IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Saif Aldin Ahmed Ali Abdalgbar, **Petitioner,** **v.** **Kristi Noem,** ***in her official capacity as Secretary of the United States Department of Homeland Security;*** **Todd Lyons,** ***in her official capacity as Attorney General of the United States.*** **Respondents.**	**Civil Action No.: 1:25-cv-01353** **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **ORAL ARGUMENT REQUESTED**

Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241

Introduction

1. Petitioner Saif Aldin Ahmed Ali Abdalgbar is an asylum seeker who entered the United States on December 19, 2023 and was initially paroled into the country by Department of Homeland Security (DHS) officials.
2. He was arrested on December 11, 2025, and is now unlawfully detained by U.S. Immigration and Customs Enforcement (ICE) at the Buffalo Federal Detention Facility (Buffalo Field Office).
3. This petition challenges his continued detention as violating federal law and the Fifth Amendment to the U.S. Constitution, and seeks relief under 28 U.S.C. § 2241. Petitioner contends that ICE is detaining him under the wrong statutory authority (8 U.S.C. § 1225

instead of 8 U.S.C. § 1226) and in doing so has failed to provide the bond hearing that Congress and the Constitution require.

4. Petitioner respectfully requests that this Court declare his detention unlawful and order Respondents to provide an immediate individualized custody redetermination hearing (bond hearing) at which the government must justify any further detention, or, if no such hearing is promptly provided, to order his immediate release.
5. Petitioner further requests any additional relief the Court deems just and proper to remedy the ongoing violation of his rights.

Jurisdiction and Venue

6. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody in violation of the Constitution or laws of the United States.
7. Habeas corpus is the appropriate vehicle to challenge the legality of immigration detention. The central question in a § 2241 habeas action is whether the detention violates U.S. law; here, Petitioner's detention squarely violates federal statute and the Fifth Amendment.
8. This Court also has jurisdiction under 28 U.S.C. § 1331, as Petitioner's claims arise under federal law, including the Immigration and Nationality Act (INA) and the U.S. Constitution.
9. Venue is proper in the Western District of New York because Petitioner is detained within this District.
10. Petitioner is currently in ICE custody at the Buffalo Field Office of ICE, which is located in this District. The immediate custodian of Petitioner – the person with day-to-day

control of his detention – is within the Court's territorial jurisdiction, and thus venue lies in this Court.

11. Petitioner has exhausted any available administrative remedies to the extent required. There are no adequate or available administrative avenues to challenge his unlawful detention.

12. Petitioner has no recourse to seek a bond hearing in the immigration court because DHS has categorized him as an "arriving alien" not entitled to bond redetermination by an Immigration Judge.

13. He has requested release or a custody review from ICE to no avail. In these circumstances, requiring further exhaustion would be futile, and habeas relief is available without additional administrative proceedings.

Parties

14. Petitioner Saif Aldin Ahmed Ali Abdalgbar is a native of Sudan who fled genocide and persecution and sought asylum in the United States. He has no criminal history, and came to the U.S. to seek protection. After entering the United States on December 19, 2023, Petitioner was processed by DHS and released on parole into the country pending further immigration proceedings. Petitioner is presently detained by ICE at the Buffalo Field Office in Buffalo, New York. He is in removal proceedings and has applied for asylum, but his case remains unresolved while he endures prolonged detention with no bond hearing.

15. Respondent Kristi Noem, sued in her official capacity as Secretary of the U.S. Department of Homeland Security (DHS), is responsible for the enforcement of the immigration laws of the United States, including the authority over custody and detention

of noncitizens. DHS (through its sub-agency ICE) has ultimate custody of Petitioner. As DHS Secretary, Respondent Noem has supervisory authority over Petitioner's detention.

16. Respondent Todd Lyons, sued in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement (ICE), is the head of the agency that currently detains Petitioner. ICE is the DHS component responsible for carrying out immigration detentions and removals. Respondent Lyons oversees ICE's Enforcement and Removal Operations, including the Buffalo Field Office that has custody of Petitioner. Respondents Noem and Lyons are the governmental officials with legal custody of Petitioner and the ability to produce him before the Court; they are thus the proper respondents to this habeas petition.[1]

Factual and Procedural Background

Petitioner's Entry into the U.S. and Release on Parole

1. Petitioner entered the United States on or about December 19, 2023 near the U.S.–Mexico border, seeking asylum.
2. He presented himself to U.S. immigration officers and expressed a fear of persecution in his home country.
3. After undergoing initial inspection and screening, Petitioner was granted humanitarian parole into the United States pending the outcome of his immigration case.
4. DHS exercised its discretionary authority under INA § 212(d)(5) to release Petitioner on parole rather than detain him at that time.

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[1] Any additional Respondent, such as the local ICE Field Office Director or facility warden, can be automatically substituted by the Court if deemed necessary. Petitioner names the high-level officials above to ensure that appropriate relief can be directed, and because the unlawful detention stems from DHS/ICE policies under their authority.

5. Petitioner was allowed to live in the community while his asylum claim and removal proceedings were initiated. Importantly, this conditional release (parole) was not an "admission" to the United States, but it allowed Petitioner physical presence in the country and signified that DHS, in its discretion, declined to keep him in custody during the early stages of his case.
6. Following his parole, Petitioner complied with all conditions imposed on him.
7. He promptly took steps to pursue his asylum claim. Petitioner filed an asylum application (Form I-589) and continued to appear for all required check-ins or immigration court dates.
8. Despite having fled violence and trauma, Petitioner began rebuilding his life here under the shadow of possible removal.
9. He consistently obeyed U.S. laws and cooperated with immigration authorities during this period.
10. Petitioner's removal case was commenced by the issuance of a Notice to Appear (NTA) in removal proceedings under 8 U.S.C. § 1229a.
11. The NTA charged Petitioner with inadmissibility under the INA (for entering without a valid visa or entry document) and classified him as an "arriving alien" due to his manner of entry. Petitioner's case was docketed with an Immigration Judge in the Buffalo Immigration Court.
12. As an asylum seeker who passed initial screening, Petitioner was placed in standard removal proceedings where he could apply for relief.
13. However, to date, no merits hearing on Petitioner's asylum application has been scheduled.

14. Nearly a full year has passed since his application, with only preliminary matters occurring; the final hearing to decide his asylum claim remains in the indefinite future.

Re-Detention by ICE on December 11, 2025

15. On December 11, 2025, ICE abruptly arrested Petitioner and took him back into custody, terminating his parole.
16. Petitioner was taken into custody by immigration authorities and is currently held at the Buffalo Field Office.
17. Without any advance notice or allegation of changed circumstances, ICE officers detained Petitioner and transferred him to the Buffalo Field Office.
18. This re-detention was not predicated on any new criminal conduct, flight attempt, or violation by Petitioner; by all indications, it was an arbitrary change in DHS's handling of his case.
19. ICE provided Petitioner with no explanation for why it was detaining him at that juncture after having allowed him to live at liberty since his entry.

No Bond Hearing or Custody Determination Provided

20. At no point since his re-detention has Petitioner been or will be given a custody redetermination hearing or any meaningful process to challenge his detention.
21. His redetention was without any prior notice or opportunity for Petitioner to be heard. Petitioner was not informed of any specific reasons why his liberty was being taken away again, nor was he allowed to present evidence or argue for his continued release under supervision.
22. No neutral decision-maker has ever reviewed whether Petitioner's detention is necessary.

23. By regulation and statute, when DHS makes an initial custody decision or revokes a prior release, a detainee would ordinarily have the right to seek review by an Immigration Judge.

24. Under the INA's framework, 8 U.S.C. § 1226(a) authorizes discretionary immigration detention "pending a decision on whether the alien is to be removed," but also provides that such detainees may be released on bond or conditional parole.

25. The implementing regulations require that after ICE's initial custody determination, the noncitizen "may, at any time before an order of removal becomes final, request amelioration of the conditions under which he or she may be released" – *i.e.* request a bond/custody redetermination by an Immigration Judge.

26. Indeed, 8 C.F.R. § 1003.19(d) specifically provides that if DHS declines to release an individual or (as here) grants release but later re-detains the person, the noncitizen has a right to seek a "custody or bond" hearing before an Immigration Judge.

27. Any such bond hearing is a separate proceeding, independent of the removal trial, to decide if detention is warranted.

28. In Petitioner's case, however, DHS has completely bypassed this required procedure. By classifying Petitioner as an "arriving alien," DHS has taken the position that the immigration court lacks jurisdiction to hold a bond hearing for him at all.

29. As a result, Petitioner has been denied any custody hearing whatsoever.

30. Petitioner has exhausted all possible avenues to secure his release from custody.

31. Through counsel, Petitioner requested that ICE reconsider his detention category.

32. These requests have been ignored or summarily denied.

33. Because DHS's position is that Petitioner is not entitled to a bond hearing by an Immigration Judge, Petitioner effectively has no administrative remedy to contest his detention.

34. His only recourse is this petition for habeas corpus relief. Every additional day Petitioner remains jailed without a hearing compounds the violation of his rights.

35. In sum, Petitioner's continued detention is marked by an absence of statutory authority and due process.

36. The government's actions have placed Petitioner in a legal limbo: he is detained as if subject to mandatory custody under 8 U.S.C. § 1225(b), even though his circumstances place him under 8 U.S.C. § 1226, which would entitle him to a bond hearing.

37. This misclassification has led to the denial of the process that is due under both the INA and the Constitution. Petitioner now seeks relief from this Court to correct these violations.

Grounds for Relief

Claim I: Unlawful Detention Under the INA – Petitioner Is Detained Under 8 U.S.C. § 1226 and Not Subject to Mandatory Detention as an "Arriving Alien"

38. Petitioner's continued detention is not authorized by law because he is being held as if subject to mandatory detention for arriving aliens under 8 U.S.C. § 1225(b), when in fact his detention is governed by 8 U.S.C. § 1226, the provision applicable to noncitizens already present in the United States. Under the correct statutory provision (§ 1226), Petitioner's detention is discretionary and he is entitled to an individualized bond hearing. The government's failure to provide such a hearing renders his detention unlawful.

39. The Immigration and Nationality Act (INA) delineates two primary statutory regimes for immigration detention before removal: 8 U.S.C. § 1225(b) applies to "applicants for

admission" – generally individuals encountered at a port-of-entry or seeking entry – and requires that certain such arriving aliens be detained pending proceedings.

40. In contrast, 8 U.S.C. § 1226 governs the arrest and detention of aliens who are within the United States pending removal proceedings (including those who entered without inspection or were paroled into the country). Section 1226(a) authorizes DHS to detain such individuals on a discretionary basis, and crucially it allows for their release on bond or conditional parole while proceedings are ongoing.

41. Petitioner falls within the ambit of § 1226, not § 1225. Although Petitioner was not formally "admitted" at the border, he was physically allowed into the United States in December 2023 under DHS parole.

42. He has been physically present in U.S. territory since that time. The Supreme Court has long recognized that "our immigration laws have long made a distinction between those aliens who come to our shores seeking admission … and those who are within the United States after entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Once an individual enters the country, "the legal circumstance changes." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

43. Petitioner is no longer at the threshold seeking permission to enter; he is inside the United States and has been living here for an extended period. Thus, the statutory authority that governs his detention is § 1226. As one court succinctly put it: "a noncitizen who has entered the country, even illegally, and is apprehended by CBP after entry is not subject to the mandatory detention provision of Section 1225, and is instead subject to the discretionary detention provision of Section 1226." a noncitizen who has entered the country, even illegally, and is apprehended by CBP after entry is not subject to the

mandatory detention provision of Section 1225, and is instead subject to the discretionary detention provision of Section 1226. *Huamani v. Francis*, No. 25-cv-8110 (LJL), 2025 U.S. Dist. LEXIS 219101, at *12 (S.D.N.Y. Nov. 4, 2025)

44. DHS's own regulations confirm this interpretation. The term "arriving alien" – which denotes who falls under §1225 procedures – is defined as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2 (previously 8 C.F.R. § 1001.1(q)).

45. Petitioner is not presently coming into the U.S. at a port of entry – he is already here. Once DHS exercised its discretion to parole Petitioner into the country, he was no longer at the border seeking initial entry; he was in the interior, in removal proceedings like any other person subject to § 1226.

46. While immigration law maintains the legal fiction that a paroled alien has not been "admitted," it does not follow that such a person remains in mandatory custody status indefinitely. To the contrary, courts have recognized that § 1225 and § 1226 are mutually exclusive detention authorities – "[a] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226"; if an individual was detained (or released) under one provision, he cannot suddenly be switched to the other.

47. Here, by paroling Petitioner at entry, DHS effectively placed him within the §1226 framework (discretionary detention with possibility of release) and cannot now unilaterally strip him of the procedural safeguards attendant to that framework.

Claim II: Violation of the Fifth Amendment – Detention Without a Bond Hearing or Due Process

48. Respondents' failure to provide Petitioner any meaningful hearing or process to challenge his detention violates Petitioner's rights under the Due Process Clause of the Fifth Amendment. The Due Process Clause prohibits the Government from depriving any person of liberty without due process of law. Freedom from bodily restraint lies at the heart of the liberty that the Due Process Clause protects. Noncitizens, no less than citizens, are entitled to due process protection when the government seeks to detain them. In the immigration context, due process has both procedural and substantive components, and at minimum it guarantees a noncitizen the right to a fair opportunity to contest the necessity of their detention.

49. In Petitioner's case, the Government has provided no process at all before or after locking him up in May 2024. He was not afforded any sort of hearing, no neutral decision-maker, no chance to offer evidence, and not even a basic explanation of why DHS was revoking his parole. This total absence of procedure is constitutionally indefensible.

50. Detaining Petitioner in a legal vacuum – with neither prior notice nor prompt post-deprivation review – is a flagrant violation of due process.

51. Due process in this context requires, at a minimum, an individualized determination of risk and necessity. Even where the statutory scheme allows immigration officials discretion to detain, "Due Process still requires that such discretion actually be exercised – i.e., that some determination actually be made" as to the person's risk of flight or danger.

52. The essence of due process is that a person in jeopardy of serious loss (such as loss of freedom) be given notice of the case against him and an opportunity to be heard. DHS violated these fundamental principles by summarily stripping Petitioner of his freedom without any individualized assessment or procedure.

53. The agency's failure to even consider, at the time of re-detention, whether Petitioner's detention was justified by legitimate governmental interests (such as public danger or flight risk) renders the detention arbitrary. It is well-settled that "[a]t the least, due process would require an opportunity for [the noncitizen] to demonstrate that [he] should not be detained;" yet Petitioner was given no such opportunity (internal quotation omitted).

54. The Constitution requires that Petitioner receive a timely and fair custody hearing, or else be released. By failing to provide any such hearing, Respondents have violated Petitioner's Fifth Amendment right to due process.

55. Because Petitioner's detention has been illegal from its inception (due to the lack of required process), he is entitled to relief now.

56. He should not be required to endure further indefinite detention waiting for an eventual merits decision on his asylum claim. The writ of habeas corpus exists to prevent exactly this type of executive "detention that is without legal authority or due process."

57. The Supreme Court has noted that the "typical remedy" for unlawful detention is "release", as the "traditional function of the writ is to secure release from illegal custody." *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

58. Petitioner respectfully submits that his continued jailance without a hearing is unlawful, and thus this Court should use its habeas authority to order appropriate relief as detailed below.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Saif Aldin Ahmed Ali Abdalgbar prays that this Court grant the following relief:

A. **Declaratory Relief:** Declare that Petitioner's ongoing detention without an individualized bond hearing violates the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause. In particular, declare that Petitioner is detained under 8 U.S.C. § 1226 and is entitled to a prompt custody hearing, and that Respondents' failure to provide such a hearing to date is unlawful.

B. **Injunctive/Habeas Relief:** Issue a writ of habeas corpus or injunction directing Respondents to immediately provide Petitioner with a lawful custody redetermination hearing. This hearing should be conducted by an Immigration Judge (or another neutral adjudicator) no later than 7 days from the Court's order. If Respondents do not provide such a hearing within the timeframe set by the Court, or if they fail to meet their burden to demonstrate necessity of detention, Petitioner must be released forthwith under appropriate conditions of supervision.

C. **Further Relief as Appropriate:** Grant any other and further relief that the Court deems just and proper, including an order for Petitioner's immediate release from custody pending his removal proceedings, and/or any necessary orders to ensure compliance.

Dated: December 11, 2025.

Respectfully submitted,

/s/ *Rafael Urena*
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VERIFICATION

Counsel for Petitioner (Counsels for Petitioner certify that, pursuant to 28 U.S.C. § 2242, this Petition is verified by the undersigned counsel upon information and belief, as Petitioner is in custody and unable to personally sign. The facts stated herein have been either directly witnessed by counsel or reliably reported by Petitioner and documentary evidence.)

/s/Rafael Urena