UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YOK

Ousmane SAVANE,

Petitioner,

v.

LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General.

Respondents.

Case No. 1:25-cv-06666-GHW

FIRST AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Ousmane Savane ("Petitioner" or "Ousmane") brings this amended petition to challenge his unlawful detention on August 12, 2025, following a routine appearance at the Executive Office of Immigration Review (EOIR), Office of the Immigration Judge ("IJ") located in New York, New York-290 Broadway, 15th Floor, New York, New York 10007.
2. Ousmane came to the United States to seek safety. He arrived on or about December 21, 2023. He was detained in the custody of Immigration and Customs Enforcement (ICE) in California until January 18, 2024, when he was released on his own recognizance pursuant to 8 U.S.C. § 1226. *See* Exh. 1, Release on Own Recognizance (ROR)(ROR sets forth "You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply

with the following conditions:").

3. On the same day he was released, Ousmane was also served with a Notice to Appear (NTA) that required him to appear before an Immigration Judge at 290 Broadway, 15th Floor, New York, New York 10007 on September 17, 2024, at 8:30am. *See* Exh. 2, NTA. Ousmane was charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i), Immigration and Nationality Act (INA) § 212(a)(6)(A)(i), a charge applicable to individuals who entered without inspection and are "present in the United States without admission or parole." It does not designate him as an "arriving alien."
4. Ousmane did as he was told—he appeared on September 17, 2024, before the Immigration Court at 290 Broadway, 15th Floor, New York, New York 10007 and received another date to return to Court on August 12, 2025.
5. Following his September 17, 2024 court date, he filed a timely asylum application on December 14, 2024.[1]
6. On August 12, 2025, Ousmane appeared again before the same Immigration Court in Manhattan and his case was set for a future hearing in 2027 for adjudication of his asylum application. But rather than let him return home and await that hearing, Respondents detained Ousmane after he exited the immigration courtroom into the hallway of the Court without prior notice or explanation.
7. From the time he was detained, late morning or midday on August 12, until the evening of August 13, 2025, he was held in extremely harsh conditions at 26 Federal Plaza, a federal building across the street from the Immigration Court at 290 Broadway. Ousmane—a

[1] Given the confidential nature of the asylum application, it is not being submitted as an exhibit hereto.

practicing Muslim—was not given food that was permissible for him to eat as a Muslim and did not have a bed, bathing facilities, or a change of clothes.

8. On the evening of August 13, 2025, Ousmane was taken by Respondents, ICE to the Orange County Jail in Goshen, New York where he is now detained.[2]

9. As of August 18, 2025, Osumane is detained in a cell alone, without the ability to leave the cell unless granted permission by the Orange County Jail officials. He is also not receiving a Halal diet as a practicing Muslim and was required to consent to a strip search in order to meet with undersigned counsel in person on August 16, 2025.

10. Ousmane's confinement is unlawful, and he brings this Petition seeking immediate and unconditional release. He also asks this Court to enjoin his transfer out of the jurisdiction of this Court.

PARTIES

11. Petitioner Ousmane Savane is a citizen of Guinea who lives the Bronx, New York. He was detained at 26 Federal Plaza in Manhattan at the time of the filing of the instant petition. Since the evening of August 13, 2025, Ousmane has been detained at the Orange County Jail in Goshen, New York.

12. Respondent LaDeon Francis is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Francis's address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.

[2] Upon information and belief, Respondents, ICE, have a contract with the Orange County Jail to house people who are in civil detention in ICE custody.

13. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigrations and Customs Enforcement. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Oliver.

14. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

15. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

16. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Ousmane was detained by Respondents on August 12, 2025.

17. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All-Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

18. Venue is proper in this Court because Petitioner was detained by Respondents in Manhattan, within the jurisdiction of this Court, at the time of filing. He remains detained in this jurisdiction.

SPECIFIC FACTS ABOUT PETITIONER

19. Ousmane is a 22-year-old citizen of Guinea and resident of New York City. Prior to his unnoticed detention by Respondents, ICE, on August 12, 2025, he was living in the Bronx, New York.

20. He came to United States on or about December 21, 2023, to seek safety and apply for asylum. Respondents initially detained Ousmane on or about December 21, 2023. On January 18, 2024, Ousmane was released on his own recognizance pursuant to 8 U.S.C. § 1226. *See* Exh. 1, ROR.

21. On January 18, 2024, Respondents issued Ousmane an NTA that required him to appear before the New York Broadway Immigration Court at 290 Broadway, 15th Floor, New York, New York 10007 on September 17, 2024, at 8:30am. *See* Exh. 2, NTA.

22. Since entering the United States, Ousmane has been going to school to learn English. Ousmane also attended a Mosque in New York and become a member of African Communities Together, a community organization. He regularly attended events with African Communities Together.

23. Ousmane is a practicing Muslim and maintains a halal diet.

24. Although Osumane does not have any criminal convictions in the United States, he did receive a ticket for entry into the subway without paying. Late for his English glasses, Ousmane went through an open gate at the subway station near his home in the Bronx, New York and received a ticket. The resulting case was ultimately dismissed.

25. Ousmane dutifully attended his most recent Immigration Court hearing on August 12, 2025. During this hearing, the Immigration Judge set his case for a final hearing on his asylum application in April 2027.[3]

26. On August 12, 2025, as Ousmane was leaving the courtroom, he was surrounded and detained by Respondents. As is set forth *supra,* Ousmane had not been given any prior notice or warning that he was going to be arrested after attending his Immigration Court date on August 12, 2025.

27. At the time of his arrest, Ousmane was exiting the courtroom with two volunteer attorneys, who were present for the purpose of accompanying him. One of the three ICE officers asked Ousmane just outside the courtroom to identify himself. After getting his name, the ICE officers verified that Ousmane was on their list of people to arrest in court and proceeded to arrest him. When one of the volunteer attorneys accompanying Ousmane asked to see the judicial warrant justifying Ousmanee's arrest, one of the ICE Officers showed the attorneys an unsigned administrative warrant.

28. Respondents have not provided any explanation for their decision to detain Ousmane.

29. Since Ousmane's arrest on the morning on August 12, 2025, he has remained detained. He

[3] Undersigned counsel does not represent Ousmane in his immigration proceedings pending before EOIR. However, because undersigned counsel has his alien registration number it is possible to check an online EOIR system. Based upon the information available on the online EOIR system as of August 17, Ousmane now has an immigration court date on August 20, 2025, at 10:00am but it does not indicate the location of the hearing. *See* https://acis.eoir.justice.gov/en/caseInformation

was initially moved across the street and detained at 26 Federal Plaza from August 12, 2025 to the evening of August 13, 2025. During that time, he did not have a bed to sleep. He received food twice per day but it was not halal and appeared to have pork in it. In the evening of August 13, 2025, he was transferred to the Orange County Jail in Goshen, New York.

CAMPAIGN OF ARRESTS AND DETENTIONS

30. On or about May 20, 2025, Respondents began a nationwide campaign to arrest and detain people attending their immigration court hearings. Initially, this was tied to motions to dismiss removal proceedings for people present in the U.S. for under two years, predicated on Respondents' intention to place them into expedited removal proceedings instead of full removal proceedings. After such a motion was made, and irrespective of the outcome, Respondents would then arrest and detain individuals immediately after their appearance in immigration court. But the arrest and detention campaign appears to have now expanded, targeting even people for whom no motion to dismiss has been made or who are not eligible for expedited removal for detention.

31. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses. The detentions are not individualized: on information and belief, Respondents create lists of individuals to be detained and then proceed to detain every single one, even in the face of protests such as that the person has minor children or medical conditions or cannot lawfully be subject to expedited removal. Detention decisions are not predicated on any indication that the individuals detained now pose any flight risk or danger.

32. Once detained, New Yorkers targeted by this campaign are held incommunicado for several days or in some cases even longer. Family members often not hear from them for days and the ICE locator, an online portal, may not reflect their location or reflects a detention center

at which (according to facility staff there) detainees are not actually present. Respondents will not confirm detainees' location during this time and will not facilitate legal calls or visits. Public reporting and reports from people in detention have indicated that hundreds of people are regularly being held for prolonged periods in rooms inside 26 Federal Plaza in Manhattan, which is a temporary holding area intended for a much smaller number of people.

33. The conditions inside 26 Federal Plaza are inhumane. Individuals detained do not have access to beds, regular meals, or communication with loved ones or counsel. People also report that they are not able to bathe or change clothes; that the temperature can be extremely hot or cold; and that medical care is not provided. Detainees are also not given access to counsel.

34. In Ousmane's case, undersigned counsel was only able to obtain a legal call after the Honorable Lewis Kaplan issued a temporary restraining order in *Barco Mercado v. Noem,* Case No, 1:25-cv-06568-LAK, ECF No. 65, (S.D.N.Y. Aug. 12, 2025).

LEGAL FRAMEWORK

35. Simply put, Respondents' actions against Ousmane cannot be deemed permissible against the backdrop of the Constitution and well-settled law, both of which militate in favor of granting Ousmane's immediate release. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("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."); *id.* at 693 ("[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."); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (similar). "Procedural due process rules are meant to protect against

the mistaken or unjustified deprivation of life, liberty, or property." *A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1367 (2025) (cleaned up).

36. "The Supreme Court long ago held that the Fifth Amendment entitles noncitizens to due process in removal proceedings." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024). Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

37. The INA provides for removal proceedings to be the "sole and exclusive" procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. 1229a. Section 1229a(a)(3) states that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."[4]

38. Ousmane is currently in removal proceedings under §1229a.

39. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas*, 533 U.S. at 690. For individuals who are arriving in the U.S. or who are subject to expedited removal because they have been present under two years and meet certain other requirements, mandatory detention is authorized by 8 U.S.C. § 1225(b)(2). For individuals who are in removal proceedings following entry without inspection and who are not subject to mandatory detention based on criminal history, detention is normally authorized by 8 U.S.C. § 1226(a).

[4] "Attorney General" in Section 1254a now refers to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

Individuals with a final order of removal may be subject to mandatory or discretionary detention pursuant to 8 U.S.C. § 1231(a).

40. In May 2025, the Board of Immigration Appeals (BIA) held that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). As a result of this new decision, many individuals who were encountered or presented themselves to immigration authorities shortly after entering the U.S. and who previously qualified for release on their own recognizance or bond now no longer do.

41. On July 8, 2025, Respondents promulgated an internal memo directing attorneys representing ICE before EOIR to argue for an even more expansive interpretation of who is subject to mandatory detention. This memo, now leaked to the public, states that "effective immediately, it is the position of DHS that [any noncitizens who have not been admitted to the country] are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)] parole. These [noncitizens] are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration just and may not be released for the duration of their removal proceedings absent a parole by DHS."

42. Since that memorandum, individuals like Ousmane initially released from custody pursuant to 8 U.S.C. § 1226(a) now find that when re-detained Respondents—and more recently the U.S. Attorney's Office—assert their custody is pursuant to 8 U.S.C. § 1225(b) and therefore mandatory.

43. Respondents' position on their own detention authority contradicts decades of settled precedent that individuals who entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a). Regulations promulgated nearly thirty years ago provide that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until now, Respondents consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*, 25 I&N. Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N. Dec. 572 (A.G. 2003); *see also* Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

44. Since this shift, a growing number of courts, including in this District, have rejected Respondents' contention that entrants without inspection previously released pursuant to § 1226(a) are now subject to mandatory detention under § 1225(b). *Lopez Benitez v. Francis*, --- F.Supp.3d ----, 2025 WL 2371588 at *9-12 (S.D.N.Y. August 13, 2025) (ECF No. 14) ("*Lopez Benitez*"); *Kelly v. Almodovar et al*, 25-cv-06448 (AT), 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025); *Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025); *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025) and *Rodriguez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025).

45. Although civil immigration detention is authorized by statute, that detention serves only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

46. DHS makes initial custody determinations pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody *only* "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez* at *10.

47. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). The *Mathews* factors are: (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." *Mathews*, 424 U.S. at 335.

48. This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest. Revocation of conditional release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole; probation; and freedom from civil

immigration confinement. *See Valdez*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

49. As to process, at a minimum, in the context of revocation of civil release, "an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing." *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022).

50. Despite these baseline requirements, Respondents now regularly re-detain individuals notwithstanding an earlier determination to release them and do so without according any notice or process whatsoever. These redetentions violate noncitizens' right to due process. *See Lopez Benitez*, --- F.Supp.3d ----, 2025 WL 2371588 at *15 (ordering immediate release of Petitioner redetained in immigration court and noting " [i]n practice, Respondents seem to be detaining some arbitrary portion of such individuals as they leave their regularly scheduled immigration court proceedings. But treating attendance in immigration court as a game of detention roulette is not consistent with the constitutional guarantee of due process."); *Kelly*, 2025 WL 2381591 at *3 (ordering immediate release of Petitioner and writing that "[t]he suggestion that government agents may sweep up any person they wish and hold that person in the conditions in which Kelly was held without consideration of dangerousness or flight risk so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment."); *Chipantiza*, 2025 WL 1927931, at *3 (ordering the immediate release of a

petitioner redetained by ICE because she "poses a risk of flight or a danger to the community" and her sudden redetention violated her right to due process) and *Valdez*, 2025 WL 1707737, at *4 (ordering the release of petitioner redetained after an immigration court hearing and concluding "Respondents ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.").

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (Substantive Due Process)

51. Ousmane repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

52. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Noncitizens unquestionably have a substantive liberty interest to be free from detention. *See id*.

53. Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *Salerno*, 481 U.S. at 755). Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also Schall v. Martin*, 467 U.S. 253, 264 (1984)

(finding detention must be a proportional—not excessive—response to a legitimate state objective).

54. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 853-54 (2d. Cir. 2020); *Faure v. Decker*, No. 15-CV-5128, 2015 WL 6143801, at *3 (S.D.N.Y. Oct. 19, 2015) (ordering release or a bond hearing where there was "no evidence" that the habeas petitioner "poses a danger to the public or would flee during the pendency of the removal proceedings"). Neither purpose is served by Ousmane's detention.

55. Ousmane is not a flight risk nor is he a danger to the community. The government already determined so when it decided to release him on his own recognizance after arresting and detaining him. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Since his release, Ousmane has followed all of the procedures and requirements of the immigration system, including attending his immigration hearing. In that time, he has also deepened his ties to the United States, integrating into his community in New York City and learning English.

56. The government is not detaining Ousmane to serve its legitimate interests in protecting against danger or flight risk. Instead, the government is detaining Ousmane, along with countless others swept up in its courthouse arrests, for the understandable but patently illegitimate reason that he was easy to locate. He was where the government told him to be to pursue his asylum claim. But "while [DHS] might want to enforce this country's immigration laws

efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1, at *1284720 (W.D.N.Y. May 2, 2025). Because Ousmane's detention basis bears no "reasonable relation" to the government's interests in preventing flight and danger, *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), Respondents' detention of Ousmane is unjustified and unlawful. *See also Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk").

57. Accordingly, Ousmane is being detained in violation of his Constitutional right to Due Process under the Fifth Amendment.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION (Procedural Due Process)

58. Ousmane repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

59. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

60. Ousmane's detention violates the Due Process Clause. He has a liberty interest in his freedom from detention pending the outcome of his removal proceedings. He was determined not to pose danger or flight risk when he was released from custody on his own recognizance on January 18, 2024; he has since applied for asylum and diligently attended immigration court, including most recently on September 17, 2024. There is no reason to now conclude he poses a danger or flight risk.

61. He was also not accorded sufficient process prior to his sudden re-detention by ICE on August 12, 2025. He has received neither notice nor an opportunity to be heard as to whether a change in custody status was warranted. *See Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment"); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3; *Valdez*, 2025 WL 1707737, at *4; *Kelly*, 2025 WL 2381591 at *3 (same).

62. Respondents are likely to now contend in administrative proceedings that Ousmane is ineligible for bond under *Matter of Q Li*, 29 I. & N. Dec. 66 (BIA 2025) and their own more capacious interpretation of the mandatory detention provision at 8 U.S.C. § 1225(b). Mandatory detention without access to a bond hearing violates Petitioner's right to due process.

63. Respondents' actions violate Ousmane's right to due process.

COUNT THREE

VIOLATION OF THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION
(Unlawful Arrest)

64. Ousmane repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

65. The Fourth Amendment protects the right of the people to be secure in their persons against unreasonable searches and seizures. U.S. Const. amend. IV. "It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable." *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020). This requirement that further seizure requires a court order or new probable cause "guards against precipitate rearrest." *Carlson v. Landon*, 342 U.S. 524, 546 (1952).

66. Ousmane's redetention violates the Fourth Amendment because it had no basis apart from his removability from the U.S., which was the same cause that justified his prior detention.

67. An administrative arrest provides a valid basis for initial detention of a noncitizen, *Abel v. United States*, 362 U.S. 217, 233 (1960), but the BIA and DHS have long required a showing of changed circumstances to alter prior bond and release determinations. *See Saravia*, 280 F. Supp. 3d at 1197 (discussing government counsel's representations regarding DHS' practice of re-arresting only after a material change in circumstances). Numerous courts have also recognized that noncitizens, including asylum seekers like Ousmane, cannot be rearrested based on the same probable cause. *Lopez*, 2018 WL 2932726, at *14 ("Such administrative warrants raise serious due process and Fourth Amendment questions when used in this way."); *Saravia*, 280 F. Supp. 3d at 1196 ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.") (citation omitted).

68. Ousmane was detained by federal immigration officials as removable when he entered the United States. The government exercised its discretion under the INA to release him on his own recognizance while he litigated that charge in immigration court.

69. In the absence of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided he could pursue his claims for immigration relief at liberty, his re-arrest based solely on the fact that he is subject to removal proceedings is unreasonable and violates the Fourth Amendment.

COUNT FIVE

UNLAWFUL APPLCIATION OF 8 U.S.C. §1225(b)

70. Ousman repeats and re-alleges the alleges contained in all preceding paragraphs of this Petition as if fully set forth herein.

71. Upon information and belief, Respondents are currently detaining Ousmane pursuant to 8 U.S.C. §1225(b).

72. However, Ousmane was, at the time of his re-detention by Respondents, was not seeking admission to the United States. Rather, Ousmane was already residing in the United States. *See Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

73. Therefore, the application of 8 U.S.C. §1225(b) to Ousmane is unlawful.

COUNT SIX

RELEASE PENDING ADJUDICATION

74. Ousmane repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

75. Pursuant to *Mapp v. Reno*, this Court has the "inherent authority" to set bail pending the adjudication of a habeas petition when the petition has raised (1) substantial claims and (2) extraordinary circumstances that (3) "make the grant of bail necessary to make the habeas remedy effective." 241 F.3d 221, 226 (2d Cir. 2001).

76. Ousmane presents substantial claims. He also presents extraordinary circumstances. He is an asylum applicant who fears return to his country of origin, as to return would expose him to death or serious injury; he complied fully with immigration authorities prior to his re-detention; he was confined in inhumane conditions at 26 Federal Plaza; and he is now

confined in a jail setting without access to religiously appropriate food.

77. He requests immediate release pending adjudication of the instant petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings;
3. Declare that Petitioner's arrest and detention violates the Due Process Clause of the Fifth Amendment; the Fourth Amendment; and the Immigration and Nationality Act and implementing regulations;
4. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody without restraints on his liberty beyond those that existed prior to his unlawful re-detention;
5. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
6. 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
7. Grant such further relief as this Court deems just and proper.

Dated: August 18, 2025
New York, New York

Respectfully submitted,

/s/ Sarah T. Gillman
Sarah T. Gillman
Sarah E. Decker
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this First Amended Petition. On the basis of those discussions, I hereby verify that the statements made in this First Amended Petition are true and correct to the best of my knowledge.

DATED: August 18, 2025
New York, NY

/s/ Sarah T. Gillman

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