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

Mohamud, K'naan)

Petitioner,)

Case No. 3:26-cv-00456

Agency No. 

v.)

PETITION FOR WRIT OF HABEAS
CORPUS

WARDEN of the ERO El Paso Camp East)
Montana; TODD LYONS, Acting Director)
U.S. Customs and Immigration Enforcement;))
MARY DE ANDA-YBARRA, ICE Field)
Office Director; KRISTI NOEM, U.S.)
Secretary of Homeland Security; PAMELA)
BONDI, Attorney General of the United)
States;)

Expedited Hearing Requested

Respondents.)

INTRODUCTION

1. Petitioner, K'naan Mohamud, is a native and citizen of Somalia who fled to the United States due to political persecution.
2. Petitioner entered the States without inspection on December 29, 2022. Petitioner was issued a Form I-862, Notice to Appear, and charged as subject to removal under 8 U.S.C. § 1182(a)(6)(A)(i). Exhibit 1: Notice to Appear.
3. Petitioner was released on his own recognizance on January 4, 2023. *Id.* See also Exhibit 2: Application for Asylum at 8.
4. Respondents commenced removal proceedings pursuant 8 U.S.C. § 1229a against the Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights. *Id.*
5. Petitioner timely applied for asylum before the Fort Snelling, Minnesota Immigration Court on June 2, 2023. Exhibit 2.
6. The Petitioner was scheduled for a hearing in November 2024 before the Immigration Court, but that hearing was postponed by the Court. The Petitioner cooperated with all required ICE appointments as a condition of his release on recognizance.
7. On January 14, 2026, Immigration and Customs Enforcement (“ICE”) agents detained Petitioner during their enforcement operations targeting non-citizens in Minneapolis and Saint Paul, Minnesota..
8. The Petitioner was working as a driver providing public transportation to disabled citizens. He has just two days prior been offered a new position as a nursing assistant, after completing a background check, drug test, and vaccination requirements. When he finished his shift as a driver, he got in his car and facetimed his girlfriend from the

parking lot when he was suddenly surrounded by ICE agents in five or six vehicles. Two of the vehicles blocked his car in the front and from behind, and collided with his vehicle on both sides. Petitioner's chest was slammed against the steering wheel from the impact. Petitioner's driver's side window was broken by agents and he was pulled from his vehicle, thrown on the ground, and handcuffed. Petitioner suffered an injury to his wrist and hand due to being cut by broken window glass. Petitioner was never able to recover his damaged vehicle and was not able to begin his job as an essential worker and nursing assistant.

9. ICE officers did not possess a warrant to arrest the Petitioner. Petitioner had not violated any of the conditions of his release on recognizance to justify revocation of his release.
10. On information and belief, Petitioner asserts that ICE re-detained him pursuant to a warrant issued by the Attorney General on about December 29, 2022. Exhibit 1. No just cause was shown for Petitioner's arrest and his order of release on his own recognizance was revoked.
11. Petitioner was transferred to the ERO El Paso Camp East Montana detention center the same day in shackles.
12. On February 5, 2026, the Immigration Judge denied Petitioner's request for release on bond citing lack of jurisdiction due the Respondents' erroneous classification of Petitioner as an "arriving alien." Exhibit 3: Order of the Immigration Judge.
13. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant Petition for a Writ of Habeas Corpus. Petitioner asks this Court to find that any attempts by the Respondents to transfer Petitioner are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing Petitioner's transfer out of this district.

Petitioner further asks this Court to order his immediate release under conditions no more stringent than those of his release on recognizance. In the alternative, Petitioner asks this Court to hold that he is entitled to a prompt bond hearing before the Immigration Judge.

JURISDICTION

14. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et. seq.*
15. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
16. 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).

VENUE

17. Venue is proper because Petitioner is in Respondents' custody in ERO El Paso Camp Eas Montana. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

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

18. The Court must grant the petition for Writ of Habeas Corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the 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.*

19. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

20. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

21. Petitioner K’NAAN MOHAMUD is currently detained at the ERO El Paso Camp East Montana located at: 6920 Digital Road, El Paso, TX 79936.

22. Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security (“DHS”), and is sued in her official capacity. The Secretary of the Department Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).

23. Respondent PAMELA BONDI¹ is the Attorney General of the United States and is sued in her official capacity as the head of the Department of Justice. The Attorney General is responsible for the fair administration of the laws of the United States.

¹ In *Rumsfeld v. Padilla*, the Supreme Court addressed the identity of the proper respondent to a § 2241 habeas petition filed by a U.S. citizen challenging his detention as an enemy combatant. 542 U.S. 426 (2004). The Court held that the only appropriate respondent for a traditional habeas corpus petition involving a “core challenge” to “present physical confinement” is the individual’s “immediate custodian,” meaning the person in charge of the facility where the individual is being held. *Id.* at 435. In that case, the immediate custodian was the commanding officer in charge of the naval brig where the petitioner was physically held. *Id.* at 442. The Supreme Court also made it clear that it would not address who the proper respondent would be for a petition filed by a noncitizen “detained pending deportation.” The Court noted a disagreement among different circuit courts regarding whether the Attorney General is a proper respondent to a habeas petition in such cases and stated, “Because the issue is not before us today, we again decline to resolve it” *Id.* at 435 n.8.

24. Respondent WARDEN is the operator of the ERO El Paso Camp East Montana facility. The facility is responsible for the detention of the Petitioner.
25. Respondent TODD LYONS is the Acting Director of the U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. ICE is responsible for the detention of Petitioner.
26. Respondent MARY DE ANDA-YBARRA is the ICE Field Office Director overseeing the ERO El Paso Camp East Montana facility and is sued in his official capacity. ICE is responsible for the detention of Petitioner.

LEGAL FRAMEWORK

Petitioner's Warrantless Arrest During the Pendency of Proceedings before the Immigration Court and the Board of Immigration Appeals Violate Due Process

27. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
28. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).
29. The Immigration and Nationality Act (INA) establishes various procedures through which individuals may be detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a).
30. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. § 1229a.

31. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.” *Refugee Act of 1980*, § 101(a), Pub. L.No. 96-212, 94 Stat. 102 (1980).
32. The “motivation for the enactment of the Refugee Act” was the United Nations Protocol Relating to the Status of Refugees, “to which the United States had been bound since 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432–33 (1987). The Refugee Act reflects a legislative purpose “to give ‘statutory meaning to our national commitment to human rights and humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).
33. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.
34. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution or fear. 8 U.S.C. § 1101(a)(42)(A).
35. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is

physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

36. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).
37. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
38. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.
39. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual’s release when the facts and circumstances warrant it. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

Respondents’ Change in Policy Regarding Mandatory Detention

40. In general, under federal immigration law, two statutes govern the detention of noncitizens in removal proceedings—8 U.S.C. §§1225 and 1226. Section 1225 applies to “applicants for admission”—noncitizens who are either “present in the United States who ha[ve] not been admitted” or who “arrive[] in the United States.” 8 U.S.C. §1225(a)(1).
41. Applicants for admission fall under either §1225(b)(1) or §1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). “Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation” as well as “certain other aliens designated by the Attorney General in his discretion.” *Id.* (citations omitted). Section 1225(b)(2) serves as a “catchall provision that applies to” almost all other applicants for admission not covered by §1225(b)(1). *Id.* at 289.
42. The mandatory detention statute at issue here, Section §1225(b)(2)(A), provides that “a [noncitizen] seeking admission, [who] is not clearly and beyond a doubt entitled to be admitted . . . shall be detained for a proceeding under 8 U.S.C. §1229a.” 8 U.S.C. §1225(b)(2)(A) (emphasis added).
43. On July 8, 2025, ICE issued interim guidance instructing all ICE employees to consider anyone charged with inadmissibility under §1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an “applicant for admission” under 8 U.S.C. §1225(b)(2)(A) and therefore subject to mandatory detention. [Exhibit 4: July 8, 2025 ICE Guidance Regarding Detention Authority for Applications for Inspection.] (“July 8 ICE Policy Memo”).
44. The July 8 ICE Policy Memo states that it was issued in coordination with the Department of Justice (“DOJ”). EOIR is an agency within the DOJ.

45. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*.

There, the BIA held that all noncitizens who entered the United States without inspection or parole are considered “applicants for admission” and are therefore ineligible for IJ bond hearings.

46. Petitioner’s Notice to Appear charges him with inadmissibility pursuant to INA § 212(a)(6)(A)(i) (codified at 8 U.S.C. § 1182(a)(6)(A)(i)) (Exhibit 1). Therefore, based on the July 8 ICE Policy Memo, Petitioner is purportedly subject to indefinite, mandatory detention, despite his initial release on conditional parole.

47. To the contrary, Petitioner is detained pursuant to 8 U.S.C. §1226(a).

48. The discretionary detention statute at issue here, Section §1226(a), applies to the apprehension and detention of noncitizens who are already present in the United States and subject to removal. See *Jennings*, 583 U.S. at 288; *Rodriguez v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022).

49. If they have an arrest warrant issued by the Attorney General, ICE may arrest and detain noncitizens in this category pending a decision in removal proceedings. However, most are eligible for release on conditional parole or bond. 8 U.S.C. §1226.² An exception under §1226(c) for noncitizens with enumerated criminal convictions, does not apply to Petitioner.

50. In short, 8 U.S.C. §1225 allows ICE to detain certain noncitizens seeking admission into the United States and §1226 authorizes the government to detain noncitizens already in

² 8 U.S.C. §1226 (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. . . .

the country pending the outcome of removal proceedings. *Jennings*, 583 U.S. at 289 (emphasis added).

51. Respondents' treatment of Petitioner since he arrived in the United States supports the conclusion that he is detained pursuant to §1226(a). Petitioner entered the United States without inspection on April 14, 2022. Exhibit 1; 2. Federal authorities released him on his own recognizance on May 28, 2022 with an order stating that he was released "In accordance with section 236 of the Immigration and Nationality Act" (codified at 8 U.S.C. §1226). Exhibit 3.

52. Noncitizens detained under §1225(b) may not be released on recognizance; they may only be paroled into the country under 8 U.S.C. §1182(d)(5)(A). Release on recognizance is a form of "conditional parole" from detention under §1226 that is distinct from parole under §1182(d)(5)(A). See *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025))).

53. Petitioner was not seeking admission on November 29, 2025—the day he was detained. ICE apprehended and detained him in Minnesota, more than three and a half years after he initially entered the United States. Therefore §1226(a) governs his detention.

FACTUAL BACKGROUND

54. Petitioner raises the following factual allegations:

- 1) The Petitioner entered the United States on December 29, 2022 and was issued a Form I-862, Notice to Appear. Exhibit 1. Petitioner was placed into removal proceedings pursuant to INA § 240 to appear before an Immigration Judge, and was charged with having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

- 2) He was released on his own recognizance on January 4, 2023. *Id.*
- 3) Petitioner resided in Minnesota from January 2023 until January 14, 2026.
- 4) Petitioner timely applied for asylum on June 2, 2023. Exhibit 2.
- 5) Petitioner complied with and attended all ICE appointments as required as a condition of his release on recognizance.
- 6) On January 14, 2026, Immigration and Customs Enforcement (“ICE”) agents detained Petitioner during their enforcement operations targeting non-citizens in Minneapolis and Saint Paul, Minnesota.
- 7) The Petitioner was working as a driver providing public transportation to disabled citizens. He has just two days prior been offered a new position as a nursing assistant, after completing a background check, drug test, and vaccination requirements. When he finished his shift as a driver, he got in his car and facetimes his girlfriend from the parking lot when he was suddenly surrounded by ICE agents in five or six vehicles. Two of the vehicles blocked his car in the front and from behind, and collided with his vehicle on both sides. Petitioner’s chest was slammed against the steering wheel from the impact. Petitioner’s driver’s side window was broken by agents and he was pulled from his vehicle, thrown on the ground, and handcuffed. Petitioner suffered an injury to his wrist and hand due to being cut by broken window glass. Petitioner was never able to recover his damaged vehicle and was not able to begin his job as an essential worker and nursing assistant.
- 8) ICE officers did not possess a warrant to arrest the Petitioner. Petitioner had not violated any of the conditions of his release on recognizance to justify revocation of his release.

- 9) On information and belief, Petitioner asserts that ICE re-detained him pursuant to a warrant issued by the Attorney General on December 29, 2022. Exhibit 1. No just cause was shown for Petitioner's arrest and his order of release on his own recognizance was revoked.
- 10) Petitioner was transferred to the ERO El Paso Camp East Montana detention center the same day in shackles.
- 11) On February 5, 2026, the Immigration Judge denied Petitioner's request for release on bond citing lack of jurisdiction due the Respondents' erroneous classification of Petitioner as an "arriving alien." Exhibit 3: Order of the Immigration Judge.
- 12) Petitioner is neither a danger to others nor a flight risk.
- 13) Petitioner has no criminal history.

55. Respondents detained Petitioner based not on his personal circumstances or individualized facts but because of policies recently adopted by DHS and the Executive Office for Immigration Review ("EOIR") asserting that all noncitizens who have entered the United States without inspection or parole are "arriving aliens" and subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

56. The Board of Immigration Appeals ("BIA"), the highest administrative body within the EOIR, issued precedential decisions adopting the same policy. In *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025), the BIA held that all noncitizens who fall within the scope of 8 U.S.C. §1225(b)(1) (arriving aliens) must be detained under that section and are ineligible for any subsequent release on bond under 8 U.S.C. §1226(a). In *Matter of Yajure Hurtado*, the BIA held that Immigration Judges ("IJ"s) have no jurisdiction to

consider bond for persons charged as “arriving aliens” in removal proceedings. 29 I &N Dec. 216, 229 (BIA 2025).³

57. On February 5, 2026, the Immigration Judge denied Petitioner’s request for release on bond citing lack of jurisdiction due the Respondents’ erroneous classification of Petitioner as an “arriving alien.” Exhibit 3: Amended Order of the Immigration Judge.

58. Petitioner affirmatively sought an individualized custody redetermination before the Immigration Court. *Id.* The Immigration Judge denied the request solely on jurisdictional grounds, concluding that the court lacked authority to consider bond or conduct any custody review based on DHS’s classification of Petitioner as subject to mandatory detention under INA § 235(b).

59. Because the Immigration Court expressly determined that it lacked jurisdiction to conduct any custody redetermination, Petitioner has no administrative mechanism through which to challenge the legality, duration, or necessity of his detention. The Board of Immigration Appeals likewise lacks jurisdiction to review custody determinations where no bond hearing may be held.

60. Requesting a bond hearing before the Immigration Judge in the El Paso Immigration Court would be futile because the Court and the Board of Immigration Appeals have categorically denied bond hearings to Respondents in identical circumstances due to a

³ In any event, *Yajure Hurtado* is *ultra vires* of the Board’s delegated authority because it effectively rewrites binding Attorney General custody regulations—without rulemaking—by converting a narrow, regulation-based “arriving alien” bond bar into a sweeping prohibition for virtually all noncitizens charged as present without admission. Compare 8 C.F.R. §§ 1236.1(d)(1), 1003.19(h)(2)(i)(B) (IJ bond jurisdiction before a final order; categorical bar limited to “arriving aliens” and other enumerated classes) with 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (final interim rule explaining that “inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge”). The Board has repeatedly stated that it lacks the authority to invalidate or disregard Attorney General regulations. See, e.g., *Matter of Akram*, 25 I&N Dec. 874, 875 (BIA 2012). Basic administrative law likewise forbids an agency from accomplishing a de facto amendment of a binding legislative rule through adjudication rather than notice-and-comment rulemaking. See, e.g., *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003).

misinterpretation of INA 1226(a) requiring mandatory detention of all immigrants “seeking admission.” This District Court has repeatedly found this interpretation to lack sound logical reasoning and ordered immediate release without a bond hearing for individuals subjected to re-detention. *Granados v. Noem et. al.*, 5:25-cv-01464 (W.D. Tex. Nov. 26, 2025); see also *Ramos de Lara v. Noem et. al.*, 5:25-cv-01459 (W.D. Tex. Nov. 21, 2025).

61. Further administrative exhaustion would be futile. On or about January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration judges that: “Maldonado Bautista is not a nationwide injunction and does not purport to vacate, stay or enjoin Yajure Hurtado.” Immigration judges are instructed to treat the BIA’s decision in *Matter of Yajure Hurtado* as binding precedent. EOIR guidance further states that a “declaratory judgment” is not binding and lacks authority to compel specific action. ³ Under these circumstances, no administrative body within EOIR has authority to provide the relief sought.
62. DHS’s discretionary parole authority does not constitute an available or adequate administrative remedy that must be exhausted prior to habeas review. Parole decisions are committed to agency discretion, are not subject to neutral adjudication, and provide no mechanism for Petitioner to challenge the legality of his detention. Courts have consistently held that discretionary parole is not an exhaustion prerequisite to habeas corpus relief.
63. Therefore, Petitioner has been categorically denied access to any administrative custody review, and no adequate alternative remedy exists; exhaustion is either satisfied or

excused as futile. A writ of habeas corpus is the sole avenue to vindicate Petitioner's constitutional, statutory, and regulatory rights and to restore his liberty.

64. Petitioner asserts that he is not an "arriving alien" as he was not seeking admission at the time of ICE's warrantless arrest on January 14, 2026. He was a noncitizen in removal proceedings, residing in the United States. Therefore, 8 U.S.C. §1226(a) applies to Petitioner's detention. Section 1226(a) requires ICE to have an arrest warrant issued by the Attorney General and also provides that Petitioner is eligible for conditional release or bond.

65. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

66. On information and belief, Respondents are detaining Petitioner regardless of the individual facts and circumstances of his case.

67. On information and belief, Petitioner has no criminal history.

**THE FIFTH CIRCUIT'S FEBRUARY 6, 2026 DECISION IN BUENROSTRO-MENDEZ
v. BONDI FORECLOSES PETITIONER'S PURELY STATUTORY CLAIM TO A BOND
HEARING UNDER 8 U.S.C. § 1226(a) BUT DOES NOT PRECLUDE HABEAS RELIEF
ON CONSTITUTIONAL AND OTHER GROUNDS**

A. Buenrostro-Mendez forecloses Petitioner's purely statutory entitlement theory under § 1226(a), but it does not deprive this Court of habeas jurisdiction or resolve Petitioner's independent constitutional and other claims.

68. On February 6, 2026, a panel of the United States Court of Appeals for the Fifth Circuit issued its published opinion in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026). The panel held that noncitizens who are present in the United States without having been admitted or paroled—including those apprehended years after entry—are “applicants for admission” under 8 U.S.C. § 1225(a)(1) and are subject to mandatory detention under § 1225(b)(2)(A) pending removal proceedings under § 1229a.
69. The panel further held that such individuals are not eligible for discretionary release on bond under § 1226(a) and that immigration judges lack jurisdiction to conduct bond hearings in their cases. The panel endorsed the Board of Immigration Appeals' precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and reversed two district court orders that had granted habeas relief on statutory grounds.
70. This Court is bound by the Fifth Circuit's holding on the purely statutory question of whether § 1225(b)(2)(A) or § 1226(a) governs Petitioner's detention and whether he has a statutory entitlement to a bond hearing before an immigration judge. Petitioner respectfully acknowledges that, under *Buenrostro-Mendez*, Petitioner has no statutory right to such a hearing.
71. However, the Fifth Circuit's decision does not resolve—and expressly did not reach—the independent constitutional and other claims raised in this Petition. The panel in *Buenrostro Mendez* addressed only the statutory interpretation dispute and reversed the district courts solely because they had granted bond hearings as a matter of statutory entitlement under § 1226(a). The panel had no occasion to consider due process

challenges to prolonged or indefinite mandatory detention without any individualized hearing, nor did it address claims under the Administrative Procedure Act, the equal protection component of the Fifth Amendment, the Suspension Clause, or the Accardi doctrine.

72. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), similarly held that there is no statutory right to periodic bond hearings under §§ 1225(b), 1226(a), or 1226(c), but it explicitly remanded for the lower courts to consider constitutional arguments in the first instance. *Id.* at 302–03. The Fifth Circuit's statutory holding in *Buenrostro-Mendez* leaves those constitutional questions open, just as *Jennings* did.

B. Habeas jurisdiction remains available to test the legality of detention and the constitutionality of detention procedures; § 1226(e) does not bar review of legal and constitutional claims.

73. Nothing in *Buenrostro-Mendez* strips this Court of jurisdiction under 28 U.S.C. § 2241 to adjudicate constitutional challenges to immigration detention or to review whether the Executive's custody scheme violates governing law. *Jennings* itself distinguishes unreviewable discretionary custody judgments from reviewable questions of law and constitutional claims. Likewise, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003), both proceeded through § 2241 habeas and underscore that civil immigration detention must remain tethered to lawful purposes and must satisfy due process.

74. Petitioner does not ask this Court to second-guess a discretionary bond determination. He challenges DHS's asserted authority to hold him in prolonged civil detention without any meaningful individualized custody determination by a neutral decisionmaker empowered to order release, and he challenges the lawfulness of the government's detention process as applied to him.

**AS-APPLIED DUE PROCESS VIOLATION FROM PROLONGED OR INDEFINITE
DETENTION WITHOUT INDIVIDUALIZED HEARING**

75. Even accepting the Fifth Circuit's interpretation that § 1225(b)(2)(A) mandates detention and provides no statutory bond hearing, Petitioner's ongoing and potentially indefinite detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment as applied to him.
76. Civil immigration detention is permissible only to the extent it serves the statutory purposes of ensuring appearance at proceedings and protecting the community from danger. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003). When detention becomes prolonged or indefinite and is no longer tied to those purposes, it becomes punitive and unconstitutional. *Id.*
77. Although Petitioner's detention is currently approximately four months old, since October 17, 2025, his pending applications for asylum, withholding of removal, and Convention Against Torture protection are complex and typically require extended proceedings—often lasting one to three years or more, nationals given country conditions evidence and backlog. Absent any mechanism for individualized review, Petitioner faces a substantial risk of indefinite detention under penal conditions despite having no criminal history, no disciplinary infractions, demonstrated compliance, and no individualized finding of danger or flight risk.
78. Numerous district courts, including within the Fifth Circuit, have held post-Jennings that due process requires an individualized bond hearing, with the government bearing the burden of proof by clear and convincing evidence, when mandatory detention under §§ 1225(b) or 1226(c) becomes prolonged. While the Fifth Circuit has not adopted a bright

line rule, district courts in this Circuit and others commonly find six months presumptively unreasonable absent individualized justification. See, e.g., practice advisories and district court orders cited in post-Jennings litigation, collecting cases requiring hearings after 6–12 months under analogous mandatory detention provisions.

79. The constitutional concerns are heightened here because the government's new interpretation—upheld in *Buenrostro-Mendez*—extends mandatory detention without bond or hearing to noncitizens who have lived openly in the United States for significant periods, here, over two years, accrued equities, and were not detained at the time of initial processing. Traditional “arriving alien” detention under § 1225(b) historically applied to those apprehended at or near the border or port of entry, where detention was typically brief pending expedited processing. Extending it to individuals in full § 1229a proceedings with meritorious relief claims raises far graver liberty interests than the brief detention upheld in *Demore* or contemplated for true arriving aliens.
80. Petitioner is a with no criminal record, no history of violence, and strong humanitarian claims. Continued categorical detention without any hearing—where the government never has to justify his confinement by evidence—serves no legitimate purpose and is punitive in effect.

PRESERVATION OF STATUTORY ARGUMENT FOR EN BANC OR SUPREME COURT REVIEW

81. To preserve the issue for possible *en banc* review or certiorari, Petitioner respectfully submits that the panel in *Buenrostro-Mendez* erred in its statutory interpretation for the following reasons, which align with the overwhelming majority of district court decisions nationwide prior to February 6, 2026:

- a. The phrase “an alien seeking admission” in § 1225(b)(2)(A) is in the present tense and applies only to those actively seeking admission at the time of apprehension (e.g., at a port of entry or in active inspection), not to individuals living quietly in the interior years later.
- b. The government's and panel's reading renders § 1226(a)'s bond provisions largely superfluous for the vast majority of noncitizens in removal proceedings who entered without inspection.
- c. It contradicts three decades of consistent administrative practice (1997–2025), including EOIR regulations and DHS guidance treating such individuals as detained under § 1226(a).
- d. It reverses the congressional intent behind IIRIRA, which sought to eliminate incentives for evading inspection but did not contemplate mandatory indefinite detention for long-present residents.
- e. Over 350 district courts nationwide rejected the government's position in 2025–early 2026 habeas cases, finding the text, structure, and history compel application of § 1226(a).

82. These preserved arguments do not request this Court to disregard binding Fifth Circuit precedent on the statutory issue; they are included solely to preserve further review. 65. The APA claim remains viable because DHS's abrupt 2025 policy reversal—announced via internal memo without notice-and-comment or reasoned explanation for departing from 28 years of practice—is arbitrary and capricious under 5 U.S.C. § 706(2)(A). *Buenrostro Mendez* did not address this administrative law challenge.

83. *Because Buenrostro-Mendez* resolved only the statutory interpretation question, it does not preclude (a) equal protection challenges to arbitrary detention classifications and disparate treatment without a rational basis, (b) Suspension Clause claims where the government's scheme eliminates any meaningful mechanism—other than habeas—to test the legality of detention, and (c) Accardi claims requiring the agency to follow its own binding arrest and processing regulations. See 8 C.F.R. § 287.8(c)(2)(i)–(ii).
84. For all these reasons, this Court may—and should—grant habeas relief on non-statutory grounds by ordering Respondents to order his immediate release under reasonable conditions of supervision or, in the alternative, provide Petitioner a prompt, individualized bond hearing before a neutral decisionmaker with the government bearing the burden to justify continued detention by clear and convincing evidence.

**THE FIFTH CIRCUIT PANEL'S DECISION IN *BUENROSTRO-MENDEZ* v. *BONDI* IS
INCONSISTENT WITH *LOPER BRIGHT ENTERPRISES* v. *RAIMONDO***

85. To further preserve the statutory issue for potential en banc review by the Fifth Circuit or certiorari to the Supreme Court, Petitioner respectfully submits that the panel's decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), is inconsistent with the Supreme Court's controlling precedent in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).
86. In *Loper Bright*, the Supreme Court held that courts “must exercise their independent judgment in deciding whether an agency has acted within its statutory authority” and may no longer defer to an agency's interpretation of an ambiguous statute under *Chevron*. *Id.* at 374. While agencies' views may still be entitled to respectful consideration under

Skidmore v. Swift & Co., 323 U.S. 134 (1944)—with persuasive force depending on factors such as the thoroughness of the agency's reasoning, the consistency of its position over time, and its expertise—courts must independently determine the best reading of the statute using traditional tools of statutory construction. *Loper Bright*, 603 U.S. at 402.

87. The panel in *Buenrostro-Mendez* did not adhere to this mandate. Although the panel conducted a textual analysis, its reasoning effectively accorded dispositive weight to the Board of Immigration Appeals' recent interpretation in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—a 2025 decision that abruptly reversed nearly three decades of consistent administrative practice (1997–2025) treating unadmitted noncitizens apprehended in the interior as subject to discretionary detention and bond eligibility under § 1226(a). The panel adopted the BIA's new position wholesale, without acknowledging or applying the *Skidmore* factors that, post-*Loper Bright*, should have diminished the persuasive value of an inconsistent, late-breaking agency reversal.
88. Under *Skidmore* and *Loper Bright*, longstanding agency interpretations are entitled to greater weight precisely because consistency and reliance interests bolster their persuasiveness. Here, the opposite occurred: for 28 years, multiple administrations, EOIR regulations, and DHS guidance uniformly applied § 1226(a) to individuals in Petitioner's position. See, e.g., *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). The BIA's 2025 reversal—prompted by a policy shift announced in a July 2025 DHS memo—lacks the hallmarks of thorough, consistent reasoning that could earn persuasive force. Yet the panel endorsed it without critically examining this inconsistency or independently weighing the superior reading supported by historical

practice, statutory structure, and the overwhelming majority of pre-2026 district court decisions (over 350 nationwide).

89. This approach mirrors the deference prohibited by *Loper Bright*, as the panel appeared to treat the agency's new litigating position and BIA precedent as authoritative rather than exercising fully independent judgment. The panel dismissed the decades of contrary practice as irrelevant (“The text says what it says, regardless of the decisions of prior administrations”), effectively insulating the agency's reversal from meaningful judicial scrutiny—the very dynamic *Loper Bright* rejected. As the dissent in *Buenrostro-Mendez* recognized, the majority's reading amounts to “rubber stamp[ing]” the government's “proposed legislation by executive fiat,” a concern heightened in the post-*Chevron* era where courts must not abdicate their interpretive role.
90. The panel's failure to grapple with *Loper Bright's* implications is particularly striking given that the BIA itself invoked *Loper Bright* in *Yajure Hurtado* to assert that the statute is “clear and unambiguous,” thereby attempting to preempt deference questions. But where reasonable minds differ—as evidenced by the hundreds of district courts rejecting the government's position, the dissent's detailed critique, and the statutory tensions (e.g., surplusage in § 1226(a), present-tense “seeking admission”)—*Loper Bright* requires courts to resolve ambiguity independently, not to defer to an agency's self-serving declaration of clarity after decades of interpreting the statute differently.
91. For these reasons, the panel's statutory holding warrants reconsideration en banc, as it conflicts with *Loper Bright's* command that courts, not agencies, hold the ultimate responsibility for statutory meaning. This Court, while bound by the panel's result on the

pure statutory claim in this Circuit, may note this tension in support of granting relief on the independent constitutional and APA grounds asserted herein.

CLAIMS FOR RELIEF COUNT ONE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Abuse of Discretion

Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

92. Petitioner restates and realleges all paragraphs as if fully set forth here.
93. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
94. 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)).
95. 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).
96. By categorically revoking Petitioner’s release and seeking to transfer him away from the district without consideration of his individualized facts and circumstances, Respondents have violated the APA.
97. By detaining the Petitioner categorically, Respondents have further abused their discretion because there have been no changes to his facts or circumstances since the

agency made its initial custody determinations that support the revocation of his release from custody.

98. Respondents have already considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. There have been no changes to the facts that justify this revocation of his release on his own recognizance since 2023. The fact that Petitioner has already been granted release by Respondents under the same facts and circumstances shows that Respondents do not consider him, on an individualized basis, to be a danger to the community or a flight risk.

COUNT TWO

Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

99. Petitioner restates and realleges all paragraphs as if fully set forth here.

100. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)–(D).

101. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke a bond or parole authorized under 8 U.S.C. § 1226(a)” and rearrest a noncitizen under the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies that such revocations of release from custody may only be carried out in the “discretion of the district director, acting district director, deputy district director, assistant district

director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).”

102. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by an unauthorized official).

103. On information and belief, Respondents have revoked or are revoking Petitioner’s prior custody determination as a result of a categorical policy prepared by and implemented by unidentified government officials in Washington, not through the individual exercise of discretion required by law or by the individuals enumerated by regulation to do so.

104. Because Petitioner’s revocation of release from custody has been made or will be categorically directed by government officials not authorized by law to make this determination, Respondents’ detention of Petitioner is not in accordance with law and in excess of statutory authority.

COUNT THREE

Violation of Fifth Amendment Right to Due Process Procedural Due Process

105. Petitioner restates and realleges all paragraphs as if fully set forth here.

106. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful,

unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

107. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

108. While the government has discretion to detain individuals under 8 U.S.C. §1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not “unlimited” and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698.

109. Here, Respondents have re-detained Petitioner in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents’ revocation of Petitioner’s release violates his right to procedural due process.

110. Notwithstanding the Fifth Circuit’s recent precedential decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. 2026) issued on February 6, 2026, determining Respondents’ statutory interpretation of Section 1225(b)’s mandatory detention provision, this Court should find that *Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds. In its original due process analysis, this Court accepted without deciding Respondents’ interpretation was true. *See*, e.g., *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025) (“The parties argue about Respondents’ novel interpretation regarding mandatory detention under Section 1225(b) and whether Petitioner falls within it. Even assuming

without deciding Respondents' reading is correct, the Court will not address these arguments because the Court finds Petitioner is entitled to procedural due process in his as-applied challenge.”).

111. Federal courts have consistently held that exhaustion is not required where administrative remedies are inadequate, unavailable, or futile, particularly in immigration detention cases involving purely legal questions and constitutional claims. *See, e.g., McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).
112. Petitioner raises constitutional and statutory challenges to the legality of his detention itself, including his warrantless arrest and continued custody without individualized findings. These claims are beyond the competence of the immigration courts to resolve and fall squarely within this Court’s habeas jurisdiction.
113. Accordingly, exhaustion should be excused, and this Court should grant habeas relief without requiring Petitioner to pursue futile administrative proceedings.

COUNT FOUR

The Court should award EAJA fees

114. The Equal Access to Justice Act (EAJA) provides that the prevailing private party ‘in any civil action (other than cases sounding in tort)’ brought by or against the United States is entitled to attorneys’ fees and costs if the Government’s position was not ‘substantially justified’ or ‘special circumstances make an award unjust.’ 28 U.S.C. § 2412(d)(1)(A).
115. Although the statute does not expressly define “civil action,” the panel notes that in controlling Supreme Court authority, standard legal dictionaries, and prevailing common

law, habeas has been consistently defined as a civil action. The Federal Rules of Civil Procedure themselves also treat habeas as within its ambit. “Rule 1 provided that the Rules applied to ‘all suits of a civil nature . . . with the exceptions stated in Rule 81.’ Fed. R. Civ. P. 1 (1980). And Rule 81 specified the Rules “are applicable to proceedings for . . . habeas corpus . . . to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions.’ Fed. R. Civ. P. 81(a) (1980). We know of no relevant statute or practice that would have negated the civil status of immigration challenges like this one.”

116. Here, the Court should find the Respondent’s actions in arresting Petitioner were not ‘substantially justified’ and should award the detainees fees and costs. While the Fifth Circuit does not typically⁴ award EAJA fees in habeas matters, the Court should find that this case raises a distinct issue; damage to the Petitioner’s vehicle caused by Respondents during their warrantless arrest and reckless and unnecessary conduct.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner’s detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Declare that Petitioner’s revocation of parole from custody and re-detention was made in violation of statute and regulation;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner

⁴ *Gomez Barco v. Witte*, No. 21-30637 (5th Cir. 2023).

from custody;

- (6) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;
- (7) Issue the Respondent's immediate release without a bond hearing conducted by the Immigration Judge and under conditions **no more stringent– i.e. no GPS ankle monitor or increased frequency of ICE appointments–** than those of his original release on recognizance; *or in the alternative,*
- (8) Issue an Order compelling the Respondents to conduct a bond hearing in which the Respondents bear the burden of justifying– by clear and convincing evidence of dangerousness or flight risk– Petitioner's continued detention; and under reasonable conditions of supervision **no more stringent– i.e. no GPS ankle monitor or increased frequency of ICE appointments–** than those of his original release on recognizance; and; and
- (9) Grant any further relief this Court deems just and proper.

DATE: 02/14/2025



Jacklyn Kelly Garcia
Casa de León, PLLC
Bar No. 24119484
Attorney for Petitioner

EXHIBIT 1

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED]

FINS #: [REDACTED]

File No: [REDACTED]

DOB: [REDACTED]

Event No: [REDACTED]

In the Matter of:

KNAAN MOHAMUD

Respondent: _____ currently residing at:

(Number, street, city, state and ZIP code)

(Area code and phone number)

- ☐ You are an arriving alien.
- ☒ You are an alien present in the United States who has not been admitted or paroled.
- ☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of SOMALIA and a citizen of SOMALIA ;
3. You arrived in the United States at or near SAN YSIDRO, CA , on or about December 29, 2022 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a) (6) (A) (i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

1 FEDERAL DRIVE, SUITE #1850, FORT SNELLING, MN. 55111

(Complete Address of Immigration Court, including Room Number, if any)

on August 24, 2023 at 08:30 AM to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

MICHAEL BELL

MICHAEL J BELL
Date: 2023 01 04 13:27 -08:00
ACTING WAT CH COMMANDER
0390802752 CBP

(Signature and Title of Issuing Officer) (Sign in ink)

Date: January 04, 2023

San Diego, California

(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.dhs.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1228(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an Immigration Judge and request my hearing be scheduled.

Before:

(Signature of Respondent) (Sign in ink)

BORDER PATROL AGENT

Date: 01/04/2023

(Signature and Title of Immigration Officer) (Sign in ink)

Certificate of Service

This Notice To Appear was served on the respondent by me on January 04, 2023, in the following manner and in compliance with section 239(a)(1) of the Act.

- ☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail
☐ Attached is a credible fear worksheet.
☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the ENGLISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

KASARI Mohan
(Signature of Respondent if Personally Served) (Sign in ink)

STEVE W ROE
STEVE ROE, BORDER PATROL AGENT
Date: 2023.01.04 10:39 -08:00
0167816681 CBP
(Signature and Title of officer) (Sign in ink)

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

EXHIBIT 2

Abdiqani A Jabane
Jabane Law Office, LLC
2649 Park Ave, Suite 214
Minneapolis, MN 55407
651-329-5070
abdi@jabanelaw.com

NON-DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FORT SNELLING, MINNESOTA**

IN THE MATTER OF:)

Knaan Abdi Mohamud)

RESPONDENT.)

Alien No: 

Next Master Calendar hearing:
August 24 2023 at 9:00 AM
before the Honorable Katherine L. Hansen

**RESPONDENT'S SUBMISSION OF FORM I-589, APPLICATION FOR
ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE
CONVENTION AGAINST TORTURE**

COMES NOW RESPONDENT, Knaan Mohamud, by and through undersigned
counsel, before this honorable Court to respectfully submit his FORM I-589, Application
for Asylum, Withholding of Removal, and Protection under the Convention Against
Torture.

Respectfully Submitted,

Abdiqani A Jabane

Abdiqani Jabane

CERTIFICATE OF SERVICE

This document was served on DHS via ECAS.

No Service needed. I electronically filed the attached documents, and the opposing party is participating in ECAS.

Abdiqani A Jabane, Esq.

Attorney for Respondent

Abdiqani Jabane

Date: June 1, 2023

EXHIBIT 3



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
EL PASO SPC IMMIGRATION COURT**

Respondent Name:

MOHAMUD, KNAAN

To:

Jabane, Abdiqani Ahmed
4403 E Lake Street
Minneapolis, MN 55406

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

02/05/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☒ Denied, because
No jurisdiction.

☐ Granted. It is ordered that Respondent be:
☐ released from custody on his own recognizance.
☐ released from custody under bond of \$
☐ other:

☐ Other:

M. P.

Immigration Judge: PLETTERS, MICHAEL 02/05/2026

Appeal: Department of Homeland Security: ☒ waived ☐ reserved
Respondent: ☐ waived ☒ reserved

Appeal Due: 03/09/2026

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To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : MOHAMUD, KNAAN | A-Number : 

Riders:

Date: 02/05/2026 By: Martinez, Sandy, Court Staff

EXHIBIT 4



To All ICE Employees

July 8, 2026

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 236 of the Immigration and Nationality Act (INA), rather than section 238, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

An "applicant for admission" is 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. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 236(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

Moving forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 238 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(V), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

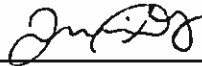
This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to re-arresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.

VERIFICATION

On this 14th day of February, 2026, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of and acting on behalf of Petitioner, K'naan Mohamud, because Petitioner is currently detained and because of the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing the Petitioner.



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Certificate of Service

I hereby certify I served Petitioner's Petition for Habeas Corpus, Application for Order to Show Cause, Order to Show Cause to the U.S. Attorney for the Western District of Texas via electronic service.

Date: 02/14/2026

A handwritten signature in black ink, appearing to read 'Jacklyn Kelly Garcia', is written over a horizontal line.

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