

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

KARIM ALY AHMED HAMDY,

Petitioner,

v.

Civil Action No.

WARDEN, Irwin County Detention Center; TODD LYONS, Acting Director, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Department of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Karim Aly Ahmed Hamdy petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to compel his release from custody, as his current civil immigration detention violates the Due Process Clause of the United States Constitution and the Administrative Procedure Act.

JURISDICTION AND VENUE

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

2. This court has subject matter jurisdiction under 28 U.S.C. §§ 2241 and 1331, and Article I, section 9, clause 2 of the United States Constitution.

3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the INA, 8 U.S.C. § 1252(e)(2). This Court also has remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. Venue is proper in the United States District Court for the Middle District of Georgia, Columbus Division, pursuant to 28 U.S.C. § 1391(e)(1) and Local Rule 3.4, because at least one Respondent is in this District and Division, Petitioner is currently detained in this District and Division, and Petitioner's immediate physical custodian is in this District and Division.

PARTIES AND BACKGROUND

5. **Petitioner Karim Aly Ahmed Hamdy (A# [REDACTED])** is a native of Egypt, who entered the United States in 2024 on a B-2 visa. Petitioner is married to a lawful permanent resident of the United States; his spouse has filed a family-based immigrant petition (I-130) on his behalf; Petitioner has filed a Form I-485 application to adjust his status. *See*, Notice of Action on Form I-485, attached as **Exhibit 1**.

6. Petitioner was granted employment authorization (EAD) while awaiting adjudication of his I-485, which constitutes deferred action and placed him in an authorized stay in the United States. *See* Employment Authorization, attached as **Exhibit 2**. Petitioner's employment authorization expires in 2030. *See id.*

7. Petitioner was arrested and charged with "assault on a female" (his wife) in North Carolina in early 2026. The charge was dismissed on March 10, 2026. *See* Docket Sheet, attached as **Exhibit 3**. At present, no criminal matters remain pending

related to Petitioner.

8. While Petitioner was in custody for the assault charge, despite being in an authorized period of stay, an ICE detainer was lodged, and Petitioner was taken into ICE custody following his release from police custody. Petitioner has been in ICE detention since then. According to the Notice to Appear, Petitioner was admitted into the United States but “remained in the United States beyond May 27, 2025 without authorization....” *See* Notice to Appear (“NTA”), attached as **Exhibit 4**.

9. However, the NTA is incorrect. Petitioner received an extension of his B-2 status through November 26, 2025. *See* B2 Approval Notice, attached as **Exhibit 5**. Prior to the end of this extension, Petitioner received his employment authorization per his pending I-485 application to adjust status. *See* Ex. 2 (valid from 9/24/2025).

10. Accordingly, Petitioner’s arrest and detention in ICE custody is unlawful while he is in an authorized period of stay, without revocation of the same.

11. Petitioner filed a motion with the Stewart Immigration Court seeking release from ICE custody. On March 24, 2026, the immigration judge denied Petitioner’s request for release, finding that it was *Petitioner’s* burden to show that he was not a danger to society if released. Specifically, the immigration judge found:

Respondent has failed to meet his burden to show that he is not a danger to persons or property. He has only been in the US for a little over one year and has already been arrested for assault on a female. Respondent introduced evidence to show that the charge was dismissed because the primary witness did not want to proceed and because he was in ICE detention. However, this does not satisfy the court that the incident, for which probable cause was found to make the arrest, did not occur, or that his actions on the date in question did not involve violence, threat, or harm to another. Respondent did

not submit any documentation in relation to the arrest (i.e., no police or investigation report), and, while he asserts that his wife was the alleged victim in the criminal case, her written statement to the court makes no mention of the incident. **It is Respondent's burden to satisfy the Court that he is not a danger and he has failed to do so based upon the evidence presented.**

See Order of the Immigration Judge, attached as **Exhibit 6** (emphasis supplied).

12. Petitioner remains detained at the Irwin County Detention Center in Ocilla, Georgia, within this District and Division. Thus, Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

13. **Respondent Warden** is the Warden of Irwin County Detention Center, where Petitioner is being held. Respondent Warden is a legal custodian of Petitioner and he is sued in his official capacity.

14. **Respondent Todd Lyons** is Acting Director, United States Immigration and Customs Enforcement (“ICE”). ICE is the federal agency responsible for custody decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. As Acting Director of ICE, Respondent Lyons has authority over its actions, including Petitioner’s detention. He is sued in his official capacity.

15. **Respondent Markwayne Mullin** is the Secretary of the United States Department of Homeland Security (“DHS”). DHS is the federal agency that has authority over the actions of ICE. As Secretary of DHS, Respondent Mullin has authority over its actions, including Petitioner’s detention. He is sued in her official capacity.

16. **Respondent Todd Blanche** is the Acting Attorney General of the United States and the senior official of the U.S. Department of Justice. He is sued in his official capacity. In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Blanche is responsible for decisions relating to noncitizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. Therefore, he is also Petitioner's legal custodian.

LEGAL FRAMEWORK

17. District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). The Constitution guarantees that the writ of habeas corpus is available to every individual detained within the United States. *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. Art. I, § 9, cl. 2); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.”).

18. A district court's power includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Indeed, 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).

Petitioner's Detention While in an Authorized Period of Stay is Unlawful

19. The filing of a Form I-485 “places the foreign worker in a period of authorized stay until the USCIS decides whether to grant the employee lawful permanent resident status.” *Samiappan v. Su*, 2024 WL 990065, at *1 (N.D. Tex. Feb. 16, 2024). This “period of stay authorized by the Attorney General,” mandates that the applicant “only become ‘unlawfully present’ for purposes of removal upon denial of [their] application.” *Curva v. United States Citizenship & Immigr. Servs.*, 2010 WL 11530932, at *5 (C.D. Cal. Jan. 11, 2010) (quoting 8 U.S.C. 1182(a)(9)(B)(ii)).

20. Only when USCIS renders a negative determination, does the applicant become unlawfully present in the United States. 8 U.S.C. 1182(a)(9)(B)(ii). In such cases, DHS will issue a notice to appear after the conclusion of the period of authorized stay. *See, e.g., Kok Wei Cheah v. Att’y Gen. of U.S.*, 384 F. App’x 96, 97 (3d Cir. 2010) (DHS issued an NTA charging the petitioner with removability because he did not leave the United States at the conclusion of his authorized stay); *Ablahad v. Gonzales*, 230 F. App’x 563, 564 (6th Cir. 2007) (same); *Nasserian v. Ridge*, 2004 WL 2826823, at *1 (N.D. Tex. Dec. 8, 2004) (same).

21. Here, ICE has charged Petitioner with exceeding his authorization to remain in the United States beyond May 27, 2025, the date his B2 visa expired. *See* Ex. 4.

22. Petitioner’s B2 visa, however, was extended through November 2025, and prior to that date he obtained work authorization through his pending I-485. *See* Exs. 1, 2 & 5.

23. Because Petitioner's EAD remains valid, his I-485 remains pending, and Respondents have not denied his I-485 or revoked his authorized stay, his detention is unlawful. Petitioner should be released.

Even if Petitioner's Stay is Revoked, He Should be Released from Custody

24. Alternatively, Petitioner's constituted detention remains unlawful because the immigration judge erroneously applied the wrong burden.

25. The Government is detaining Petitioner awaiting a final decision as to whether the government will order him to be removed. Such detention is subject to 8 U.S.C. § 1226(a). *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1334 (M.D. Ga. 2020).

26. Under section 1226, detention is discretionary. "The statute provides no guidance as to how IJs make discretionary bond determinations. Section 1226(a) is silent as to whether the Government or the noncitizen bears the burden of proof." *Id.*

27. In *J.G.*, Judge Lawson joined the authority from the Ninth and Second Circuits "as well as 'the overwhelming majority of district courts' that hold the Government must bear the burden of proof to justify a noncitizen's detention pending removal proceedings." *Id.* at 1335 (quoting *Hernandez-Lara v. Immigr. & Customs Enft, Acting Dir.*, No. 19-cv-394-LM, 2019 WL 3340697, at *3 (D.N.H. July 25, 2019)) & (collecting cases).

28. Here, the immigration judge placed the burden of persuasion on *Petitioner* to prove that he was not a danger based on the dismissed criminal charge. *See* Ex. 6.

29. The immigration judge relied on evidence supplied by Petitioner to show that his criminal charge (against his wife) was dropped. But then the immigration judge discounted Petitioner's wife's declaration in support of his release, and instead relied on speculation about the offense to justify continued detention, without the government providing any evidence supporting that Petitioner would be a danger.

30. The immigration judge faulted Petitioner for not providing evidence that his actions "did not involve violence, threat, or harm to another," which is not only negative evidence, but also the government's burden. The immigration judge also faulted Petitioner for not "submit[ting] any documentation in relation to the arrest (i.e., no police or investigation report)." Again, the immigration court placed the burden on Petitioner, which violates his rights under the Due Process Clause, necessitating release, or alternatively, a bond hearing where the burden of persuasion is placed on the government.

COUNT I
Violation of Fifth Amendment Right to Due Process
(against all Respondents)

31. Petitioner re-incorporates and re-alleges paragraphs 1-30 above as if fully set forth herein.

32. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. While certain constitutional protections do not extend outside the "geographic borders" of the United States, "legal circumstances change" as soon as a noncitizen "enters the country." *Id.*; see also *A.A.R.P. v. Trump*, 605

U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”) (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam)).

33. To determine whether civil detention violates a detainee’s due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See id.* at 335.

34. Here, all three factors favor Petitioner. He has a significant private interest at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (freedom from physical detention is “the most elemental of liberty interests”); *see also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”).

35. Petitioner is experiencing all the deprivations that come with physical detention, including separation from his lawful-permanent resident spouse and community.

36. Next, there is a large risk of the erroneous deprivation of Petitioner’s liberty interest through the procedures used in the immigration court proceedings. This is

equally true where the government placed Petitioner in a period of authorized stay while he seeks adjustment of status, yet it detains him based on the purported expiration of a B2 visa that was extended beyond the date identified in the NTA, and was later vitiated through Petitioner's application to adjust his status.

37. Alternatively, even if Petitioner was not in an authorized period of stay, the government improperly placed the burden of persuasion on him to justify his release based on his dismissed criminal charge.

38. Finally, to the extent there is any government interest in detention, it is minimal compared with Petitioner's liberty interest.

COUNT II
Ultra Vires Agency Action Not Authorized by Congress
(against all Respondents)

39. Petitioner re-incorporates and re-alleges paragraphs 1-30 above as if fully set forth herein.

40. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268 (1954). Agencies must follow their own "existing valid regulations," even where government officers have broad discretion, such as in the area of immigration. *Id.* at 268; *see also Gonzalez v. Reno*, 212 F.3d 1338, 1349 (11th Cir. 2000) ("Agencies must respect their own procedural rules and regulations."); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to follow their own procedures ... even where [they] are possibly more rigorous than otherwise would be required.").

41. A violation of the *Accardi* doctrine may constitute a violation of the Fifth Amendment's Due Process Clause. *United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014) (recognizing that an *Accardi* violation may be a due process violation,); *Jean v. Nelson*, 727 F.2d 957, 976 (11th Cir. 1984) (“Agency deviation from its own regulations and procedures may justify judicial relief in a case otherwise properly before the court.”).

42. Respondents’ actions were in direct contravention to the Immigration and Nationality Act and its implementing regulations. Such action violates the Fifth Amendment under the *Accardi* doctrine.

COUNT III
Violation of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A)
(against all Respondents)

43. Petitioner re-incorporates and re-alleges paragraphs 1-30 above as if fully set forth herein.

44. 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).

45. Congress has made it clear that mandatory detention under 8 U.S.C. § 1225(b) applies to “applicant[s] for admission” who are determined to be “seeking admission.” By contrast, Congress permits other noncitizens who are arrested on a warrant issued by the Attorney General to be detained (using the language “may”) but those noncitizens are also eligible for release on bond. 8 U.S.C § 1226(a).

46. Petitioner entered the United States with inspection in 2024. He then applied to adjust his status and was placed in a period of authorized stay. The government ignores that. It contends he overstayed his visa, while conveniently ignoring that the visa was extended and then Petitioner filed an application to adjust. The basis for his arrest and detention by ICE is therefore in violation of the agency's procedures.

47. Respondents' determination that Petitioner overstayed his visa was arbitrary, capricious, an abuse of discretion, and not otherwise in accordance with law. 5 U.S.C. § 706(2)(A). Indeed, "ICE, like any agency, 'has the duty to follow its own federal regulations.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (quoting *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003)).

48. Because Petitioner is not subject to detention, Respondents' issuance of the NTA and decision to arrest and detain him was unlawful.

COUNT IV
Ultra Vires Agency Action Not Authorized by Congress
(against all Respondents)

49. Petitioner re-incorporates and re-alleges paragraphs 1-30 above as if fully set forth herein.

50. Before USCIS is an application to adjust Petitioner's status to permanent residence (I-485).

51. During the pendency of Petitioner's I-485 application, he is not unlawfully present in the United States under the INA.

52. Notwithstanding, Respondents issued an NTA to Petitioner, arrested him, and detained him in custody, where he remains at the time of filing.

PRAYER FOR RELIEF

Petitioner Karim Aly Ahmed Hamdy respectfully requests that the Court:

- A. Retain jurisdiction over this action;
- B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. § 2243;
- C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act, and the Administrative Procedure Act;
- D. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or in the alternative provide a bond hearing under 8 U.S.C. § 1226(a) where the burden of proof as to flight risk and danger is placed on the government and the immigration judge must consider alternatives to detention;
- E. Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- F. Grant all other relief that the Court deems just and proper.

Dated: April 20, 2026

Respectfully submitted,

/s/ James M. Slater

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

I submit this verification on behalf of Petitioner Karim Aly Ahmed Handy because I am the Petitioner's attorney. I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 20, 2026

/s/ James M. Slater

James M. Slater