

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

REMON RAYEK ISKANDAR ZAKI,

Petitioner,

v.

Richard A. LUNA., Warden of FCI Berlin;

PATRICIA H. HYDE, Acting Field Office

Director, Immigration & Customs Enforcement,

Enforcement and Removal Operations, Boston

Field Office; **Rodney SCOTT** Commissioner,

U.S. Customs and Border Protection,

TODD LYONS, Acting Director, US Immigration

And Customs Enforcement

KRISTI NOEM, Secretary of US Department

Of Homeland Security

PAMELA BONDI, US Attorney General

in their official capacities,

Respondents.

Case No. _____

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

**ORAL ARGUMENT
REQUESTED**

INTRODUCTION

1. The Petitioner, Reymon Raek Iskdar Zaki, is a 21-year-old Egyptian national currently detained by Immigration and Customs Enforcement (“ICE”) at FCI Berlin in Berlin, New Hampshire.
2. Petitioner has an approved I-360 Special Immigrant Juvenile (SIJ) petition, issued by U.S. Citizenship and Immigration Services on 6/24/2025. This approval recognizes that Petitioner was abused, abandoned, or neglected, and that return to his country of origin
3. A return to Egypt is not in his best interest.
4. Petitioner was lawfully paroled into the United States under INA § 212(d)(5) and was later detained by ICE on 10/28/2025 solely because DHS alleges that Petitioner did not properly utilize the CBP One mobile processing system while approaching the U.S. border.
5. The alleged failure to use a mobile application is not a lawful basis for continued civil immigration detention.
6. Petitioner’s detention is non-criminal, indefinite, excessive, and punitive, in violation of the Due Process Clause of the Fifth Amendment. Petitioner seeks release, or in the alternative, an individualized bond hearing before an Immigration Judge with the burden placed on the Government.

PARTIES

7. Petitioner is an Egyptian citizen who is currently detained at FCI Berlin, in Berlin, NH. He is in the custody of the lead Respondent and under the direct control of additional agency Respondents and their agents.
8. Respondent Richard Luna., Warden of FCI Berlin, is named in his official capacity as the direct custodian of Mr. Zaki. In this capacity, he has 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. At the time of filing this petition, the ICE Detainee Locator – <https://locator.ice.gov> – reflects that Petitioner remains detained at FCI Berlin in Berlin, New Hampshire.

9. Respondent Patricia Hyde is sued in her official capacity as the Director of the Boston Field Office of United States Immigration and Customs Enforcement. Respondent Hyde is a legal custodian of Petitioner and has authority to release him.
10. Respondent Todd Lyons is sued in his official capacity as Acting Director of the United States Immigration and Customs Enforcement. In this capacity, Respondent Lyons oversees all detention of noncitizens held in ICE custody and is another of Petitioner's legal custodians imbued with the authority to release him.
11. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.
12. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is therefore also a legal custodian of Petitioner.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction under **28 U.S.C. § 2241** because Petitioner is in custody within the District of New Hampshire.
14. Venue is proper in this District because Petitioner is detained at FCI Berlin, located in Coos County, New Hampshire within the territorial jurisdiction of this Court.
15. The proper respondent is the Warden of FCI Berlin, who exercises immediate custody.
16. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
17. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
18. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. FACTS AND PROCEDURAL HISTORY

19. Petitioner entered the United States on 08/06/2024, and was granted humanitarian parole.
20. On 6/24/2025, USCIS approved Petitioner's I-360 SIJ petition, making him statutorily eligible to pursue lawful permanent residence once a visa number becomes available.
21. Petitioner has no criminal history. He has no history of flight. He has close family and community ties in Bridgewater, Massachusetts.
22. On 10/28/2025, ICE detained Petitioner, claiming that he "failed to properly use CBP One." DHS alleges no criminal act, fraud, threat to safety, or national security concern.
23. Petitioner has now been detained with no scheduled bond hearing and no foreseeable timeline for adjudication.

IV. LEGAL ARGUMENT

A. Detention Is Unlawful and Violates Due Process

24. Civil detention may not be arbitrary or punitive. *Zadvydas v. Davis*, 533 U.S. 678 (2001).
25. A technical or alleged procedural defect in CBP border application usage cannot justify prolonged incarceration.
26. The Government has no legitimate interest in detaining a SIJ-approved youth whose best-interest finding has been affirmed by a U.S. state court and DHS.

B. Petitioner Is Entitled to an Individualized Bond Hearing

27. For detention under 8 U.S.C. § 1226(a), Petitioner is entitled to a bond hearing.
28. Even under § 1225(b), extended detention raises serious constitutional concerns requiring a custody review hearing. See *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).
29. The burden of proof must rest on the Government, not the detainee. See *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021).
30. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief.
28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).
31. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

V. REQUEST FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

32. The allegations in the above paragraphs are realleged and incorporated herein.
33. The Constitution establishes due process rights for “all ‘persons’ within the United States, including (noncitizens), whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The *Zadvydas* Court found that civil incarceration is only acceptable in “certain special and narrow non-punitive circumstances, where a special justification... outweighs the individual’s constitutionally protected interest.” 533 U.S. 678, 690 (2001). The Court further held that noncitizens in deportation/removal proceedings are entitled to due process protections. *Id.*, 533 U.S. at 690 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment’s Due Process Clause forbids the government to ‘deprive’ any ‘person of... liberty... without the due process of law.’”)
34. Similarly, in *Hernandez-Lara v. Lyons*, the First Circuit Court of Appeals echoed the United States Supreme Court’s civil detention jurisprudence in its due process analysis to conclude similarly that due process rights apply to noncitizens. 10 F.4th 19, 36-38 (1st Cir. 2021).
35. Here, the Petitioner was taken into custody and detained to this day due to his appearance and due to where he was located when ICE encountered him. There are no criminal allegations, nor was there probable cause to effect an arrest or detention of the Petitioner.
36. For these reasons, Petitioner’s detention violates the Due Process Clause of the Fifth

Amendment.

COUNT TWO

Violation of 8 U.S.C. §1226(a)

37. The allegations in the above paragraphs are realleged and incorporated herein.
38. Petitioner submits that facts and procedural history of his case resemble those in *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025), where – over the Government’s objection – the Court analyzed the Petitioner’s detention under 8 U.S.C. Sec. 1226(a), authorizing a discretionary determination of the validity of the Petitioner’s continued custody, as opposed to 8 U.S.C. Sec. 1225(b).
39. In *Jimenez*, the Court noted that “Jimenez ‘has always been treated by the government as subject to discretionary detention under Section 1226, rather than mandatory detention under Section 1225.’” *Id.* at 5 (citing *Romero v. Hyde*, -- F. Supp. 3d --, 2025 WL 2403827, at 8 (B. Mass. Aug. 19, 2025), and *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 18691299, at 5, 8 (D. Mass. July 7, 2025)
40. For these reasons, Petitioner’s detention violates 8 U.S.C. §1226(a).

COUNT THREE

Violation of Fourth Amendment Reasonable Search and Seizure

41. The allegations in the above paragraphs are realleged and incorporated herein.
42. The Department arrested and detained Petitioner in violation of his right to be free from

unreasonable search and seizure. A party claiming a Fourth Amendment violation must establish both that a seizure occurred, and that the seizure was unreasonable. *Sodal v. Cook County*, 506 U.S. 56, 71 S. Ct. 538, 121 L. Ed. 2d 450 (1992). A seizure is unreasonable if a balance of public and private interests implicated by the seizure favors the asserted private interest. *Id.* Petitioner asserts a private interest to apply for lawful status in the United States. Respondents have not asserted an articulable reason for detaining Petitioner. The balance of Petitioner's asserted private liberty interest outweighs the government interest here.

PRAYERS FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention and arrest violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. §1226(a), and the Fourth Amendment;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release the Petitioner immediately;
- (5) In the alternative, exercise its inherent authority by scheduling a bail hearing before this Court forthwith;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/Amy B. McGarry

Amy McGarry, Esq.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Remon Rayek Iskandar Zaki, 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.

Dated this 12th day of November, 2025.

/s/Amy B. McGarry

Amy B. McGarry