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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

FRAILYN RAFAEL MONTILLA MESA,

Petitioner,

v.

LADEON FRANCIS, Field Office Director of
Enforcement and Removal Operations,
ATLANTA Field Office, Immigration and
Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; Jason
STREEVAL Warden of STEWART
DETENTION CENTER, *in their official
capacities*

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

Agency number: A



INTRODUCTION

1. Petitioner FRAILYN RAFAEL MONTILLA MESA is in the physical custody of Respondents at the STEWART DETENTION CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) will refuse to hold a bond hearing claiming to have no jurisdiction.

2. Petitioner came to the United States seeking refuge due to persecution he was suffering in the Dominican Republic on or about October 1, 2024, a Notice to Appear was issued on October 12, 2024, he was released under an Order of Release on Recognizance on October 16, 2024; Petitioner filed an Application for Asylum with the San Antonio Immigration Court on March 11, 2025.

3. It is to note that Petitioner's Release on Recognizance specifically references Section 236 of the Immigration and Nationality Act. Petitioner believes he was in full compliance with the conditions of his release, including GPS monitoring, appearing at all ICE and ISAP (Intensive Supervision Appearance Program) appointments, and had not committed any crimes. He was arrested during an ISAP appointment on or about December 10, 2025 seemingly for no reason at all. Since then, he has been transferred to the Stewart Detention Center in Lumpkin, Georgia.

4. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days. Petitioner asks this Court to find that Respondents' attempts to detain and transfer Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district.

JURISDICTION

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the STEWART DETENTION CENTER located in Lumpkin, Georgia.

6. 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).

7. 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

8. 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 the MIDDLE DISTRICT OF GEORGIA, the judicial district in which Petitioner currently is detained.

9. 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 MIDDLE DISTRICT OF GEORGIA.

REQUIREMENTS OF 28 U.S.C. § 2243

10. 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.*

11. 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

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

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PARTIES

6 12. Petitioner Frailyn Rafael Montilla Mesa is a citizen of the Dominican Republic
7 who has been in immigration detention since December 10, 2025 and is currently detained at the
8 Stewart Detention Center.

9 13. Respondent Ladeon Fracis is the Director of the Atlanta Field Office of ICE’s
10 Enforcement and Removal Operations division. As such, Ladeon Francis is Petitioner’s
11 immediate custodian and is responsible for Petitioner’s detention and removal. She is named in
12 her official capacity.

13 14. Respondent Kristi Noem is the Secretary of the Department of Homeland
14 Security. She is responsible for the implementation and enforcement of the Immigration and
15 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms.
16 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

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

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

5 18. Respondent Jason Streeval is employed by CoreCivic as Warden of the Stewart
6 Detention Center where Petitioner is detained. He has immediate physical custody of Petitioner.
7 He is sued in his official capacity.

8 LEGAL FRAMEWORK

9 19. Immigration detention should not be used as a punishment and should only be used
10 when, under an individualized determination, a noncitizen is a flight risk because they are unlikely
11 to appear for immigration court or are a danger to the community. *Zadvydas v. Davis*, 533 U.S.
12 678, 690 (2001).

13 20. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth
14 Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

15 21. The Immigration and Nationality Act (INA) establishes various procedures through
16 which individuals may be detained pending a decision on whether the noncitizen is to be removed.
17 8 U.S.C. § 1226(a).

18 22. Removal proceedings described in section 240 of the INA are used to determine
19 whether individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. §
20 1229a.

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

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2 24. The “motivation for the enactment of the Refugee Act” was the United Nations
3 Protocol Relating to the Status of Refugees, “to which the United States had been bound since
4 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a
5 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and
6 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

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

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

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

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

22 29. Custody determinations for individuals in 1229a removal proceedings are governed
23 by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger
24 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).

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

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

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

14 **FACTUAL BACKGROUND**

15 33. Petitioner is a native and citizen of the Dominican Republic who came to the United
16 States on or about October 1, 2024 in order to seek asylum due to persecution he was suffering in
17 his Country.

18 34. Upon presenting himself at the border, Petitioner was detained by Customs and
19 Border patrol and was subsequently released under an Order of Release on Recognizance on
20 October 16, 2024 indicating "you have been arrested and placed in removal proceedings. In
21 accordance with section 236 of the Immigration and Nationality Act and the applicable provisions
22 of Title 8 of the code of federal regulations, you are being released on your own recognizance
23 provided you comply with the following conditions. . ." The conditions included reporting to any
24 hearings or interviews as instructed, surrendering for removal if so ordered, reporting as directed,
securing written permission before changing place of residence, not violating any laws, and

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2 assisting ICE in obtaining any necessary travel documents, and enrollment in the Alternatives to
3 Detention program which included GPS monitoring.

4 35. Petitioner was issued a Notice to Appear dated October 12, 2024 charging
5 Petitioner as being an alien present in the United States without being admitted or paroled under
6 212(a)(6)(A)(i), and being an immigrant who at the time of application for admission was not in
7 possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid
8 entry document under 212(a)(7)(A)(i)(I).

9 36. On March 11, 2025, Petitioner filed an Asylum Application with the San Antonio
10 Immigration Court in compliance with the statutory one year deadline filing requirement for
11 Asylum.

12 37. Petitioner was believed to be in full compliance with his Order of Release on
13 Recognizance when on December 10, 2025 he reported to ISAP, was taken into custody by ICE
14 and transferred to the Stewart Detention Center.

15 38. Petitioner has been residing in Kannapolis, North Carolina with his United States
16 Citizen girlfriend and her two kids. He is working with valid authorization pursuant to his pending
17 application for asylum in order to help provide for his family.

18 39. Petitioner is neither a danger to the community nor a flight risk, however, the
19 Respondents are holding Petitioner without bond and any request for bond is futile as EOIR
20 Immigration Judges are claiming that they lack jurisdiction to conduct a bond redetermination
21 hearing for similarly situated Petitioners, claiming that they are "applicants for admission." Any
22 appeal to the Board of Immigration Appeals is also futile.

23 40. On information and belief, Petitioner has no criminal history.
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CLAIMS FOR RELIEF

COUNT ONE

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)

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

42. 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).

43. 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)).

44. 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).

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

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

8 **COUNT TWO**

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

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

13 48. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
14 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction,
15 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §
16 706(2)(A)-(D).

17 49. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke
18 a bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen under the initial
19 warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies that such
20 revocations of release from custody may only be carried out in the “discretion of the district
21 director, acting district director, deputy district director, assistant district director for
22 investigations, assistant district director for detention and deportation, or officer in charge
23 (except foreign).”
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25 50. It is a well-established administrative principle that “agency action taken without
26 lawful authority is at least voidable, if not void *ab initio*.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d

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2 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also*
3 *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating
4 agency action because it was taken by unauthorized official).

5 51. On information and belief, Respondents have revoked or are revoking Petitioner's
6 prior custody determination as a result of a categorical policy prepared by and implemented by
7 unidentified government officials in Washington, not through the individual exercise of
8 discretion required by law or by the individuals enumerated by regulation to do so.

9 52. Because Petitioner's revocation of release from custody has been made or will be
10 categorically directed by government officials not authorized by law to make this determination,
11 Respondents' detention of Petitioner is not in accordance with law and in excess of statutory
12 authority.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

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

54. 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*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

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

56. 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.

57. Here, Respondents have chosen to revoke Petitioner’s release 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 revocation 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.

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 to hold a bond hearing;
- (6) Issue an Order prohibiting the Respondents from transferring Petitioner from
the district without the court's approval;
- (7) Award Petitioner attorney's fees and costs under the Equal Access to Justice
Act, and on any other basis justified under law; and
- (8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Date:

S/Matthew O. Boles

1/29/2026

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Counsel for Petitioner

Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

S/Matthew O. Boles

Date: January 29, 2026