UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Aiman Ayesh Ahmed AL OSHAISHI,

Petitioner,

v.

Michael BRECKON, Warden of Folkston D Ray ICE Processing Center in his official capacity,

Respondent.

Agency Identification #: A[redacted]

HEARING REQUESTED

Case No.: 5:26-cv-280

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Aiman Ayesh Ahmed Al Oshaishi (A[redacted] is a native and citizen of Yemen who entered the United States without inspection on or about June 7, 2024, seeking asylum. *See* Exhibit A, Notice to Appear (NTA), I-862. Petitioner planned to reside with his U.S. Citizen brother, Saleh Al Oshaishi, who lives in Yonkers, New York and has submitted evidence of his and his co-sponsor's ability to financially support his brother, Petitioner, Mr. Aiman Al Oshaishi. *See* Exhibit B, Bond Support Evidence Submitted. Petitioner was detained immediately after entering without inspection and remained detained after passing his credible fear interview (CFI), for cited "security risk." *See* Exhibit C, CFI Findings. He has no known criminal convictions and importantly, the Immigration Judge determined that he does not pose any security risk. *See* Exhibit G, IJ Findings as to Security Risk. After U.S. Immigration and Customs Enforcement ("ICE") detained Mr. Al Oshaishi, they transferred him to the Folkston D Ray ICE Processing

Center in Folkston, Georgia. *See* Exhibit E, ICE Detainee Locator Results. Petitioner's asylum claim is currently pending before the Board of Immigration Appeals. *See* Exhibit E, BIA Filing Receipt. Finally, in April 2025, Petitioner submitted an application to United States Citizenship and Immigration Services (USCIS) for Temporary Protected Status (TPS) which is now pending adjudication with receipt # [redacted] *See* Exhibit F, TPS Notice by USCIS.

2. Pursuant to a July 2025 DHS policy and the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Department of Homeland Security has determined that those immigrants who, like Mr. Al Oshaishi, entered the U.S. without inspection to seek asylum protections, regardless of the progress made in their case or merits warranting bond, are detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Under this interpretation, Immigration Judges are stripped of jurisdiction to conduct custody redeterminations, and individuals like Mr. Al Oshaishi are categorically denied bond hearings despite decades of contrary agency and judicial practice.

3. Mr. Al Oshaishi's detention under § 1225(b)(2)(A) violates the text and structure of the INA and its implementing regulations. Federal courts across the country have rejected DHS's new interpretation of § 1225(b)(2) and have held that the detention of individuals detained at the border is governed by § 1226(a).

4. Most importantly, this Court has already determined that individuals like Mr. Al Oshaishi are eligible for bond because they are detained pursuant to § 1226(a), and thus this Court ordered that immigration courts subject to this court's jurisdiction hold bond hearings to determine whether such individuals are eligible for discretionary bond. *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted sub nom. Aguirre Villa v. Normand*, No. 5:25-cv-100, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025).

5. Mr. Al Oshaishi also falls within the Bond Eligible Class in the U.S. District Court for the Central District of California's holding in the class action lawsuit in *Maldonado Baustista v. Santacruz*, 5:25-cv-01873, (C.D. Cal. Nov. 25, 2025). That class includes all individuals in the United States without lawful status who (1) have entered or will entered the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. *Id.* That order extended a grant of summary judgment to the Petitioners in that case to the entire Bond Eligible Class as a whole, finding that such individuals are detained pursuant to 8 U.S.C. § 1226 and therefore eligible for bond. *Id.* The district court then entered final judgment on December 18, 2025. *Maldonado Bautista v. Noem*, 5:25-cv-01873, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

6. Mr. Al Oshaishi respectfully requests that this Court: (a) declare that his detention is governed by § 1226(a) and that he is therefore eligible for bond; (b) order Respondent to provide him with an immediate bond hearing before an Immigration Judge applying § 1226(a); and (c) if Respondent fails to provide such a hearing within a reasonable time, or, does not fairly support any adverse findings of flight risk (using this as a catch-all to deny him without full consideration of the merits) order his release from custody under appropriate conditions of supervision.

JURISDICTION AND VENUE

7. Mr. Al Oshaishi is currently in the physical custody of Respondent at the Folkston ICE Processing Center in Folkston, Georgia. *See* Exhibit D.

8. This Court has jurisdiction under 28 U.S.C. § 2241 (*habeas corpus*), 28 U.S.C. § 1331 (*federal question*), 28 U.S.C. § 1651 (*All Writs Act*), 28 U.S.C. §§ 2201–2202 (*Declaratory Judgment Act*), 5 U.S.C. § 702 (*APA*), and Article I, Section 9, Clause 2 of the United States Constitution (*Suspension Clause*). Mr. Al Oshaishi is presently in custody under color of the

authority of the United States and challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

9. Federal district courts have jurisdiction under § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). The Supreme Court has repeatedly upheld such jurisdiction, most recently in *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

10. Venue is proper in the Southern District of Georgia, Waycross Division, pursuant to 28 U.S.C. §§ 1391 and 2241(d), because Petitioner is detained within this District at the Folkston ICE Processing Center.

PARTIES

11. Petitioner Aiman Ayesh Ahmed Al Oshaishi is a native and citizen of Yemen unlawfully detained at the Folkston ICE Processing Center in Folkston, Georgia. He is not subject to a final order of removal where his appeal remains pending. *See* Exhibit E. Under DHS's July 2025 policy and the BIA's decision in *Matter of Yajure Hurtado*, Immigration Judges no longer have jurisdiction to redetermine custody for individuals like Mr. Al Oshaishi. As a result, he has been categorically denied access to a bond hearing.

12. Respondent Michael Breckon is the warden of the Folkston D Ray ICE Processing Center and controls the detention center where Petitioner is confined under the authority of ICE. Mr. Breckon has direct physical custody of Petitioner and is his immediate custodian. Mr. Breckon is sued in his official capacity.

FACTS

13. Petitioner Aiman Ayesh Ahmed Al Oshaishi is a native and citizen of Yemen unlawfully detained at the Folkston ICE Processing Center in Folkston, Georgia. ICE has held him

in custody since June of 2024 after passing his credible fear interview and seeking to rejoin his U.S. Citizen brother in Yonkers, NY. *See* Exhibit B. Petitioner's family has been present in the country since in or around 2015. *Id.*

14. Mr. Al Oshaishi has no criminal convictions to counsel's knowledge. He has never been convicted of any crime that would subject him to mandatory detention under INA § 1226(c). He is not subject to a final order of removal as his claim is on appeal with the BIA. *See* Exhibit E.

15. Historically, individuals like Mr. Al Oshaishi were detained under INA § 236(a), 8 U.S.C. § 1226(a), which provides for release on bond or conditional parole. After the BIA's decision in *Matter of Q. Li*, however, any noncitizen detained at the United States border after entering without inspection was an "applicant for admission" under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and deemed ineligible for bond. This was later extended to anyone who entered without inspection, regardless of whether they were detained at the border or hundreds of miles from the border and regardless of whether they were first apprehended decades from their initial entry in *Matter of Yajure Hurtado*.

16. As a result of this policy and decision, Immigration Judges lack jurisdiction to conduct custody redeterminations for individuals like Mr. Al Oshaishi. He has been categorically denied the opportunity to seek bond, despite his strong community ties via his U.S. Citizen brother and absolutely no criminal record.

17. Federal district courts across the country, like this one, have rejected *Matter of Q. Li*'s and *Matter of Yajure Hurtado*'s mandate of § 1225(b)(2) for individuals like Mr. Al Oshaishi, finding instead that detention of individuals like him is under § 1226(a). Nonetheless, ICE continues to hold him without access to a bond hearing.

LEGAL FRAMEWORK

18. Under 8 U.S.C. § 1226(a), individuals are generally entitled to discretionary bond determinations when detained. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Certain noncitizens who are arrested, charged with, or convicted of specified crimes are subject to mandatory detention until removal proceedings are concluded under 8 U.S.C. § 1226(c).

19. By contrast, 8 U.S.C. § 1225(b) applies to noncitizens encountered at the border. According to that provision, "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." 8 U.S.C. § 1225(b)(2)(A). Thus, unless the noncitizen is paroled into the country under 8 U.S.C. § 1182(d)(5)(A) for "urgent humanitarian reasons or significant public benefit," such an individual is subject to mandatory detention and is ineligible for release on bond. *Jennings*, 583 U.S. at 288.

20. The U.S. Supreme Court has recognized that while "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (2)," "[i]t also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 289.

21. Following enactment of these statutes, EOIR issued regulations clarifying that individuals who entered the country without inspection but who were apprehended in the interior were not detained under § 1225, but instead under § 1226(a). See *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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled...will be eligible for bond and bond redetermination."). For nearly three decades, this was the consistent practice.

22. In *Matter of Q. Li*, the BIA upended years of precedent and understanding of which

noncitizens were considered detained under § 1225 versus § 1226. In that case, the noncitizen was arrested and detained under § 1225 at the border and was subsequently paroled into the United States. 29 I. & N. Dec. at 66. She was subsequently re-detained and denied bond because she was deemed to be an "applicant for admission" under § 1225, and her parole, which is the only exception to mandatory detention under § 1225, was later revoked when she was served with a Notice to Appear, thus returning her to her status under § 1225. *Id.*

23. In July 2025, DHS abruptly adopted a new interpretation expanding on *Q. Li* and requiring detention under § 1225(b)(2)(A) for all noncitizens charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). On September 5, 2025, the BIA issued *Yajure Hurtado*, 29 I&N Dec. 216, adopting DHS's view and holding that all noncitizens present in the United States without admission are "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A). As a result, any individual who entered the country without inspection is ineligible for bond.

24. This Court has already rejected this interpretation, finding instead that individuals like Mr. Al Oshaishi are eligible for bond because they are detained pursuant to § 1226(a) and therefore eligible for release on discretionary bond. *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted sub nom. Aguirre Villa v. Normand*, No. 5:25-cv-100, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025).

25. Over 300 district courts have also rejected this position and have granted habeas petitions for petitioners like Mr. Al Oshaishi. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, Civ. No. 3:25-cv-05240, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, Civ. No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025), *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025); *Rosado v. Bondi*, Civ. No. 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez-Benitez v. Francis*, Civ. No. 25-5937, 2025 WL 2371588, ---F. Supp.3d ---- (S.D.N.Y. Aug.

13, 2025); *Dos Santos v. Lyons*, Civ. No. 1:25-cv-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, Civ. No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Escalante v. Bondi,* Civ. No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025); *O.E. v. Bondi*, Civ. No. 25-cv-3051, 2025 WL 2235056 (D. Minn. Aug. 3, 2025); *Arrazola-Gonzalez v. Noem*, Civ. No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, Civ. No. 25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 15, 2025); *Mayo Anicasio v. Kramer*, Civ. No. 4:25-cv-3158, 2025 WL 2374224 (D. Neb. Aug 14, 2025); *Rodriguez de Oliveira v. Joyce*, Civ. No. 2:25-cv-00291, 2025 WL 1826118 (D. Me. July 2, 2025); *Leal-Hernandez v. Noem*, Civ. No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos*, Civ. No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, Civ. No. 25-11631, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, Civ. No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Herrera Torralba*, Civ. No. 2:25-cv-01366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Kostak v. Trump*, Civ. No. 3:25-1093, 2025 WL 2473136 (W.D. La. Aug. 27, 2025); *Simpiao v. Hyde*, Civ. No. 1:25-cv-11981-JEK, 2025 WL 2607925 (D. Mass Sept. 9, 2024); *Garcia Cortes v. Noem*, Civ. No. 1:25-cv-02677, 2025 WL 2652990 (D. Colo. Sept. 16, 2026); *Jimenez v. Warden*, Civ. No. 25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, Civ. No. 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Velasquez Salazar v. Dedos*, Civ. No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept., 17, 2025); *Hasan v. Crawford*, 1:25-cv-1408, 2025 WL 2682255 (E.D. Va., Sept. 19, 2025);); *Singh v. Lewis*, Civ. No. 4:25-cv-96, 2025 WL 2699219 (W.D.Ky., Sept. 22, 2025); *Beltran Barrera v. Tindall*, Civ. No. 3:25-cv-541, 2025 WL 2690565 (W.D.Ky., Sept. 19, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541, (D.Me., Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, Civ. No. 2:25-cv-00479 (D.Me., Sept. 19, 2025).

26. The government's interpretation defies the INA's text and structure. Section 1226(a) explicitly applies to individuals charged as inadmissible after entry without inspection. Congress reinforced this point in 2025 by amending § 1226(c) through the Laken Riley Act to exclude from bond eligibility certain noncitizens who entered without inspection and committed crimes. If Congress had intended all such individuals to be subject to mandatory detention under § 1225(b)(2)(A), it would not have needed to create these specific carve-outs. Construing § 1225(b)(2)(A) as the government suggests renders § 1226(c)(1)(E) superfluous, in violation of the canon against surplusage. See *Corley v. United States*, 556 U.S. 303 (2009).

27. This approach is consistent with Eleventh Circuit precedent. In *Ortiz-Bouchet v. U.S. Attorney General*, 714 F.3d 1353 (11th Cir. 2013), the court held that noncitizens already present in the United States seeking to adjust status were not "applicants for admission." The Supreme Court has likewise recognized that mandatory detention under § 1225(b) applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is inadmissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

28. Therefore, the mandatory detention provisions of § 1225(b)(2) do not apply to Mr. Al Oshaishi, who was apprehended within the United States after his initial passage of his credible fear screening, seeking to rejoin his U.S. Citizen brother who has resided in the U.S. since 2015. CLP does not limit his access to asylum and the only remaining issue on appeal as to his asylum claim relates to sufficiency of persecution. Therefore, he is detained under § 1226(a) and is eligible for a bond hearing.

CLAIMS FOR RELIEF

COUNT I

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

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

30. The mandatory detention provision of § 1225(b)(2) does not apply to noncitizens like Mr. Al Oshaishi who have no criminal record and were apprehended inside the United States after their initial entry and passage of a Credible Fear Interview. Such individuals are in removal proceedings under INA 240 and detained under § 1226(a), thus are eligible for release on bond, as this Court has already found.

31. Respondent's decision to find that individuals like Mr. Al Oshaishi are detained under § 1225(b)(2)(A) when they are not currently in expedited removal proceedings nor classified as an alien subject to mandatory detention given his lack of criminal history, unlawfully denies him access to a bond hearing in violation of the INA.

COUNT II

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19

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

33. For decades, both Congress and the agencies charged with implementing the INA have recognized that individuals who were detained after entering without inspection are detained under § 1226(a) and eligible for bond, as reflected in implementing regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

34. Despite this clear regulatory framework, Respondent has unlawfully detained Mr. Al Oshaishi by misapplying § 1225(b)(2).

35. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires, including access to a bond

hearing, his continued detention violates the INA, its implementing regulations, and the Due Process Clause of the Fifth Amendment.

COUNT III

Violation of the Fifth Amendment Due Process

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

37. Under the Fifth Amendment of the Constitution, no person shall be deprived of liberty without due process of law. Freedom from imprisonment and government custody lies at the core of the liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The protections of the Due Process Clause extend to all persons within the United States, regardless of immigration status. *Id.* at 693.

38. Respondent's protracted detention of Mr. Al Oshaishi under § 1225(b)(2), without the possibility of release on bond or a meaningful custody redetermination, violates his right to due process under the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Aiman Ayesh Ahmed Al Oshaishi requests that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondent to show cause why the writ should not be granted within **three days**, pursuant to 28 U.S.C. § 2243;
3. Grant a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and ordering Respondent to provide him with an immediate bond hearing before an Immigration Judge applying § 1226(a);

4. In the alternative, order Petitioner's immediate release from custody under reasonable conditions of supervision if Respondent fails to provide such a bond hearing within a reasonable period of time;
5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
6. In the event the Court determines a genuine dispute of material fact exists regarding Petitioner's entitlement to habeas relief, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243;
7. Enter preliminary and permanent injunctive relief enjoining Respondent from further unlawful detention of Petitioner;
8. Declare that Petitioner's detention violates the INA;
9. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
10. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
11. Grant such further relief as this Court deems just and proper.

Dated: February 27, 2026

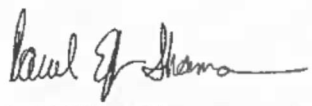
Respectfully submitted,

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DECLARATION OF LOCAL COUNSEL REGARDING VERIFICATION

I am local counsel for Petitioner in this matter. I have not yet had direct contact with Petitioner in order to verify this petition. The Petition for writ of habeas corpus is based on information provided by lead counsel and local counsel's review of all available records. Counsel will file a verification from Petitioner as soon as counsel receives it, or in the alternate, lead counsel will file a complete verification once admitted pro hac vice. Due to Petitioner being detained far from his counsel, it will take extra time to obtain verification from Petitioner directly, but because this is an urgent matter, counsel requests leave of the court to file the verification as soon as it is available.

Dated this 27th day of February, 2026.



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