

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Wesby Delien

Petitioner,

v.

Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security;
Department of Homeland Security, in his
official capacity;

Todd M. LYONS, Acting Director of
Immigration and Customs Enforcement;
Immigration and Customs Enforcement, in
his official capacity;

David EASTERWOOD, Field Office
Director of Enforcement and Removal
Operations, Minneapolis - St. Paul Field
Office, Immigration and Customs
Enforcement, in his official capacity;

Joel BROTT, Sheriff of Sherburne County
Jail, Minnesota, custodian of detainees of the
Sherburne County Jail.

Respondents.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

I. INTRODUCTION

1. Petitioner, Wesby Delien, is a 34-year-old native and citizen of Haiti, who lawfully entered the United States on humanitarian parole on or about January 24, 2024. *See* Ex. A, I-213 Notice to Appear. Petitioner was subsequently granted employment authorization. *Id.* On August 7, 2024, Petitioner filed an application for Temporary Protected Status, which remains pending. On November 27, 2025, Petitioner filed an I-589 application for asylum and withholding of removal, which also remains pending. *See* Ex. B., I-213 Record of Deportable Inadmissible Alien.
2. On or about December 23, 2025, Respondents detained Petitioner at his job at the Minneapolis-St. Paul Airport. Petitioner believes that he was randomly detained by Respondents based on his ethnicity as a black male, and the fact that he was working at the airport. Respondents have a disturbing and unlawful pattern of detaining any individual they encounter who appears to be non-white, including U.S. citizens, permanent residents, and legal immigrants like Petitioner.¹
3. On December 25, 2025, Respondents issued Petitioner a Notice to Appear (NTA), placing him in removal proceedings, and designating him as an “arriving alien.” *See* Ex. B, Notice to Appear.
4. Petitioner has languished in detention for over two months, without any individualized determination that he is a danger or a flight risk.

¹<https://www.startribune.com/allegations-of-racial-profiling-of-us-citizens-on-the-rise-as-ice-surge-expands-in-minnesota/601564653>, <https://www.nbcnews.com/news/us-news/ice-approaching-people-minneapolis-demanding-proof-citizenship-rcna254247>, <https://sahanjournal.com/immigration/ice-racial-profiling-minnesota-citizens-detained/>, <https://www.cbsnews.com/minnesota/news/aclu-class-action-lawsuit-against-federal-government-ice-minneapolis-operation-metro-surge/>

5. Petitioner has no criminal history.

6. Respondents appear to rely on 8 U.S.C. § 1182(d)(5)(A) to justify Petitioner's ongoing detention pursuant to 8 U.S.C. § 1225(b)(2). However, they are mistaken.

Numerous federal courts have found that re-detention of non-citizens who were granted humanitarian parole under § 1182(d)(5)(A) upon their initial arrival to the United States cannot be justified under the government's theory that they are "seeking admission."

HASANBOY OLIMOV, Petitioner, v. JAMAL JAMISON, Warden of Philadelphia Det. Facility, ET AL., Respondents., No. 2:26-CV-00532-JDW, 2026 WL 596155, at *4 (E.D. Pa. Mar. 3, 2026); *See also Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123 (D. Or. 2025); *Noori v. LaRose*, 807 F. Supp. 3d 1146 (S.D. Cal. 2025); *Bashir K. A. v. Klang*, No. 25-CV-4559 (KMM/DJF), 2026 WL 452353 (D. Minn. Feb. 17, 2026)

7. Likewise, *Matter of Q.Li*, 29 I&N Dec. 66 (BIA 2025) cannot be used to justify Petitioner's detention. In *Q.Li*, the Board held, among other things, that a non-citizen who is arrested and detained without a warrant *while arriving* in the United States is subject to detention under § 1225 and is not eligible for bond. *Id.* To the extent that *Q.Li* held that all non-citizens released on humanitarian parole under § 1182(d)(5)(A) must be detained after their period of parole expires or is revoked, that holding does not comport with due process in this case, because Petitioner has a due process interest in being free from detention. noncitizen. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

II. PARTIES

8. Respondent Markwayne Mullin is the Secretary of Homeland Security. He is sued in his official capacity. In that capacity, Defendant Mullin is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Petitioner.

9. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). He is sued in his official capacity. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also the legal custodian of Petitioner.
10. Respondent David Easterwood, is the Director of the St. Paul Field Office of Immigration and Customs Enforcement. As such, he is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.
11. Respondent Samuel Olson is the Chicago Field Office Director of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Petitioner's detention and which contracts with the Sherburne County Jail, where Petitioner is detained. He is sued in his official capacity.
12. Petitioner Joel Brott is the Sheriff of the Sherburne County Jail He is sued in his official capacity. In that capacity, he is the custodian of detained non-citizens, including Petitioner, housed at the Sherburne County Jail.

III. JURISDICTION AND VENUE

13. 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). Federal questions in this case arise under the Immigration and Naturalization Act, 8 U.S.C. § 1101-1524, and the United States Constitution.
14. 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).

Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because Petitioner is in Respondents' custody in the District of Minnesota. 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. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States.

IV. FACTUAL BACKGROUND

15. Petitioner is a native and citizen of Haiti, who lawfully entered the United States on January 24, 2024, pursuant to a grant of humanitarian parole. *See* Ex. C., I-261, Additional Charges of Inadmissibility/Deportability.
16. On August 7, 2024, Petitioner filed an I-821, Application for Temporary Protected Status. Ex. C. That application is pending.
17. Petitioner filed for asylum on or about November 27, 2025, Petitioner filed an I-589 Application for Asylum with USCIS Ex. C. That application remains pending.
18. Petitioner has lived and worked in Minnesota since 2024. He has no criminal history.
19. On or about December 23, 2025, Petitioner was arrested at the Minneapolis-St. Paul Airport, where he works. Respondents almost certainly arrested him solely on the basis of his perceived ethnicity as a Haitian man.
20. Petitioner has remained detained at the Sherburne County Jail for going on three months now, without any individualized determination of his flight risk.

V. LEGAL ARGUMENT

21. The court has authority to issue a writ of habeas corpus if an individual, including a noncitizen, "is in custody in violation of the Constitution or laws and treaties of the

United States.” 28 U.S.C. § 2241(c)(3); *See also Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957 (D. Minn. 2025).

22. There are two separate statutory schemes that govern the detention of non-citizens. 8 U.S.C. §1101-1524. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard removal proceedings. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As *the Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

23. In addition, while on release, the noncitizen may apply for asylum or other relief in the United States. 8 U.S.C. § 1158. While a grant of asylum is discretionary, the right to apply for asylum is not. The Refugee Act, codified in various sections of the INA, broadly affords a right to apply for asylum to any noncitizen, like Petitioner, “who is physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1); Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

24. The INA guarantees to noncitizens in standard removal proceedings who apply for asylum and other relief valuable procedural rights that reduce the risk of an erroneous

decision. These include the rights to legal counsel, 8 U.S.C. § 1229a(b)(4)(A) and § 1362; to present supporting evidence (both documentary and through lay and expert witness testimony) and to challenge through cross-examination adverse evidence during a full adversarial hearing before an immigration judge (IJ), 8 U.S.C. § 1148(b)(1)(B); to seek reconsideration or reopening of an adverse decision, 8 U.S.C. § 1229a(c)(6)-(7), to appeal an adverse decision of an IJ to the Board of Immigration Appeals based on the full evidentiary record, 8 U.S.C. § 1229a(c)(5), and to appeal an adverse decision of the Board to a federal circuit court of appeals, 8 U.S.C. § 1252(b).

25. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).
26. The second relevant means of detention is governed by 8 U.S.C. § 1225, which provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission under 8 U.S.C. § 1225(b)(2).
27. The mandatory detention scheme under 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at U.S. ports of entry who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added).
28. As to 8 U.S.C. § 1225(b)(1), this subsection provides for mandatory detention of

noncitizens subject to expedited removal. Because expedited removal provides very few procedural protections, it applies narrowly to only those noncitizens who are inadmissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). As relevant here, the government may not subject any other person to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

29. For noncitizens in expedited removal, the INA does not grant them the rights enshrined in standard removal proceedings. To begin, an immigration officer may order them removed “without further hearing or review,” 8 U.S.C. § 1225(b)(1)(A)(i), unless the noncitizen has expressed an intent to apply for asylum or a fear of persecution. But even then, the noncitizens’ rights are truncated. Although the immigration officer “shall refer the [noncitizen] for an interview by an asylum officer,” 8 U.S.C. § 1225(b)(1)(A)(i)-(ii), a “credible fear” interview differs from an asylum application. First, the INA does not, as it does during standard removal proceedings, guarantee the noncitizen with the rights to counsel, to present documents or witness testimony, or to cross-examine adverse evidence. See *id.* § 1225(b)(1)(B)(iv). Second if the asylum officer decides that the noncitizen does not have a credible fear of persecution, the noncitizen may seek review before an IJ, but review is limited to the record of the interview. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). Finally, if the IJ concurs with the asylum officer, the noncitizen is removed without any further review by the Board of Immigration Appeals or a federal court. Only if a noncitizen passes a credible fear interview may they apply for asylum and

related relief in full removal proceedings. See 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

30. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).
31. These two processes have governed removal proceedings for nearly three decades. The release provisions for noncitizens placed in standard removal proceedings under § 1226 and the mandatory detention provisions for noncitizens recently arriving in the United States under § 1225(b)(1) and (b)(2) were enacted in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585.
32. As this court is well aware, Respondents have embarked on path of unlawful detention of all non-citizens who have not been inspected admitted or paroled. *See* “Interim Guidance Regarding Detention Authority for Applicants for Admission.” Respondents have adopted this policy despite numerous federal courts holding that it is unlawful, across thousands of habeas petitions nationwide. *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA’s analysis in *Yajure Hurtado*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Martinez v. Hyde*,

CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump*, et al., 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025); *Eliseo A.A. v. Olson*, No. 25-CV-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), Doc. No. 226 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v Noem*, No. 0:25-cv-04584 (JWB-DJF), Doc. No 10. (D. Minn. December 18, 2025).

33. This case deals with a slight variation of the now familiar § 1225 vs § 1226 detention authority debate, namely whether someone who is given humanitarian parole is “deemed an applicant for admission under the humanitarian-parole provision.” *Bashir K. A. v. Klang*, No. 25-CV-4559 (KMM/DJF), 2026 WL 452353, at *4 (D. Minn. Feb. 17, 2026).

34. As discussed in *Bashir*, “[petitioner] is not subject to expedited removal proceedings and mandatory detention under Arriving Aliens Provision, for the reasons set forth in *Rodriguez-Acurio* 2025 WL 3314429.” No. 25-CV-4559 (KMM/DJF), 2026 WL 452353 at *5. As the court further explained, “the Arriving Aliens Provision subjects an alien who is arriving in the United States to expedited removal proceedings. Given the ordinary meaning of arriving it refers to a process that occurs upon physical entry to the

United States, not an interminable status that attaches to a noncitizen upon arrival.” *Id.* at *5 (internal quotations omitted).

35. With regard to the language of 8 U.S.C. § 1182(d)(5)(A) because once humanitarian parole expires or is terminated the noncitizen “to return or be returned from the custody from which he was paroled.” 8 U.S.C. § 1182(d)(5)(A). However, “the return to custody language in the humanitarian parole provision does not affirmatively authorize detention.” *Bashir K.A. v. Klang*, No. 25-CV-4559 (KMM/DJF), 2026 WL at *6.
- Additionally, § 1182(d)(5)(A) does not transform [Petitioner] into an arriving alien because he is no longer, in any sense, in the process of arriving in the United States.” *Id.*
- Thus, Petitioner is entitled to an individualized custody determination under 8 U.S.C. § 1226.

VI. CLAIMS FOR RELIEF COUNT 1

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

36. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
37. 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). 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)).

38. To avoid an abuse of discretion, the agency must articulate “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).
39. By detaining Petitioner without consideration of any individualized facts and circumstances applicable to him, and without finding that he is a danger to the community or a flight risk, and while his standard removal proceedings are still pending, Respondents have violated the APA.
40. The government previously considered Petitioner’s facts and circumstances and determined that he was not a flight risk or danger to the community, paroled him from custody, and placed him on the alternatives to detention program.
41. By detaining Petitioner without articulating a rationale based on his individualized circumstances, and by detaining him in contradiction of his individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA.

COUNT 1

Violation of the Immigration and Nationality Act

42. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
43. To the extent that Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2), his detention under that statute is unlawful. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and were explicitly released under 8

U.S.C. 1226. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

44. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT III

Violation of Due Process (Arbitrary Detention)

45. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
46. The Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to all persons within the United States. Once a noncitizen enters this country, whether the presence is “lawful, unlawful, temporary, or permanent,” the Due Process Clause applies to the noncitizen. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
47. Petitioner has a fundamental interest in liberty and being free from official restraint.
48. The government’s detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

Prayer for Relief

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

1. Assume jurisdiction over this matter;
2. Order Respondents not to remove Petitioner from the district of Minnesota during the pendency of this petition;

3. Declare that Petitioner's current detention without an individualized determination is unlawful;
4. Issue a writ of habeas corpus ordering Respondents to release Petitioner from custody, or, in the alternative, hold a prompt bond hearing to determine whether he should remain in custody;
5. Prohibit the Respondents from transferring Petitioner from the district without the court's approval;
6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7. Grant any further relief this court deems just and proper.

SANTANA DHAWAN, PLLC

Dated: March 5, 2026

/s/Evangeline Dhawan-Maloney

Evangeline Dhawan-Maloney
4600 W. 77th Street, Suite 239
Edina, MN 55435
(763) 726-8262
evangeline@santanadhawan.com