

ADAM F. DOYLE

California Bar No. 281763
The Law Office of Adam F. Doyle
444 W. C St., Ste. 310, San Diego CA 92101
Telephone: (619) 438-0816
adamfdoyle@gmail.com
www.doyledefense.com

Attorney for Petitioner **Augustin**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(HON. JAMES E. SIMMONS, JR.)

FRITZNER JUNIOR AUGUSTIN,

Petitioner,

v.

CHRISTOPHER LAROSE,
WARDEN, Otay Mesa Detention
Center, et al,

Respondents.

Civil No.: 26-CV-4398-JES

**AMENDED¹ PETITION FOR
WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

INTRODUCTION

Like many people from Haiti, Fritzner Augustin came to the United States legally using a travel authorization document under the CHNV parole program in 2023. Although he applied for TPS in 2024, Mr. Augustin's application remained pending as the new administration moved to terminate both CHNV parole and TPS protections for Haitians.

¹ Federal Rule of Civil Procedure 15(a)(2) permits a party to "amend its pleading . . . with the court's leave." The Court's scheduling Order permitted an amended petition by setting an August 14 deadline. [ECF 5.]

On January 10 of this year, ICE arrested Mr. Augustin in New York without a warrant and he requested political asylum. He has been held in immigration custody ever since. On June 3 the Immigration Judge (IJ) granted Mr. Augustin's asylum application but he remains in custody because the Department of Homeland Security (DHS) appealed that grant and the appeal is pending.

Mr. Augustin should be granted relief for three reasons:

1. Even if Mr. Augustin's parole technically expired in May 2025, he retained a parole-like liberty interest and the government violated regulations, the Administrative Procedure Act, and due process, by arresting him without adequate procedures;
2. The government failed to procure a warrant prior to Mr. Augustin's arrest;
3. Mr. Augustin falls under the removal scheme under 8 U.S.C. § 1226(a) because he was inspected when he entered and in light of the Ninth Circuit's recent decision in *Rodriguez Vazquez v. Bostock*, No. 25-6842, --- F.4th --- (9th Cir. July 30, 2026). He is therefore not only statutorily eligible for a bond hearing but should be granted immediate release in light of the current bias of immigration judges.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §§ 2201–02 (declaratory judgment), and Article I, Section 9 of the United States Constitution (Suspension Clause).

Mr. Augustin challenges the statutory and constitutional authority for his physical detention, a claim at the core of habeas jurisdiction.

Venue is proper in the Southern District of California under 28 U.S.C. § 1391 because Mr. Augustin is detained in this district and a substantial part of the events or omissions giving rise to this action occurred here.

PARTIES

Petitioner Fritzner Junior Augustin is in removal proceedings and is detained at the Otay Mesa Detention Center, located in the Southern District of California.

Respondent Christopher Larose is the Warden of the Otay Mesa Detention Center Detention Facility, where Mr. Augustin is detained. He has immediate physical custody of Mr. Augustin and is sued in his official capacity.

Respondent Markwayne Mullin is the U.S. Secretary of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Mr. Augustin's detention. Mr. Mullin has ultimate custodial authority over Mr. Augustin. He is sued in his official capacity.

Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and has authority over ICE operations. In that capacity and through his agents, Mr. Lyons has authority over the operation and enforcement of the immigration laws. Mr. Lyons is sued in his official capacity.

Respondent Daniel A. Brightman is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations, which includes Imperial Valley as a sub-office. He is therefore the custodian of all people held at the Otay Mesa Detention Center Detention Center and is Mr. Augustin's immediate custodian and responsible for his detention. He is sued in his official capacity.

Todd Blanche is the Acting Attorney General of the U.S. and is responsible for the Department of Justice. He is sued in his official capacity.

STATEMENT OF FACTS

A. Haiti and Parole into the U.S.

Petitioner Fritzner Junior Augustin was born and raised in Haiti. As an adult, he was the target of serious persecution due to his political views and at one point would-be assassins shot into his home. He has a ten-year-old daughter he loves dearly and who still lives in Haiti.

As the Court is likely aware, in 2022 Haiti was an extremely difficult place to live. Human Rights Watch reported, “Haiti remained in a long-standing political, security and humanitarian crisis that [] left all government branches inoperative, compounding overwhelming impunity for human rights abuses.” Human Rights Watch, *Haiti: Events of 2022*, World Report 2023, <https://www.hrw.org/world-report/2023/country-chapters/haiti> (last visited Aug. 13, 2026). Armed gangs seized control of strategic areas and “[m]ore than 42 percent of Haiti’s population need[ed] humanitarian assistance and up to 40 percent of the country experience[d] acute food insecurity.” *Id.*

As a result of the humanitarian crisis in Haiti and in three other countries, the Biden administration launched the “CHNV”² program, which permitted refugees from those countries to apply for a travel authorization document that would allow them to travel to a U.S. port and be screened for immediate parole under INA § 212(d). *See Noem v. Doe*, 145 S. Ct. 1524, 1525 (2025) (Jackson, J., dissenting). Under the program, “[I]ndividuals from these

² The CHNV acronym stands for the four involved countries: Cuba, Haiti, Nicaragua, and Venezuela.

1 conflict-ridden countries receive[d] ‘parole’ status for up to two years, which
2 allow[ed] them to live in the United States and, in some cases, work here
3 lawfully. Parole [was] discretionary by statute. *Id.* “DHS award[ed] parole
4 status through a competitive and detailed application process that involve[d]
5 a rigorous, individualized assessment of the applicant's circumstances.” *Id.*

6 On January 8, 2023, Mr. Augustin applied for CHNV travel
7 authorization. He was approved on January 24 and received a travel
8 authorization document. On May 12, he flew from Haiti to Miami, Florida,
9 where he presented his passport and travel authorization document. He was
10 vetted by immigration, who approved his entry, stamped his passport, and
11 paroled him into the U.S.

12 Mr. Augustin thereafter lived with his sister in Miami, received
13 employment authorization, and worked hard. He was providing for his young
14 daughter in Haiti and was seeing her over video calls at least once every day.
15 He has no criminal history whatsoever.

16 **B. Life in U.S. and Arrest.**

17 Mr. Augustin understood that he could remain in the United States for
18 two years under CHNV parole and potentially obtain another form of
19 immigration protection or status through Temporary Protected Status (TPS)³,
20 marriage, or asylum. He did not date any women because he was working
21 hard so he did not get married. He applied for TPS in 2024 but his
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23 ³ TPS was enacted by Congress in 1990 and protects “people who are
24 already in the US when a natural disaster, epidemic, armed conflict or other
25 extraordinary and temporary circumstance affects their country of origin,
26 making it unsafe for them to return home. Alexandra Villarreal, *Haitians
27 Face Arrest and Deportation After U.S. Removes TPS Protections*, The
28 Guardian (Aug. 7, 2026), [https://www.theguardian.com/us-
news/2026/aug/07/haitians-us-deportation-tps-immigration](https://www.theguardian.com/us-news/2026/aug/07/haitians-us-deportation-tps-immigration).

1 application remained pending for an extended period. In January 2025 a new
2 administration took office and President Trump immediately issued an
3 executive order stating that the government would “Terminate all categorical
4 parole programs that are contrary to the policies of the United States
5 established in [his] Executive Orders, including the program known as the
6 ‘Processes for Cubans, Haitians, Nicaraguans, and Venezuelans.’ ” In that
7 political climate, Mr. Augustin’s TPS application continued undecided.

8 On March 25, DHS formally terminated CHNV programs and existing
9 CHNV grants were scheduled to terminate on April 24. *Termination of Parole*
10 *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg.
11 13,611 (Mar. 25, 2025). DHS attempted to end TPS protections in July 2025
12 but that action was blocked by a district court. On July 25, 2026, the
13 Supreme Court ruled in favor of the government and Haiti’s TPS designation
14 is now terminated. *Mullin v. Doe*, 609 U.S. ---, 146 S. Ct. 2121 (2026). Mr.
15 Augustin’s TPS application is therefore no longer pending. His CHNV parole
16 presumably expired in May 2025 because two years had elapsed since his
17 original entry.

18 On January 10, Mr. Augustin was in New York state after attempting
19 to obtain immigration relief in Canada and was arrested by ICE. He spent
20 four days in custody in New York before being transferred to immigration
21 custody in Otay Mesa. After being placed in removal proceedings, Mr.
22 Augustin claimed asylum based on political persecution in Haiti, which at
23 one point resulted in assailants shooting into his home.

24 **C. Previous Petitions and Grant of Asylum.**

25 Mr. Augustin previously filed § 2241 habeas petitions on April 15 and
26 May 13. [26CV02406-JES at ECF 1; 26CV3008-JES at 1.] The first petition
27 was dismissed without prejudice because Mr. Augustin cited only prolonged
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1 detention of three months as the basis and the Court needed additional
2 information regarding his immigration history. The second petition was
3 dismissed without prejudice because Mr. Augustin did not include the name
4 of the Warden of the Otay Mesa Detention Center as the respondent. The
5 court permitted Mr. Augustin to file an amended petition by June 26.

6 Before June 26, however, Mr. Augustin appeared before the IJ on June
7 3. There, the IJ granted Mr. Augustin's asylum application. [See Ex. A.] But
8 DHS appealed that decision on June 23. [See Ex. B.] That appeal remains
9 pending in the Board of Immigration Appeals (BIA), and Mr. Augustin
10 remains in custody. He has never received any bond hearing.⁴

11 While Mr. Augustin thankfully does not have any chronic health
12 conditions and is in decent health, the conditions in Otay Mesa are quickly
13 wearing him down. He explains there is "no life" within the walls of Otay,
14 that the food is terrible and he is becoming depressed as the days wear on. He
15 states that while some of the guards treat immigrants with respect, others
16 treat detainees like they are "trash." Mr. Augustin is unable to get a complete
17 night's sleep due to the conditions and his sleep patterns are getting
18 progressively worse. Whereas he used to speak with his daughter over video
19 every day, he is now lucky if he can get a sporadic phone call because he does
20 not have money to speak more frequently.

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27 ⁴ Counsel confirmed the lack of any immigration bond hearing with
28 assigned government counsel in these habeas proceedings.

ARGUMENT

I.

THE GOVERNMENT VIOLATED DUE PROCESS BY ABRUPTLY REVOKING PETITIONER'S PAROLE-LIKE LIBERTY INTEREST AND LONGSTANDING RELEASE WITHOUT NOTICE, CHANGED CIRCUMSTANCES, OR A PRE-DEPRIVATION HEARING.

Mr. Augustin's detention violates the Fifth Amendment. When the government granted CHNV travel authorization and then approved Mr. Augustin for entry at the Miami airport, it explicitly granted parole into the U.S. Thereafter, since May 2023 the federal government knowingly allowed Mr. Augustin to live and work freely in the U.S. and continued to do so after he applied for TPS relief and after his parole technically expired in May 2025. He followed instructions, kept his head down, and did not commit any crimes. But then ICE stripped his liberty interest without any allegation that circumstances had changed.

A. Petitioner Developed a Substantial Liberty Interest in His Continued Freedom.

The Fifth Amendment protects every "person" from deprivation of liberty without due process of law. *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001). Physical freedom lies at the heart of that protection. *Id.* at 690.

Courts addressing immigration re-detention have therefore recognized that once the government releases a noncitizen into the community, the individual develops a substantial liberty interest in remaining free. *See, e.g., Garcia Domingo v. Castro*, 806 F. Supp. 3d 1246, 1252–53 (D.N.M. 2025); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1146 (D. Or. 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC, 2025 WL 2800149, at *10 (S.D. Cal. Oct. 1, 2025). That stems from *Morrissey v. Brewer*, which recognized that a person living

1 outside custody enjoys a concrete liberty interest because release permits the
2 person “to do a wide range of things” and “be with family and friends and to
3 form the other enduring attachments of normal life.” 408 U.S. 471, 482
4 (1972). Here, Mr. Augustin was granted parole when he arrived under the
5 CHNV program and was therefore granted a liberty interest by the
6 government. Although parole expired in May 2025, his liberty interest did
7 not, especially because the government made no attempt to place him in
8 removal proceedings from May 2025 to January 2026.

9 **B. ICE Violated its Own Regulations Regarding Parole under 8**
10 **C.F.R. § 212.5 as well as the Administrative Procedure Act and**
11 **Due Process.**

12 Mr. Augustin does not know whether ICE stated that it was revoking
13 his parole when it arrested him on January 10, 2026, so it is unclear whether
14 a revocation occurred. Either way, the government’s actions violate the
15 Administrative Procedure Act and Due Process.

16 Under the Administrative Procedure Act (APA), an agency action may
17 be held to be unlawful and set aside if it is “arbitrary, capricious, an abuse of
18 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An
19 action is an abuse of discretion if the agency “entirely failed to consider an
20 important aspect of the problem, offered an explanation for its decision that
21 runs counter to the evidence before the agency, or is so implausible that it
22 could not be ascribed to a difference in view or the product of agency
23 expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658
24 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut.*
25 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged agency action to be
26 upheld, the agency “must explain the evidence which is available and must
27 offer a rational connection between the facts found and the choice made.”
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1 *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983) (internal quotations omitted)
2 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168
3 (1962)).

4 Here, regardless of whether ICE formally revoked Mr. Augustin's
5 parole, it violated the APA. If the government did not purport to revoke
6 parole, then its January 2026 decision to incarcerate Mr. Augustin was a new
7 agency action that required an independent, rational justification. Doing so
8 violated the APA because the agency did not "offer a rational connection
9 between the facts found and the choice made"—i.e., the fact that Mr.
10 Augustin still had a parole-like liberty interest and had committed no
11 violations and had applied for TPS protections, yet the agency decided to
12 detain him. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that
13 there *was* a "rational" reason for this choice. This was the epitome of an
14 "arbitrary" and "capricious" act under the APA. 5 U.S.C. § 706(2)(A).

15 Alternatively, to the extent ICE treated its January arrest as a
16 termination or revocation of Mr. Augustin's prior parole-based release, it
17 failed to comply with the procedures governing such action. Per ICE
18 regulations, a person shall only be "returned to the custody from which he
19 was paroled" when "the purposes of such parole . . . have been served." 8
20 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be
21 terminated "upon accomplishment of the purpose for which parole was
22 authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the
23 regulations permit revocation of parole when "neither humanitarian reasons
24 nor public benefit warrants the [noncitizen's] continued presence." 8 C.F.R.
25 § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated
26 upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the
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1 statute and the regulations, the agency may only revoke parole and re-detain
2 a noncitizen when the parole's purpose is served or no humanitarian reasons
3 warrant it *and* the noncitizen receives written notice. None of this occurred
4 here.

5 **C. The Due Process Clause Required Notice and a Chance to be**
6 **Heard Before Parole was Revoked.**

7 Additionally, "the revocation of [Mr. Augustin's] parole without
8 justification or consideration of his individualized circumstances violates the
9 Due Process Clause." *Perez v. LaRose*, No. 3:25-CV-02620-RBM, 2025 WL
10 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Mr. Augustin was "entitled to notice
11 of the reasons for revocation of his parole and a hearing before an
12 immigration judge to determine whether detention is warranted" before ICE
13 revoked his parole. *Id.* at *7.

14 "The Fifth Amendment guarantees that '[n]o person shall be . . .
15 deprived of life, liberty, or property, without due process of law.'" *Salazar*,
16 2025 WL 3063629, at *3 (quoting U.S. Const. amend. V). "[T]he Due Process
17 Clause applies to all 'persons' within the United States, including aliens,
18 whether their presence here is lawful, unlawful, temporary, or permanent."
19 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

20 "Generally, due process protections depend on the situation and must
21 account for (1) the private interest at issue, (2) the risk of erroneous
22 deprivation of that interest through the procedures used, and (3) the
23 Government's interest." *Noori v. LaRose*, No. 25-cv-1824-GPC, 2025 WL
24 2800149 (S.D. Cal. Oct. 1, 2025) (citing *Mathews v. Eldridge*, 424 U.S. 319
25 (1976)). Weighing those considerations here, the government violated the Due
26 Process Clause by revoking parole with no notice or hearing.

27 "First, Petitioner has a private interest in remaining free, which
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1 developed over the [years] he resided in the United States.” *Id.* at *10. It does
2 not matter that parole is temporary or discretionary. “For example, *Morrissey*
3 *v. Brewer*, 408 U.S. 471, 482 (1972) – though analyzing the criminal parole
4 context – found that ‘the liberty of a parolee, although indeterminate,
5 includes many of the core values of unqualified liberty and its termination
6 inflicts a grievous loss on the parolee and often others . . . [thus it] must be
7 seen within the protection of the [Fifth] Amendment.’” *Id.*

8 “Second, the risk of an erroneous deprivation of such interest is high as
9 Petitioner’s parole was revoked without providing [him] a reason for
10 revocation or giving [him] an opportunity to be heard.” *Salazar*, 2025 WL
11 3063629, at *4. “Civil immigration detention is permissible only to prevent
12 flight or protect against danger to the community.” *Perez*, 2025 WL 3171742,
13 at *5. But here, “[s]ince DHS’s initial determination that Petitioner should be
14 paroled because [he] posed no danger to the community and was not a flight
15 risk, there is no evidence that these findings have changed.” *Id.*

16 “Third, the Government’s interest in detaining Petitioner without
17 notice, reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5
18 (cleaned up). “Detention for its own sake, to meet an administrative quota, or
19 because the government has not yet established constitutionally required
20 pre-detention procedures is not a legitimate government interest.” *Pinchi v.*
21 *Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025).

22 Thus, because the government did not provide “proper notice,
23 reasoning, and a pre-deprivation hearing” before revoking parole, Mr.
24 Augustin’s detention violated the Due Process Clause. *Salazar*, 2025 WL
25 3063629, at *5. That is true regardless of whether the Court uses the grant of
26 parole or the parole-like liberty interest conferred by permitting Mr.
27 Augustin to live in the U.S. for an extended period and by not placing him in
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1 removal proceedings after his CHNV period had expired.

2 II.

3 **THE GOVERNMENT WAS REQUIRED TO HAVE AND PRESENT A**
4 **WARRANT PRIOR TO PETITIONER'S ARREST.**

5 Even if Mr. Augustin's detention does not violate due process, he should
6 have been afforded the process in 8 U.S.C. § 1226(a) because he did not enter
7 without inspection and therefore falls under that section. And, as the Ninth
8 Circuit recently confirmed, "[b]ecause § 1226 is not limited to aliens deemed
9 "applicants for admission," the aliens subject to § 1226 include other aliens,
10 such as admitted aliens "who overstay or violate the terms of their visas" or
11 who "engage in conduct that renders them removable." *Rodriguez Vazquez v.*
12 *Bostock*, No. 25-6842, --- F.4th --- at *15 (9th Cir. July 30, 2026). Mr.
13 Augustin is analogous to an individual who entered on a visa and later
14 overstayed because, although his initial entry was authorized, the period of
15 that authorization subsequently expired. Section 1226(a), in addition to being
16 afforded a bond hearing, requires that ICE have a warrant *prior* to any
17 arrest. It also requires that ICE may only issue such a warrant at the time of
18 or after the issuance of a notice to appear for removal proceedings. Mr.
19 Augustin was afforded none of the protections under § 1226(a) and should be
20 released.

21 Under § 1226, "[i]ssuance of a warrant is a necessary condition to justify
22 discretionary detention under section 1226(a)." *Chogllo Chafla v. Scott*, 804
23 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that, "[o]n a warrant issued by
24 the Attorney General, an alien may be arrested and detained." 8 U.S.C.
25 § 1226(a). Such a warrant "must be issued before the alien is arrested and
26 taken into custody." *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023 (C.D. Cal.
27 Nov. 12, 2025); *Matovu*, 2026 WL 1387476, at *3 ("Generally, the warrant
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1 must be issued before the noncitizen's arrest."). "[I]t follows that absent a
2 warrant a noncitizen may *not* be arrested and detained under section
3 1226(a)." *Chogllo Chafla*, 804 F. Supp. 3d at 264 (emphasis in original).

4 Here, Mr. Augustin was arrested on January 10, 2026, after having
5 attempted to obtain asylum in Canada. Mr. Augustin was not shown a
6 warrant before being arrested. Because this arrest violated the plain
7 language of § 1226(a), Mr. Augustin's "arrest and detention are
8 unauthorized," and immediate release is the "appropriate remedy." *Cruz*
9 *Pedraza*, 26-cv-2697-LL, ECF 12 at 4.

10 III.

11 **8 U.S.C. § 1226(a) APPLIES TO MR. AUGUSTIN AND THE COURT**
12 **SHOULD GRANT IMMEDIATE RELEASE.**

13 Even if the Court does not grant release because of the government's
14 failure to follow the Constitution, statutes, and its own regulations, it should
15 grant relief because Mr. Augustin is subject to the process outlined in 8
16 U.S.C. § 1226(a) and not § 1225(b). At a minimum, § 1226(a) mandates that
17 he receive a bond hearing. And in light of the lack of neutrality of IJs in the
18 current political climate, the Court should grant immediate release.

19 A. **The Mandate of § 1226(a).**

20 Section 1226(a) authorizes the arrest and detention of a noncitizen
21 "pending a decision on whether the alien is to be removed from the United
22 States." It provides that the Attorney General "may continue to detain" the
23 person or "may release" the person on bond of at least \$1,500 or on
24 conditional parole. 8 U.S.C. § 1226(a). Federal regulations specify that
25 persons detained under § 1226(a) should receive bond hearings at the outset
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1 of detention and may appeal bond decisions. *See* 8 C.F.R. §§ 1236.1(d),
2 1003.19(a)–(f); *see also Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018).

3 Section 1226(a) therefore “sets out the default rule” for detention during
4 removal proceedings unless a more specific provision applies. *Rodriguez v.*
5 *Bostock*, 779 F. Supp. 3d 1239, 1246 (W.D. Wash. 2025) (quoting *Jennings*,
6 583 U.S. at 288). The Supreme Court has similarly described § 1226(a) as
7 applying to “aliens already present in the United States.” *Jennings*, 583 U.S.
8 at 303.

9 **B. Mr. Augustin Falls Under § 1226(a).**

10 First, Mr. Augustin falls under § 1226(a) because he did not enter
11 without inspection. Not only did he enter the U.S. at a designated port of
12 entry (i.e., the airport), he had previously obtained a travel authorization
13 document and was then inspected and paroled into the U.S. when he arrived
14 in May 2023. He is akin to a person who entered on a visa and then
15 overstayed his visa.

16 Second, even if the government were to argue that Mr. Augustin should
17 fall under § 1225(b) because he was not technically “admitted,” the Ninth
18 Circuit’s recent decision in *Rodriguez Vazquez v. Bostock* precludes that
19 argument. No. 25-6842, --- F.4th ---- (9th Cir. July 30, 2026).

20 In *Rodriguez Vazquez*, the petitioner had entered the U.S. without
21 admission or parole in 2009 and was not apprehended by immigration
22 authorities until 2025. *Id.* at 21–22. The government argued that because
23 § 1225(a)(1) deems any noncitizen present in the United States who has not
24 been admitted an “applicant for admission,” such individuals necessarily fall
25 within § 1225(b)(2)(A)’s mandatory-detention provision. The Ninth Circuit
26 rejected that interpretation. It held that § 1225(b)(2)(A), when read in
27 context, applies to noncitizens who are actually “seeking admission”—i.e.,
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1 engaged in the affirmative process of attempting to enter the United States
2 at the border or a port of entry. *Id.* at 28–40. Thus, the fact that a person has
3 never technically been “admitted” does not, standing alone, subject him to
4 mandatory detention under § 1225(b)(2)(A).

5 Instead, the Ninth Circuit held that “aliens present without admission
6 who are apprehended in the interior of the United States are subject to the
7 detention regime of § 1226, not § 1225(b)(2)(A).” *Id.* at 10. The court
8 explained that this distinction accords with the longstanding statutory
9 scheme: § 1225(b)(2)(A) governs mandatory detention of persons seeking
10 entry at the border, while § 1226 supplies the detention authority for persons
11 already present in the United States, including those who were never
12 formally admitted. *Id.* at 9–10, 25–27.

13 The same reasoning applies with even greater force here. At a
14 minimum, the Court should order the IJ to provide a bond hearing.

15 **C. Immediate Release is the Appropriate Remedy Due to the**
16 **Erosion of Immigration Judge Neutrality.**

17 Ideally, the Court could remedy the violation by ordering a bond
18 hearing before a neutral immigration judge, allowing the IJ to determine
19 whether Mr. Augustin posed a risk of flight. But attacks on IJ independence
20 under the current administration have severely compromised IJs’ neutrality.
21 There is a growing understanding that court-ordered “bond hearings [are],
22 effectively, stacked against detainees from the start.” Kyle Cheney, *How ICE*
23 *Defies Judges’ Orders to Release Detainees, Step by Step*, Politico (Feb. 10,
24 2026), <https://tinyurl.com/fucm99m9>. As a result, there is a serious risk that
25 an IJ will order Mr. Augustin’s continued detention even if he poses no flight
26 risk. Several data points support that conclusion.

1 **1. Concerns from Other Cases.**

2 In *Yin v. Maldonado*, a court expressed consternation at an IJ's
3 "conclusory, two-line determination of flight risk" for a person whom DHS
4 had previously agreed "to release . . . on his own recognizance" and who
5 "attend[ed] [all] immigration check-ins" during his release. No. 26-CV-0103
6 (PKC), 2026 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).

7 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
8 only to learn that "[t]he IJ denied Petitioner the opportunity to present
9 testimony, declined to consider the sworn, documentary evidence submitted
10 by Petitioner, and based his decision on an uncorroborated, unauthenticated
11 claim by a government official that Petitioner failed to share his location for
12 the ISAP." No. 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4,
13 2026). The original habeas "Order presupposed that this hearing would be
14 conducted in accordance with Petitioner's due process rights," the court
15 wrote. "It was not." *Id.*

16 And in *Picado v. Hyde*, a district judge ordered outright release after
17 two deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7
18 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant
19 a danger to the community based on an uncorroborated police report accusing
20 him of driving 90 mph in a 55-mph zone. *Id.*

21 **2. Evidence of a Concerted Effort.**

22 These trends are consistent with sustained attacks on IJs' independence
23 under the current administration. Several examples illustrate the point.

24 a. Immigration Judges.

25 First, the Trump administration has eliminated at least 128 IJs
26 insufficiently aligned with the administration's priorities, illustrating to the
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1 remaining IJs the cost of resistance. *See* Woo-Sun Lim, *Former judge*
2 *highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20,
3 2025), <https://tinyurl.com/4p9xsyys>.

4 These IJs are under no illusions about why they were let go. Former
5 Baltimore IJ Emmett Soper stated: "I think the current administration of the
6 immigration courts does not fundamentally see the immigration courts as
7 neutral decision-makers. I think that they see the immigration courts as a
8 tool for this administration to advance its policy objectives." Geoff Bennett &
9 Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*,
10 PBS NewsHour (Nov. 12, 2025), <https://tinyurl.com/4y2a4stn>. Former San
11 Francisco IJ Jeremiah Johnson similarly understood "the hint that they
12 should be hearing cases a certain way, deciding cases a certain way. Move
13 faster. Less due process, essentially." Hilda Gutierrez, Michael Bott & Son
14 Vo, *'An all-out attack on immigration court:' SF immigration judges speak out*
15 *after firings*, NBC Bay Area (Nov. 25, 2025), <https://tinyurl.com/426jy9dk>.
16 Former San Francisco IJ George Pappas was even more direct: "We were told
17 to facilitate deportation... Due process is dead in immigration courts." Isabela
18 Dias, *"Fired for No Reason": Former Immigration Judges Speak Out Against*
19 *Trump's Assault on the Courts*, Mother Jones (Oct. 9, 2025),
20 <https://tinyurl.com/yevhp32h>.

21 This has had a predictable effect on those who remain. According to
22 former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges
23 still serving], and they're like, 'When I go into court, I am concerned about
24 applying the law, but I'm also concerned that I should deny more, because if I
25 don't, then I'll get fired.'" Marco Poggio, *Judges See an Immigration Court*
26 *Gutted from Inside*, Law360 (Oct. 31, 2025), <https://tinyurl.com/dyc6utv6>.
27 Meanwhile, Department of Justice recruitment materials seek "deportation
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judges” to fill the empty IJ slots, Coral Murphy Marcos, *US Justice Department Recruiting Legal Experts to Serve as ‘Deportation’ Judges*, Guardian, <https://tinyurl.com/4amnhj6u>. These materials invite IJs to “bring the hammer down on criminal illegal aliens” and “defend your communities, your culture, your very way of life.” dhsgov, Instagram (Nov. 21, 2025), <https://tinyurl.com/y4ueh7nd>.

b. The BIA

Second, a parallel purge occurred at the BIA, which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), <https://tinyurl.com/3p8rxjdf/>. The statistical impact is stark. As of January 22, 2026, the reconstituted BIA had issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep’t of Just. (Jan. 21, 2026), <https://www.justice.gov/eoir/volume-29>. Of those, 69 decisions (97%) favored the administration. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions. Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep’t of Just. (June 13, 2025), <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28 I. & N. Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination of one administration’s appointees – speaks for itself.

Given the effort of the current administration to pressure immigration courts to value deportation over the statutory and due process rights of immigrants, the only way to ensure Mr. Augustin receives due process is to order his immediate release from custody.

CLAIM AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Order Respondents to immediately release Petitioner from custody without the need for a bond hearing, without the need for any bond amount, and subject to the conditions of his parole or parole-like liberty interest;
2. Alternatively order Petitioner's immediate release based on the absence of a warrant as required by § 1226(a);
3. Alternatively order Petitioner's immediate release based on the release provision of 8 U.S.C. § 1226(a) and the current lack of neutrality of immigration judges;
4. Alternatively order Respondents to provide Petitioner with a hearing and individualized bond determination within **ten days** of its order under 8 U.S.C. § 1226(a).
5. Order that, prior to any re-detention of Petitioner, Petitioner is entitled to notice of the reasons for revocation of his release and a hearing before an immigration judge to determine whether detention is warranted. The government should bear the burden of establishing, by clear and convincing evidence, that circumstances have changed since the initial determination of release such that Petitioner now poses a danger to the community or is a risk of flight at that hearing;
6. Order any other relief that the Court deems just and proper.

Dated: August 14, 2026

Respectfully submitted,

By: s/ Adam F. Doyle
ADAM F. DOYLE
Attorney for Mr. Augustin

VERIFICATION

I, Adam F. Doyle, declare as follows:

I am an attorney admitted to practice law in the State of California.

I am the attorney of record for Petitioner in this action. I have prepared the foregoing Amended Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 based on my review of records, including immigration documents, and on information provided to me by Petitioner.

Because Petitioner is currently detained, it has not been feasible for him to review and sign this petition prior to filing. The factual allegations in the petition are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on August 14, 2026.

s/ Adam F. Doyle
ADAM F. DOYLE
Attorney for Mr. Augustin
email: adam@doyledefense.com