UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

A.M., Petitioner, v. **KEVIN JOYCE**, Sheriff, Cumberland County; **PATRICIA HYDE**, Field Office Director; **MICHAEL KROL**, HSI New England Special Agent in Charge; **TODD LYONS**, Acting Director U.S. Immigrations and Customs Enforcement; **KRISTI NOEM,** U.S. Secretary of Homeland Security; **DONALD TRUMP**, President of the United States, Respondents.	Case No. **2:25-cv-00615-LEW**

PETITIONER'S REPLY TO RESPONDENTS'
RETURN AND RESPONSE TO ORDER TO SHOW CAUSE

Petitioner A.M. respectfully submits this reply in support of his petition for habeas corpus [Doc. 1] and motion for preliminary relief [Doc. 3], and opposing the Respondents' return and response [Doc. 9]. As an initial matter, this Court has jurisdiction over Mr. M.'s claims, and Respondents have waived any challenge to jurisdiction under 28 U.S.C. § 2241 or 8 U.S.C. § 1252. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("any person" may raise claims under § 2241(c)(3)); *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (Fifth Amendment's Due Process Clause extends to all *persons*, regardless of immigration status).

With their return and response, Respondents provided a copy of a warrant for Mr. M.'s arrest (Ex. 4), further obscuring the justification for his detention. The warrant indicates that Mr. M. is actually detained under 8 U.S.C. § 1226(a), and therefore he is entitled to a bond hearing at which the Department of Homeland Security (DHS) bears the burden to prove that he is a flight

risk or danger to the community, justifying continued detention. If Respondents purport to detain him under § 1225, as they claim, the legal requirements for such detention have not been met.

Mr. M. will litigate the merits of his immigration case in immigration court.[1] His ultimate eligibility for adjustment of status or other relief is not before this Court. Resp. at 9-10 (quoting 8 U.S.C. §§ 1229a(a)(1), (3)). Instead, he simply seeks from this Court a review of the legality of his detention.

I. Respondents' inconsistent actions have raised more questions about the legal authority for Mr. M.'s detention.

A. The response reveals that Mr. M. was actually arrested pursuant to a warrant, under the authority of 8 U.S.C. § 1226(a).

Respondents claim that Mr. M. is detained under 8 U.S.C. § 1225, and therefore is subject to mandatory detention without the possibility of bond. Mr. M. filed the instant habeas petition with

---

[1] For purposes of this petition, Mr. M. would like to take a minute to clear his good name before this Court. He intends to contest the allegations in the Notice to Appear (Resp. Ex. 3), and rebut all of the USCIS officer's findings (Resp. Ex. 2), in his immigration court proceedings. Mr. M. strongly denies that his identity is in question or that he has provided fraudulent documents or misinformation at any point in his immigration process. His family's *tazkeras,* or identity documents, are genuine. In alleging that his documents were fraudulent, USCIS did not rely on any forensic analysis, but simply the officer's layperson impression.

Regarding Mr. M's children, it is common that Afghan *tazkeras* list one's "ancestral home" rather than one's actual physical location of birth. Norwegian Country of Origin Information Centre, "Report Afghanistan: Tazkera, passports and other ID documents," May 22, 2019, LANDINFO, https://landinfo.no/wp-content/uploads/2019/08/Afghanistan-Tazkera-passports-and-other-ID-documents-22052019-final.pdf, at 10 ("Place of birth is not necessarily the place where the holder was born, but where their spouse or ancestors were born"). The USCIS officer was evidently unaware of this standard practice.

Finally, Mr. M. will testify, and the evidence will show, that all of Mr. M.'s work in Afghanistan was planned, authorized, supervised, controlled, and funded by the American military. Reflecting this, the U.S. government awarded him certificates for his loyal and exemplary service to their efforts. *See* Pet. Motion, Ex. A. To the extent that Respondents argue that Mr. M. has "possible *complicity* in past human rights abuses" during his military service, Resp. at 12, 18 (emphasis added), this would constitute a truly stunning concession regarding the activities of the U.S. military in Afghanistan.

this understanding, because his Notice to Appear charges him as an "arriving alien" – a charge he intends to contest in immigration proceedings. Yet, an exhibit filed with Respondents' response reveals that his arrest was actually pursuant to an immigration warrant – a document indicating detention under § 1226(a), *not* § 1225(b). *See* Resp. Ex. 4. As this Court has recently expressed:

> Surely, the Government ought to at a minimum be able to direct us with metaphysical certainty to the statute under which Petitioner was detained. That even that baseline determination is cloaked in enigma is sadly in keeping with our Nation's immigration 'policy' and laws overall, which are a byzantine patchwork of obtuse, incomplete and often contradictory etchings on the cave wall, illuminated mostly by Sturm and Drang.

Rodrigues De Oliveira v. Joyce, No. 2:25-CV-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025). Perhaps this is a difficult question because there is *no* statute that authorizes Respondents to act in such a manner. Here, the existence of a warrant just adds a new level of confusion.

The Respondents outlined the two immigration statutes authorizing custody for people without final orders of removal, 8 U.S.C. § 1225 and § 1226. Resp. at 7-9. As the Board of Immigration Appeals recently noted, section 1226 "applies to aliens already present in the United States" and "authorizes detention *only* '[o]n a warrant issued' by the Attorney General leading to the alien's arrest." *Matter of Q.Li,* 29 I&N Dec. 66 (BIA 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 302–303 (2018), and 8 U.S.C. § 1226(a)); and citing *Matter of M-S-,* 27 I&N Dec. 509, 515 (A.G. 2019)). But a warrant would not have been necessary if Respondents were simply "return[ing Mr. M.] to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A);

Jennings, 583 U.S. at 302 (no warrant is required to continue a detention under § 1225(b))[2]. Further, by the plain text of the two statutes, warrants are only for § 1226 arrests. The face of the document contemplates an immigration officer "authorized pursuant to sections 236 [§ 1226] and 287 [8 U.S.C. § 1357] of the Immigration and Nationality Act…" Resp. Ex. 4. There is no mention of warrants in § 1225. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (an individual "was taken into custody because he was arrested on a warrant issued under Section 1226, not because humanitarian parole under Section 1182(d)(5)(A) automatically terminated"). Respondents implicitly acknowledge this ambiguity by addressing the possibility that Mr. M.'s detention could be governed by § 1226(a) in their Response. Resp. at 15-17. This warrant's existence lends further credence to the idea that Mr. M. is detained under § 1226(a). Because of this uncertainty, Mr. M. seeks a judgment from this Court determining the basis for detention, as well as whether the legal requirements to justify this basis have been met.

B. Mr. M. is not subject to mandatory § 1225(b) detention as an "applicant for admission" because he has completed extensive background checks and has lived in the United States for over four years.

Mr. M. arrived in the United States four years ago, yet Respondents still consider him an "applicant for admission" today. Resp. at 10-11; *see* 8 U.S.C. § 1225(b)(2)(A) ("…in 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

[2] In *dicta*, the BIA in *Q.Li* indicates that "Once an alien is detained under section [1225](b), DHS cannot convert the statutory authority governing her detention from section [1225](b) to section [1226](a) through the post-hoc issuance of a warrant." 29 I&N Dec. 66, 69 n.4 (BIA 2025). This cites to *Jennings*, but that authority does not support this assertion. Further, this *dicta* is contrary to the immigration court's longstanding practice. In any event, this Court is not bound by the BIA's opinion after *Loper Bright* – especially since the agency's interpretation and implementation of these two statutes is incoherent and inconsistent.

shall be detained for a proceeding under section 1229a…") (emphasis added). Just days ago, a sister Court examined the situation of another Afghan parolee similarly situated to Mr. M., in which the DHS asserted § 1225 detention and the respondent argued for § 1226. *Walizada v. Trump, et al.*, No. 2:25-CV-00768, 2025 WL 3551972, at *10 (D. Vt. Dec. 11, 2025) (granting release on grounds of prolonged detention) (attached as Ex. H). That Court engaged in extensive analysis, concluding that "§ 1225(b)(2)(A) applies only to those noncitizens who are actively 'seeking admission' to the United States, [and] it cannot, according to its ordinary meaning, apply to [noncitizens] ... residing in the United States for several years." *Id.* at *9 (quoting *Lopez Benitez v. Francis*, 795 F.Supp. 3d 475, 495 (S.D.N.Y. 2025)). The Court noted that to hold otherwise would produce an "unjust and counterintuitive result" that an Afghan parolee "who was welcomed into the United States after extensive screening, would be entitled to less statutory protection and due process rights than someone who has entered the country illegally and committed certain crimes here." *Id.* at *15

Multiple other courts have recently agreed with this type of analysis. *See, e.g.,* Y-Z *L-H v. Bostock*, 792 F. Supp. 3d 1123, 1143 (D. Or. 2025) (distinguishing someone who was "paroled into the United States and has remained here for nearly two years" from a recent arrival); *Mendoza v. Noem*, No. 1:25-CV-1252, 2025 WL 3077589, at *5 (W.D. Mich. Nov. 4, 2025) (holding that § 1225(b) cannot apply to someone who "was not actively 'seeking admission' during those years" he had lived in the US). The petitioners in these cases also had less claim to status than Mr. M.; they had only pending asylum claims, with no COM or I-360 approvals. *Id.* at *2. Respondents have presented no cohesive or compelling argument that Mr. M. is actually still an "applicant for admission" after four years in the United States and completing multiple rounds of thorough vetting, or that he is lawfully detained under § 1225.

In arguing that Mr. M. is subject to mandatory § 1225 detention, Respondents want to treat Mr. M like any unknown individual who shows up at the U.S. border seeking admission. Respondents' Return and Response ("Resp.") at 15 (arguing that Mr. M.'s situation should be handled "... just as if he had been encountered at a port of entry yesterday"). But Mr. M. is no stranger to this country. [redacted] when USCIS approved his I-360 petition; and again when USCIS extended his initial term of parole from 2023 to 2025. Biometrics checks, background checks, and extensive vetting occurred at each of these stages. Surely all this means *something*.

II. If indeed Mr. M. is detained under § 1225, Respondents' decision to detain Mr. M. at this particular time and in this particular way is unlawful.

Mr. M. asserts that the true "revocation" of his parole happened on December 5, 2025 when he was detained. Parole under §1182(d)(5) is usually granted for a fixed term. *See* 8 C.F.R. § 212.5(e)(2). Upon expiration of that term, Respondents have historically and routinely allowed paroled individuals to remain in the community while they continue to pursue long-term lawful immigration status. *See Rodrigues De Oliveira v. Joyce*, No. 2:25-CV-00291-LEW, 2025 WL 1826118, at *1 (D. Me. July 2, 2025) (parole authorized for one year, but individual remained for eight years beyond expiration); *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500-JAW, 2025 WL 3013081, at *3 (D. Me. Oct. 28, 2025) (parolee at liberty for approximately three years after parole expiration); *see also* Memorandum from Joseph V. Cuffari, Ph.D., "DHS Needs to

Improve Oversight of Parole Expiration for Select Humanitarian Parole Processes," OFFICE OF THE INSPECTOR GENERAL, July 2, 2025, https://www.oig.dhs.gov/sites/default/files/assets/2025-07/OIG-25-30-Jul25.pdf (detailing how DHS has never had any means of tracking parole expiration and as a matter of course, allows nearly all parolees to remain in the US beyond the expiration date). It is well established that "the longstanding 'practice of the government'—like any other interpretive aid—can inform [a court's] determination of 'what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (internal citations and quotation marks omitted). And, "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. May 2, 2025). Here, Respondents equate the expiration of the term of parole with their return of Mr. M. to custody. But, in practice, these are different things. The actual "revocation of parole" contested here is not the expiration date on Mr. M's document, but the *decision to detain him*, which happened nearly three months later than the expiration – not "forthwith" as the statute requires. This is bolstered by the fact that they used a warrant, which they would not have needed if they were simply "returning" him to detention.

Respondents have not pointed to any justification for detention *now* other than the expiration of parole on September 7, 2025, and the contested allegations in the Notice to Appear (Resp. Ex. 3) and I-485 denial (Resp. Ex. 2). As presented in Mr. M's Petition and Motion, the return to custody must occur "forthwith" upon the end of parole. 8 U.S.C. § 1182(d)(5)(A). Even after the expiration of parole, the regulation provides that a noncitizen "*shall* again be released on parole" if any "exclusion, deportation, or removal order cannot be executed within a reasonable time," unless a DHS official determines that "the public interest requires that the alien be continued in custody." 8 C.F.R. § 212.5(e)(2)(i) (emphasis supplied). Here, Mr. M. does not yet have any

removal order, and so cannot be removed "within a reasonable time." He should therefore be released on parole unless he can be granted an individualized assessment of whether the public interest requires his return to custody.

III. Conclusion

For the foregoing reasons, Mr. Murad Khil respectfully reiterates his requests that the Court issue a writ of habeas corpus ordering his immediate release during the pendency of his habeas proceedings (should it find detention under § 1225), or in the alternative, an order requiring an Immigration Judge to provide him a bond hearing as soon as possible (should it find him detained under § 1226).

Dated: December 11, 2025

Respectfully submitted,

Attorneys for Petitioner

/s/ Jenny Vi Beverly
Jenny Vi Beverly ME Bar# 005349
Haven Immigration Law
132 Spring St, Floor 1
Portland, ME 04101
Tel: 207-515-8005
Email: jb@im.law

/s/ Stephanie E.Y. Marzouk
Stephanie E.Y. Marzouk MA BBO#683291*
Marzouk Law LLC
2464 Massachusetts Ave Ste 317
Cambridge, MA 02140
Tel: 617-674-2112
Fax: 617-674-1664
Email: sym@marzouklaw.com
*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

/s/ Stephanie E.Y. Marzouk
Stephanie E.Y. Marzouk
Counsel for Petitioner