UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

DUSTMUROD RAKHIMOV,
Alien Detainee at Butler County Jail
705 Hanover Street
Hamilton, OH 45011

Petitioner,

v.

Field Office Director of Enforcement and and Removal Operations, Detroit Field Office. U.S. Immigration and Customs Enforcement, in his official capacity; Secretary, U.S. Department of Homeland Security, in his official capacity; U.S. Attorney General in his official capacity

Respondents.

Case No. 1:26-CV-00444

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, Dustmurod Rakhimov, brings this petition for a writ of habeas corpus to seek enforcement of his rights to a bond hearing as an alien detainee under 8 U.S.C. § 1226(a) and his constitutional right to due process under the Fifth Amendment of the United States Constitution.
2. Petitioner faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) deprived him of a bond hearing on April 15, 2026, the date on which the immigration court in Cleveland, Ohio, issued an order finding that it did not have jurisdiction to set a bond on the ground that the Petitioner was mandatorily detained as an alien seeking admission under 8 U.S.C. § 1225 rather than as an arrested and detained alien under 8 U.S.C. § 1226.

3. After apprehending Petitioner on or about 12/313/2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without admission or parole.
4. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved in his favor by a majority of United States District Courts, including by this court.
5. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

JURISDICTION

6. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Butler County Jail in Hamilton, Ohio.
7. 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).
8. 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

9. 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 Southern District of Ohio, the judicial district in which Petitioner currently is detained.

10. 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 Southern District of Ohio.

PARTIES

11. The Petitioner, Dustmurod Rakhimov, is a thirty-two-year-old citizen of Uzbekistan who has been residing in the United States with his family since August 16, 2023.

12. Respondent, Director of the Detroit Field Office for U.S. Immigration and Customs Enforcement, is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

STATEMENT OF FACTS

15. Petitioner ("Mr. Rakhimov") is a native and citizen of Uzbekistan, who fled his country on June 11, 2023, after [redacted]

16. Mr. Rakhimov was apprehended by U.S. immigration officers near the border shortly after his entry, at which time he was placed in removal proceedings and released, having been found to have a credible fear of persecution in Uzbekistan *See* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien.

17. In his removal proceedings Mr. Rakhimov was charged with being an alien present in the United States without admission or parole. *See* Exhibit B, Notice to Appear.

18. After his release in 2023, Mr. Rakhimov retained immigration counsel and voluntarily attended hearings in immigration court while working lawfully in the United States.

19. Mr. Rakhimov's removal proceedings remain pending. While he has not contested that he is removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (as an alien present in the United States without admission or parole), he has applied for lawful forms of relief from removal, which remain under consideration by the immigration court; therefore, the Petitioner is not subject to a final order of removal.

20. On December 31, 2025, Mr. Rakhimov was once again detained by Respondents, following his arrest approximately three weeks earlier on charges of domestic violence and strangulation, charges that were later dismissed for want of prosecution.

21. Mr. Rakhimov, through his immigration counsel, submitted a request for custody redetermination to the immigration court in Cleveland, Ohio.

22. On April 15, 2026, The Immigration Judge nonetheless denied any conditions of release on the ground that he lacked the jurisdiction to do so. The Immigration Judge's written order was solely and expressly based on lack of jurisdiction, not oni any finding that the Petitioner was a flight risk or a danger to the community *See* Exhibit C.
23. The Petitioner has filed this Petition without further delay and remains detained without a constitutionally adequate bond hearing.
24. Mr. Rakhimov's applications for legal relief from removal remain pending before the immigration court; therefore, he is not subject to a final order of removal.
25. Mr. Rakhimov's next removal hearing before the immigration judge will take place on May 6, 2026.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. Petitioner has not filed any administrative appeal of the Immigration Judge's custody redetermination order because doing so would be futile and excessively time-consuming.
27. More specifically, pursuant to regulations, 8 C.F.R.§ 1236.1(d)(3), an administrative appeal of the IJ's bond decision is filed with the Board of Immigration Appeals (BIA), the same agency which continues to abide by its unprecedented and erroneous decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (holding that all aliens who have not been admitted to the United States, regardless of how long they have resided in the United States, are subject to mandatory detention under 8 U.S.C. § 1225 and are not legally eligible for a bond under 8 U.S.C. § 1226(a)).
28. An appeal to the BIA would not only be manifestly futile; it would require an unreasonable long time to adjudicate, resulting in irreparable harm to Petitioner while he remains deprived of his liberty.

CLAIMS FOR RELIEF

I. Violation of the Immigration and Nationality Act (INA)

29. The continued detention of the Petitioner without possibility of bond violates his statutory rights under the plain language of 8 U.S.C. § 1226(a), which states in pertinent part, "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." It further states, "Except as provided in subsection (c) and pending such decision, the Attorney General- (1) may continue to detain the arrested alien; and (2) may release the alien on- (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole.

30. The plain language of 8 U.S.C. § 1226(a) thus authorizes the Attorney General (and by extension the Immigration Court, which is under the Attorney General) to set conditions for the Petitioner's release.

31. Rather than recognizing that the Petitioner is detained under 8 U.S.C. § 1226(a) and thus eligible for a bond, the immigration court found that it lacked jurisdiction to set a bond, based on a novel administrative decision issued in September of last year, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

32. In *Yajure Hurtado* the Board of Immigration Appeals, disregarding decades of contrary authority, held that all aliens present in the United States without admission or parole, regardless of the length of their residence, are subject to the same mandatory detention statute, 8 U.S.C. § 1225, which governs aliens seeking admission at the border, not 8 U.S.C. § 1226(a).

33. Regarding the issue presented by this Petition, i.e., whether the Petitioner is legally subject to mandatory detention as an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A) (as the

government claims) or whether he is only subject to discretionary detention under 8 U.S.C. § 1226(a), there is still no judicial precedent binding on this Court. On the side of the government, the Eighth Circuit in *Avila v. Bondi,* No. 25-3248 (March 25, 2026), has joined the Fifth Circuit in *Buenrosotro Mendez v. Vergara*, No. 25-20496, No. 25-40701, 2026 WL 323330 (Feb. 6, 2026), and has upheld *Yajure Hurtado's* interpretation of the INA. On the other hand, the Second Circuit recently came to the opposite conclusion. *Cunha v. Freden,* No. 25-3141-pr, 2026 WL 1146044 (April 28, 2026).

34. The vast majority of U.S. District Courts outside the Second, Fifth, and Eighth Circuits (including this court) have been granting writs of habeas corpus on the ground that the government's position is untenable as a matter of statutory interpretation. A list of the relevant lower court decisions would take up many pages; therefore, Petitioner will content himself with a few of the most recent. *See, e.g., Hernandez Lopez v. Woodall,* 3:26-cv-117, 2026 WL 804174 (M.D. Fl. March 26, 2026); *Guinac Vasquez v. Crawford,* 3:26-cv-51, 2026 WL 802852 (E.D. Va. March 23, 2026); *Ramirez Quintant v. Lynch,* 1:25-cv-919, 2026 WL 746359 (S.D. Ohio March 17, 2026).

35. Until the issue is definitively resolved in this Circuit, the court should follow its own precedent and the consensus of its sister courts and grant habeas relief on the ground that subjecting the Petitioner to mandatory detention under § 1225(b)(2) violates his statutory rights under the Immigration and Nationality Act (INA).

II. Violation of Due Process

36. Detaining the Petitioner without possibility of bond not only violates the INA; it is a violation of the Petitioner's right to due process under the Fifth Amendment. It is well established that "non-punitive detention in the immigration context violates the Due Process

Clause," *Padilla v. U.S.I.C.E.* 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023), absent "adequate procedural protections" or a "special justification" outweighing a petitioner's liberty interests." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). In this case, the Petitioner's detention without bond is clearly non-punitive unsupported by any special justification, yet he has never been afforded any consideration for release under any conditions whatsoever. That is a clear violation of the Petitioner's due process rights, which can and should be remedied by this Court.

PRAYER FOR RELIEF

37. WHEREFORE, Petitioner prays that this Court grant the following relief: (A) Assume jurisdiction over this matter; (B) Issue a writ of habeas corpus requiring that Respondents release the Petitioner; (C) Alternatively, issue a writ of habeas corpus requiring the Respondents to afford Petitioner a constitutionally adequate bond hearing on an expedited basis, where the government shall bear the burden of justifying his continued detention without bond; (D) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and (E) Grant any other and further relief that this Court deems just and proper.

DATED this 4th day of May, 2026.

Respectfully submitted,

/s/ Paul W. Shonk
Counsel for Petitioner

CERTIFICATE OF SERVICE

I submitted the foregoing electronically to the Court's ECF system on May 4, 2026. I certify that all parties are participants in ECF; therefore, no separate service was completed.

/s/ Paul W. Shonk
Paul W. Shonk