

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| <p>Gholam Ali Ahmadi,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p style="text-align: center;">v.</p> <p>Judith Almodovar, as Director of the New York Field Office Director for U.S. Immigration and Customs Enforcement; Kenneth Genalo, as Director of the New York Field Office Director for U.S. Immigration and Customs Enforcement; Pamela Bondi, as Attorney General of the United States; Kristi Noem, as Secretary of the United States Department of Homeland Security; and Todd M. Lyons, as Acting Director, U.S. Immigration and Customs Enforcement,</p> <p style="text-align: center;"><i>Respondents.</i></p> |
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Civil Action No. 26-cv-____

**PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner Gholam Ali Ahmadi, appearing by his attorneys Lansner & Kubitschek, for his petition alleges the following:

PRELIMINARY STATEMENT

1. Petitioner Gholam Ali Ahmadi, an asylum-seeker who is lawfully in the United States after having fled Afghanistan because of threats to his life as a result of his and his family's [REDACTED] has been seized by Respondents and detained by them at their holding facility at 26 Federal Plaza, New York, New York, in violation of the laws and Constitution of the United States. Petitioner now asks this Court to release him from detention.

JURISDICTION AND VENUE

2. This Court has jurisdiction over writs of habeas corpus on behalf of individuals who are detained by agents or employees of the United States pursuant to 28 U.S.C. §2241 and

pursuant to the All Writs Act, 28 U.S.C. §1651. The Court also has subject matter jurisdiction pursuant to 28 U.S.C. §1331.

3. Venue is proper in this District under 28 U.S.C. §2241 and 28 U.S.C. §1391. Petitioner is incarcerated at the New York City Immigration and Customs Enforcement holding facility at 26 Federal Plaza, within this District; the Respondents' field office that controls the location of his detention is based in New York City; and many of the events giving rise to the claims occurred in this District.

PARTIES

4. Petitioner Gholam Ali Ahmadi is a resident of the City and State of New York, a citizen of Afghanistan, and an asylum seeker who is lawfully present in the United States.

5. Petitioner has been detained by Respondents in immigration detention since January 13, 2026. Respondents are currently detaining Petitioner in their custody at their detention or holding facility located at 26 Federal Plaza, New York, New York.

6. Upon information and belief, Respondent Judith Almodovar is the Field Office Director for the New York field office of the Enforcement and Removal Operations of the United States Immigrations and Customs Enforcement, located at 26 Federal Plaza, New York, NY. Respondent Almodovar is sued in her official capacity.

7. Petitioner's belief is based upon the facts that Respondent Almodovar has been the Field Office Director in the recent past, that Respondent Almodovar has been sued in her capacity as Field Office Director as recently as December 29, 2025, that Respondent Almodovar has been quoted many times in the media in her capacity as Field Office Director, and that the United States government has not announced that anyone has replaced Respondent Almodovar as Field Office Director.

8. Upon information and belief, respondent Kenneth Genalo may be the Field Office Director for the New York field office of the Enforcement and Removal Operations of the United States Immigrations and Customs Enforcement, located at 26 Federal Plaza, New York, NY. Respondent Genalo is sued in his official capacity.

9. Petitioner's belief that Kenneth Genalo may be the Field Office Director is based upon the fact that Kenneth Genalo, on his LinkedIn page, claims to be the Field Office Director.

10. As field office director, respondent Genalo or respondent Almodovar is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.

11. Upon information and belief, respondent Almodovar or respondent Genalo currently has physical custody and control of Petitioner. When Petitioner determines which of the two Respondents is the actual Field Office Director, Petitioner will inform this Court and make appropriate changes.

12. Respondent Pamela Bondi is the Attorney General of the United States. Respondent Bondi is sued in her official capacity.

13. As Attorney General, respondent Bondi is responsible for administering immigration laws through the operations of Executive Office for Immigration Review, including the immigration courts and the Board of Immigration Appeals, pursuant to 8 U.S.C. §1103(g). Respondent Bondi is legally responsible for administering Petitioner's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

14. Respondent Kristi Noem is the Secretary of the United States Department of

Homeland Security. Respondent Noem is sued in her official capacity.

15. As Secretary of Homeland Security, respondent Noem is responsible for the administration of immigration laws, pursuant to 8 U.S.C. §1103(a). Respondent Noem routinely transacts business in the Southern District of New York, supervises Respondents Lyons and Almodovar, and/or Genalo, is legally responsible for Petitioner's detention and removal, and is a legal custodian of Petitioner. Respondent Noem's office is located at the United States Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

16. Respondent Todd M. Lyons is the Acting Director of the United States Immigration and Customs Enforcement. Respondent Lyons is sued in his official capacity. In that capacity, Respondent Lyons is responsible for administration of the immigration laws pursuant to 8 U.S.C. §1103(a). Respondent Lyons routinely transacts business in this District, and is legally responsible for Petitioner's seizure and detention. As such, respondent Lyons is a legal custodian of Petitioner. Respondent Lyons's office is located at the United States Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

EXHAUSTION OF REMEDIES

17. Exhaustion of administrative remedies in immigration detention cases is a prudential concern, not a statutory requirement. *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18 Civ. 2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

18. Exhaustion may be excused when any of the following apply: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329

F.3d 51, 62 (2d Cir. 2003).

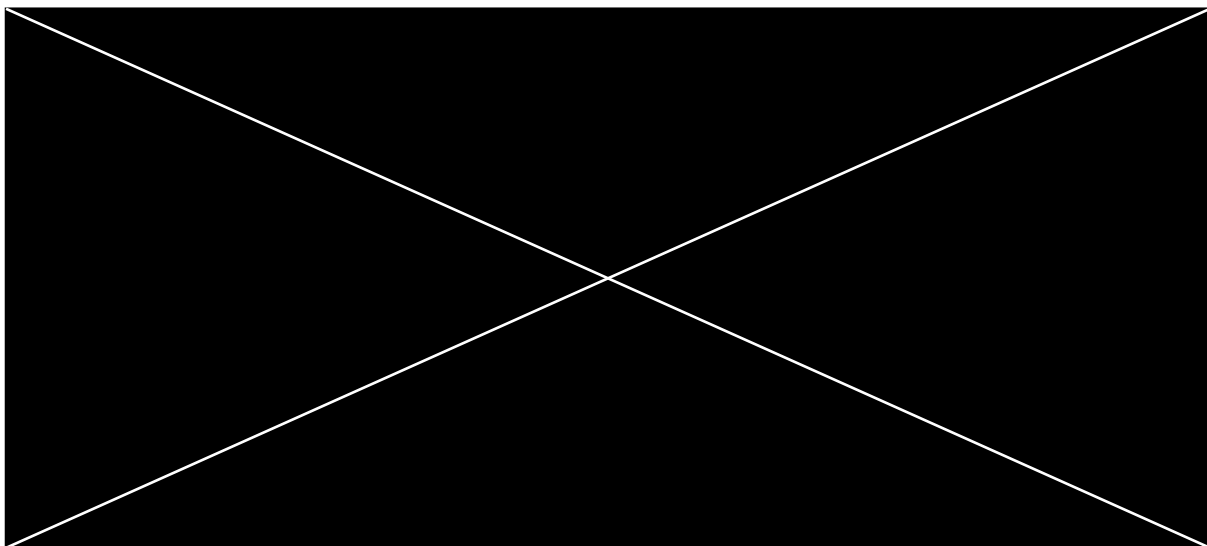
19. Petitioner satisfies each of said requirements. Not only will Petitioner face irreparable injury if his detention continues, and not only does the instant petition raise substantial constitutional questions, but intervening events have rendered administrative appeal futile and incapable of providing a genuine opportunity for adequate relief.

20. Since September 5, 2025, Respondents have prohibited United States Immigration Judges from considering bond requests for any and all persons such as Petitioner, who entered the United States without having been admitted. See, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

21. All Immigration Judges are thus required by Respondents' policy to find that Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) and to deny Petitioner's release from detention, even though the overwhelming majority of District Courts in the United States that have considered the issue have rejected Respondents' position.

STATEMENT OF FACTS

22. Petitioner is a



petitioner and his family continued to [REDACTED]
[REDACTED]

25. When the United States left Afghanistan and the Taliban seized control of Afghanistan in 2021, Petitioner knew that his life was in danger.

26. Petitioner went into hiding and then fled, arriving in the United States on April 15, 2023.

27. Petitioner entered the United States on April 15, 2023 and was promptly arrested by United States Customs and Border Protection officials and detained for the first time.

28. After several days, the United States Department of Homeland Security made an individualized custodial determination that Petitioner was not a flight risk or a danger to the community and released Petitioner on his own recognizance. The United States Department of Homeland Security stated in writing that they were releasing Petitioner “in accordance with Section 236 of the Immigration and Nationality Act,” i.e., 8 U.S.C. §1226.

29. At the time of the release, the Department of Homeland Security issued Petitioner a Notice to Appear, charging Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i), as being present in the United States without admission or parole. The Department of Homeland Security subsequently placed Petitioner in removal proceedings, pursuant to 8 U.S.C. §1229a.

30. Following his release from detention in April, 2023, Petitioner moved to New York and began to build a life for himself. He found housing with other asylum-seekers in the borough of Queens. He timely filed a written application for asylum and retained pro bono counsel to represent him in his removal proceedings and asylum claim.

31. Petitioner applied for permission to work as soon as he was eligible to do so. On

April 15, 2024, the Department of Homeland Security issued Petitioner an employment authorization document, allowing him to work in the United States.

32. Petitioner has steady employment with Xinos Construction Corporation, a company based in Queens, New York. Petitioner has always paid his taxes.

33. Since his release from detention, Petitioner has lived a law-abiding life, with the small exception that, on December 12, 2024, Petitioner pled guilty to disorderly conduct in the Queens Criminal Court and paid a fine. Disorderly conduct is not a crime in the State of New York, merely a violation. NY Penal Law §240.20.

34. Petitioner has been ready and willing to attend all proceedings and/or appointments set for him by the Respondents and has kept the government apprised of his address. Petitioner has always complied with every obligation set out by Respondents. The Immigration Court has, however, has canceled or rescheduled hearings in Petitioner's removal proceedings on three occasions.

35. The hearing on Petitioner's application for asylum is now set for March, 2027.

36. On December 19, 2025, Respondents notified Petitioner to appear for an appointment at their office at 26 Federal Plaza on January 13, 2026. The notice stated that the reason for the appointment was "for case review and updates" and gave no notice that Respondents would detain Petitioner.

37. When Petitioner attended the appointment on January 13, 2026, agents of Respondents took Petitioner into custody without a hearing, without an individualized custodial determination by a neutral decisionmaker, and without a warrant issued by a neutral magistrate.

38. Upon information and belief, Respondents seized and detained Petitioner because of his national origin. In recent weeks, Respondents have conducted mass arrests of asylum-

seekers from Afghanistan,⁴ without justification and without custody determinations.

39. Respondents have failed to provide Petitioner with notice or an opportunity to be heard to challenge their seizure and detention of Petitioner.

40. Respondents have failed to provide Petitioner with a bond hearing, as required by 8 C.F.R. §§1003.19(a) and 1236.1(d).

41. Respondents have failed to make an individualized custodial determination concerning petitioner.

42. Respondents have failed to provide any lawful basis for their continued detention of Petitioner.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION: VIOLATION OF 8 U.S.C. §1226

43. Petitioner realleges and incorporates by reference all allegations contained above.

44. When Respondents seize and detain a noncitizen whom Respondents have previously seized within the United States and then released from an initial period of detention, Respondents are required by 8 U.S.C. §1226 to make an individualized determination as to the noncitizen's risk of flight and danger to the community.

45. Respondents and their agents and employees initially seized Petitioner within the United States on April 15, 2023.

46. When Respondents initially released Petitioner from Petitioner's initial period of detention, in April, 2023, Respondents had determined that Petitioner was not a flight risk and not a danger to the community.

⁴ Maanvi Singh, *U.S. Agents Increasingly Arresting Afghan Asylum Seekers, Lawyers Say: 'A Huge Chilling Effect,'* The Guardian, Dec. 12, 2025, available at <https://www.theguardian.com/us-news/2025/dec/12/afghan-asylum-seekers-immigration>.

47. When Respondents seized Petitioner a second time, on January 13, 2026, Respondents failed to make individualized determinations regarding Petitioner's possible risk of flight and possible danger to the community.

48. Upon information and belief, Respondents still have not made individualized determinations regarding Petitioner's possible risk of flight and possible danger to the community.

49. Respondents are also required, when Respondents seize and detain a noncitizen whom Respondents have previously seized within the United States and then released from an initial period of detention, to provide the noncitizen with a bond hearing. 8 U.S.C. §1226.

50. After seizing Petitioner on January 13, 2026, Respondents have failed to provide Petitioner with a bond hearing.

51. Respondents' failure to make individualized determinations regarding Petitioner's possible risk of flight and possible danger to the community, and Respondents' failure to provide Petitioner with a bond hearing, violate the Immigration and Naturalization Act, 8 U.S.C. §1226.

SECOND CAUSE OF ACTION: DEPRIVATION OF DUE PROCESS OF LAW

52. Petitioner realleges and incorporates by reference all allegations contained above.

53. The Due Process Clause of the Fifth Amendment requires Respondents to provide noncitizen immigrants with due process of law when Respondents seek to deprive such immigrants of their liberty. The Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted).

54. Freedom from imprisonment, physical restraint, or other forms of government custody is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Thus, the Fifth Amendment’s guarantee of due process requires at least some notice and an opportunity to be heard *before* a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that “notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]” *Id.*

55. The due process clause thus requires Respondents to make individualized determinations to detain noncitizens like Petitioner and to give Petitioner notice and a meaningful opportunity to be heard when challenging their detention.

56. In failing to give Petitioner notice or an opportunity to be heard, either before or after depriving Petitioner of his liberty, Respondents violated Petitioner’s constitutional rights under the Due Process Clause of the Fifth Amendment of the Constitution.

57. The immediate release of Petitioner is the appropriate remedy for that violation. See, *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner’s first encounter with ICE was a detention without an individualized determination); *Perez Velasquez v. Noem*, No. 25 CIV. 10338 (AT), 2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

58. Indeed, Respondents’ actions of seizing in numerous Afghan nationals in the past several weeks demonstrates that Petitioner’s national origin was the true reason for Respondent’s re-detention of Petitioner. Petitioner’s nationality a) has no bearing on whether he is a flight risk or a danger to the community; b) has not changed since Respondents’ last custody determination

and release of Petitioner in 2023; and c) is not a lawful reason to detain Petitioner.

THIRD CAUSE OF ACTION: WARRANTLESS ARREST IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §706(2)(A)

59. Petitioner realleges and incorporates by reference all allegations contained above.

60. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious or contrary to law. 5 U.S.C. §706(2)(A).

61. The law prohibits Respondents and their agents and employees from arresting an immigrant without a warrant unless they have reason to believe that 1) the immigrant is in the United States in violation of law and 2) is likely to escape before a warrant can be obtained. 8 U.S.C. §1357.

62. Upon information and belief, before seizing and detaining Petitioner, Respondents did not have probable cause to believe that Petitioner was likely to escape before a warrant could be obtained and did not make an individualized assessment of Petitioner's flight risk.

63. Respondents' decision to seize and detain Petitioner, a result of their Afghan detention operation, irrespective of Petitioner's individual circumstances, is arbitrary and capricious and contrary to law.

64. Respondents' seizure and detention of Petitioner violates the Administrative Procedure Act.

FOURTH CAUSE OF ACTION: REDETENTION IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §706(2)(A)

65. Petitioner realleges and incorporates by reference all allegations contained above.

66. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is arbitrary and capricious, an abuse of discretion, or otherwise not in

accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)–(C).

67. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

68. To survive an APA challenge, the agency must articulate “a satisfactory explanation for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

69. By categorically revoking their 2023 custodial determination to release Petitioner on his own recognizance without consideration of his individualized facts and circumstances, Respondents have violated the APA.

70. By detaining Petitioner categorically, Respondents have abused their discretion because there have been no changes to the facts or circumstances that would support the revocation of Petitioner’s release from custody subsequent to Responent’s initial custody determination. To the contrary, since his release, Petitioner has demonstrated at every opportunity that he is not a flight risk, filing affirmatively for asylum following his release, retaining counsel and appearing for his scheduled ICE check-in on January 13, 2026. Petitioner now has more reason than when he was released in 2023 to comply and appear: he has an opportunity to pursue asylum before an immigration judge. He has paid taxes, has no criminal

convictions, and there has been no indication that he poses a danger to the community.

71. Petitioner's detention is therefore arbitrary and capricious, in violation of 5 U.S.C. §706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court issue an order and judgment:

1. Issuing an immediate order prohibiting Respondents from moving or transferring Petitioner to any location outside the Southern District of New York; and, if Petitioner is no longer within the Southern District of New York, issuing an immediate order directing Respondents to return Petitioner to the Southern District of New York forthwith; and
2. Issuing a writ of habeas corpus directing Respondents to release Petitioner from custody immediately, without any additional restraints on Petitioner's liberty, and enjoining any re-detention of Petitioner; or
3. In the alternative, conducting a prompt individualized bond hearing for the Petitioner; or
4. In the alternative, ordering Respondents to conduct an individualized bond hearing for Petitioner in front of an impartial adjudicator, at which:
 - a. Respondents will bear the burden of establishing by clear and convincing evidence that the continued detention of Petitioner is justified;
 - b. The adjudicator must meaningfully consider alternatives to imprisonment, such as release on recognizance, parole, or electronic monitoring; and
 - c. The adjudicator must meaningfully consider Petitioner's ability to pay if the adjudicator sets a monetary bond; and

5. Awarding Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
6. Granting such further relief as the Court deems just and proper.

Dated: New York, NY
January 13, 2026

/s Carolyn A. Kubitschek
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Carolyn A. Kubitschek, submit this verification on behalf of the Petitioner as an attorney for Petitioner. I, or my co-counsel, have discussed with Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: New York, NY
January 13, 2026

/s Carolyn A. Kubitschek
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