IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DMYTRO KAPUSTIN, Petitioner, vs. **MARKWAYNE MULLIN**, Secretary, U.S. Department of Homeland Security (DHS); **TODD M. LYONS**, Acting Director, U.S. Immigration and Customs Enforcement (ICE); **DEREK GORDON**, Acting Executive Associate Director, Homeland Security Investigations (HSI), U.S. Immigration and Customs Enforcement (ICE); **MARCOS CHARLES**, Acting Executive Associate Director, Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE); **DAREN K. MARGOLIN**, Acting Director, Executive Office For Immigration Review; **WARDEN**, Northeast Ohio Correctional Center, Respondents.	CASE NO.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner, Dmytro Kapustin (A[redacted]), by and through undersigned counsel, respectfully submits this Emergency Petition for Writ of Habeas Corpus. Petitioner seeks relief under 28 U.S.C. § 2241. In support thereof, Petitioner states as follows:

INTRODUCTION

1. This is a habeas corpus petition brought by Dmytro Kapustin, a native and citizen of Ukraine, who has been unlawfully detained by U.S. Immigration and Customs Enforcement (ICE) since at least March 23, 2026, following an interior arrest by joint ICE and local law enforcement officers. Petitioner is currently detained at the Northeast Ohio Correctional Center, located in Youngstown, Ohio.

2. Ms. Kapustin has resided continuously and peacefully in the United States since February 7, 2023, and he has no criminal history.

3. The government is detaining him under 8 U.S.C. § 1225(b)(2), claiming he is subject to mandatory detention without the possibility of a bond hearing. This is incorrect. Since he was arrested well over two years after entering the United States, and inside the country, he is not subject to expedited removal or mandatory detention under § 1225. Rather, he is properly classified under 8 U.S.C. § 1226(a), which entitles him to an individualized custody determination and the opportunity to request release on bond.

4. By denying Mr. Kapustin a bond hearing, the government is violating his statutory rights under § 1226(a), his procedural and substantive due process rights under the Fifth Amendment, and is acting contrary to law under the Administrative Procedure Act.

5. This Petition seeks an immediate bond hearing or release from detention, as required by law.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241, which authorizes federal courts to grant writs of habeas corpus to individuals in custody in violation of the Constitution, laws, or treaties of the United States.

7. This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), as this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

8. Petitioner's claim is not barred from review by 8 U.S.C. § 1252(g) as Petitioner does not challenge the Respondent's decision to commence removal proceedings against him, the decision to arrest and detain him, or the methods by which he is detained. Petitioner challenges the Attorney General's treatment of him as an "alien seeking admission," whose detention is governed by 8 U.S.C. § 1225(a)(2) rather than 8 U.S.C. § 1226(a). *Cf. Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [Section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

9. Similarly, this Court is not stripped of jurisdiction by the "zipper clause" of the INA, *see* 8 U.S.C. § 1252(b)(9), because Petitioner is "not asking for review of an order of removal;" he is not "challenging the decision to detain [him] in the first place or to seek removal;" and he is "not even challenging any part of the process by which

[his] removability will be determined. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *see also Madu*, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

10. To the extent applicable, this Court further has jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq., which authorizes judicial review of final agency actions where no adequate alternative remedy exists. *See* 5 U.S.C. §§ 702, 704, and 706(2)(A); *see also Califano v. Sanders*, 430 U.S. 99, 105–07 (1977).

11. This Court may issue declaratory relief under 28 U.S.C. § 2201 and may compel agency action unlawfully withheld or unreasonably delayed under 28 U.S.C. § 1361 where appropriate.

12. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391(e)(1)(B), because Petitioner is currently detained in this District and a substantial part of the events or omissions giving rise to this action occurred here.

PARTIES

13. Petitioner, Damytro Kapustin, is a native and citizen of Ukraine, born on [redacted]

14. Respondent Markwayne Mullin, Secretary of the U.S. Department of Homeland Security (DHS), is the head of DHS, the federal department charged with administering and enforcing the nation's immigration laws. Secretary Mullin has the

ultimate authority over ICE and all subordinate agencies involved in Petitioner's detention. He is sued in his official capacity.

15. Respondent Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE), is responsible for the nationwide administration and oversight of ICE, the agency charged with enforcement of immigration detention and removal. He is sued in his official capacity.

16. Respondent Derek Gordon, Acting Executive Associate Director of Homeland Security Investigations (HSI), ICE, oversees investigative operations of ICE, including matters involving the apprehension of noncitizens. While HSI is primarily investigative, its leadership participates in the broader enforcement mechanisms of DHS. He is sued in his official capacity.

17. Respondent Marcos Charles, Acting Executive Associate Director of Enforcement and Removal Operations (ERO), ICE, is directly responsible for the supervision and operation of ICE's detention and removal activities. His division has direct oversight of the detention facility where Petitioner is currently held. He is sued in his official capacity.

18. Respondent, Daren K. Margolin, is the Director of the Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice responsible for adjudicating immigration cases, including asylum claims, in removal proceedings. He is sued in his official capacity.

19. Respondent, Warden of the Northeast Ohio Correctional Center, has the immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. He is sued in his official capacity.

FACTUAL ALLEGATIONS

20. Petitioner Dmytro Kapustin is a 25-year-old citizen and native of Ukraine, born on [redacted].

21. Petitioner entered the United States on or about February 7, 2023, in Boston, Massachusetts, after presenting himself pursuant to a grant of humanitarian parole. After inspection and authorization by the Department of Homeland Security ("DHS"), Petitioner was paroled into the United States under 8 U.S.C. § 1182(d)(5). Petitioner was not admitted in any formal immigration status but was permitted to remain temporarily under parole, which was valid through February 5, 2025.

22. Following his arrival, Petitioner resided in Akron, Ohio, where he lived peacefully and worked as a truck driver to support himself. He has maintained steady employment and complied with all immigration requirements.

23. Petitioner has no criminal history in the United States or abroad. He has never been arrested, charged, or convicted of any criminal offense.

24. Petitioner is currently in removal proceedings before the Cleveland Immigration Court pursuant to 8 U.S.C. § 1229a.

25. On or about March 23, 2026, Petitioner was taken into custody by immigration authorities. He is currently detained at the Northeast Ohio Correctional Center in Youngstown, Ohio, which lies within the jurisdiction of the United States District Court for the Northern District of Ohio.

26. Petitioner has remained continuously detained since that date and continues to be held in the custody of DHS without meaningful opportunity to secure release.

27. On April 8, 2026, Petitioner filed a defensive application for asylum and withholding of removal (Form I-589) with the Immigration Court.

28. As a noncitizen who was paroled into the United States, established residence and employment, and was subsequently detained well within the interior of the country, Petitioner has developed substantial liberty interests protected by the Due Process Clause. As a result, he is entitled to an individualized hearing with adequate procedural safeguards to challenge his continued detention.

COUNT I

Violation of Fifth Amendment Right to Due Process

(Failure to Provide an Individualized Hearing for Domestic Civil Detention)

29. Petitioner re-alleges and incorporates by reference preceding paragraphs one (1) through twenty-eight (28) as though fully set forth herein.

30. The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

31. The Fifth Amendment's Due Process Clause forbids the government to "depriv[e]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause Protects." *Zadvydas v. David*, 533 U.S. 758, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court "has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and 'narrow' nonpunitive 'circumstances,' *Foucha*, 504, U.S.at 80, where a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

32. The Supreme Court's balancing test in *Mathews v. Eldrige* is dispositive. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," and (3) "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." *Id.* at 335.

33. The First factor weighs heavily in Petitioner's favor. "Freedom from imprisonment —from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. A noncitizen's interest in his freedom pending the conclusion of his removal proceedings deserves great "weight and gravity." *See Addington v. Texas*, 441 U.S. 418, 427 (1979); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Courts have held that once released from immigration custody, noncitizens acquire a "protectable liberty interest in remaining out of custody on bond." *See Lopez-Arevelo v. Ripa*, 3:25-CV00337-KC, 2025 WL 2691828 at *11 (W.D. Tex. Sept. 22, 2025). Here, Petitioner has lived in the United States since 2023 and was previously released from custody and allowed to establish himself in the United States for over two years.

34. Turning onto the second factor, the Court shall consider "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. There is no doubt that Respondents have an interest in ensuring that noncitizens appear for their removal hearings and for them not to pose a risk to the communities in which they live. However, that interest is significantly diminished in this case. Petitioner was paroled into the United States by DHS after inspection and vetting, reflecting the government's own prior determination that he did not present a danger or flight risk at the time of entry.

35. Moreover, since his arrival in the United States, Petitioner has lived in Akron, Ohio, maintained steady employment as a truck driver, and has no criminal history. There is no evidence that Petitioner has ever failed to comply with immigration requirements or otherwise engaged in conduct that would justify his continued detention without an individualized determination. To the extent Respondents contend that Petitioner presents a risk of flight or danger, a bond hearing before an Immigration Judge is the appropriate forum to evaluate such claims based on evidence. Continued detention without such a hearing does not meaningfully advance the government's interest, particularly where less restrictive alternatives exist. Finally, any asserted fiscal or administrative burden associated with providing a bond hearing is minimal. Immigration courts have long conducted individualized bond determinations, and requiring such a hearing here would not impose any novel or undue burden on the government. Accordingly, the second Mathews factor weighs in favor of Petitioner.

36. The third *Mathews* factor calls for the Court to consider "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." *Mathews*, 424 U.S. at 335. Here, 8 C.F.R. § 1003.19(h)(2)(i)(B as applied creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings. Here, the procedures as applied create a substantial risk of erroneous deprivation of Petitioner's fundamental liberty interest in freedom from arbitrary detention pending the resolution of his removal

proceedings. That risk is particularly acute where Petitioner has never been afforded an individualized bond hearing to assess whether his continued detention is justified. Petitioner was paroled into the United States by DHS after inspection, reflecting an initial determination that he did not present a danger to the community or a risk of flight.

37. Since his entry, Petitioner has resided in Akron, Ohio, maintained employment, and has no criminal history, further underscoring the absence of any evidence supporting his continued detention. Absent a bond hearing, Petitioner remains detained without any meaningful opportunity to contest the government's justification for his confinement. This creates a significant risk that Petitioner is being erroneously deprived of his liberty despite posing no danger or flight risk. The value of additional procedural safeguards—namely, a prompt individualized bond hearing before an Immigration Judge where the government bears the burden of justifying continued detention—is substantial. Such a hearing would allow for a fact-specific determination based on Petitioner's actual circumstances, rather than categorical detention. Accordingly, the third Mathews factor weighs strongly in favor of Petitioner.

38. The government's refusal to provide Petitioner a bond hearing violates his procedural and substantive due process rights under the Fifth Amendment. The continued detention of Petitioner without any bond hearing, based solely on the misapplication of a statute that does not govern his case, is arbitrary, capricious, and unconstitutional.

39. For the reasons stated above, Petitioner's continued detention without an individualized hearing violates the Fifth Amendment's Due Process Clause. Specifically, 8 C.F.R. § 1003.19(h)(2)(i)(B) is unconstitutional as applied to them. And because the *Mathews v. Eldridge* factors weigh decisively in his favor, his confinement constitutes an unlawful deprivation of liberty. Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release or, at minimum, a constitutionally adequate bond hearing.

COUNT II

Violation of Fifth Amendment Right to Due Process

(Substantive Due Process)

40. Petitioner re-alleges and incorporates by reference preceding paragraphs one (1) through twenty-eight (28) as though fully set forth herein.

41. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

42. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Court will:

43. Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241 and Article I, Section 9, Clause 2 of the U.S. Constitution (the Suspension Clause);

44. Order that Petitioner shall not be transferred outside of Ohio during the pendency of these proceedings;

45. Order Respondents to Show Cause within three days unless, for good cause, additional time, not exceeding twenty days, is allowed pursuant to 28 U.S.C. § 2243.

46. Declare that Petitioner's continued detention without an individualized bond hearing violates: (a) the Immigration and Nationality Act; and (b) the Due Process Clause of the Fifth Amendment (procedural and substantive);

47. Issue a preliminary injunction and Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, order Respondents to release Petitioner if he is not provided a bond hearing within seven (7) days after the Court's order;

48. Under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et seq., individuals can recover attorneys' fees and costs for successful federal court litigation against the U.S. government. The EAJA statute applies to "any civil action (other than cases sounding in tort), including proceedings for judicial review of

agency action, brought by or against the United States in any court having jurisdiction of that action." 28 U.S.C. § 2412(d)(1)(A); and

49. Grant such other and further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

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VERIFICATION PURSUANT TO 8 U.S.C. § 2242

I represent Petitioner, Dmytro Kapustin, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: May 7, 2026

/s/Eduardo R. Soto, Esq.
Eduardo R. Soto, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 7, 2026, I electronically filed the foregoing document with the Clerk of Court using PACER. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by PACER or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/Eduardo R. Soto, Esq.
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