JS 44 (Rev. 04/21)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

## I. (a) PLAINTIFFS

Mushtaq Hussain

**(b)** County of Residence of First Listed Plaintiff Philadelphia
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*

David M Bercovitch, Bercovitch Law Offices, 100 S Broad Street, Suite 1902, Philadelphia PA 19110, 215-220-6310

## DEFENDANTS

Warden, Philadelphia Federal Detention Center

County of Residence of First Listed Defendant Philadelphia
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

**PRISONER PETITIONS**

Habeas Corpus:
- ☒ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

**FORFEITURE/PENALTY**
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**INTELLECTUAL PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

## V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 USC 2241

Brief description of cause:
Unlawful detention of a foreign national by the Department of Homeland Security

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

**DEMAND $**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

*(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 4/14/26

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

10/2024

**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DESIGNATION FORM**

Place of Accident, Incident, or Transaction: Philadelphia Federal Detention Center

***RELATED CASE IF ANY:*** Case Number:_____ Judge:_____

1. Does this case involve property included in an earlier numbered suit? Yes ☐
2. Does this case involve a transaction or occurrence which was the subject of an earlier numbered suit? Yes ☐
3. Does this case involve the validity or infringement of a patent which was the subject of an earlier numbered suit? Yes ☐
4. Is this case a second or successive habeas corpus petition, social security appeal, or pro se case filed by the same individual? Yes ☐
5. Is this case related to an earlier numbered suit even though none of the above categories apply? If yes, attach an explanation. Yes ☐

I certify that, to the best of my knowledge and belief, the within case ☐ **is** / ☒ **is not** related to any pending or previously terminated action in this court.

**Civil Litigation Categories**

***A. Federal Question Cases:***

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts)
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Wage and Hour Class Action/Collective Action
- ☐ 6. Patent
- ☐ 7. Copyright/Trademark
- ☐ 8. Employment
- ☐ 9. Labor-Management Relations
- ☐ 10. Civil Rights
- ☒ 11. Habeas Corpus
- ☐ 12. Securities Cases
- ☐ 13. Social Security Review Cases
- ☐ 14. Qui Tam Cases
- ☐ 15. Cases Seeking Systemic Relief ***see certification below***
- ☐ 16. All Other Federal Question Cases. *(Please specify)*:_____

***B. Diversity Jurisdiction Cases:***

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (*Please specify*):_____
- ☐ 7. Products Liability
- ☐ 8. All Other Diversity Cases: *(Please specify)*_____

I certify that, to the best of my knowledge and belief, that the remedy sought in this case ☐ **does** / ☐ **does not** have implications beyond the parties before the court and ☐ **does** / ☒ **does not** seek to bar or mandate statewide or nationwide enforcement of a state or federal law including a rule, regulation, policy, or order of the executive branch or a state or federal agency, whether by declaratory judgment and/or any form of injunctive relief.

**ARBITRATION CERTIFICATION (CHECK ONLY ONE BOX BELOW)**

I certify that, to the best of my knowledge and belief:

☒ db Pursuant to Local Civil Rule 53.2(3), this case is not eligible for arbitration either because (1) it seeks relief other than money damages; (2) the money damages sought are in excess of $150,000 exclusive of interest and costs; (3) it is a social security case, includes a prisoner as a party, or alleges a violation of a right secured by the U.S. Constitution, or (4) jurisdiction is based in whole or in part on 28 U.S.C. § 1343.

☐ None of the restrictions in Local Civil Rule 53.2 apply and this case is eligible for arbitration.

NOTE: A trial de novo will be by jury only if there has been compliance with F.R.C.P. 38.

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF PENNSYLVANIA**
**PHILADELPHIA DIVISION**

| | |
|---|---|
| **Mushtaq Hussain,**<br><br>Petitioner,<br><br>v.<br><br>**Warden**, Philadelphia Federal Detention Center, Philadelphia, PA,<br><br>**David O'Neill**, Acting Field Office Director, Philadelphia Field Office Immigration and Customs Enforcement,<br><br>**Markwayne Mullin**, Secretary U.S. Department of Homeland Security<br><br>**Todd Blanche**, Attorney General, U.S. Department of Justice,<br><br>Respondents. | Case No. _____<br><br>**PETITION FOR WRIT OF HABEAS CORPUS** |

## INTRODUCTION

1. Petitioner Mushtaq Hussain (hereinafter "Mr. Hussain"), A [redacted], seeks a writ of habeas corpus under 28 U.S.C. § 2241 challenging his current unlawful detention by Immigration and Customs Enforcement (hereinafter "ICE"). Mr. Hussain does not raise any issues of removability or the merits and/or adjudication of immigration applications.

2. Petitioner's habeas corpus petition is challenging the legality of Mr. Hussain's detention. Mr. Hussain entered without inspection at or near the United States-Mexico border on or about December 1st, 2024. DHS allowed him to reside in the community while his removal case proceeded, and he complied with all DHS reporting obligations.

3. Respondents are detaining Mr. Hussain as if he were subject to mandatory detention under INA § 235, 8 U.S.C. § 1225(b), notwithstanding that he was previously entered the United States. Respondents take the position that he is ineligible for a bond (custody redetermination) hearing before an Immigration Judge.

4. Mr. Hussain is properly detained, if at all, under INA § 236(a), 8 U.S.C. § 1226(a), and therefore is entitled to a prompt custody redetermination (bond) hearing. Absent an order from this Court, Mr. Hussain will continue to be detained without the bond-hearing procedures Congress provided in § 1226(a).

5. Mr. Hussain asks this Court to issue an Order to Show Cause, declare that § 1226(a) governs his detention, order Respondents to release Petitioner (or, in the alternative, order Respondents to provide him a prompt bond hearing before an Immigration Judge).

## JURISDICTION AND VENUE

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et. seq*. 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).

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq*., and the All Writs Act, 28 U.S.C. § 1651.

8. Venue is proper because Petitioner is detained at the Philadelphia Federal Detention Center in Philadelphia, PA, which is within the jurisdiction of this District.

## REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or order Respondents

to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

10. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. J.N.S.,* 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

## LEGAL FRAMEWORK

11. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

12. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *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), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

13. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(I) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

14. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

15. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

16. The detention provisions at§ 1226(a) and § 1225(b)(2) were enacted as part of 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. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

17. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained 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).

18. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at§ 1252(a)).

19. On July 8, 2025, ICE, "in coordination with" DOJ, started policy that rejected well-established understanding of the statutory framework, reversing decades of practice.

20. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

policy applies regardless of when a person is apprehended, and it affects those who have resided in the United States for months, years, and even decades.

21. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado.* There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

22. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities in over 1,600 decisions. Courts have likewise rejected *Matter of Yajure Hurtado,* which adopts the same reading of the statute as ICE. in over 1,600 cases[2] decided by over 300 different judges across the United States, the policy and/or *Matter of Yajure Hurtado* have been completely rejected. *Barco Mercado v. Francis et al.,* No. 25-06582, ECF No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025). *See also, Demirel v. Federal Detention Center Philadelphia, et al.,* No. 25-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (provided full list of cases as of November 18, 2025). Court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde,* No. CV 25-11613-BEM, --- F. Supp. 3d, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rasada v. Figueroa,* No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation*

[2] A January 5, 2026, Politico article notes that "More than 300 federal judges, including appointees of every president since Ronald Reagan, have now rebuffed the administration's six-month-old effort to expand its so-called "mandatory detention" policy, according to a POLITICO analysis of court dockets from across the country. Those judges have ordered immigrants' release or the opportunity for bond hearings in more than 1,600 cases." *See* https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494 (Last accessed March 10, 2026).

*adopted,* No. CV-25-02157 PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson,* No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem,* No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde,* No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce,* No. 25 CIV.6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem,* No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump,* No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi,* No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft,* No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem,* No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft,* No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde,* No. l:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg,* No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump,* No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer,* No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

23. Indeed, within the Third Circuit, the Western District of Pennsylvania, the Middle district (E.D. Pa. Dec. 22, 2025) (Beetlestone, C.J.); *Pereira v. O'Neill,* 2025 WL 3516665 (E.D.

Pa. Dec. 8, 2025) (Marston, J.); *Conde v. Jamison,* 2025 WL 3499256 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Suspes v. Rose,* 2025 WL 3492820 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Hidalgo et al. v. O'Neill,* No. 25-cv-6775 (E.D. Pa. Dec. 5, 2025) (Diamond, J.); *Delgado Villegas v. Bondi,* No. 25-cv-6143 (E.D. Pa. Dec. 4, 2025) (Diamond, J.); *Nogueira-Mendes v. McShane,* 2025 WL 3473364 (E.D. Pa. Dec. 3, 2025) (Slomsky, J.); *Juarez v. O'Neill,* 2025 WL 3473363 (E.D. Pa. Dec. 3, 2025) (Henıy, J.); *Yilmaz v. Warden of Fed. Det. Ctr. Philadelphia,* 2025 WL 3459484 (E.D. Pa. Dec. 2, 2025) (Rufe, J.); *Soumare v. Jamison,* 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025) (Henry, J.); *Flores Obanda v. Bondi,* 2025 WL 3452047 (E.D. Pa. Dec. 1, 2025) (Brody, J.); *Wu v. Jamison,* No. 25-cv-6469 (E.D. Pa. Dec. 1, 2025) (J. Gallagher); *Valdivia Martinez v. FDC,* No. 25-cv-6568 (E.D. Pa. Dec. 1, 2025) (J. Savage); *Morocho v. Jamison,* 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025) (Gallagher, J.); *Diallo v. O'Neill,* 2025 WL 3298003 (E.D. Pa. Nov. 26, 2025) (Savage, J.); *Centeno Ibarra v. Warden ofthe Fed. Det. Ctr. Philadelphia,* 2025 WL 3294726 (E.D. Pa. Nov. 25, 2025) (Rufe, J.); *Espinal Rosa v. O'Neill,* No. 25-cv-6376 (E.D. Pa. Nov. 25, 2025) (Weilheimer, J.); *Patel v. McShane,* 2025 WL 3241212 (E.D. Pa. Nov. 20, 2025) (Brody, J.); *Ndiaye v. Jamison,* 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025) (Sanchez, J.); *Demirel v. Fed. Det. Ctr. Philadelphia,* 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025) (Diamond, J.); *Kashranov v. Jamison,* 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025) (Wolson, J.); *Cantu-Cortes v. O'Neill,* 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025) (Kenney, J.). *Del Cidv. Bondi,* 3:25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Zumba v. Bondi,* Civ. No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Bethancourt Soto v. Louis Soto, et al.,* No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Lomeu v. Soto, et al.,* No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025).

24. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. Finding that the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

25. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

26. The text of§ 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(l)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). When Congress creates 'specific exceptions' to a statute's applicability, it proves that absent those exceptions, the statute generally applies.

27. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those people who are present without admission or parole.

28. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or 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).

29. Accordingly, the mandatory detention provision of§ 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

**PARTIES**

30. Petitioner Mr. Hussain is a citizen and national of Pakistan (See attached "**Exhibit A**"). His A-Number is [redacted].

31. Mr. Hussain is currently in civil immigration detention. ICE is holding Mr. Hussain at the Philadelphia Federal Detention Center, 700 Arch Street, Philadelphia PA 19106 (See attached "**Exhibit B**").

32. Respondent Warden, Philadelphia Federal Detention Center, Philadelphia, PA is Mr. Hussain's immediate custodian at the facility where he is confined and has day-to-day control over him.

33. Respondent David O'Neill**,** Acting Field Office Director, Philadelphia Field Office Immigration and Customs Enforcement (hereinafter "ICE") Enforcement and Removal Operations (hereinafter "ERO"), is responsible for ICE detention operations and custody decisions in the Philadelphia area.

34. Respondent, Markwayne Mullin, Secretary of the U.S. Department of Homeland Security (hereinafter "DHS") is sued in his official capacity and has authority to effectuate the relief requested.

35. Respondent, Todd Blanche**,** Attorney General of the United States is sued in his official capacity and has authority to effectuate the relief requested.

## FACTUAL BACKGROUND

36. Upon information and belief, on or about December 1st, 2024, Mr. Hussain entered the United States without inspection or parole pursuant to 8 U.S.C. 1182(a)(6)(A)(i) (INA § 212).

37. Upon information and belief, DHS then served Mr. Hussain with a Notice to Appear charging Mr. Hussain under INA § 212(a)(6)(A)(i).

38. Respondent was placed in removal proceedings in Executive Office of Immigration Review (EOIR) with the opportunity to present his case why he should not be Ordered removed from the United States.

39. Mr. Hussain timely filed a form I-589 application for asylum, withholding of removal and protection from convention against torture.

40. Mr. Hussain's next scheduled hearing with EOIR in Philadelphia is before Immigration Judge Melissa Fox on July 14, 2026 at 1:00 PM.

41. Upon information and belief, after Mr. Hussain has been physically present in the United States for more than a year before the April 13, 2026 arrest.

42. During that time, he has consistently complied with DHS supervision, including required ICE ERO check-ins.

43. After his arrival to the United States Mr. Hussain was scheduled for and attended regularly ICE ERO "check-in" appointments at the Philadelphia Field Office.

44. On April 13, 2026, Mr. Hussain appeared for his "check-in" appointment at ICE ERO, Philadelphia Field Office. However, this time Mr. Hussain was taken into ICE custody.

45. Respondents have taken the unconstitutional and unlawful position that Mr. Hussain is subject to mandatory detention under INA § 235, 8 U.S.C. § 1225(b), and therefore is not eligible for a bond hearing before the Immigration Court.

## CLAIMS FOR RELIEF

**COUNT I (Statutory/Ultra Vires) DHS lacks authority to detain under § 1225(b); detention is governed by § 1226(a); refusal to provide bond hearing violates the INA/regulations**

46. The averments contained in the preceding paragraphs one (1) – forty-five (45) are incorporated by reference as if fully contained herein.

47. Section 1225(b) (INA § 235) governs inspection-related detention of noncitizens who are arriving at the border; Section 1226 (INA § 236) governs arrest, detention, and release of noncitizens who have entered the United States and are held pending a decision on removal. INA § 236(a), 8 U.S.C. § 1226(a). This case involves a parolee who was inspected and paroled into the United States; once paroled, he is no longer in the process of "arriving" and the statutory detention authority, if any, is § 1226(a).

48. Mr. Hussain has been living in the community for over a year and is not arriving in the United States.

49. Respondents now attempt to reclassify Mr. Hussain as subject to mandatory detention under § 1225(b) to deny him any bond hearing. That position is inconsistent with the INA's text, structure, and purpose as applied to parolees who have already been inspected and permitted to enter under parole.

50. Courts have repeatedly held that noncitizens arrested in the interior after release into the community are detained under § 1226(a), not § 1225(b), and are entitled to the bond-hearing procedures Congress provided. *See*, e.g., *Coalition for Humane Immigrant Rights v.*

*Noem*, --- F. Supp. 3d ----, 2025 WL 2192986 (D.D.C. Aug. 1, 2025) (staying DHS action that expanded expedited removal to noncitizens previously paroled into the United States, concluding plaintiffs showed substantial likelihood of success that DHS exceeded statutory authority); *Rodrigo A. Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (E.D. Cal. Aug. 21, 2025), 2025 WL 2420390 (ordering immediate release and holding respondents may not re-detain absent a pre-deprivation bond hearing before a neutral arbiter at which the government must prove by clear and convincing evidence that detention is required); and *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 20, 2025) (granting petitioners partial summary judgment that § 1226(a) governs and bond process applies). *See also Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025) (granting habeas); and *Alberto Picon v. O'Neill*, CV 25-6731, 2025 WL 3634212 (E.D. Pa. Dec. 15, 2025) (granting habeas and ordering immediate release).

51. Because § 1226(a) governs, Mr. Hussain is entitled to a prompt bond (custody redetermination) hearing before an Immigration Judge pursuant to 8 C.F.R. § 236.1(d) and related regulations.

52. This Court should declare that § 1226(a) governs Mr. Hussain's detention and order Respondents to release Mr. Hussain unless and until such a hearing is provided.

**COUNT II (Due Process): Misclassification and categorical denial of any bond hearing deprives liberty without due process**

53. The averments contained in the preceding paragraphs one (1) – fifty-two (52) are incorporated by reference as if fully contained herein.

54. Civil immigration detention must comport with due process. By holding Mr. Hussain without any meaningful opportunity to seek release through the bond-hearing

procedures Congress and the regulations provide under § 1226(a), Respondents are depriving him of liberty without due process of law.

55. Where a person has been living in the community pursuant to DHS release and is then taken into custody, due process at minimum requires a prompt hearing before a neutral adjudicator to assess flight risk and danger. *See Rodrigo A. Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (E.D. Cal. Aug. 21, 2025), 2025 WL 2420390 (ordering immediate release and requiring, as a condition of any re-detention, a pre-deprivation bond hearing with a clear-and-convincing burden on the government).

56. Accordingly, this Honorable Court should order Respondents to immediately release Mr. Hussain. In the alternative, the Court should order Respondents to provide a prompt individualized bond hearing before an Immigration Judge at which the government bears the burden to justify continued detention.

57. This Court should grant any additional relief necessary to remedy the due process violation.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this matter;

**B. Order that Petitioner shall not be transferred outside the Eastern District of Pennsylvania while this habeas petition is pending;**

C. Issue an Order to Show Cause under 28 U.S.C. § 2243 directing Respondents to respond promptly to this Petition;

D. Declare that Respondents are unlawfully detaining Mr. Hussain under 8 U.S.C. § 1225(b) and that 8 U.S.C. § 1226(a) governs his detention;

E. Order Respondents to immediately release Mr. Hussain from custody; or, in the alternative, order Respondents to provide a prompt individualized bond hearing before an Immigration Judge (within seven (7) days) at which the government bears the burden to prove flight risk or danger;

F. Enjoin Respondents from re-detaining Petitioner no earlier than fourteen (14) days after Respondents file a certification of compliance with an order granting release from detention, and should Respondents choose to pursue re-detention under section 8 U.S.C. § 1226(a), they must first provide Petitioner with a bond hearing at which a neutral immigration judge will determine whether detention is warranted pending resolution of those removal proceedings;

G. Enjoin Respondents so they cannot remove, transfer, otherwise facilitate the removal of Petitioner from the Eastern District of Pennsylvania before an ordered bond hearing, but if a duly authorized under law immigration judge with jurisdiction finds Petitioner is subject to detention under 8 U.S.C. § 1226(a) after affording due process, the United States may seek leave before a federal district judge in the Eastern District of Pennsylvania to remove Petitioner from this district for unforeseen or emergency circumstances through a filed petition with good cause including the proposed destination for the Court's consideration following timely response from Petitioner;

H. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

I. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Date: April 14, 2026

/s/ David M. Bercovitch
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# EXHIBIT B

Official Website of the Department of Homeland Security

Report Cri

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# Facility Page

## Detention Information For:

**MUSHTAQ HUSSAIN**
**Country of Birth:** Pakistan
**A-Number:** [redacted]

## Current Detention Facility:

Philadelphia Federal Detention Center
700 Arch Street
NA
Philadelphia, PA 19106
**Visitor Information:** (215) 521-4000

MORE INFORMATION >

# ERO Office Information

Family members and legal representatives may be able to obtain additional information about this individual's case by contacting this ERO office:

PHILADELPHIA, PA, DOCKET CONTROL OFFICE
**Phone Number:** (215) 656-7164

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### Helpful Info

Status of a Case

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ICE ERO Field Offices

ICE Detention Facilities

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