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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FELIPE MONTES MONTES A[redacted] Petitioner, v. **TODD BLANCHE,** in his official capacity as Deputy Attorney General of the United States; **MARCOS CHARLES,** in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, ICE; **TODD M. LYONS,** in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** in her official capacity as Secretary of Homeland Security; **LUIS SOTO,** in his official capacity as Colonel, Corrections Division, Delaney Hall Detention Facility, Respondents.	**Civil Action No.:** 26-4224 **PETITION FOR WRIT OF HABEAS CORPUS** **28 U.S.C. § 2241** **DETAINED** **Delaney Hall Detention Facility** **Newark, New Jersey**

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Felipe Montes Montes (A# [redacted]) brings this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to challenge his unlawful civil immigration detention by Respondents. Petitioner is currently held at the Delaney Hall Detention Facility in Newark, New Jersey. He has been detained without a judicially issued warrant, without the filing of a Notice to Appear ("NTA"), without the initiation of any removal proceedings before the Executive Office for Immigration Review ("EOIR"), and without any bond hearing or individualized custody determination — in violation of the Constitution, the Immigration and Nationality Act ("INA"), and controlling Third Circuit and District of New Jersey precedent.

2. Petitioner is a 37-year-old national of Mexico (DOB: [redacted]) who has resided continuously in the United States for more than twenty (20) years. He is the father of a United States citizen son, [redacted]**. M.** (DOB: [redacted], age 7), who has been formally diagnosed with **Autism Spectrum Disorder ("ASD"), Level 2**, a lifelong neurological disability. As confirmed by the Division of Child Neurology & Neurodevelopmental Disabilities at Rutgers Robert Wood Johnson Medical Center (June 12, 2024), [redacted] requires ongoing Applied Behavioral Analysis ("ABA") therapy, speech therapy, and occupational therapy. Petitioner is [redacted]'s primary caregiver, and [redacted]'s therapeutic development and daily stability depend fundamentally on his father's presence.

3. Petitioner has a **pending affirmative asylum application — Form I-589, Application for Asylum and for Withholding of Removal**, filed with U.S. Citizenship and Immigration Services ("USCIS"), **Receipt No.** [redacted], received by USCIS on **August 23, 2024**. Petitioner completed biometrics at the USCIS Application Support Center in Elizabeth, New Jersey, on **September 23, 2024**. A pending Form I-765, Application for Employment Authorization (Receipt No. [redacted]), filed under Category C08, 8 C.F.R. § 274a.12(c)(8), independently corroborates the existence and pendency of Petitioner's asylum claim.

4. As of April 21, 2026, the EOIR Automated Case Information System ("ACIS") returns **"No case found" for A#** [redacted]. No NTA has filed with any immigration court. No removal proceedings have been initiated before any immigration judge. Petitioner is detained in a constitutional and statutory void — confined by the Executive Branch without charges, without a pending immigration court case, and without any bond hearing before a neutral adjudicator.

5. Petitioner satisfies all four requirements for Cancellation of Removal under INA § 240A(b), 8 U.S.C. § 1229b(b): more than twenty years of continuous physical presence; good moral character and an unblemished criminal record; no disqualifying convictions; and exceptional and extremely unusual hardship to his U.S. citizen son with ASD Level 2 who depends on Petitioner's daily care.

6. Under *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. Sept. 1, 2011), and this Court's decisions in *Soto v. Soto*, 807 F. Supp. 3d 397, 2025 WL 2976572 (D.N.J. Oct. 22, 2025), and *Chen v. Bondi*, No. 2:25-cv-16901 (D.N.J. 2025), Petitioner — a twenty-year interior resident with no criminal history — is detained under 8 U.S.C. § 1226(a) and is entitled to an individualized bond hearing at which the government must demonstrate by clear and convincing evidence that detention is justified. No such hearing has occurred.

7. This Court should grant this Petition and order Petitioner's immediate release, or in the alternative, an immediate bond hearing within seven (7) days.

CUSTODY

8. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE"). As confirmed by the ICE Online Detainee Locator System on April 21, 2026, Felipe Montes Montes (A# [redacted]), a national of Mexico, is listed as **"In ICE Custody"** at the **Delaney Hall Detention Facility**, Newark, New Jersey. The immediate custodian is Respondent Luis Soto, Colonel of the Corrections Division.

JURISDICTION

9. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq., as amended by IIRIRA, Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 2241(c)(3) and (c)(5); 28 U.S.C. § 1331; Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause); and the Fifth Amendment of the United States Constitution.

11. Relief is additionally available pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02; the All Writs Act, 28 U.S.C. § 1651; and 5 U.S.C. § 702.

VENUE

12. Venue lies in this District pursuant to *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 493–500 (1973), as Petitioner is detained within the District of New Jersey and the immediate custodian is present here. Venue is further proper under 28 U.S.C. § 1391(e).

PARTIES

13. **Petitioner Felipe Montes Montes** (A# [redacted]) is a national of Mexico, born [redacted], who has continuously resided in the United States for more than twenty (20) years, most recently in Lakewood, New Jersey. He was apprehended by ICE agents on May 25, 2026, at a gas station in [arrest location to be confirmed by counsel], New Jersey, and is currently detained at the Delaney Hall Detention Facility, Newark, New Jersey. He has no criminal record of any kind. He is the father of a U.S. citizen child with ASD Level 2. He has a pending I-589 (Receipt No. [redacted], received August 23, 2024) and a pending I-765 (Receipt No. [redacted], Category C08) with USCIS. He qualifies for Cancellation of Removal under INA § 240A(b).

14. **Respondent Todd Blanche** is the Deputy Attorney General of the United States, responsible for overseeing the operations of the Department of Justice, including the Executive Office for Immigration Review and ICE enforcement policies. Sued in his official capacity.

15. **Respondent Marcos Charles** is the Acting Executive Associate Director for Enforcement and Removal Operations of ICE, responsible for the enforcement and removal operations that led to Petitioner's detention. Sued in his official capacity.

16. **Respondent Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement. Sued in his official capacity.

17. **Respondent Kristi Noem** is the Secretary of the Department of Homeland Security. Sued in her official capacity.

18. **Respondent Luis Soto** is the Colonel of the Corrections Division at the Delaney Hall Detention Facility, Newark, New Jersey, and is the immediate physical custodian of Petitioner. Sued in his official capacity.

STATEMENT OF FACTS

A. Petitioner's Long-Term Residence, Community Ties, and Family

19. Petitioner entered the United States in or about 2004 and has resided continuously in this country for more than twenty (20) years. He is a native and citizen of Mexico, born [redacted], and has most recently resided in Lakewood, New Jersey.

20. Petitioner has an **absolutely clean criminal record** — no arrests, no convictions, and no pending charges of any kind. He has been a person of good moral character throughout his entire residence in the United States, maintaining consistent employment, paying federal and state income taxes, and fulfilling all civic obligations.

21. Petitioner is the father of **L.M.** a United States citizen born [redacted], currently seven (7) years of age. His son has been formally diagnosed with **Autism Spectrum Disorder (ASD), Level 2**, as confirmed by **Anna Ku, APN, Division of Child Neurology & Neurodevelopmental Disabilities, Rutgers Robert Wood Johnson Medical Center** (letter dated June 12, 2024). ASD Level 2 is a lifelong neurological diagnosis. His son requires, and has been prescribed, the following ongoing specialist-directed therapeutic interventions: **Applied Behavioral Analysis (ABA) therapy**; **speech therapy**; and **occupational therapy**. Petitioner is [redacted]'s primary caregiver and uniquely positioned — through years of daily engagement with [redacted]'s specific needs, routines, and therapeutic protocols — to support his son's development and well-being.

22. Petitioners' removal or continued detention would cause **exceptional and extremely unusual hardship** to his son. The disruption to [redacted]'s therapeutic programming, caregiver continuity, and daily stability cannot be remedied by alternative caregivers or by other means. ASD Level 2 requires intensive, consistent, and specialized parental engagement. Petitioner's absence causes irreversible developmental harm to his son.

23. Petitioner has been a registered and practicing member of **Our Lady of Guadalupe Parish**, Lakewood, New Jersey, since 2008 — a period of more than seventeen (17) years — as certified by the parish's Associate Pastor on July 22, 2024. He attended Sunday Mass with his family and received the sacrament of First Communion at this parish. These ties demonstrate extraordinary roots in the Lakewood community across two decades.

B. Pending Affirmative Asylum Application — I-589 Receipt No. [redacted]

24. On **August 23, 2024**, Petitioner filed a **Form I-589, Application for Asylum and for Withholding of Removal**, with USCIS. USCIS issued Form I-797C, Notice of Action (Receipt Notice), dated September 3, 2024, bearing **Receipt Number [redacted]**, designating the case as "I589 — Application for Asylum and for Withholding of Removal" for **MONTES MONTES, FELIPE**, A# [redacted], Lakewood, New Jersey.

25. Petitioner appeared at and completed his **biometrics appointment on September 23, 2024**, at the USCIS Application Support Center in Elizabeth, New Jersey, as reflected in the USCIS ASC Appointment Notice issued under Receipt No. [redacted]. Petitioner has fully complied with all USCIS processing requirements for his I-589.

26. The pending I-589 is independently corroborated by a pending **Form I-765, Application for Employment Authorization** (Receipt No. [redacted], received April 18, 2025), filed under eligibility **Category C08**, 8 C.F.R. § 274a.12(c)(8) — a category available exclusively to noncitizens with a pending affirmative asylum application. USCIS has not adjudicated Petitioner's I-589. Under 8 C.F.R. § 208.2(a), USCIS retains

jurisdiction over the I-589 unless and until DHS files an NTA with EOIR, which has not occurred.

27. Petitioner's detention prevents him from receiving and responding to USCIS interview notices, gathering supporting evidence, consulting with counsel about his I-589, and exercising his statutory right to seek protection from persecution under INA § 208, 8 U.S.C. § 1158.

C. Arrest, Detention, and Confirmed Absence of Any Removal Proceedings

28. On **May 25, 2026**, ICE agents arrested Petitioner at a gas station in [arrest location to be confirmed by counsel], New Jersey. Petitioner was not engaged in any criminal activity and was not subject to a judicially issued arrest warrant at the time of his apprehension.

29. Petitioner has been held in immigration detention since May 5, 2026, at the Delaney Hall Detention Facility, Newark, New Jersey, as confirmed by the ICE Online Detainee Locator System on April 21, 2026.

30. The **EOIR Automated Case Information System (ACIS)**, accessed April 21, 2026, for [redacted] (Mexico), returns: **"No case found for this A-Number."** This conclusively establishes the following:

- No Notice to Appear has been filed with any immigration court;
- No removal proceedings have been initiated before any immigration judge;
- No immigration judge has authorized, reviewed, or approved Petitioner's detention; and

- No bond hearing has been held or scheduled.

31. Petitioner is detained in a complete legal void — confined without charges, without a pending immigration court case, and without any neutral adjudicator having reviewed or authorized his confinement.

EXHAUSTION OF REMEDIES

32. Petitioner has exhausted all available and practicable administrative remedies. Because no NTA has been filed and no removal proceedings have been initiated, no immigration court has jurisdiction over Petitioner's case. Any motion for bond or custody redetermination filed with EOIR would be dismissed for lack of jurisdiction pursuant to 8 C.F.R. § 1003.14(a). There is no administrative forum through which Petitioner can obtain the relief sought. Resort to this Court under 28 U.S.C. § 2241 is the sole available avenue to vindicate Petitioner's constitutional and statutory rights.

LEGAL CLAIMS

COUNT I: Unlawful Detention — No NTA Filed, No Removal Proceedings Initiated (28 U.S.C. § 2241; U.S. Const. amend. V; INA § 236, 8 U.S.C. § 1226)

33. Petitioner incorporates all preceding paragraphs by reference as if fully set forth herein.

34. The government's authority to detain noncitizens in the civil immigration context derives exclusively from statutory grants by Congress. *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). INA § 236, 8 U.S.C. § 1226, authorizes detention only "pending a decision on whether the alien is to be removed" — language that necessarily presupposes the

existence of pending removal proceedings. Immigration court jurisdiction vests only upon the filing of a charging document with EOIR. 8 C.F.R. § 1003.14(a). No charging document has been filed here.

35. Without a pending removal proceeding, there is no statutory basis for Petitioner's detention. No removal decision is pending. No immigration judge has jurisdiction. Petitioner is confined without charges and without any statutory or constitutional foundation for his continued detention. Such detention violates the Fifth Amendment guarantee that no person shall be deprived of liberty without due process of law. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

36. Petitioner is entitled to immediate release as a matter of constitutional and statutory law.

COUNT II: Petitioner Is Detained Under § 1226(a) and Is Entitled to a Bond Hearing (Diop v. ICE/Homeland Sec., 656 F.3d 221 (3d Cir. 2011); Soto v. Soto, 807 F. Supp. 3d 397 (D.N.J. 2025))

37. Petitioner incorporates all preceding paragraphs by reference as if fully set forth herein.

38. Petitioner entered the United States in or about 2004 and has resided as an interior resident for over twenty years. He was arrested in the interior of the country, not at a port of entry. He is therefore detained under 8 U.S.C. § 1226(a) — the general detention provision — not under § 1225(b), which applies only to arriving aliens and recent entrants. *Soto v. Soto*, 807 F. Supp. 3d 397, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Chen v. Bondi*, No. 2:25-cv-16901 (D.N.J. 2025).

39. Mandatory detention under § 1226(c) does not apply because Petitioner has absolutely no criminal history — no arrests, no convictions, no pending charges. He does not fall within any of the criminal or national security categories that trigger mandatory detention under § 1226(c).

40. The Third Circuit held in *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. Sept. 1, 2011), that noncitizens detained under § 1226(a) are entitled to individualized bond hearings at which the government must demonstrate by **clear and convincing evidence** that continued detention is necessary to prevent flight or danger to the community. No bond hearing has been provided here.

41. The government cannot satisfy its burden. Petitioner has lived in New Jersey for over twenty years. He is the primary caregiver for a U.S. citizen child with ASD Level 2 who depends on his daily presence. He has a pending I-589 asylum application with USCIS ([redacted]9). He has an unblemished criminal record. He has deep community and church ties spanning 17+ years. He is prima facie eligible for Cancellation of Removal. He is neither a flight risk nor a danger to the community.

COUNT III: Denial of Due Process — Deprivation of Liberty Without Meaningful Hearing (U.S. Const. amend. V; Mathews v. Eldridge, 424 U.S. 319 (1976))

42. Petitioner incorporates all preceding paragraphs by reference as if fully set forth herein.

43. The Fifth Amendment prohibits the deprivation of liberty without due process of law — a guarantee that extends to all persons within the United States, including noncitizens. *Zadvydas*, 533 U.S. at 693.

44. Application of the *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing framework demonstrates that Petitioner's constitutional rights have been violated. (1) **Private interest:** Petitioner's interest in freedom from detention is fundamental and weighty. (2) **Risk of erroneous deprivation:** The risk is extreme — no charges, no proceedings, no mandatory detention basis, yet Petitioner remains confined. (3) **Government's interest:** The government's interest in continued detention is minimal to nonexistent, given Petitioner's clean record, pending asylum application, prima facie eligibility for cancellation of removal, and the catastrophic impact on his disabled son.

45. Petitioner has received no immigration court hearing, no bond hearing, and no individualized custody determination of any kind. This wholesale denial of process violates the Fifth Amendment.

COUNT IV: Violation of INA § 208 — Interference with Pending I-589 (8 U.S.C. § 1158; 8 C.F.R. §§ 208.2, 208.2(a))

46. Petitioner incorporates all preceding paragraphs by reference as if fully set forth herein.

47. Petitioner filed his I-589 on August 23, 2024 (Receipt No. [redacted]9). Under 8 C.F.R. § 208.2(a), USCIS retains jurisdiction over a pending affirmative asylum application unless and until DHS files an NTA with EOIR. No NTA has been filed. USCIS jurisdiction over the I-589 is therefore intact.

48. Petitioner's detention prevents him from receiving and responding to USCIS interview notices, developing his asylum case with counsel, and participating in the adjudication of

his I-589. Detaining an asylum applicant in a manner that materially interferes with a pending affirmative asylum claim violates INA § 208, 8 U.S.C. § 1158, and the procedural due process guarantee of the Fifth Amendment.

COUNT V: Prima Facie Eligibility for Cancellation of Removal (INA § 240A(b)(1), 8 U.S.C. § 1229b(b)(1))

49. Petitioner incorporates all preceding paragraphs by reference as if fully set forth herein.

50. Petitioner is prima facie eligible for Cancellation of Removal under INA § 240A(b)(1). All four statutory elements are satisfied:

- **Continuous physical presence of 10+ years:** Petitioner has resided continuously in the United States for more than twenty (20) years since approximately 2004.
- **Good moral character:** Petitioner has an unblemished criminal record, has paid taxes, and has been a law-abiding resident for over two decades.
- **No disqualifying convictions:** Petitioner has not been convicted of any offense under INA §§ 212(a)(2), 237(a)(2), or 237(a)(3).
- **Exceptional and extremely unusual hardship:** Petitioner's removal would impose exceptional and extremely unusual hardship on his U.S. citizen son, [redacted] [redacted] Montes Diaz, age 7, diagnosed with ASD Level 2, who requires ABA therapy, speech therapy, and occupational therapy, and who depends on Petitioner's daily care and presence. *In re Andazola-Rivas*, 23 I. & N. Dec. 319 (Board of Immigration Appeals Apr. 3, 2002); *In re Recinas*, 23 I. & N. Dec. 467 (Board of Immigration Appeals Sept. 19, 2002).

51. Petitioner's prima facie eligibility for this statutory form of relief weighs heavily in favor of his release pending proper adjudication before an immigration judge. His detention without proceedings denies him the ability to file and present this meritorious defense.

COUNT VI: Arbitrary and Capricious Agency Action (Administrative Procedure Act, 5 U.S.C. § 706(2)(A))

52. Petitioner incorporates all preceding paragraphs by reference as if fully set forth herein.

53. ICE's decision to detain Petitioner indefinitely — without an NTA, without initiated proceedings, without a bond hearing, and without any individualized assessment — is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The agency action ignores: (a) twenty-plus years of continuous residence; (b) a pending I-589 asylum application with completed biometrics ([redacted]9); (c) a U.S. citizen son with ASD Level 2 who depends on daily paternal care; (d) an unblemished criminal record; (e) seventeen-plus years of church community membership; (f) consistent tax compliance; and (g) prima facie eligibility for Cancellation of Removal under INA § 240A(b). No rational basis supports continued detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Felipe Montes Montes respectfully prays that this Honorable Court grant the following relief:

54. **FIRST,** assume jurisdiction over this matter;

55. **SECOND,** issue a **Writ of Habeas Corpus** pursuant to 28 U.S.C. § 2241 directing Respondents to immediately release Petitioner from unlawful custody;

56. **THIRD,** in the alternative, issue a **Writ of Habeas Corpus** directing Respondents to release Petitioner unless they provide an individualized bond hearing under 8 U.S.C. § 1226(a) within seven (7) days of this Order, at which hearing the government bears the burden of demonstrating by clear and convincing evidence that Petitioner poses a flight risk or danger to the community;

57. **FOURTH,** order Respondents to show cause within 72 hours of service of this Petition why the Writ should not issue;

58. **FIFTH,** order that Respondents provide Petitioner's counsel with at least 48 hours' written notice before any transfer of Petitioner outside the District of New Jersey or initiation of any removal action;

59. **SIXTH,** award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

60. **SEVENTH,** grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

_____

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Counsel for Petitioner

Dated: April 21, 2026

VERIFICATION BY COUNSEL

I, Franklin S. Montero, Esq., declare under penalty of perjury in accordance with 28 U.S.C. § 1746 as follows:

1. I am the attorney for Petitioner in this matter and am personally familiar with the facts of this case;

2. I have read the allegations contained in the foregoing Petition and to the best of my knowledge, those allegations are true based upon my personal knowledge, information and belief;

3. Due to Petitioner' detention and the lack of availability of certain information, certain facts are stated upon information and belief. Respondents have the burden of providing accurate information regarding Petitioner' location and the basis for their detention.

Dated: April 21, 2026

Respectfully submitted,

s/ Franklin S. Montero
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CERTIFICATE OF SERVICE

I, Franklin S. Montero, Esq., hereby certify that on this 28th Day of December 2025, I electronically filed the foregoing **PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY MOTION FOR IMMEDIATE RELEASE** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered counsel of record.

Dated: April 21, 2026

Respectfully submitted,

s/ Franklin S. Montero
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INDEX OF EXHIBITS

The following exhibits are submitted in support of this Petition:

- **Exhibit A** — ICE Online Detainee Locator System result confirming "In ICE Custody" at Delaney Hall Detention Facility for Felipe Montes Montes, A#242-359-495 (April 21, 2026).
- **Exhibit B** — EOIR Automated Case Information System (ACIS) result confirming "No case found" for A[redacted] (April 21, 2026)
- **Exhibit C** — USCIS Form I-797C, Receipt Notice, Receipt No. [redacted], Form I-589, Application for Asylum and for Withholding of Removal, received August 23, 2024.
- **Exhibit D** — USCIS Form I-797C, ASC Appointment Notice, Receipt No. [redacted], biometrics completed September 23, 2024, Elizabeth, New Jersey.
- **Exhibit E** — USCIS Form I-797C, Receipt Notice, Receipt No. [redacted], Form I-765, Category C08, received April 18, 2025.
- **Exhibit F** — Medical Letter, Anna Ku APN, Division of Child Neurology & Neurodevelopmental Disabilities, Rutgers Robert Wood Johnson Medical Center, June 12, 2024 — [redacted] Montes Diaz (DOB [redacted]), ASD Level 2, ABA therapy, speech therapy, occupational therapy

- **Exhibit G** — Certification, Our Lady of Guadalupe Parish, Lakewood, New Jersey, July 22, 2024 — Petitioner's parish membership since 2008.