

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Mr. Jose Enrique Ojeda Duarte,



Petitioner,

v.

Warden, in his/her Official Capacity, ERO El Paso Camp
East Montana Detention Center;

Mary De ANDA-YBARRA, in her Official Capacity Field
Office Director of El Paso, Texas, Office of Detention and
Removal, U.S. Immigrations and Customs Enforcement;
U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and
Customs Enforcement, U.S. Department of Homeland
Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S.
Department of Homeland Security; and

Pamela BONDI, in her Official Capacity, Attorney General
of the United States;

Respondents-Defendants.

Case No. 3:26-cv-00089

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration
Detention Statutes; Request for
Declaratory and Injunctive Relief

INTRODUCTION

1. On or about September 15, 2025, Mr. Jose Enrique Ojeda Duarte, upon his arrival to work in Chicago, Illinois, was unlawfully detained without probable cause or a signed warrant for arrest by U.S. Immigration Customs and Enforcement ("ICE").

2. ICE processed Petitioner Ojeda Duarte at its Broadview processing office, then within five (5) days, transferred Petitioner to at least two other detention centers before he was placed at El Paso Montana Detention Center in El Paso, Texas.
3. Respondents arrested Petitioner without considering the personal circumstances or individualized facts, but because of Respondents' misguided assumption that noncitizens are not entitled to due process under the Fifth Amendment, and they can rapidly deported under an entirely separate and inapposite law, 8 U.S.C. § 1225.
4. Petitioner Ojeda Duarte asks this Honorable Court to grant his writ of habeas as Respondents acted in violation of his afforded due process rights and acted arbitrarily and capriciously.

JURISDICTION

5. This action arises under the U.S. Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. Seq and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.
6. 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).
7. 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).

VENUE

8. Venue properly lies within the Western District of Texas under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies of the United States, and Petitioner is currently detained in this District.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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

10. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

11. Petitioner is “in custody” for the purpose of § 2241 because he was arrested and detained by Respondents.

PARTIES

12. Petitioner, Jose Enrique Ojeda Duarte, is a thirty-year-old Venezuelan citizen who left his native country with his long-time partner and their children, due to the ongoing threats to his life around June 2023. Petitioner Ojeda Duarte and his family applied for lawful entrance through the CBP One application and were paroled into the US on or about October 18, 2024. Petitioner and his family filed their asylum application with the Immigration Court, which continues to be pending. On the early morning of September 15, 2025, just as he arrived at place of his employment, Respondents arrested Petitioner Ojeda Duarte, without probable cause, an arrest warrant or an explanation as to the basis of his arrest.

13. Warden of El Paso East Montana Center Detention Center is where Petitioner is being held. Respondent oversees the day-to-day operations of the facility and acts at the Direction of

Respondents Lyons, Noem, and Olsen. He is a custodian of Petitioners and is named in his official capacity.

14. Mary De ANDA-YARBA is Field Director of Immigration and Customs Enforcement in El Paso, Texas, and is named in her official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In her official capacity, she is the legal custodian of Petitioner.
15. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.
16. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.
17. Respondent Pamela BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice ("DOJ") and is named in her official capacity. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

EXHAUSTION OF REMEDIES

18. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).
19. Petitioner asserts that exhaustion requirement is satisfied as there is no administrative jurisdiction over this detention status. No statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
20. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. See *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); see also *Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

LEGAL FRAMEWORK

Statutory Framework of 8 U.S.C. 1225(b)(1)

21. Section 1225(b)(1) also applies to certain noncitizens designated by the Attorney General in his discretion. See § 1225(b)(1)(A)(iii). Noncitizens who arrive at a port of entry without a visa or other entry document, like Petitioner, are deemed ‘inadmissible’ under 8 U.S.C. § 1182(a)(7)” due to their lack of entry documents. *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1132 (D. Or. 2025) (noting that “[d]epending on the circumstances, other categories of inadmissibility may also apply, but § 1182(a)(7) applies for noncitizens without proper documentation”).
22. These individuals under 1225(b)(1) are typically ordered removed “without further hearing or review” pursuant to an expedited removal process. § 1225(b)(1)(A)(i). However, if the noncitizen expresses a fear of persecution, he is referred for an asylum interview. § 1225(b)(1)(A)(ii). If an immigration officer determines after that interview that the alien has a credible fear of persecution, “the alien shall be detained for further consideration of the application for asylum.” § 1225(b)(1)(B)(ii).
23. Applicants for admission may be temporarily released on parole “for urgent humanitarian reasons or significant public benefit” as set forth in 8 U.S.C. § 1182(d)(5)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). The decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined “on a case-by-case basis.” 8 U.S.C. § 1182(d)(5)(A).
24. “When the purpose of the parole has been served,” § 1182(d)(5)(A) provides that “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter

his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

25. To terminate the previously granted parole, the agency must comply with the applicable regulatory and statutory requirements. The governing statute for termination of parole is 8 C.F.R. § 212.5(e)(2)(i), which reads:

in cases not covered by paragraph (e)(1) of this section,[3] upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. 8 C.F.R. § 212.5(e)(2)(i).

26. That is, “[u]nder the governing regulation, [§ 1182(d)(5)(A)] parole may be terminated only if the purpose of parole is accomplished, or humanitarian reasons and the public benefit no longer warrant parole.” *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)).

27. Here, Respondents fail to follow the applicable statutory and regulatory provisions to terminate Petitioner’s parole. *Cf. Coal. for Humane Immigrant Rts. v. Noem*, No. 25 cv-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025) (holding that the government failed to follow the applicable statutory and regulatory provisions and that paroled noncitizens cannot be subject to expedited removal proceedings); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *5–7 (E.D. Mich. Oct. 29, 2025) (same); *E.V. v. Raycraft*, No. 4:25-cv-2069, 2025 WL 2938594, at *10 (N.D. Ohio Oct. 16, 2025) (same).§ 1182(d)(5)(A); see also 8 C.F.R §§ 212.5(b), 235.3 (2017). Neither §§ 1225(b), 1182(d)(5)(A) nor any other statute specifically authorizes an individualized bond hearing pending the outcome of asylum proceedings in Petitioner’s circumstances.

28. At the time of their entry to the U.S. Petitioner, with his family, informed Respondents of their intention to seek asylum based on the past harm that he suffered in Venezuela. Petitioner's asylum application is pending before the Immigration Court, which there is no foreseeable outcome as to a final decision. The purpose of parole is still ongoing, and Petitioner should not be detained during the pendency of his proceeding. Respondents' termination of Petitioner's parole fails to meet the statutory and regulatory requirements.

Violation of Due Process

29. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Fifth Amendment reads that: "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Because an alien is a "person," *Wong v. United States*, 163 U.S. 228, 237–38 (1896) and because detention of a person without any sort of process is a deprivation of that person's bodily "liberty," an arriving alien subject to prolonged and indefinite detention is detained in violation of the Fifth Amendment.

30. To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: 1) "the private interest that will be affected by the official action;" 2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and 3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*, 424 U.S. at 335.

Private Interest

31. As to the first *Mathews* factor, “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner’s continued detention at El Paso at Caroline Detention Center in conditions that are indistinguishable from criminal incarceration. This detention prevents him from seeing his family, going to work to support himself and deprives him of any privacy and freedom of movement. Multiple courts hold that prolonged detention without a bond determination deprives one’s liberty interest. See *Leke v. Hott*, 1:20-cv-1382 (E.D.V.A. February 23, 2021) (citing to *Kouadio v. Decker*, 352 F. Supp. 3d 235, 241 (S.D.N.Y. 2018) (34-month detention of arriving alien without bond hearing violates due process); *Kydrali v. Wolf*, -- F. Supp. 3d --, No. 3:20-cv-539, 2020 WL 6498969, at *4 (S.D. Cal. Nov. 4, 2020) (27-month detention of arriving alien without bond hearing violates due process); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) (23-month detention of arriving alien without bond hearing violates due process); *Mbalivoto v. Holt*, No.1:20-cv-827 at 5 (Dkt. 22) (E.D.Va. Aug. 11, 2020) (22-month detention of arriving alien without bond hearing violates due process); *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019) (19-month detention of arriving alien without bond hearing violates due process); *Tuser E. v. Rodriguez*, 370 F. Supp.3d 435, 442–43 (D. N.J. 2019) (same); *Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917, 930 (W.D. Wash. 2020) (18-month detention of arriving alien without bond hearing violates due process); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1177 (W.D. Wash. 2019) (17-month detention of arriving alien without bond hearing violates due process); *Lett v. Decker*, 346 F. Supp. 3d 379, 387 (S.D.N.Y. 2018) (10-month detention of arriving alien without bond hearing violates due process)). While Petitioner has been detained for four months, every day spent in immigration

incarceration deprives Petitioner of his liberty interest. Petitioner, with his family, were paroled into the U.S. to seek asylum. They

Risk of Erroneous Deprivation

32. As to the second *Mathews* factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The current procedures cause an erroneous deprivation of Petitioner’s liberty interest in remaining free from detention. Any request for parole will be effectively denied by ICE.

33. It is clear that the government’s current procedure subjects Petitioner to continued mandatory detention creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement. Petitioner previously made requests for his release, which were denied due to ICE’s arbitrary policy change.

Government Interest

34. As to the third *Mathews* factor, the government’s interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b) flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond determination hearing where an immigration judge will consider Petitioner’s individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

35. To determine whether continued detention is unreasonable without a bond hearing, this Court, outlined the five following factors: (1) the length of Petitioner's detention; (2) the length of any delays attributable to the Petitioner; (3) dilatory tactics employed in bad faith by the parties or adjudicators; (4) procedural or substantive legal errors that significantly extend the duration of detention; and (5) the likelihood that the government will secure a final removal order." See *Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018) (outlining a balancing test of five factors to consider detention under § 1226(c)).
36. Applying the factors in the instant case, Petitioner has been (1) detained for four months; (2) not at his fault; (3) ICE has acted in bad faith in his re-detention and any denial of parole requests; and (4) Petitioner's case continues to be pending (5) with no foreseeable likelihood of final order of removal. Petitioner meets his burden as to the factors and warrants either parole with reasonable assurances or bond determination

The Right to Seek Asylum

37. 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).
38. 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 established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

39. 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 or fear. 8 U.S.C. § 1101(a)(42)(A).
40. 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). The statute provides an applicant the right to counsel, at no expense to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).
41. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) *et seq.*
42. Here, after their CBP One entry and initial grant of parole, Respondents placed Petitioner Ojeda Duarte and his family in full INA § 240 immigration proceedings. Petitioner filed his

I-589 application, which is currently pending. Petitioner should not be forced to remain in Respondents' custody as he pursues his asylum claim.

FACTS

43. Petitioner Ojeda Duarte served in the Venezuelan Air Force from and witnessed human rights violations by the Venezuela government. He retired from the Venezuelan military due to his moral objection but was seen as a "deserter" by the Venezuelan government and started to receive threats. As both he and his family faced ongoing threats and fear of being killed, Petitioner and his family left Venezuela sometime in June 2023.
44. On or about October 2020, a mobile application titled CBP One was made available for noncitizens to schedule an in-person appointment to a port of entry. With this appointment, non-citizens, like Petitioner, may present themselves, be paroled into the U.S. and be issued a Notice to Appear ("NTA") in immigration court.
45. On July 29, 2024, Petitioner applied for his family and himself and waited approximately six (6) months. (Exhibit A, Confirmation of CBP One). On or about October 14, 2024, Petitioner and his family presented themselves on their appointment date, and the border officials paroled the family into the US and issued a NTA. (Exhibit B, CBP One Appointment Notices). Petitioner was placed into full removal proceedings in accordance to INA 240. (Exhibit C, NTA).
46. Petitioner, through Immigration Counsel, filed his asylum application with the Immigration Court. Petitioner applied for his employment authorization and maintained steady work history. (Exhibit D, Employment Authorization). Petitioner has an upcoming hearing before the Immigration Court on January 22, 2026. (Exhibit E, Hearing Date).

47. On or about September 15, 2025 around seven (7) a.m., Petitioner was arriving to work when ICE officials stopped him without probable cause or a formal immigration warrant and arrested and detained Petitioner Ojeda Duarte. ICE has yet to explain the basis of his parole termination and his unlawful arrest. Since then, Petitioner remains in detention at EL Paso East Montana in El Paso, Texas, more than a thousand four hundred (1,400) miles away from his partner, two children, his Immigration Attorney and his community.

CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Right to Due Process Procedural Due Process

48. Petitioner restates and realleges all paragraphs as if fully set forth here.
49. 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. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
50. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*
51. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§

1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, *see id.* § 1229a(c)(6)-(7).

52. Here, ICE failed to advise Petitioner their intention to terminate his parole status, depriving Petitioner's right to pursue their asylum claim in full removal proceedings. The actions by Respondents are a violation of Petitioner's violated due process. See generally *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

COUNT TWO

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

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

54. The APA provides that courts "shall . . . hold unlawful and set aside agency action"

that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). The agency's various articulations of its authority to expose individuals inspected and granted parole at ports of entry to expedited removal are unexplained and entirely inconsistent with each other. In the January 23 Huffman memorandum, the Department contemplates using expedited removal against parolees pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii) and the February 18 directive, however, appears to make all individuals who were granted parole at ports of entry and are now present in the United States eligible for expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i). The directive additionally is explicit that "[t]here is no time limit on the ability to process [such parole beneficiaries] for expedited removal."

55. The agency policies failed to provide a legitimate explanation for why parole beneficiaries, like Petitioner, subjecting them to mandatory detention or possibly expedited removal, and any explanation that exists in the January 23 and March 21 agency policies is inconsistent with any explanation that exists in the February 18 directive.

56. The arbitrariness and capriciousness of each agency policy is further evidenced by the failure of such policy to consider the agency's own contrary conclusions regarding the legal authority for the agency to adopt the policy as contemplated. Indeed, the inconsistent agency interpretations are both incorrect as a matter of law. The agency policies must therefore be held unlawful, set aside, and/or otherwise vacated.

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 re-detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Set aside Respondents' unlawful detention policy under the APA, 5 U.S.C. § 706(2);
- (5) Order Petitioner's Immediate Release from Respondents' custody with appropriate conditions;
- (6) Award costs and reasonable attorney fees incurred under this action under 28 U.S.C. § 2412, et. seq. (Equal Access to Justice Act); and
- (7) Grant any further relief that this Court may deem fit and proper.

Dated this 19th of January, 2026

Respectfully Submitted,



Afshan J Khan, Esq.
Attorney for Petitioner
986 Lake Street, Suite 102
Roselle, IL 60172

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioners' attorney. I have discussed with the Petitioners the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 19th of January, 2026 in Roselle, Illinois.



Afshan J Khan, Esq.
Attorney for Petitioner

Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants.

A copy will also be sent by Certified Mail to the following Respondents and their respective addresses:

Warden, ERO El Paso Camp East Montana Detention Center
6920 Digital Road
El Paso, TX 79936

Mary De Anda-Ybarra
Field Office Director of El Paso, Texas,
U.S. Immigrations and Customs Enforcement
11541 Montana Ave, Suite E
El Paso, TX 79936

Todd M. Lyons
Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

Kristi Noem, U.S. Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Avenue NW,
Washington, D.C. 20528

Pam Bondi, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

Dated this 19th of January, 2026

Respectfully Submitted,

/s/Afshan J. Khan
Afshan J Khan, Esq.
Attorney for Petitioner
986 Lake Street, Suite 102
Roselle, IL 60172
Telephone: (331) 703-5258