

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Xuseen Afey,

Petitioner,

v.

Pamela Bondi, Attorney General,

25-4514

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

Department of Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Daren K. Margolin, Director for Executive
Office for Immigration Review,

Executive Office for Immigration Review,

And,

David Easterwood, Acting Director, St. Paul
Field Office, Immigration and Customs
Enforcement .

Respondents.

INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Xuseen Afey (“Petitioner”) in violation of law.
2. Respondents are detaining Petitioner and improperly denying him access to a bond hearing to which he is entitled under 8 U.S.C. § 1226(a).
3. The continued detention of Petitioner, absent a bond hearing, serves no legitimate purpose.
4. To remedy this unlawful detention, Petitioner seeks declaratory relief and a writ of habeas corpus in the form of an order to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days.
5. Pending the adjudication of his petition, Petitioner seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration’s (“ICE”) St. Paul Office of Enforcement and Removal Operations in the State of Minnesota.
6. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.

7. Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hours-notice prior to any removal or movement of him away from the State of Minnesota.

JURISDICTION AND VENUE

8. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”).
9. Because Petitioner seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.
10. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019); *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1209-12 (11th Cir. 2016).

11. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1226(a)(2). This statute, 8 U.S.C. § 1226(a)(2), entitles Petitioner to a bond hearing in which an immigration judge may determine his eligibility for release from custody.
12. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Petitioner is detained within this District. He is currently detained at Ft. Snelling, Minnesota. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

13. Petitioner Afey is a citizen of Somalia. Prior to his detention, he was residing in Minnesota. He is not an arriving alien, nor is he seeking admission.
14. Petitioner Afey is currently in Immigration and Customs Enforcement (“ICE”) custody. It is unknown which facility within Minnesota is holding him. He was last reported at the Ft Snelling Office for Immigration & Customs Enforcement.
15. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals (“BIA”) and the immigration judges through the Executive Office for Immigration Review (“EOIR”). Attorney General Bondi shares responsibility for implementation

and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Petitioner.

16. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the St. Paul ICE Field Office, and is legally responsible for pursuing Petitioner’s detention and removal. As such, Respondent Noem is a legal custodian of Petitioner.
17. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. As such, Respondent DHS is a legal custodian of Petitioner.
18. Respondent Daren K. Margolin is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings. He is sued in his official capacity.
19. Respondent Executive Office for Immigration Review (“EOIR”) is the adjudicative authority with jurisdiction over the removal and bond cases of Petitioner. Its authority includes individuals detained in Minnesota, Iowa,

North Dakota, and South Dakota. This district is known as the Fort Snelling district.

20. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Respondent Lyons is responsible for Petitioner's detention. As such, Respondent Lyons is a legal custodian of Petitioner.
21. Respondent Immigration and Customs Enforcement (ICE) is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens. As such, Respondent ICE is a legal custodian of Petitioner.
22. Respondent David Easterwood is being sued in his official capacity as the Acting Field Office Director for the St. Paul Field Office for ICE within DHS. In that capacity, Field Director Easterwood has supervisory authority over the ICE agents responsible for detaining Petitioner. The address for the St. Paul Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111. As such, Respondent Easterwood is a legal custodian of Petitioner.

EXHAUSTION

23. ICE asserts authority to detain Petitioner pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(a). No statutory requirement of exhaustion applies to Petitioner's challenge to the lawfulness of his detention.

See, e.g., Araujo-Cortes v. Shanahan, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) (“There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.”); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) (“this Court ‘follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.’”); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992))).

24. Prudential exhaustion is not required when to do so would be futile or “the administrative body . . . has . . . predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).
25. Any bond request or appeal to the Board of Immigration Appeals is futile. Respondents’ new policy was issued “in coordination with DOJ,” which oversees the immigration courts. Until November 2025, the Board’s published

decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), bound the immigration court and erroneously denied many aliens access to a bond hearing.

26. Petitioner entered the United States without inspection, was not apprehended on arrival, and is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Respondents released him under his own recognizance.
27. Therefore, this Court should not require exhaustion as a prudential matter.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

28. Petitioner Afey is a native and citizen of Somalia.
29. On March 16, 2023, Petitioner entered the United States without inspection and eventually traveled to Minnesota.
30. Petitioner was released from ICE custody under a Order of Release on Recognizance on March 21, 2023.
31. Petitioner Afey has been under supervision through BI and compliant with his supervision.
32. Respondents served Petitioner with a Notice to Appear dated March 20, 2023. Respondents did not file its Notice to Appear with EOIR to commence proceedings under 8 U.S.C. § 1229a.

33. Petitioner filed an affirmative application with USCIS. USCIS accepted his timely application.
34. Respondents served a new Notice to Appear on June 24, 2025, without allowing USCIS to complete its asylum adjudication.
35. The Notice to Appear indicates Petitioner is “an alien present in the United States who has not been admitted or paroled.”
36. Petitioner submitted a timely application for Temporary Protected States under the designation for Somalia.
37. On September 5, 2025, Respondents, through the Board of Immigration Appeals, issued a precedential decision, binding on lower immigration courts, finding that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
38. Petitioner Afey has no criminal history that would subject him to 8 U.S.C. § 1226(c).
39. On or about December 3, 2025, Respondents took Petitioner Afey.
40. Respondents have held Petitioner Afey in custody since that time.
41. Petitioner Afey is now currently in ongoing removal proceedings.
42. Petitioner Afey is presently held in ICE custody in Minnesota.

LEGAL FRAMEWORK

43. “An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-
- (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or
 - (ii) the alien is described in section 1158(b)(2)(A) of this title.
- 8 U.S.C. § 1254a(c)(2)(B).
44. “An alien provided temporary protected status under this section **shall not be detained** by the Attorney General on the basis of the alien’s immigration status in the United States.” 8 U.S.C. § 1254a(d)(4) (emphasis added).
45. “Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.” 8 U.S.C. § 1254a(d)(1).
46. In the absence of the termination of TPS, “such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period.” 8 U.S.C. § 1254a(d)(2).
47. 8 U.S.C. § 1254a(d)(4) is clear. It provides

Detention of alien

An alien provided temporary protected status under this section **shall not be detained by the Attorney General on the basis of the alien’s immigration status in the United States.**

48. “In the case of an alien who establishes a prima facie case of eligibility for [TPS] benefits...until a final determination with respect to the alien’s eligibility for such [TPS] benefits has been made, the alien shall be provided such benefits.” 8 U.S.C. § 1254a(a)(4)(B).
49. Respondents are violating 8 U.S.C. § 1254a(d)(4) because Afey’s *prima facie* eligibility under 8 U.S.C. § 1254a(a)(4)(B) means that Afey is provided the benefits of Temporary Protected Status pending a final determination of his TPS application.
50. Respondents’ detention of Afey is in violation of the plain language of the Immigration & Nationality Act.
51. 8 C.F.R. § 244.1 is clear. It states, “Prima facie means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.”
52. 8 C.F.R. § 244.5 states, “Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien’s *prima facie* eligibility for Temporary Protected Status.”
53. Something is “prima facie” when it is “[s]ufficient to establish a fact or raise a *presumption* unless disproved or rebutted; based on what seems to be true

on first examination, even though it may later be proved to be untrue.” Black’s Law Dictionary (12th ed. 2024) (emphasis added).

54. The regulation rests exclusively on what is contained in the application. *See* 8 C.F.R. § 244.1. There is no inquiry to make.
55. This is not a novel position either. It has been the norm since at least 1990. “The regulations define ‘prima facie’ as an application for TPS ‘containing factual information that if unrebutted will establish a claim of eligibility’ under the Act.” *Benefits pending a decision*, Immigr. Act of 1990 Today § 14:18.
56. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that “[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien,” 8 U.S.C. § 1229a(a)(1) and that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States.” 8 U.S.C. § 1229a(a)(3).
57. To initiate removal proceedings, “written notice (in this section referred to as a ‘notice to appear’) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any).” 8 U.S.C. § 1229(a)(1).

58. The “[a]pprehension and detention of aliens” is governed under 8 U.S.C. § 1226, which provides that:

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. Except as provided in subsection (c) and pending such decision, **the Attorney General ... may release the alien on bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General.**

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

59. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

(b) Warrant of arrest—

(1) In general. **At the time of issuance of the notice to appear, or at any time thereafter** and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.

(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.

(c) Custody issues and release procedures—

(1) In general.

(i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1) **of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.**

8 C.F.R. § 236.1(b).

60. 8 U.S.C. 1226(a) is the default detention authority, and it applies to anyone who is detained “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a).
61. 8 U.S.C. 1226(a) applies to those who are “already in the country” and are detained “pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).
62. 8 U.S.C. § 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.*, 8 U.S.C. § 1226(c)(1)(A), (C).
63. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without

authorization. *See* LAKEN RILEY ACT, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)’s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E).

64. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanent residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020) (“specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

65. The [i]nspection by immigration officers [and] expedited removal of inadmissible arriving aliens, [and] referral for hearing” is governed under 8 U.S.C. § 1225, which provides that “[a]n alien present in the United States

who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1).

66. “All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3).
67. “If an immigration officer determines that an alien ... who **is arriving in the United States** ... is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum.” 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added).
68. “If the officer determines at the time of the interview that an alien has a credible fear of persecution ... the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).
69. “[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien **seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a

proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

70. 8 U.S.C. § 1225(b)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
71. “Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded. Until that point, nothing in the statutory text imposes a limit on the length of detention, and neither provision says anything about bond hearings.” *Jennings v. Rodriguez*, 583 U.S. 281, 282 (2018).
72. By regulation, “[a]rriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.” 8 C.F.R. § 1.2.

73. “[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to ... [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act.” 8 C.F.R. § 1003.19(h)(2)(i)(B).
74. As such, arriving aliens are not entitled to bond, nor, arguably, are aliens falling within the confines of 8 U.S.C. § 1225(b).
75. Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States).
76. In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely “restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

77. Respondents' longstanding practice of considering people like Petitioner as detained under § 1226(a) further supports reading the statute to apply to them. Typically, DHS issues a person Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA).
78. As these arrest documents demonstrate, DHS has long acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country's borders long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).
79. EOIR regulations have long recognized that Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court's jurisdiction—provides otherwise.
80. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, EOIR explained that "[d]espite being

applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

81. Almost every court that considered these questions has ruled contrary to Respondents’ interpretation of the law. *See, e.g., Belsai v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *A.A. v. Olson*, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Herrera Avila v. Bondi*, 25-cv-03741 (D. Minn. Oct. 21, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, 2025

WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Hernandez Marcelo v. Trump*, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Chogllo Chafra v. Scott*, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Chanaguano Caiza v. Scott*, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Padron Covarubias v. Vergara*, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Kostak v. Trump*, 2025

WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Pineda Parada v. Rice*, 2025 WL 3146250 (W.D. La. Nov. 4, 2025); *Ventura Martinez v. Trump*, 3:25-cv-01445 (W.D. La. Oct. 22, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *S.D.B.B. v. Johnson*, WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Afey v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Contreras-Cervantes v. Raycraft*, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Morales Chavez v. Director of Detroit Field Office*, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *Sanchez Alvarez v. Noem*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL

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REMEDY

82. Respondents' detention of Afey violates 8 U.S.C. § 1254a(d)(4).

83. Afey seeks immediate release from custody.
84. Afey seeks a declaratory judgement that Respondent violated 8 U.S.C. § 1254a(a)(4)(B) and 8 U.S.C. § 1254a(d)(4).
85. Respondent has denied Afey all rights available to him under 8 U.S.C. § 1254a as a *prima facie* Temporary Protected Status beneficiary.
86. Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.
87. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Somaliana*, 406 U.S. 715, 738 (1972)).
88. Petitioner seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.
89. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release.

Boumediene v. Bush, 553 U.S. 723, 779 (2008) (“[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.”).

90. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) (“The typical remedy for [unlawful executive detention] is, of course, release.”); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 “is to obtain release from the duration or fact of present custody.”).
91. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, “habeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts “[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters ‘as law and justice require.’” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court’s broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (“Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien’s release.”).

92. Alternatively, Petitioner requests a constitutionally adequate custody redetermination hearing in which he is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2) and is instead treated as a detainee under 8 U.S.C. § 1226(a) within seven calendar days.

CAUSE OF ACTION

COUNT ONE: VIOLATION OF 8 U.S.C. § 1254a(d)(4).

93. Afey re-alleges and incorporates by reference the paragraphs above.
94. 8 U.S.C. § 1254a governs the treatment of TPS holders and individuals who establish *prima facie* eligibility for TPS, including their detention and removal under federal immigration law.
95. 8 U.S.C. § 1254a(a)(4)(B) states that individuals who establish *prima facie* eligibility for TPS shall be provided with the benefits under 8 U.S.C. § 1254a until a final determination on their eligibility has been made. 8 U.S.C. § 1254a(a)(4)(B).
96. Afey's detention is in violation of 8 U.S.C. § 1254a(d)(4). 8 U.S.C. § 1254a(d)(4) states "[a]n alien provided temporary protected status under this section **shall not be detained** by the Attorney General on the basis of the alien's immigration status in the United States." (emphasis added). There is no exception to this rule provided in the statute.

97. Respondent must release Afey without any conditions, including bond or other monitoring requirements.

COUNT TWO: DECLARATORY RELIEF

98. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
99. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that 8 U.S.C. § 1254a(d)(4) prohibits his detention.
100. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that he is eligible for release from Respondents' custody.
101. Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is not subject to detention under to 8 U.S.C. § 1225(b)(2) and must be released unless Respondents assert authority to detain him under 8 U.S.C. § 1226(c).
102. In the event Respondents assert that Petitioner is detained under 8 U.S.C. § 1226(a), Petitioner requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Petitioner is eligible for release from Respondents' custody pursuant to a bond as set forth at 8 U.S.C. § 1226(a)(1).

COUNT THREE: VIOLATION OF 8 C.F.R. § 244.5

103. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

104. 8 C.F.R. § 244.5 mandates that an applicant for Temporary Protected Status shall be afforded the temporary benefits of 8 U.S.C. § 1254a.
105. One benefit is the prohibition against detention.
106. Respondents are violating the regulation and the Accardi doctrine by detaining Petitioner while his application for Temporary Protected Status remains pending.

**COUNT FOUR: VIOLATION OF THE IMMIGRATION & NATIONALITY
ACT – 8 U.S.C. § 1225(b)(2)**

107. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
108. Section 1225 of Title 8 of the U.S. Code governs aliens arriving at the border and seeking admission from outside the country. *See* 8 U.S.C. § 1225.
109. 8 U.S.C. § 1225(b)(2)(A), specifically, cannot apply as it only applies to those “applicants for admission” who are “seeking admission” at the time of detention and Petitioner was not “seeking admission” at the time he was detained, nor is he doing so now. 8 U.S.C. § 1225(b)(2)(A).
110. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released.

**COUNT FIVE: VIOLATION OF THE IMMIGRATION & NATIONALITY
ACT – 8 U.S.C. § 1226(a)**

111. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
112. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.
113. Such an alien “may [be] release[d] ... on bond of at least \$1,500.” 8 U.S.C. § 1226(a)(2)(A).
114. The denial of Petitioner’s bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes him eligible for bond.
115. If Respondents do not release Petitioner without any conditions, he requests that he be afforded the opportunity to present his case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

COUNT SIX: VIOLATION OF THE FIFTH AMENDMENT

116. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
117. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

118. Petitioner is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for his continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

COUNT SEVEN: VIOLATION OF 8 C.F.R. §§ 236.1, 1236.1 AND 1003.19 - UNLAWFUL DENIAL OF RELEASE ON BOND

119. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
120. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added).
121. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.

122. Nonetheless, DHS and EOIR have adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.
123. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.
124. As such, the Court must order the Respondents afford Petitioner a bond hearing to comport with these regulatory requirements.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Afey, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Petitioner from the District of Minnesota during the pendency of this Petition.
3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Petitioner.
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153.
5. Order Petitioner's immediate release, or, alternatively, order Respondents to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days.
6. Declare that Respondents' action is arbitrary and capricious.
7. Declare that Respondents failed to adhere to its regulations.

8. Declare that Petitioner's detention absent a bond hearing violates the Due Process Clause of the Fifth Amendment.
9. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
10. Grant all further relief this Court deems just and proper.

DATED: December 3, 2025

Respectfully submitted,

/s/ David Wilson

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Attorneys for Petitioner

**Verification by Someone Acting on
Petitioner's Behalf Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I and others working under my supervision have discussed with the Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status, are true and correct to the best of my knowledge.

/s/ DAVID WILSON

Date: December 3, 2025