

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Ahmednoor Shukri Mohamed,

Petitioner,

v.

MARY DE ANDA-YBARRA, Field Office
Director of Enforcement and Removal Operations,
El Paso Field Office, Immigration and Customs
Enforcement; Warden of ERO El Paso Camp East
Montana;

TODD M. LYONS, *in his official capacity* as
Acting Director, Immigration and Customs
Enforcement;

KRISTI NOEM, *in her official capacity* as
Secretary, U.S. Department of Homeland Security;
and

PAMELA JO BONDI, *in her official capacity* as
Attorney General of the United States;

Respondents.

C/A No. 3:26-cv-00064

VERIFIED
PETITION FOR WRIT
OF HABEAS CORPUS
AND COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE
RELIEF

INTRODUCTION

1. Ahmed Shukri Mohamed, a native and citizen of Somalia, (hereinafter “Petitioner”) was detained by Respondents and subjected to purportedly mandatory detention, without the opportunity for bond, pursuant to the

unlawful agency decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

2. “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
3. Petitioner seeks a writ of habeas corpus in the form of immediate release from detention or an order to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within five business days.
4. Pending the adjudication of this Petition, Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hours-notice prior to any removal or movement of him away from the State of Texas.

CUSTODY

5. Petitioner is currently in the custody of Immigration and Customs Enforcement (“ICE”) at ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936. He is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

6. This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*
7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
8. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless, for good cause, additional time, not exceeding twenty days, is allowed.” *Id.*
10. Petitioner is “in custody” for the purpose of § 2241 because Petitioner was detained by Respondents.

VENUE

11. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in El Paso, at the ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding. See *Fuller v Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir 2000).
13. Respondents assert authority to detain Petitioner pursuant to the mandatory detention provisions at 8 U.S.C. § 1225(b)(2)(a). No statutory requirement of exhaustion applies to Petitioner's challenge to the lawfulness of his detention. See, e.g., *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019)

(“this Court ‘follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.’”); *Gomes v. Hyde*, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec’y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992))).

14. Prudential exhaustion is not required when to do so would be futile or “the administrative body . . . has . . . predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), superseded by statute on other grounds as stated in *Woodford v. Ngo*, 548 U.S. 81 (2006).
15. Any appeal to the Board of Immigration Appeals is futile as the Board’s published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), binds the immigration court, *see* 8 C.F.R. § 1003.1(g)(1), and erroneously denies him access to a bond hearing.
16. Prudential exhaustion is also not required in cases where “a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim.” *McCarthy*, 503 U.S. at 147. Every day that Petitioner is unlawfully detained causes him and his family irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) (“Hise, continued

loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion.”); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that “a loss of liberty” is “perhaps the best example of irreparable harm”); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that “detention has inflicted grave” and “irreparable harm” and describing the impact of prolonged detention on individuals and their families).

17. Prudential exhaustion is additionally not required in cases where the agency “lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute.” *McCarthy*, 503 U.S. at 147–48.
18. Immigration agencies have no jurisdiction over constitutional challenges of the kind Petitioner raises here. *See, e.g., Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *Matter of Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997).
19. Because requiring Petitioner to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack

jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.

PARTIES

20. Petitioner is from Somalia and has resided in the United States since February 2023. He is currently detained in the ICE El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.
21. Respondent Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement and Warden of ERO El Paso Camp East Montana, is sued in her official capacity. Respondent Anda-Ybarra is a legal custodian of Petitioner.
22. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.
23. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.
24. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the

Department of Justice and is charged with faithfully administering the immigration laws of the United States

LEGAL BACKGROUND AND ARGUMENT

25. Arrest and detention of noncitizens present inside the United States is governed under 8 U.S.C. § 1226, which states, in pertinent part, “[o]n 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.” 8 U.S.C. § 1226(a).

26. 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).

27. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

(b) Warrant of arrest—

(1) In general. **At the time of issuance of the notice to appear, or at any time thereafter** and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.

(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.

(c) Custody issues and release procedures—

(1) In general.

(i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

8 C.F.R. § 236.1(b) (emphasis added).

28. 8 U.S.C. 1226(a) applies to those who are “already in the country” and are detained “pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

29. Certain classes of noncitizens are not eligible for release on bond. *See* 8 U.S.C. § 1226(c). Amongst the classes of noncitizens who are not eligible for bond are noncitizens who are “inadmissible under paragraph (6)(A), (6)(C),

or (7) of section 1182(a) of this title” – that is, for presence without admission or parole – who are also “charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.” 8 U.S.C. 1226(c)(1)(E).

30. Congress did not intend to subject all people present in the United States without admission or parole to mandatory detention without the possibility of bond. Prior to the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States).

31. In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely “restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

32. For 29 years, from 1996 to 2025, Respondents provided bond hearings to noncitizens who were present without admission or parole. This longstanding practice of considering people like Petitioner as detained under § 1226(a) further supports reading the statute to apply to them.

33. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, EOIR 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.” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

34. The detention of noncitizens arriving at the border is governed by 8 U.S.C. § 1225.

35. In pertinent part, “in the case of an alien who is an applicant for 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 for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A)

36. “An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1).
37. “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13).
38. Where a “term is not statutorily defined, we consider its ordinary dictionary definition,” *Iverson v. United States*, 973 F.3d 843, 848 (8th Cir. 2020), and “seeking” is defined, alternatively, as “to go in search of,” “to ask for,” “to try to acquire or gain,” or “to make an attempt.” *Seek*, MERRIAM WEBSTER’S ENGLISH DICTIONARY (11th Ed. 2020).
39. Thus, “seeking entry” is to try to acquire lawful entry of the alien into the United States after inspection and authorization by an immigration officer.
40. 8 U.S.C. § 1225(b)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287.
41. “[I]t is a commonplace of statutory construction that the specific governs the general.” *Morales v. Trans World Airlines*, 504 U.S. 374, 384 (1992).

42. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that “[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien,” 8 U.S.C. § 1229a(a)(1), and that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States.” 8 U.S.C. § 1229a(a)(3).
43. To initiate removal proceedings, “written notice (in this section referred to as a ‘notice to appear’) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any).” 8 U.S.C. § 1229(a)(1).
44. The “[a]pprehension and detention of aliens” is governed by a different provision of the code. *See* 8 U.S.C. § 1226.

STATEMENT OF FACTS

45. Petitioner is a native and citizen of Somalia.
46. Upon information and belief, Petitioner has resided in the United States since February 2023.
47. Upon information and belief, Respondents encountered Petitioner, processed him, and released him under an Order of Release under his own Recognizance (OREC).

48. Upon information and belief, Respondents commenced removal proceedings under 8 U.S.C. § 1229a.

49. Upon information and belief, Petitioner has been compliant with all conditions of his release.

50. On September 5, 2025, the Board of Immigration Appeals decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.”

51. Upon information and belief, Petitioner does not have any criminal contact.

52. Upon information and belief, Petitioner has not committed an offense that implicates 8 U.S.C. § 1226(c).

53. Upon information and belief, on or about January 9, 2026, Respondents detained Petitioner following a routine check-in in Minnesota.

54. Petitioner is now detained at the ICE El Paso Camp East Montana located at 6920 Digital Road, El Paso, Texas 79936

55. Without relief from this Court, he faces continued detention without a bond hearing.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

56. Petitioner restates and realleges all paragraphs as if fully set forth here.
57. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
58. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).
59. Petitioner has not been, and will not be, provided with a bond hearing as required by law.
60. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and
1003.19 Unlawful Denial of Release on Bond

61. Petitioner restates and realleges paragraphs 1-55.
62. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service ("INS") issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," 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. The agencies thus made clear

that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

63. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of 8 U.S.C. § 1252(b)(2)
Unlawful Detention Under This Provision

64. Petitioner restates and realleges paragraphs 1-55.

65. Title 8 U.S.C. § 1225(b) is concerned primarily with those seeking entry to the United States and is generally imposed at the Nation's borders and ports of entry, where the Government must determine whether a noncitizen seeking to enter the country is admissible.

66. Upon information and belief, Petitioner has resided in the U.S. since 2000. He is therefore neither an arriving alien nor an alien who is now seeking admission to the United States.

67. Because 8 U.S.C. § 1252(b) does not apply to Petitioner, Respondents' detention of him under this provision is unlawful.

COUNT IV
Violation of Fifth Amendment Right to Due Process

68. Petitioner restates and realleges paragraphs 1-55.

69. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.
70. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).
71. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release.
72. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").
73. The risk of erroneous deprivation is exceptionally high. Petitioner has been **present in the United States for nearly three years. He has built strong ties in his community and has been patiently awaiting the outcome of his pending immigration case while complying with all requirements of his release.**

74. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.
75. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.
76. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody or provide him with a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

1. Assume jurisdiction over this matter;
2. Order that he not be transferred outside of this District;
3. Issue an Order to Show Cause ordering Respondents to show cause why his Petition should not be granted within three days;
4. Declare that Petitioner's detention is unlawful;
5. Issue a Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;

6. Award his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7. Grant him any further relief this Court deems just and proper.

Date: January 16, 2025

Respectfully submitted,

/s/ David L. Wilson

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Attorneys for the Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent the Petitioner, Ahmednoor Shukri Mohamed, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this Friday, January 16, 2026.

/s/David L. Wilson
DAVID L. WILSON