

Enforcement (“ICE”) or, alternatively, conduct or order a bond hearing in which the Respondents bear the burden of justifying Petitioner’s continued detention.

Mr. Janan is a native of Afghanistan seeking asylum with his family in the United States. Mr. Janan entered the United States on December 22, 2023 and timely submitted his application for asylum based on his fear of persecution in Afghanistan at the hands of the Taliban.

On December 29, 2025, Mr. Janan was arrested outside of his workplace by ICE agents. The ICE agents arrested Mr. Janan without a stated justification. Thus, Respondents arbitrarily detained Mr. Janan despite the requirement under 8 U.S.C. § 1226(a) and its implementing regulations that immigration officials make an individualized custody determination. Moreover, Respondents have adopted policies contrary to law enshrined in administrative decisions by the Board of Immigration Appeals (“BIA”) that subject non-citizens like Mr. Janan to mandatory detention in violation of Section 1226(a).

Mr. Janan is presently detained at the Philadelphia ICE field office and it is believed that he will be transferred to the Federal Detention Center in Philadelphia later today.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (Administrative Procedures Act); U.S. Const. amend. V (Due Process Clause); and U.S. Const. art. I, § 9, cl. 2 (Suspension Clause).

2. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 2241(d), because at the time of filing his Petition for Writ of Habeas Corpus (Doc. 1), Mr. Janan is detained in Philadelphia, PA.

PARTIES

3. Petitioner Ahmad Zahir Janan is a native of Afghanistan seeking asylum in the United States. Mr. Janan was arrested by immigration officials and his last known location of detention was at the Philadelphia ICE Field Office. It is believed that he will be transferred to FDC-Philadelphia imminently.

4. Respondent J.L. Jamison is named in his official capacity as the Warden of FDC, Philadelphia, which detains individuals suspected of civil immigration violations. Respondent Jamison is the immediate physical custodian responsible for the detention of Petitioner.

5. Respondent Brian McShane is the Acting Philadelphia Field Office Director for Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations. In this capacity he is responsible for the custody of all noncitizens detained by ICE at either the ICE Field Office or FDC, Philadelphia and has the authority to release Mr. Janan or transfer him to a different facility. He is one of Mr. Janan's immediate custodians and is sued in his official capacity.

6. Respondent Todd Lyons is the Acting Director of ICE. In this capacity he is responsible for enforcing immigration laws, and as such is a legal custodian of Mr. Janan. He is sued in his official capacity.

7. Respondent Kristi Noem is Secretary of Homeland Security. In this capacity she runs the Department of Homeland Security, and is charged pursuant to 8 U.S.C. 1103(a)(1) with administering and enforcing immigration laws. She is the ultimate legal custodian of Mr. Janan, and is sued in her official capacity.

8. The Department of Homeland Security ("DHS") is the agency of the federal government responsible for enforcing the immigration laws. DHS is also Mr. Janan's legal custodian.

9. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice, which encompasses the Board

of Immigration Appeals (“BIA”) and immigration courts, known collectively as the Executive Office of Immigration Review (“EOIR”). Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Janan. She is sued in her official capacity.

LEGAL FRAMEWORK

10. For non-citizens attempting to enter the United States, the INA provides under 8 U.S.C. § 1225(b)(2)(A) that “in the case of [a noncitizen] who is an applicant from 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.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). “A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled ‘for urgent humanitarian reasons or significant public benefit’ pursuant to 8 U.S.C. § 1182(d)(5)(A).” *Gomes v. Hyde*, 25 Civ. 11571, 2025 WL 1868288, at *2 (D. Mass. July 7, 2025) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).

11. “Courts have interpreted § 1226 to ‘appl[y] to [noncitizens] already present in the United States’ and to ‘create[] a default rule for those [noncitizens] by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.’” *Ndiaye v.*

Jamison, No. 25-6007, 2025 U.S. Dist. LEXIS 227253, *14 (E.D. Pa. Nov. 19, 2025) (citing *Jennings*, 583 U.S. at 303); *see also Abreu v. Crawford*, 2025 WL 51475, at *3 (E.D. Va Jan. 8, 2025) (“There is a statutory distinction between noncitizens who are detained upon arrival into the United States and those who are detained after they have already entered the country, legally or otherwise.”) (emphasis in the original).

12. Section 1226(a) provides in relevant part as follows:

(a) Arrest, Detention, and Release. 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—*

(1) *may continue to detain the arrested alien; and*

(2) *may release the alien on—*

(A) *bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or*

(B) *conditional parole ...*

8 U.S.C. § 1226(a) (emphasis added).

The Supreme Court has interpreted similar “may” language in other provisions of the INA to require “some level of individualized determination.” *I.N.S. v. Nat’l Ctr. For Immigrants’ Rights*, 502 U.S. 183, 194 (1991).

13. Accordingly, “the regulations implementing § 1226(a) delegate to DHS officers the authority to grant bond or conditional parole, and pursuant to such authority, a DHS officer must make an individualized determination as to the

appropriateness of detention based on two factors—whether the non-citizen is a ‘danger to property or persons’ and is ‘likely to appear for any future proceeding.’” *Benitez v. Francis*, 25 Civ. 5937, 2025 WL 2371588, at *10 (S.D.N.Y., Aug. 13, 2025) (citing 8 C.F.R. §§ 236.1(c)(8); 1236.1(c)(8)). If DHS takes the non-citizen into custody, this “initial custody determination” made by the DHS officer may be appealed to an immigration judge. 8 C.F.R. §§ 236.1(d)(1); 1236.1(d)(1).

14. Noncitizens may request a review of an initial custody determination before an Immigration Judge (“IJ”). 8 C.F.R. § 1236.1(d)(1); 8 C.F.R. § 1002.19(a). At this hearing an IJ may make the decision “upon any information that is available to the [Immigration Judge] or that is presented to him or her by the [noncitizen] or the [government].” 8 C.F.R. § 1003.19(d); *see also Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006). Noncitizens may appeal a negative decision in a custody review before an IJ to the Board of Immigration Appeals. 8 C.F.R. § 1236.1(d)(3)(i). The current statutory scheme was created through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”).

15. For the first time in nearly three decades, Respondents have taken the position through a series of precedential decisions by the Board of Immigration Appeals that noncitizens residing in the interior of the United States are

not entitled to a custody redetermination (a “bond hearing”) before an Immigration Judge.

16. First, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that a noncitizen who had been apprehended near the border and subsequently released into the United States is subject to mandatory detention without a possibility of bail upon re-detention, pursuant to 8 U.S.C. § 1225(b), even if that re-detention occurs years after their initial release from custody. The BIA reasoned that “an applicant for admission who is arrested and detained without a warrant while in the process of arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section [1225(b)] [], and is ineligible for any subsequent release on bond under section [1226(a)].” *Q. Li*, 29 I&N Dec. at 74.

17. Then in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA stated that all non-citizens who are present in the United States without admission are subject to mandatory detention under Section 1225(b)(2), regardless of how long they have been residing in the U.S. and absent any prior interaction with immigration authorities. In several hundred decisions across the country district courts have rejected the BIA’s reasoning. *See Demirel v. Fed. Det. Ctr. Phila.*, No.

25-5488, 2025 U.S. Dist. LEXIS 226877, *2 (E.D. Pa. Nov. 18, 2025) (counting 288 recent decisions).

FACTS AND PROCEDURAL HISTORY

18. Mr. Janan is a native of Afghanistan. From 2011 to 2014 Afghanistan Mr. Janan was employed by the U.S. based construction company. Due to the U.S. war in Afghanistan, the Taliban regularly target individuals with ties to U.S. interests. After taking over the country, the Taliban captured Mr. Janan's brother and tortured him as they questioned him about Mr. Janan's whereabouts. Soon after learning of this Mr. Janan fled Afghanistan with his family.

19. Mr. Janan and his family resided in Pakistan for approximately eight months. Fearful that the government of Pakistan would deport them back to Afghanistan, the family traveled to Turkey and then Mexico.

20. On December 22, 2023, Mr. Janan entered the U.S. with his wife Aqila Sediqi and their three minor children. Officials from Customs and Border Patrol ("CBP"), a sub-agency of DHS, detained Mr. Janan and his family.

21. After a brief period of detention Mr. Janan and his family were released with Notices to Appear charging them as removable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) ("A [non-citizen] present in the United

States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible”).

Exh. A.

22. An Order of Release Recognizance issued by CBP officials states that Mr. Janan was being released “[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations”. Exh. B.

23. Mr. Janan and his family settled in Philadelphia, PA. Mr. Janan worked in order to support his family. In 2024, Mr. Janan and his wife welcomed their fourth child, Hamida who was born in Pennsylvania and is a U.S. Citizen. Mr. Janan’s wife remained at home to care for their children who are ages 11, 9, 6, and 1 years-old.

24. Mr. Janan timely applied for asylum on June 25, 2024.

25. For two years, Mr. Janan regularly attended his scheduled immigration check-in appointments as both the local ICE office and the Intensive Supervision Appearance Program (ISAP) office.

26. On the morning of December 29, 2025, without prior warning, Mr. Janan was arrested by ICE officials while traveling to work. Mr. Janan was transported to the ICE field office located at 114 N. 8th Street, Philadelphia, PA

19107. Mr. Janan was permitted to call his attorney, undersigned counsel. Mr. Janan was only granted a five-minute phone call. After undersigned counsel patched in a Pashto interpreter, Mr. Janan was able to briefly explain that he had just been detained and that was at the ICE field office. Mr. Janan stated that he was not given any justification for why he was being taken into custody. ICE officials disconnected the call while Mr. Janan attempted to provide additional details to undersigned counsel.

27. Undersigned counsel called the ICE field office and spoke to an official who confirmed that Mr. Janan was in custody. The official stated that Mr. Janan would be transported to FDC-Philadelphia.

28. Mr. Janan's wife, is now left without the financial support of her husband while she must care for their four minor children alone.

CLAIM FOR RELIEF

COUNT ONE

VIOLATION OF DUE PROCESS, U.S. CONST. AMEND. V

29. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

30. The Fifth Amendment's Due Process Clause prevents the

Government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. amend. V.

31. The Due Process Clause extends to noncitizens residing in the United States, whether they have lawful status or not. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Specifically, “[i]t is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *see also Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001) (“[Non-citizens] facing removal are entitled to due process”); *Calderon-Rosas v. Atty’ Gen.*, 957 F.3d 378, 386 (3d Cir. 2020) (“In sum, petitioners seeking discretionary relief are entitled to fundamentally fair removal proceedings, which constitutes a protected interest supporting a due process claim.”).

32. Evaluating the adequacy of the process provided to a non-citizen requires a balancing of factors. “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S.

319, 335 (1976).

33. First, Mr. Janan faces “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Second, Respondents have erroneously deprived Mr. Janan of his liberty without any individualized assessment of his circumstances. Third, Respondents did not make any individualized finding that Mr. Janan was a danger or flight risk, so there does not appear to be a significant government interest in detaining Mr. Janan.

34. An application of these factors demonstrates that Mr. Janan should have been provided with additional process before being detained. *See Kashranov v. Jamison*, No. 2:25-cv-05555, 2025 U.S. Dist. LEXIS 224644, at *13 (E.D. Pa. Nov. 14, 2025) (“In this case, all three *Mathews* factors weigh in favor of [Petitioner]. He has a strong liberty interest. The lack of any individualized assessment creates a high risk of error. And a bond hearing imposes minimal administrative burden. The *Mathews* factors therefore indicate that due process compels a pre-deprivation bond hearing.”). Accordingly, Mr. Janan’s December 29, 2025 detention violated the Fifth Amendment.

COUNT TWO

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8
U.S.C. § 1226(a)**

35. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. As, relevant here, it does not apply to those who have been residing in the United States at liberty after being briefly detained at or near the border. As, relevant here, it does not apply to those who have been residing in the United States at liberty after being detained following their entrance into the United States. *Kashranov*, 2025 U.S. Dist. LEXIS 224644, at * 20 (rejecting the argument that § 1225(b)(2)(A) applies to individuals “who have already entered and resided in the United States for an extended period.”); *see also Quispe v. Crawford*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025) (“Indeed, as Respondents recognize, other federal courts around the country have found that in order to be detained under § 1225(b)(2), applicants for admission must be actively ‘seeking admission’ and not be just ‘present’ in the U.S.”). Such noncitizens, if detained, are done so under § 1226(a), and are generally eligible release on bond.

37. Respondents' authority to detain Mr. Janan is derived from 8 U.S.C. § 1226(a) as Mr. Janan is already present in the United States.

38. Respondents' position that Mr. Janan is detained pursuant to 8 U.S.C. § 1225(b)(2)(A) is erroneous. The Notice to Appear initially issued on December 26, 2023 by Customs and Border Patrol, a sub-agency of the DHS, states that Mr. Janan is removable from the United States pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen "in the United States States without being admitted or paroled". Exh. A. This conflicts with Respondents' position that Mr. Janan is an applicant for admission "seeking admission". See *Yagure Hurtado*, 29 I&N Dec. 218-19 (citing 8 U.S.C. § 1225(b)(2)(A)).

39. Further, the paperwork previously issued to Mr. Janan by Respondents acknowledges that he is detained under 8 U.S.C. § 1226(a). The Order of Release Recognizance issued by CBP officials on December 26, 2023 states that Mr. Janan was being released "[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations". Exh. B.

40. As Respondents' own paperwork confirms, Mr. Janan was initially detained on August 27, 2024 pursuant to Section 1226(a). Accordingly, he cannot be said to be "seeking admission" under Section 1225(b)(2)(A), as

Respondents now argue, after living in the United States for over two years.

41. Respondents have detained Mr. Janan without making an individualized determination regarding whether he posed a danger or flight risk as required by 8 U.S.C. § 1226(a) and its regulations.

42. Moreover, Respondents' current policies as set forth in the BIA's decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado* unlawfully prevent Mr. Janan from obtaining a custody redetermination in front of an Immigration Judge as is his right by statute.

COUNTY THREE

VIOLATION OF THE BOND REGULATIONS, 8 C.F.R. § 236.1, 1236.1 and 1003.19

43. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

44. In 1997, after Congress amended the INA through IIRIRA, EOIR 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 [Non-citizens]," 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). Thus, the agencies made clear that non-citizens present in the United States would be eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

45. Yet, Respondents have adopted a policy and practice of applying § 1225(b)(2) to non-citizens like Mr. Janan who are present in the United States without being admitted or paroled.

46. The application of § 1225(b)(2) to Mr. Janan unlawfully mandates his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNTY FOUR

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (“APA”), 5 U.S.C. § 701, et. seq.

47. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

48. Mr. Janan is aggrieved by agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et. seq.* Specifically, Respondents have acted arbitrarily in detaining Mr. Janan without conducting an individualized determination into his circumstances. In other words, Respondents have not

presented any indication that Mr. Janan's circumstances have changed such that he is now a danger or flight risk in a way that he was not when he was released from detention at the border in 2023.

49. Additionally, Respondents' recent policies announced through administrative decisions issued by the BIA unlawfully withhold the right to a bond hearing under 8 U.S.C. § 1226(a) to Mr. Janan.

50. These policies are arbitrary, capricious, and not in accordance with the text of the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance or under parole, bond or reasonable conditions of supervision, on the ground that his continued detention by the Department of Homeland Security violates his Due Process rights;
2. Issue a writ requiring an immediate, constitutionally adequate hearing before an Immigration Judge, at which: (i) DHS bears the burden to

demonstrate, by clear and convincing evidence, that Petitioner's continued detention is necessary, and (ii) the immigration judge considers Petitioner's ability to pay a bond;

3. While this petition is pending, order Petitioner's immediate release pursuant to the Court's inherent authority to release habeas corpus petitioners on bail;

4. Enter a judgment declaring that Respondents' detention of Petitioner is unauthorized by statute and contrary to law and the U.S. Constitution;

5. Award Petitioner reasonable costs and attorneys' fees;

6. Grant any further relief that this Court may deem fit and proper.

Dated: December 29, 2025

Respectfully submitted,

/s/ Christopher P. Setz-Kelly
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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 29, 2025

Respectfully submitted,

/s/ Christopher Setz-Kelly

Christopher Setz-Kelly, Esq.

LIST OF EXHIBITS

Exh. A. Notice to Appear dated December 26, 2023

Exh. B. Order of Release on Recognizance dated December 26, 2023