IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MITEH RONNY FIRMINO DA SILVA

Petitioner,

v.

KRISTI NOEM, in her official capacity as U.S Secretary of Homeland Security; and
JEFFREY N. DILLMAN, in his official capacity as warden of the Riverside Regional Jail,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 26-72

Immigration No. [redacted]

INTRODUCTION

1. Petitioner Miteh Ronny Firmino Da Silva ("Mr. Firmino"), a native and citizen of Brazil, challenges his unlawful detention by the Department of Homeland Security ("DHS") because despite having lived in the United States since June 12, 2017 and having a pending I-589 application for asylum, he like so many others has been detained by Respondents, is being held in ICE detention despite ICE, upon information and belief, not having lawfully arrested him pursuant to a warrant as required by law, and despite DHS having informed him on June 8, 2023 via written notice that he may remain in the U.S. until his asylum application is decided. As such, his due process rights are being violated by his unlawful detention.
2. Mr. Firmino was apprehended by immigration officials for the first time on January 7, 2025 and is being detained at the Riverside Regional Jail in Prince George County, Virginia.
3. A bond motion was filed on January 8, 2026 with the Immigration Court in Annandale, Virginia, but has not yet been accepted for filing. Bond hearings in immigration court are

often taking multiple weeks to take place. Meanwhile, Petitioner is being irreparably harmed by his ongoing detention without a pre-deprivation bond hearing, in violation of the Immigration and Nationality Act, its implementing regulations and the Due Process Clause of the Fifth Amendment.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); and 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act).

5. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

6. Administrative exhaustion is unnecessary and would be futile, as Petitioner is being irreparably harmed by his illegal detention and ongoing imprisonment. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999).

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at the Riverside Regional Jail. Additionally, a substantial part of the events or omissions that give rise to this action occurred or continue to occur within this division at the Immigration and Customs Enforcement ("ICE") Washington Field Office in Chantilly, Virginia.

PARTIES

8. Petitioner Miteh Ronny Firmino Da Silva is a native and citizen of Brazil who lawfully entered the U.S. in 2017. He is currently detained at the Riverside Regional Jail.

9. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for administering and enforcing immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

10. Respondent Jeffrey N. Dillman is the Warden of the Riverside Regional Jail, a county jail that contracts with ICE to detain non-citizens. He is responsible for overseeing the administration and management of the Riverside Regional Jail. Mr. Dillman is the immediate custodian of Petitioner. He is sued in his official capacity.

FACTUAL ALLEGATIONS

11. Mr. Firmino is a native and citizen of Brazil. In 2017, he came to the United States legally.

12. After arriving in the U.S., Mr. Firmino settled in Maryland, and built a stable life. He resides in Gaithersburg, Maryland and is the father of a U.S. citizen son. He has earned a reputation of being a hardworking and responsible individual. Upon information and belief, Mr. Firmino has no criminal history.

13. On June 8, 2023, Mr. Firmino filed an application for asylum, withholding of removal, and protection under the Convention Against Torture, and was issued a notice stating the following: "You may remain in the U.S. until your asylum application is decided." See **Exhibit A**, Asylum Receipt Notice.

14. Mr. Firmino remained in the United States while his asylum application remains pending, in reliance on the statement in that official notice which informed him that he may remain in the U.S.

15. On January 7, 2025, Mr. Firmino was driving on the Baltimore Washington Parkway in Maryland. He was followed by a federal law enforcement officer, who racially profiled him, and when he exited onto U.S. Highway 50 and entered the District of Columbia, he was stoppe. He was apprehended and taken into custody by immigration officials for the first time in his life.

16. Upon information and belief, at the time that Mr. Firmino was apprehended and taken into custody by immigration officials, no warrant for his arrest had been issued.

17. Counsel for Mr. Firmino filed a bond motion with the Annandale Immigration Court, which remains pending in the queue for action by a clerk. No bond hearing has been scheduled. It may take weeks before Mr. Firmino has a bond hearing. In the meantime, it is likely that he will be moved by ICE to various facilities in succession, and is likely to be taken to a remote location where he is unable to access legal counsel.

Legal Background

18. The section of law that governs detention of non-citizens in the United States is 8 U.S.C. § 1226(a). Section 1226(a) plainly states: "On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained . . . ."

19. As such, it follows that absent a warrant a noncitizen may not be arrested and detained under section 1226(a).

20. To put it simply, Petitioner's detention is illegal because ICE arrested him as a result of a traffic stop, based on racial profiling, and there is no evidence that he was arrested pursuant to a warrant.

21. Federal courts have ruled that, where the Government did not comply with the plain language of section 1226(a), immediate release is justified. See *Chogllo Chafla v. Scott*, No. 2:25-CV-

00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 22, 2025) ("Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)."); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025) (reaching same conclusion); *A.E.R.T. v. Wofford,* No. 1:25-cv-01824-KES-SKO (HC) (E.D. Cal. Dec. 16, 2025) (reaching same conclusion).

22. Further, Petitioner relied on the representations of the Department of Homeland Security which stated that "You may remain in the U.S. until your asylum application is decided" yet was detained by Respondents regardless.

23. Further, due to the huge backlog in cases before the Immigration Court system, there exist substantial delays in processing, scheduling, and holding bond hearings for detained non-citizens. At this time, non-citizens are often waiting weeks, or even months, for hearings at which they may present their case for release on bond.

24. These substantial delays are in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

CLAIMS FOR RELIEF

Count I:
Violation of 8 U.S.C. § 1226(a)
Unlawful Detention Without a Warrant

25. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

26. Upon information and belief, Respondents have detained Petitioner without a warrant as required by the plain language of 8 U.S.C. § 1226(a).

27. Respondent's detention of Petitioner in violation of the warrant requirement violates the Immigration and Nationality Act.

Count II:

Violation of the Fifth Amendment to the U.S. Constitution
Unlawful Detention

28. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

29. The Fifth Amendment provides that "[n]o person" shall be "be deprived of life, liberty, or property, without due process of law."

30. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas,* 533 U.S. at 690.

31. Moreover, "[t]he Due Process Clause applies to all 'persons' within the U.S., including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

32. The government's detention of Petitioner without a warrant and without a pre-deprivation hearing, after having informed him that he may remain in the country during the pendency of his asylum application, violates his due process rights.

Count III:
Violation of the Administrative Procedures Act
Unlawful Denial of Release on Bond

33. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

34. Courts must "hold unlawful and set aside agency action" that is "arbitrary capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

35. In subjecting Petitioner to detention under §1226(a) without a warrant and despite having told Petitioner that he may remain in the United States, Respondents have violated the

INA and adopted a policy that contradicts its regulations without providing meaningful notice or opportunity to challenge that decision, despite the substantive rights of noncitizens, such as Petitioner.

36. Moreover, Respondents have failed to articulate reasoned explanations for their decision to detain respondent, after telling him that he may remain in the United States.

37. Detention of petitioner despite the pendency of his asylum application is arbitrary, capricious, and not in accordance with law, and as such violates the APA. *See* 5 U.S.C. §706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks that this Court:

a. Assume jurisdiction over the matter;

b. Order that Petitioner shall not be transferred outside of the Eastern District of Virginia while this case is pending;

c. Issue a writ of habeas corpus within three days of the filing of this petition, requiring that Respondents show cause why the relief Petitioner seeks should not be granted, and set a hearing on this matter within five days of Respondents' return on the order to show cause, pursuant to 28 U.S.C. § 2244;

d. Order Petitioner's immediate release, subject to any appropriate conditions, or require that he be provided a bond hearing pursuant to 8 U.S.C. §1226(a);

e. Declare that the continued immigration detention of Petitioner violates 8 U.S.C. § 1226(a);

f. Declare that the continued immigration detention of Petitioner violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

g. Grant any other and further relief this Court deems just and proper.

Dated: January 9, 2026

/s/ Matthew K. Borowski

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CERTIFICATE OF SERVICE

I, Matthew K. Borowski., the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I will furthermore send a copy by certified U.S. mail, return receipt requested, to:

Kristi Noem, Secretary
Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Jeffrey N. Dillman, Warden
500 Folar Trl,
North Prince George, VA 23860

Civil Process Clerk
US Attorney's Office for the Eastern District of Virginia
2100 Jamieson Ave
Alexandria, VA 22314

Dated: January 9, 2026

/s/ Matthew K. Borowski

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VERIFICATION BY SOMEONE ACTING ON PETITIONERS' BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am the attorney for Petitioner. I have discussed with Petitioner's family members the events described in this Petition. 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.

Respectfully submitted,

Dated: December 9, 2026

/s/ Matthew K. Borowski

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