in which Petitioner currently is detained.

21 14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
22 Respondents are employees, officers, and agencies of the United States, and because a  
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1 substantial part of the events or omissions giving rise to the claims occurred in the Western  
2 District of Texas.

3 **REQUIREMENTS OF 28 U.S.C. § 2243**

4 15. The Court must grant the petition for writ of habeas corpus or order Respondents  
5 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
6 order to show cause is issued, Respondents must file a return “within three days unless for good  
7 cause additional time, not exceeding twenty days, is allowed.” *Id.*

8 16. Habeas corpus is “perhaps the most important writ known to the constitutional  
9 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
10 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
11 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
12 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
13 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

14 **PARTIES**

15 17. Petitioner Kelvin Mendoza Palma is a citizen of Nicaragua who has been in  
16 immigration detention since November 7, 2025. Petitioner has a pending asylum with the  
17 Immigration Court. He also has a pending I-130, Petition for Alien Relative through his United  
18 States Citizen wife.

19 18. Respondent Mary de Anda Ybarra is the Director of the El Paso Field Office of  
20 ICE’s Enforcement and Removal Operations division. As such, Mary de Anda Ybarra is  
21 Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. She is  
22 named in his official capacity.

1 19. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of  
2 U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically  
3 responsible for managing all aspects of the immigration enforcement process, including  
4 immigration detention. ICE is responsible for apprehension, incarceration, and removal of  
5 noncitizens from the United States and as such Acting Director Lyons is a legal custodian of  
6 Petitioner.

7 20. Respondent Kristi Noem is the Secretary of the Department of Homeland  
8 Security. She is responsible for the implementation and enforcement of the Immigration and  
9 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.  
10 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

11 21. Respondent Pamela Bondi is the Attorney General of the United States. She is  
12 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
13 and the immigration court system it operates is a component agency. She is sued in her official  
14 capacity.

15 22. Respondent Executive Office for Immigration Review (EOIR) is the federal  
16 agency responsible for implementing and enforcing the INA in removal proceedings, including  
17 for custody redeterminations in bond hearings.

18 23. Respondent Acquisition Logistics LLC was contracted by U.S. government as  
19 Warden and operator of the DOW Detention Facility at Fort Bliss (a.k.a. ERO El Paso Camp  
20 East Montana), where Petitioner is detained. It has immediate physical custody of Petitioner. It is  
21 sued in its official capacity as the jailer and legal custodian of the Petitioner.

22 24. This action is commended against all Respondents in their official capacities.

23 **LEGAL FRAMEWORK**

1           25. Immigration detention should not be used as a punishment and should only be  
2 used when, under an individualized determination, a noncitizen is a flight risk because they are  
3 unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533  
4 U.S. 678, 690 (2001).

5           26. Noncitizens in immigration proceedings are entitled to Due Process under the  
6 Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993). In May  
7 2018, the ICE executed “Operation Keep Safe,” which was a large enforcement action that  
8 resulted in 156 arrests, including 106 people who were arrested without a warrant.

9           27. The Immigration and Nationality Act (INA) establishes various procedures  
10 through which individuals may be detained pending a decision on whether the noncitizen is to be  
11 removed. 8 U.S.C. § 1226(a).

12           28. Removal proceedings described in section 240 of the INA are used to determine  
13 whether individuals, such as Petitioner, should be removed from the United States. See 8  
14 U.S.C. § 1229a.

15           29. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a  
16 right to apply for asylum to individuals seeking safe haven in the United States. The purpose of  
17 the Refugee Act is to enforce the “historic policy of the United States to respond to the urgent  
18 needs of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub.  
19 L. No. 96-212, 94 Stat. 102 (1980).

20           30. The “motivation for the enactment of the Refugee Act” was the United Nations  
21 Protocol Relating to the Status of Refugees, “to which the United States had been bound since  
22 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a  
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1 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and  
2 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

3 31. The Refugee Act established the right to apply for asylum in the United States and  
4 defines the standards for granting asylum. It is codified in various sections of the INA.

5 32. The INA gives the Attorney General or the Secretary of Homeland Security  
6 discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that  
7 definition, individuals generally are eligible for asylum if they have experienced past persecution  
8 or have a well-founded fear of future persecution on account of race, religion, nationality,  
9 membership in a particular social group, or political opinion and if they are unable or unwilling  
10 to return to and avail themselves of the protection of their homeland because of that persecution  
11 of fear. 8 U.S.C. § 1101(a)(42)(A).

12 33. Although a grant of asylum may be discretionary, the right to apply for asylum is  
13 not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is  
14 physically present in the United States or who arrives in the United States[.]” 8 U.S.C. §  
15 1158(a)(1).

16 34. Immigration detention is a form of civil confinement that “constitutes a  
17 significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441  
18 U.S. 418, 4253 (1979).

19 35. Custody determinations for individuals in 1229a removal proceedings are  
20 governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not  
21 present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678,  
22 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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1 36. Custody determinations under § 1226(a) are individualized and based on the facts  
2 presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for  
3 detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the  
4 facts and circumstances.

5 37. Once a determination to release an individual from custody is made, the release  
6 order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8  
7 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take  
8 that individual back into custody by revoking the individual's release when the facts and  
9 circumstances warrant it.

10 38. Revocation and return to custody is authorized only based on the individualized  
11 facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited  
12 in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

13 39. Moreover, if revocation and return to custody of Petitioner is authorized, the INA  
14 prescribes three basic forms of detention for the vast majority of noncitizens in removal  
15 proceedings.

16 40. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
17 4 proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are  
18 generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a),  
19 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain  
20 crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

21 41. Second, the INA provides for mandatory detention of noncitizens subject to 9]  
22 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
23 10 referred to under § 1225(b)(2).

1           42.     Last, the INA also provides for detention of noncitizens who have been ordered  
2 removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a) (b).

3           43.     This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

4           44.     The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
5 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
6 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section  
7 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,  
8 139 Stat. 3 (2025).

9           45.     Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
10 that, in general, people who entered the country without inspection were not considered detained  
11 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
12 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
13 Asylum Procedures, Fed. Reg. 10312, 10323 (Mar. 6, 1997).

14           46.     Thus, in the decades that followed, most people who entered without inspection  
15 and were placed in standard removal proceedings received bond hearings, unless their criminal  
16 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent  
17 with many more decades of prior practice, in which noncitizens who were not deemed "arriving"  
18 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. §  
19 1252(a)(1994); *see* also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)  
20 simply "restates" the detention authority previously found at § 1252(a)).

21           47.     On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that 9  
22 rejected well-established understanding of the statutory framework and reversed decades of 10  
23 practice.

1 48. On September 5, 2025, the BIA adopted the same position in a published  
2 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the  
3 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are  
4 ineligible for IJ bond hearings.

5 49. Since Respondents adopted their new policies, dozens of federal courts have  
6 rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected  
7 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

8 50. Courts have uniformly rejected DHS's and EOIR's new interpretation because it  
9 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB  
10 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the  
11 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

12 51. Section 1226(a) applies by default to all persons "pending a decision on whether  
13 the [noncitizen] is to be removed from the United States." These removal hearings are held under  
14 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

15 52. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
16 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph  
17 (E)'s reference to such people makes clear that, by default, such people are afforded a bond  
18 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress  
19 creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions,  
20 the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*  
21 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025  
22 WL 1869299, at \*7.

1 53. Section 1226 therefore leaves no doubt that it applies to people who face charges  
2 of being inadmissible to the United States, including those who are present without admission or  
3 parole.

4 54. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
5 recently entered the United States. The statute's entire framework is premised on inspections at  
6 the border of people who are "seeking admission" to the United States. 8 U.S.C. §  
7 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
8 applies "at the Nation's borders and ports of entry, where the Government must determine  
9 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583  
10 18 U.S. 281, 287 (2018).

11 55. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not  
12 apply to people like Petitioner, who have already entered and were residing in the United States  
13 at the time they were apprehended. Petitioner is not a noncitizen actively "seeking admission into  
14 the country." *Jennings v. Rodriguez*, 583 U.S. at 289 (2018).

15 **ARGUMENT**

16 56. Petitioner is a citizen and national of Nicaragua.

17 57. Petitioner, Kelvin Mendoza Palma, was targeted in Nicaragua and received  
18 imminent threats to his life. He fled to seek protection in the United States.

19 58. On or about December 30, 2021, Petitioner came to or near the port of entry at or  
20 near El Paso, Texas to seek asylum. Respondents arrested and detained Petitioner. On  
21 information and belief, based on the individualized facts of Petitioner's case, Respondent DHS  
22 released Petitioner from its custody on an Order of Release on Recognizance pursuant to 8  
23 U.S.C. § 1226(a).

1 59. On or about January 9, 2022, Respondents initiated removal proceedings against  
2 Petitioner under 8 U.S.C. § 1229a.

3 60. Respondents alleged that Petitioner was inadmissible to the United States under 8  
4 U.S.C. § 1182(a)(6)(A)(i) and commanded that Petitioner appear for a hearing in immigration  
5 court.

6 61. On or about November 28, 2023, Petitioner applied for asylum before the Chicago  
7 Immigration Court.

8 62. On or about March 27, 2024, Petitioner's United States Citizen wife filed an I-  
9 130, Petition for Alien Relative for Petitioner.

10 63. On November 7, 2025, Petitioner was arrested while assisting his mother in  
11 attending a legally required ICE check-in appointment.

12 64. On December 9, 2025, Immigration Judge Jessica Miles denied Petitioner's  
13 Motion for Bond Redetermination Request, stating that the U.S. District Judge's order in *Lazaro*  
14 *Maldonado Bautista v. Ernesto Santacruz Jr*, 5:25-cv-01873, (C.D. Cal.) was not binding on the  
15 Court and that she must apply *Matter of Yajure Hurtado*.

16 65. Petitioner has a scheduled immigration court hearing on February 20, 2026.

17 66. On January 20, 2025, President Donald Trump issued several executive actions  
18 relating to immigration, including "Protecting the American People Against Invasion," an  
19 executive order (EO) setting out a series of interior immigration enforcement actions. The Trump  
20 administration, through this and other actions, has outlined sweeping, executive branch-led  
21 changes to immigration enforcement policy, establishing a formal framework for mass  
22 deportation. The "Protecting the American People Against Invasion" EO instructs the DHS

1 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil  
2 immigration enforcement procedures including through the use of mass detention.

3 67. On information and belief, Respondents are detaining Petitioner regardless of the  
4 individual facts and circumstances of his case.

5 68. On information and belief, Respondents are using the immigration detention  
6 system, including extra-territorial transfer and detention, as a means to punish individuals for  
7 asserting rights under the Refugee Act.

8 69. On information and belief, Petitioner has no criminal history.

9 70. As a result, Petitioner remains in detention. Without relief from this court, he  
10 faces the prospect of months, or even years, in immigration custody, separated from his family  
11 and community.

12 **CLAIMS FOR RELIEF**

13 **COUNT ONE**

14 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

15 **Abuse of Discretion**

16 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

17 71. Petitioner restates and realleges all paragraphs as if fully set forth here.

18 72. Under the APA, a court shall “hold unlawful and set aside agency action” that is  
19 an abuse of discretion. 5 U.S.C. § 706(2)(A).

20 73. An action is an abuse of discretion if the agency “entirely failed to consider an  
21 important aspect of the problem, offered an explanation for its decision that runs counter to the  
22 evidence before the agency, or is so implausible that it could not be ascribed to a difference in  
23 view or the product of agency expertise.” Nat’l Ass’n of Home Builders v. Defs. of Wildlife, 551  
24 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)).

1 74. By categorically revoking Petitioner's release without consideration of his  
2 individualized facts and circumstances, Respondents have violated the APA.

3 75. By detaining and transferring the Petitioner categorically, Respondents have  
4 further abused their discretion because there have been no changes to his facts or circumstances  
5 since the agency made its initial custody determinations that support the revocation of his release  
6 from custody.

7 76. Respondents have already considered Petitioner's facts and circumstances and  
8 determined that he was not a flight risk or danger to the community. There have been no changes  
9 to the facts that justify this revocation of his release on his own recognizance. The fact that  
10 Petitioner has already been granted release by Respondents under the same facts and  
11 circumstances shows that Respondents do not consider him, on an individualized basis, to be a  
12 danger to the community or a flight risk.

13 **COUNT TWO**

14 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**  
15 **Not in Accordance with Law and in Excess of Statutory Authority**  
16 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

17 77. Petitioner restates and realleges all paragraphs as if fully set forth here.

18 78. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in  
19 accordance with law;" "contrary to constitutional right;" "in excess of statutory  
20 jurisdiction, authority, or limitations;" or "without observance of procedure required by  
21 law." 5 U.S.C. § 706(2)(A)-(D).

22 79. 8 U.S.C. § 1226(b) authorizes that "[t]he Attorney General at any time may revoke a  
23 bond or parole authorized under [8 U.S.C. § 1226(a)]" and rearrest a noncitizen under the  
24 initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies  
that such revocations of release from custody may only be carried out in the "discretion

1 of the district director, acting district director, deputy district director, assistant district  
2 director for investigations, assistant district director for detention and deportation, or  
3 officer in charge (except foreign).”

4 80. It is a well-established administrative principle that “agency action taken without lawful  
5 authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp.  
6 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir.  
7 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir.  
8 2016) (invalidating agency action because it was taken by unauthorized official).

9 81. On information and belief, Respondents have revoked or are revoking Petitioner’s prior  
10 custody determination as a result of a categorical policy prepared by and implemented by  
11 unidentified government officials in Washington, not through the individual exercise of  
12 discretion required by law or by the individuals enumerated by regulation to do so.

13 82. Because Petitioner’s revocation of release from custody has been made or will be  
14 categorically directed by government officials not authorized by law to make this  
15 determination, Respondents’ detention of Petitioner is not in accordance with law and in  
16 excess of statutory authority.

17 **COUNT THREE**  
18 **Violation of Fifth Amendment Right to Due Process**  
19 **Procedural Due Process**

20 83. Petitioner restates and realleges all paragraphs as if fully set forth here.

21 84. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the  
22 federal government from depriving any person of “life, liberty, or property, without due  
23 process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the  
24

1 United States, including [non-citizens], whether their presence here is lawful, unlawful,  
2 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693; accord *Flores*, 507 U.S. at 306.

3 85. Due process requires that government action be rational and non-arbitrary. *See U.S. v.*  
4 *Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

5 86. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and  
6 to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not “unlimited”  
7 and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

8 87. Here, Respondents have chosen to revoke Petitioner’s release in an arbitrary manner and  
9 not based on a rational and individualized determination of whether he is a safety or  
10 flight risk, in violation of due process. Because no individualized custody revocation has  
11 been made and no circumstances have changed to make Petitioner a flight risk or a  
12 danger to the community, Respondents’ revocation of Petitioner’s release violates his  
13 right to procedural due process.

14 **COUNT FOUR**  
15 **Violation of the INA**

15 88. Petitioner restates and realleges all paragraphs as if fully set forth here.

16 89. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
17 noncitizens residing in the United States who are subject to the grounds of  
18 inadmissibility. As relevant here, it does not apply to those who previously entered the  
19 country and have been residing in the United States prior to being apprehended and  
20 placed in removal proceedings by Respondents. Such noncitizens are detained under §  
21 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

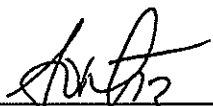
22 90. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued  
23 detention and violates the INA.  
24

**PRAYER FOR RELIEF**

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

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
3. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
4. Declare that Petitioner's revocation of parole from custody was made in violation of statute and regulation;
5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody; or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
6. Order that Petitioner shall not be transferred outside the Northern District of Illinois without the Court's approval;
7. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
8. Grant any other and further relief that this Court deems just and proper.

DATED this 9<sup>th</sup> of December 2025.

  
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Amanda Ortiz, Esq.  
*Attorney for Petitioner*