

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Erico Fernando Perez Perez,

A#: 

Petitioner,

v.

Matt ELLISTON, Field Office Director of
Enforcement and Removal Operations,
Baltimore Field Office, Immigration and
Customs Enforcement; Markwayne MULLIN,
Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Todd BLANCHE,
Acting U.S. Attorney General; EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

*I, Audrey G. Vorhees, Esq. hereby certify compliant with the Court's Local Standing Order that the Petitioner is presently detained in Maryland, that emergency relief is necessary, and that the Court has subject-matter jurisdiction over the Petition.

INTRODUCTION

1. Petitioner Erico Fernando Perez Perez is in the physical custody of Respondents at the Baltimore Holding Cells of ICE ERO Baltimore. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner does not currently have a case in removal proceedings according to the EOIR case status portal.

3. Based on the fact that the Petitioner is present in the United States without lawful immigration status, DHS will deny Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. The Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a) (2018). *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

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

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released from detention immediately and/or that the Federal Respondents be required to grant him a prompt bond hearing and enjoined from denying him bond due to lack of jurisdiction based on their erroneous statutory interpretation.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Baltimore holding cells at the Baltimore ICE ERO office.

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. 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) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

15. Petitioner Erico Fernando Perez Perez is a citizen of Guatemala who has been in immigration detention since April 13, 2026. After arresting Petitioner on his way to work, Petitioner is being held at the Baltimore holding cells of the Baltimore ICE ERO office. He has not yet filed a Motion for Bond Redetermination with the Immigration Court, as it would be futile to do so given the Federal Respondents' ongoing and nationwide-practice of denying bond for similarly-situated individuals based on their erroneous statutory interpretation that they lack of jurisdiction subject to mandatory detention policies. Petitioner has been continuously present in the United States since on or about April 2024. He has no active removal proceedings with any immigration court, according to the EOIR Case Status Portal as of 1:00 pm today, April 13, 2026.

16. Respondent Matt Elliston is the Director of the Baltimore Field Office of ICE's Enforcement and Removal Operations division. As such, Matt Elliston is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

17. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

18. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

19. Respondent Todd Blanche is the acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

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

LEGAL FRAMEWORK

21. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
22. Noncitizens are entitled to Due Process under the Fifth Amendment of the U.S. Constitution in immigration proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993).
23. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).
24. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. *See* 8 U.S.C. § 1229a.
25. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the “historic policy of the United States to respond to the

urgent needs of persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L.No. 96-212, 94 Stat. 102 (1980).

26. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol Relating to the Status of Refugees, “to which the United States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).
27. The Refugee Act established the right to apply for asylum in the United States and fines the standards for granting asylum. It is codified in various sections of the INA.
28. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
29. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

30. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
31. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
32. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.
33. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual’s release when the facts and circumstances warrant it.
34. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).
35. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

36. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E).

Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.

FACTS

37. Petitioner entered the United States through the U.S./Mexican border on an unknown date in or around April 2024. He was 17 years old when he entered.

38. The EOIR Case Status Portal shows no history of prior removal proceedings and no current, active removal proceedings with any Immigration Court.

39. He has never been arrested or charged criminally.

40. He has been living and working in Maryland since his entry two years ago. He has a stable address with his brother, sister-in-law and two nephews.

41. He was detained on April 13 while on his way to work. The ICE officers did not state the reason for the stop nor accuse him of committing any traffic violations.

CLAIMS FOR RELIEF

COUNT I

**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

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

43. 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).
44. 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)).
45. 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).
46. By categorically revoking Petitioner’s release and seeking to transfer him away from the district without consideration of his individualized facts and circumstances, Respondents have violated the APA.

COUNT II

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

47. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
48. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

49. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke a bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen under the 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 of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).”
50. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void *ab initio*.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).
51. On information and belief, Respondents have detained Petitioner without meaningful possibility of custody redetermination as a result of a categorical policy prepared by and implemented by unidentified government officials in Washington, not through the individual exercise of discretion required by law or by the individuals enumerated by regulation to do so.
52. Because Petitioner’s detention without possibility of release from custody has been made or will be categorically directed by government officials not authorized by law to make this determination, Respondents’ detention of Petitioner is not in accordance with law and in excess of statutory authority.

COUNT III

Violation of the INA

53. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
54. 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.
55. Respondents' statutory interpretation under *Matter of Q. Li* is an erroneous statutory interpretation, since individuals placed in removal proceedings under section 240 of the INA should not be subject to detention under INA section 235(b). 29 I&N Dec. 66 (BIA 2025).
56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT IV

Violation of Fifth Amendment Right to Due Process Procedural Due Process

57. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
58. 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, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

59. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
60. While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.
61. Here, Respondents have chosen to detain Petitioner in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because no individualized custody determination has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents’ revocation of Petitioner’s release violates his right to procedural due process.
62. Petitioner has a fundamental interest in liberty and being free from official restraint.

COUNT IV

Violation of Fourth Amendment Right Against Unlawful Search and Seizure

63. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
64. “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. V.
65. The Respondents violated the Petitioner’s right against unlawful search and seizure when they forced his vehicle off the road and detained him despite the Petitioner not being charged with anything, even an immigration violation. There was no probable cause for

the stop, other than the Petitioner being Hispanic and driving in an Irrigation Services company vehicle.

66. Petitioner has a fundamental interest in his right against unlawful search and seizure, liberty, and being free from official restraint.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter, and retain jurisdiction over this matter in the event the Petitioner is later transferred outside the jurisdiction of the District of Maryland;
- b. Order that Petitioner shall not be transferred outside the jurisdiction of the District of Maryland while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately and/or order that the Respondents schedule a speedy bond redetermination hearing for the Petitioner at which time they be enjoined from denying bond pursuant to their erroneous interpretation of the INA under *Matter of Yajure-Hurtado* and/or *Matter of Q. Li*;
- e. Declare that Petitioner's detention is unlawful;
- f. 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

g. Grant any other and further relief that this Court deems just and proper.

DATED this 13th day of April, 2026.

/s/Audrey Vorhees

Audrey G. Vorhees, Esq., MD Bar #2312041010

Pachuta & Kammerman, PLLC

3541 Chain Bridge Rd, Ste 208

Fairfax, VA 22030

(703) 822-4701

avorhees@pklegal.com

Attorney for Petitioner