

Bridget Bailey
OSB #970309
Bridges Immigration Law, LLC
1239 NW Golf Course Dr.
Madras, OR 97741
(541) 993-2027
bridges.immigration.law@gmail.com
Attorney for petitioner

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

M.D.S.	)	File No.
	)	
Petitioner,	)	Agency No: AXXX-XXX- 284
	)	
vs.	)	PETITION FOR HABEAS
	)	CORPUS
LAURA HERMOSILLO, Seattle Field Office	)	
Director, U.S. Immigration and Customs	)	ORAL ARGUMENT
Enforcement and Removal Operation, KRISTI	)	REQUESTED
NOEM, Secretary of Homeland Security,	)	
PAMELA BONDI, Attorney General, TODD	)	Expedited hearing requested
LYONS, Acting Director of Immigration and	)	
Customs Enforcement, U.S. DEPARTMENT	)	
OF HOMELAND SECURITY, U.S.	)	
IMMIGRATION AND CUSTOMS	)	
ENFORCEMENT, and U.S. DEPARTMENT	)	
OF JUSTICE	)	
	)	
Respondents.	)	

Petitioner seeks a writ of habeas corpus as follows.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
2. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
3. In addition, "a federal court always has jurisdiction to determine its own jurisdiction," including its own subject-matter jurisdiction. *Brownback v. King*, 592 U.S. 209, 218-19 (2021) (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)).
4. Unless the assertion of jurisdiction is frivolous, the court has the power to preserve existing conditions while it determines its own authority to grant injunctive relief. See *United States v. United Mine Workers of America*, 330 U.S. 258, 293 (1947). Such an order is valid unless and until overturned, even when the issuing court lacks subject-matter jurisdiction to determine the underlying action's merits. *Id.* at 293-94.
5. This court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
6. Venue is proper because petitioner is in respondents' constructive custody in Portland, Oregon and because a substantial part of the events giving rise to her claims occurred in this district. 28 U.S.C. § 1391(e).

THE PETITIONER

7. Petitioner is a resident of the state of Oregon, and present in the state of Oregon as of the time of filing this petition.

CUSTODY

8. Under 28 U.S.C. § 2241(c), only persons “in custody” may apply for a writ of habeas corpus. “Custody includes either physical custody or constructive custody, where the person is under a restraint on liberty not shared by the public generally.¹ For example, this includes persons subject to a final order of deportation. *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995).

9. Petitioner is “in custody” by virtue of periodic requirements to check in with ICE in person.

10. Petitioner received a positive credible fear of persecution determination and substantially complied with the terms and conditions of his parole granted on December 13, 2023.

11. Petitioner received a Call-In Letter from the Department of Homeland Security for a mandatory appointment at 4310 S Macadam Ave in Portland, Oregon on at 10 a.m. on January 19, 2025.

¹*Jones v. Cunningham*, 371 U.S. 236, 240, 83 S. Ct. 373, 9 L. Ed. 2D 285 (1963) (“[B]esides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.”).

12. The granting of parole is conditioned on compliance with the terms of parole and these restrictions are sufficient restraints upon petitioner's liberty to place him in custody for the purposes of habeas corpus.

MOTION TO PROCEED ANONYMOUSLY

13. Parties may proceed anonymously when special circumstances justify secrecy. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). In the Ninth Circuit, parties may use pseudonyms "in the unusual case when nondisclosure of the party's identity is necessary to protect a person from harassment, injury, ridicule or personal embarrassment." *Id.* at 1067-68 (citation, ellipsis and internal quotes omitted). A party may preserve anonymity in "in special circumstances when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." *Id.* at 1068.

14. In this case petitioner is Afghan and as such a national of a country highly disfavored by respondents. Exposure of his name could subject her to harassment and ridicule for this reason.

15. He has also filed an application for asylum with the Executive Office for Immigration Review (EOIR).

16. This application for asylum contains details of petitioner's life and persecution in foreign countries because of his Afghan nationality. Presenting such details in a public record would expose petitioner to potential humiliation and mental stress.

THE RESPONDENTS

17. Respondent LAURA HERMOSILLO is the Field Office Director for the Seattle Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The Seattle Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. LAURA HERMOSILLO is sued in her official capacity. The Seattle Field Office’s area of responsibility includes Alaska, Oregon, and Washington. Consequently, respondent LAURA HERMOSILLO is the immediate legal custodian of petitioners.

18. Respondent KRISTI NOEM is the Secretary of Homeland Security. As such she is responsible for the actions of that department, its subagencies, and its officers and personnel. KRISTI NOEM is sued in her official capacity.

19. Respondent PAMELA BONDI is the Attorney General of the United States, and as such has responsibility for the conduct and operations of the Department of Justice and all of its officers and personnel, including the Executive Office for Immigration Review. PAMELA BONDI is sued in her official capacity.

20. Respondent TODD LYONS is the Acting Director of ICE, and as such is responsible for the means by which the immigration laws of the United States are enforced. TODD LYONS is sued in his official capacity.

21. Respondent U.S. DEPARTMENT OF HOMELAND SECURITY is an agency

of the United States with responsibility for the enforcement of the nation's immigration laws. It is under the direction of respondent KRISTI NOEM.

22. Respondent U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT is an agency of respondent U.S. DEPARTMENT OF HOMELAND SECURITY, and is under the direction of respondent TODD LYONS

23. Respondent U.S. DEPARTMENT OF JUSTICE is an agency of the United States, and is under the direction of respondent PAMELA BONDI.

24. Respondent DEPARTMENT OF JUSTICE maintains an adjudicatory body for immigration cases called the Executive Office for Immigration Review ("EOIR"). Part of EOIR includes the Office of the Immigration Judge, which is generally known at the Immigration Court.

HABEAS CORPUS REQUIREMENTS UNDER 28 U.S.C. § 2243

25. Pursuant to 28 U.S.C. § 2243, a court entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

26. The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed. *Id.* The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed. *Id.*

27. Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained. The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts. *Id.*

28. The return and all suggestions made against it may be amended, by leave of court, before or after being filed. The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require. *Id.*

29. The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed. *Id.*

30. Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained. *Id.*

31. The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts. *Id.*

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LEGAL REQUIREMENTS

32. The Due Process Clause of the Fifth Amendment prohibits arbitrary detention by the government. Noncitizens in civil immigration custody are entitled to due process protection. See *Demore v. Kim*, 538 U.S. 510 (2003).

33. Federal regulations under 8 C.F.R. § 241.4 govern the procedures required for re-detaining a noncitizen released under an order of supervision. Under § 241.4(l), ICE must provide a written notice of revocation, an explanation of the reasons for revocation, and an opportunity for the individual to respond at an informal interview conducted promptly after re-detention.

34. Within 48 hours of an immigration arrest (or within a reasonable time in the case of emergency or extraordinary circumstances), an immigration official must make an initial custody determination to decide whether the noncitizen should remain in custody or be released. 8 U.S.C. § 1226(a); 8 C.F.R. § 287.3(d).

35. Other federal regulations at 8 C.F.R. §§ 208.31 and 241.8(e) provide that a noncitizen subject to removal to a third country must be provided with a reasonable fear screening if they express fear of persecution or torture in that country. The regulations require that such individuals be referred for an interview by an asylum officer to determine whether there is a reasonable possibility of persecution or torture.

FACTUAL ALLEGATIONS

36. On January 20, 2025, the president of the United States issued several

executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The present administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation.

37. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

38. In late May 2025, respondent KRISTI NOEM and White House Deputy Chief of Staff Stephen Miller met with ICE leadership and set a arrest quota of 3,000 per day and reportedly threatening job consequences if officials failed to meet arrest quotas.²

39. On May 28, 2025 Deputy Chief of Staff Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”³

²Julia Ainsley, et al., A sweeping new ICE operation shows how Trump’s focus on immigration is reshaping federal law enforcement, NBC News (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigrationreshape-federal-lawenforcement-rcna193494> (last visited Nov 26, 2025); Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, Axios (May 28, 2025), available at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller> (last visited Nov. 26, 2025).

³Hannity, Sean, “Stephen Miller says the admin wants to create the strongest immigration system in US History”, FOX NEWS (May 28, 2025), <https://www.foxnews.com/video/6373591405112> (last visited Nov. 26, 2025).

40. Following the directive from Noem and Miller, ICE agents were instructed in an email to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by pursuing “collaterals.” One email is reported to have said: “If it involves handcuffs on wrists, it’s probably worth pursuing. See4Olivares, José , “US immigration officers ordered to arrest more people even without warrants,” The Guardian (Jun 4, 2025) <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>

GOVERNMENT THREATS AGAINST AFGHAN NATIONALS

41. On November 27, 2025 USCIS Implemented Additional National Security Measures in the Wake of National Guard Shooting by Afghan National. News Release, USCIS 11/27/2025 (<https://www.uscis.gov/newsroom/news-releases/uscis-implements-additional-national-security-measures-in-the-wake-of-national-guard-shooting-by>)

WASHINGTON— In the wake of the shooting of two National Guard service members in Washington, D.C., Wednesday by an Afghan national, U.S. Citizenship and Immigration Services issued new guidance allowing for negative, country-specific factors to be considered when vetting aliens from 19 high-risk countries. This guidance comes after the Trump administration halted refugee resettlement from Afghanistan and the entry of Afghan nationals in its first year of office.

“My primary responsibility is to ensure that every alien is vetted and screened to the maximum degree possible,” said USCIS Director Joseph Edlow. “This includes an assessment of where they are coming

from and why. Yesterday's horrific events make it abundantly clear the Biden administration spent the last four years dismantling basic vetting and screening standards, prioritizing the rapid resettlement of aliens from high-risk countries over the safety of American citizens. The Trump administration takes the opposite approach. Effective immediately, I am issuing new policy guidance that authorizes USCIS officers to consider country-specific factors as significant negative factors when reviewing immigration requests. American lives come first."

The updated guidance, including consideration of country-specific factors such as a country's ability to issue secure identity documents, will further strengthen USCIS' implementation of President Trump's Presidential Proclamation (PP) 10949, Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats. It will allow USCIS officers to more meaningfully assess whether an alien is a threat to public safety and national security.

This policy guidance is effective immediately and applies to requests pending or filed on or after Nov. 27, 2025.

For more information, see the USCIS Policy Alert.

42. NBC news reported in November, 2025 that the president "called for a re-examination of all Afghan Nationals who came to the U.S. during the Biden administration" after an individual Afghan man was named in the shooting of members of the National Guard in Washington D.C." <https://www.nbcnews.com/politics/donald-trump/trump-re-examine-afghan-nationals-biden-administration-national-guard-rcna246172>

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CIRCUMSTANCES OF PETITIONER'S CASE

43. Petitioner is an Afghan national and fled Afghanistan, and traveled to the United States through Mexico.

44. Petitioner entered the United States on or about October 12, 2023 at an unknown location.

45. On December 7, 2023, the Department of Homeland Security issued to respondent a document on agency form I-862 entitled "Notice to Appear" ("NTA").

46. The I-862 directed petitioner herein to appear at Immigration Court on December 18, 2023 at the Otay Mesa Detention Center, 7488 Calzada De La Fuente, San Diego, CA 92154.

47. The Department of Homeland Security paroled petitioner on December 13, 2023.

48. An Asylum Officer previously found Petitioner demonstrated a credible fear of persecution or torture.

49. The NTA contains the formal charge of removability from the United States. Filing of the NTA with the immigration court is necessary to initiate removal proceedings.

50. Respondent DEPARTMENT OF HOMELAND SECURITY often delays in filing NTAs with the immigration court. The Executive Office for Immigration Review ("EOIR") maintains a website where it is possible to check on the status of a person's

removal case by entering the person's A number and country of nationality.

<https://acis.eoir.justice.gov/en/>

51. As of January 17, 2025, entry of petitioner's information into the EOIR case status program produces only the following message: "Pending, and there are no future hearings set for this case."

52. The I-862 of course was before the remarks of the president calling for a re-examination of all Afghan nationals.

53. On December 17, 2025 less than one month after the president called for a re-examination of all Afghan nationals' status, petitioner received a "call in letter" letter from Department of Homeland Security

54. The call-in letter, on DHS form G-56, directs petitioner to report to the ICE facility at 4310 S. Macadam Ave, Portland, Oregon Suite 206B on January 19, 2026 at 10:00 a.m. January 19, 2026 is a National Holiday.

55. The stated reason for the mandatory appointment is to discuss the status of his immigration case and to serve documentation. The call in letter does not state what documents will be served.

56. Petitioner is also directed to bring with him valid photo identification, proof of current address and telephone number, any passports and US immigration documents. The notice does not specify what immigration documents petitioner is to bring.

57. Petitioner has attempted to make in person ICE Check-ins scheduled in Oregon previously, but the office at the address was not open or the person at reception said they did not have staff to assist him.

58. Due to restrictions placed on the ICE facility on South Macadam in Portland, ICE is unable to accommodate prisoners overnight. Instead ICE transports its prisoners by bus operated by ICE contractor GEO to the ICE detention facility in Tacoma Washington. Usually the GEO bus departs the Portland ICE facility around 4:00 p.m.

59. It is unusual for any person subject to an ICE check-in requirement to be accorded a particular time to appear for the check-in, or on a Federal holiday. Generally any time between 8:00 a.m. to 3:00 p.m. is considered to be compliant.

60. The fact that petitioner has been issued a particular check-in time, and that it will be prior to the usual departure of the GEO bus for Tacoma is highly consistent, together with the timing on a Federal holiday, with a plan of respondents to use the occasion of her check-in to revoke petitioner's parole and transport her to their Tacoma detention facility.

61. ICE is fully aware that many petitions for habeas corpus have been filed in response to their pattern of unlawful arrests and other violations of law in the state of Oregon. For this reason they have resorted to a variety of tactics intended to defeat the jurisdiction of the U.S. District Court of Oregon, chiefly focusing on transport of the persons arrested out of the state before a petition for habeas corpus can be filed.

62. The unusual measure of requiring petitioner to appear for an ICE check-in prior to the general time for departure of the GEO bus, and on a federal holiday when the courts are closed, appears to be another strategy to limit the time in which a petition for habeas corpus can be filed on behalf of the petitioner.

63. As a result of all of the above, petitioner is filing this petition for habeas corpus in advance of his scheduled check-in at 10:00 a.m. on January 19, 2026 at the Portland Oregon ICE office. If he were to wait until he is taken into physical custody at that check-in there would not be enough time to file a petition for habeas corpus.

FIRST CLAIM FOR RELIEF

Violation of the Administrative Procedures 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).

64. Petitioner incorporates all previous allegations into this claim for relief.

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

66. 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)).

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).

By categorically revoking his parole and transferring him away from the district without consideration of his individualized facts and circumstances, Respondents will have violated the APA.

67. By detaining and transferring the Petitioner categorically, Respondents will have further abused their discretion because there have been no changes to her facts or circumstances since the agency decided to parole him from physical custody on or about December 13, 2023.

68. Respondents have already considered Petitioner’s facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify revocation of his parole. The fact that Petitioner has already been paroled by Respondents under similar facts and circumstances shows that Respondents do not consider him, on an individualized basis, to be a danger to the community or a flight risk.

SECOND CLAIM FOR RELIEF

**Violation of the Administrative Procedures 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) and 8 C.F.R. 1236.1(c)(9).**

69. Petitioner incorporates all previous allegations into this claim for relief.

70. 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). 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).”

71. 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).

72. On information and belief, Respondents have revoked or are revoking Petitioner’s prior custody determination because he is an Afghan national who

entered under the Biden administration, therefore subject to “re-examination” per the president of the United States, and not by the individual exercise of discretion required by law or by the individuals enumerated by regulation to do so.

Because Petitioner’s revocation of parole 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.

THIRD CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process of Law

73. Petitioner incorporates all previous allegations into this claim for relief.

74. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without. due process of law.” U.S. Const. Amend. V.

75. 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.

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

77. While respondents have 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.

78. Here, respondents have chosen to revoke Petitioner’s parole in an arbitrary manner not based on a rational and individualized determination of whether she is a safety or flight risk, in violation of due process. Because no individualized parole revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents’ intended revocation of Petitioner’s parole violates his right to procedural due process.

PRAYER FOR RELIEF

79. Wherefore petitioner prays for relief as follows in that this court:

- a) Assume jurisdiction in this matter;
- b) Issue an immediate order barring the respondents from removing petitioner from the state of Oregon, or, if petitioner is in the state of Washington, from the state of Washington, without notice to and approval by the court;
- c) Issue an order to show cause why this petition should not be granted within three (3) days;
- d) Declare that revocation of petitioner’s present release status without an individualized determination violates the Due Process Clause of the Fifth Amendment;

- e) Issue a writ of habeas corpus ordering respondents to release petitioner from custody with no bond, including an order to remove any ankle bracelet;
- f) Award petitioner reasonable attorney fees and costs under the Equal Access to Justice Act 28 USC § 2412 and any other statute applicable to this matter;
- g) Grant any further relief as the court may deem just and proper.

Dated this 18th day of January 2026

/s/ Bridget Bailey

OSB # 970309
Attorney for Petitioner
1239 NW Golf Course Drive
Madras, OR 97741
(541) 993-2027
bridges.immigration.law@gmail.com