

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

NAFIOU LAMIDI

Petitioner,

v.

E.L. TATUM, JR., Warden of the Federal Correctional Institute, Berlin; **PATRICIA H. HYDE**, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General;

Respondents.

Case Number:

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
(Expedited Consideration Requested)

INTRODUCTION

Petitioner Nafiou Lamidi is a noncitizen from Benin who was previously released from immigration detention under conditional parole pursuant to 8 U.S.C. § 1226(a)(2)(B) on January 3, 2025. *See Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023) (“[t]he [petitioners] were . . . released on their own recognizance pursuant to DHS’ conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)”); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is apparent that the [government] used the phrase ‘release on recognizance’ as another name for ‘conditional parole’ under § 1226(a).”). *See Exhibit 1* (Release

on Recognizance under 8 U.S.C. § 1226); Exhibit 2 (Custody Determination under 8 U.S.C. § 1226).

On May 12, 2025, without any apparent reason, Respondents re-detained Petitioner during a routine check-in under an administrative arrest warrant, as authorized under 8 U.S.C. § 1226(a). Exhibit 3 (Arrest Warrant under 8 U.S.C. § 1226).

Although Petitioner sought a bond hearing before an Immigration Judge (IJ) pursuant to 8 U.S.C. § 1226(a), Respondents argued and the IJ found that Petitioner was detained under 8 U.S.C. § 1225 instead of 8 U.S.C. § 1226(a). This is an incorrect interpretation of the law. Respondents chose 8 U.S.C. § 1226(a) to release Petitioner from detention to the United States. Petitioner is entitled to a bond hearing under 8 U.S.C. § 1226(a). *See Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, at *3 (D. Mass. July 7, 2025) (“Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework. Gomes' petition will accordingly be granted, and the government respondents will be ordered to provide him with a bond hearing before an Immigration Judge.”).

This Court should order a bond hearing under 8 U.S.C. § 1226(a). *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (“we hold that, in order to continue detaining Hernandez under section 1226(a), due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk”).

Petitioner further alleges as follows:

PARTIES

1. Petitioner Nafiou Lamidi is a noncitizen from Benin who is currently detained by Respondents at the Federal Correctional Institute (FCI) Berlin in Berlin, New Hampshire.

2. Respondent E.L. Tatum, Jr. is the warden of FCI Berlin, and he is being sued in his official capacity as the warden. He is Petitioner's immediate custodian.

3. Respondent Patricia Hyde is the Acting Boston Field Office Director, U.S. Immigration and Customs Enforcement, and she is being sued in her official capacity. She is Petitioner's legal custodian.

4. Respondent Todd Lyons is the Acting Director, U.S. Immigration and Customs Enforcement, and he is being sued in his official capacity. He is Petitioner's legal custodian.

5. Respondent Kristi Noem is the Secretary of U.S. Department of Homeland Security, and she is being sued in her official capacity. She is Petitioner's legal custodian.

6. Respondent Pamel J. Bondi is the United States Attorney General, and she is being sued in her official capacity. She oversees Immigration Judges and the Board of Immigration Appeals. She is also Petitioner's legal custodian.

JURISDICTION AND VENUE

7. The Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

8. Venue is proper in the District of New Hampshire because Petitioner is currently detained by Respondents at FCI Berlin in Berlin, New Hampshire, which is in the territorial jurisdiction of this Court. 28 U.S.C. § 1391; *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000).

FACTS

9. Petitioner is 36 years old and from Benin. Exhibit 4 (DHS Evidence at the Bond Hearing).

10. On November 2, 2024, Petitioner entered the United States without a lawful entry near Arizona. He fled Benin due to fear of persecution.

11. Respondents placed Petitioner in regular removal proceedings under 8 U.S.C. § 1229a instead of expedited removal. Exhibit 7 (Charging Document).

12. On January 3, 2025, Respondents released him under 8 U.S.C. § 1226(a)'s release on recognizance. *See* Exhibit 1 (Release on Recognizance under 8 U.S.C. § 1226); Exhibit 2 (Custody Determinations under 8 U.S.C. § 1226).

13. Since his release from immigration detention, Petitioner has established a stable residence in Lyndon Center, Vermont, and has received support from the Northeast Kingdom Asylum Seekers Assistance Network (NEKASAN).

14. On February 10, 2025, Petitioner reported to Respondents' routine check-in without any incident.

15. Petitioner filed his asylum application within one year of his entry, which is a timeliness requirement under the law.

16. On May 12, 2025, Respondents detained Petitioner without any reason or justification pursuant to an administrative arrest warrant under 8 U.S.C. § 1226. Exhibit 3 (Arrest Warrant under 8 U.S.C. § 1226).

17. Petitioner has no criminal record or any record of police encounter in the United States.

18. On May 28, 2025, with the assistance of *pro bono* counsel, Petitioner filed a motion for a bond hearing (custody redetermination) before an Immigration Judge (IJ). Exhibit 5 (Petitioner's Bond Motion).

19. On June 5, 2025, the IJ held that the IJ had no jurisdiction over Petitioner's bond hearing because he was detained under 8 U.S.C. § 1225, a mandatory detention, instead of 8 U.S.C. § 1226(a). Exhibit 6 (IJ's Bond Order).

20. Petitioner timely appealed the IJ's decision to the Board of Immigration Appeals (BIA). The appeal is currently pending.

CLAIMS FOR RELIEF

COUNT 1
8 U.S.C. § 1226

21. The foregoing allegations are realleged and incorporated herein.

22. Petitioner is detained under 8 U.S.C. § 1226(a) because Respondents released him pursuant to 8 U.S.C. § 1226 and re-detained him under the same statute.

23. Under 8 U.S.C. § 1226(a), Petitioner is entitled to a bond hearing at which Respondents must justify his detention.

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2). Issue a Writ of Habeas Corpus directing Respondents to immediately provide a bond hearing pursuant to 8 U.S.C. § 1226(a);
- (3). Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (4). Order any further relief this Court deems just and proper.

Respectfully submitted this 8th day of August 2025.

Nafiou Lamidi,

By and through his Counsel,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)

SangYeob Kim (NH Bar: 266657)

Chelsea Eddy (NH Bar: 276248)

AMERICAN CIVIL LIBERTIES UNION OF

NEW HAMPSHIRE

18 Low Avenue

Concord, NH 03301

Phone: 603.333.2081

gilles@aclu-nh.org

sangyeob@aclu-nh.org

chelsea@aclu-nh.org

Kristen J. E. Connors (*Pro Hac Vice* forthcoming)

Montroll, Oettinger & Barquist, P.C.

126 College Street, Suite 400

Burlington, Vermont 05401

(802) 540-0250

kconnors@mblawoffice.com