

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-04779-JRT-EMB**

Abdirashid Hirsi Mohamed,

Plaintiff,

PETITIONER'S REPLY

v.

Kristi Noem, Secretary, U.S. Department of Homeland Security, in her official capacity; Todd M. Lyons, Director of Immigration and Customs Enforcement, in his official capacity; Peter Berg, Director, St. Paul Field Office, Immigration and Customs Enforcement, in his official capacity; Samuel J. Olson, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity; Joel Brott, Sheriff of Sherburne County Jail, Minnesota, custodian of detainees of the Sherburne County Jail,

Respondents.

INTRODUCTION

Petitioner Abdirashid Hirsi Mohamed, submits this reply to Respondent's response to his Petition for a Writ of Habeas Corpus. Firstly, Petitioner vigorously denies that he has ever violated his conditions of release, or missed any required check-ins, as Respondents allege. *See* Declaration of Abdirashid. Indeed, the I-213 makes no mention of the supposed "multiple violations" of the alternatives to detention program. *See* I-213, ECF Doc. 6-1. Furthermore, the Declaration of Mr. Van Der Vaart does not list the specific dates that Petitioner was supposed to check in and did not. *See* Declaration of Mr. Van Der Vaart, ECF Doc. 6. To the extent that Respondents rely on the Declaration of Mr. Van Der Vaart to justify Petitioner's re-detention,

Petitioner requests an evidentiary hearing to dispute this basis for his detention.

From the outset, Respondents refuse to acknowledge that they previously released Petitioner on his own recognizance under 8 U.S.C. §1226. *See* ECF Doc 5., Government Response. The only mention that Respondent's make of this prior release is a reference to the ADT "alternatives to detention" program. *Id.* at 3. The fact that Respondent's previously explicitly released Petitioner under the detention authority of § 1226 severely undercuts Respondent's arguments that Petitioner's detention has now somehow converted to mandatory detention under § 1225. Respondents rest on two separate, but equally erroneous arguments. Firstly, Respondents claim that Petitioner is in expedited removal proceedings, and secondly, that an asylum seeker is somehow an "applicant for admission." Both are incorrect. This court has already concluded that individuals like Petitioner are not detained pursuant to 8 U.S.C. § 1225. Finally, 8 U.S.C. 1225 is unconstitutional as applied to Petitioner. *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025). Petitioner has a "cognizable interest" in being free from detention, because he has spent 14 months in the United States free from detention. *Id.* at *9.

ARGUMENT

I. Petitioner is Not Detained Under § 1225(b)(1)(B)(ii)

Respondents allege that Petitioner is properly detained under 8 U.S.C. § 1225(b)(1)(B)(ii) because he was initially issued an expedited removal order prior to being given a credible fear interview. Government's Response at 9. However, Petitioner's expedited removal order was rescinded when he was found to have a credible fear of return to Somali, and he was placed in full I.N.A. § 240 proceedings before an immigration judge. *See* Ex. A., Notice to Appear.

Respondents, at their discretion, could have instead considered Petitioner's asylum application in accordance with the procedures set forth in 8 C.F.R. 208.9. If Respondent denied Petitioner's asylum request, then he would be placed in "streamlined" proceedings under 8 C.F.R. §1240.17, a distinctly different process than § 240 proceedings. In short, Respondents chose to place Petitioner in full § 240 proceedings and explicitly release him under 8 U.S.C. § 1226.

"Decisions from this District hold that once DHS places a noncitizen in full removal proceedings and releases the individual under § 1226, that statute - not § 1225 - governs detention while the proceedings remain pending." *Khalid B.Q. v Noem*, No. 0:25-cv-04584 (JWB-DJF), Doc. No 10. t 4-5 (D. Minn. December 18, 2025). "Treating inadmissibility as a perpetual trigger for § 1225(b)(2) would erase the distinction Congress drew between border inspection and post-entry removal proceedings and would permit DHS to re-detain individuals by invoking a statute that no longer applies once removal proceedings are underway." *Id.* at 5.

Next, Respondents contend that Petitioner is "seeking admission" because he has applied for asylum and this makes him an "applicant for admission." This is in direct conflict with Respondent's own case law, namely, *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013), in which the BIA held that "admission to asylum status and admission *into* the United States" are distinct from one another." *Id.* at 151.

II. Petitioner's Due Process Rights Have Been Violated

Regardless of whether Petitioner is detained under 8 U.S.C. § 1225(b)(1)(B)(ii) or not, Petitioner raises a due process violation in his continued detention without the right to a bond hearing. Habeas Petition at 16. All three factors that the court must consider - the private interest affected by the government's action, the risk of erroneous deprivation through the current

procedures, the value of additional safeguards, and the burden to the government of additional safeguards, all weigh in favor of Petitioner. *Matthews v. Eldridge*, 424 U.S. 319 (1976).

A. Petitioner Has a Private Interest in Being Free From Detention

“The interest in being free from physical detention is the most elemental of liberty interests.” *Hernandez-Fernandez* No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8 (internal quotations omitted). Other Courts have “held that once released from immigration custody, noncitizens acquire a protectable liberty interest in remaining out of custody on bond.” *Id.* at *9 (quoting *Diaz v. Kaiser*, No 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)); *See also M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *8 (D. Or. Aug. 21, 2025)(Holding that “just as people on preparole, parole, and probation status have a liberty interest, too does a [noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond”)(quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)). Here, it is clear that Petitioner, who was previously released on his own recognizance, has a private interest in being free from detention.

B. Respondent’s Current Procedures Risk Erroneous Deprivation of Petitioner’s Due Process Rights

This Court must consider “whether the challenged procedure creates a risk of erroneous deprivation of an individual’s private rights and the degree to which alternative procedures could ameliorate these risks.” *Gunaydin v. Trump*, 784 F.Supp.3d 1185, 1187 (D. Minn. 2025)). Here, Respondents allege that, after previously releasing Petitioner on his own recognizance under § 1226, his detention is now pursuant to 8 U.S.C. § 1225. *See* Government’s Response. Additionally, Respondents, without citing details, allege that the reason that Petitioner was re-detained on December 4, 2025 is that he missed “three separate biometric check ins over a

10-month period.” *Id.* at 3. This makes little sense, given that Petitioner’s most recent check in was in November, and he was not detained at that time. A bond hearing is necessary to “provide... an opportunity” for Petitioner “to contest the existence, nature, or significance of [any] supervision violations or otherwise make an individualized assessment of the need to re-detain him.” *Hernandez-Fernandez* No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9. (internal quotations omitted). Because bond hearing will allow Petitioner to respond to the allegations that he has violated his order of release and received a “meaningful assessment of whether he is dangerous or likely to abscond, it would greatly reduce the risk of an erroneous deprivation of his liberty.” *Id.*

C. A Bond Hearing Will Not Impose an Undue Burden on the Government

Affording Petitioner with a bond hearing will not impose an undue burden on Respondents, who routinely conduct such hearings. *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 226 (BIA 2025); *See also Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his Petition for a Writ of Habeas Corpus, and order Respondents to either release Petitioner or hold a bond hearing within 7 days.

Dated: December 26, 2025

7 /s/ Evangeline Dhawan-Maloney
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