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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

OUSMANE SOUMARE,

Petitioner,

Case No.: 2:25-cv-06490

v.

JAMAL L. JAMISON, *in his official capacity as the Warden of the Philadelphia Federal Detention Center*; DAVID O'NEILL, *in his official capacity as Acting Philadelphia Field Office Director for U.S. Immigration and Customs Enforcement*; KRISTI NOEM, *in her official capacity as Secretary of the U.S. Department of Homeland Security*; U.S. DEPARTMENT OF HOMEAND SECURITY; PAMELA BONDI, *in her official capacity Attorney General of the United States*; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner Ousmane Soumare is in the physical custody of Respondents at the
3 Philadelphia Federal Detention Center (“FDC”). He now faces unlawful detention because the
4 Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review
5 (“EOIR”) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner was paroled into the United States under 8 U.S.C. § 1182(d)(5) and is
7 charged with, inter alia, having entered the United States without admission or inspection. *See* 8
8 U.S.C. § 1182(a)(6)(A)(i).

9 3. Based on this allegation in Petitioner’s removal proceedings, DHS denied
10 Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8,
11 2025, instructing all Immigration and Customs Enforcement (“ICE”) employees to consider
12 anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without
13 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore
14 ineligible to be released on bond.

15 4. Similarly, on September 5, 2025, the Board of Immigration Appeals (“BIA” or “the
16 Board”) issued a precedent decision, binding on all immigration judges, holding that an
17 immigration judge (“IJ”) has no authority to consider bond requests for any person who entered
18 the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
19 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. §
20 1225(b)(2)(A) and therefore ineligible to be released on bond.

21 5. Petitioner’s detention on this basis violates the plain language of the Immigration
22 and Nationality Act (“INA”). Section 1225(b)(2)(A) does not apply to individuals like Petitioner
23 who previously entered and are now residing in the United States. Instead, such individuals are
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1 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That
2 statute expressly applies to people who, like Petitioner, are charged as inadmissible for having
3 entered the United States without inspection.

4 6. Respondents' new legal interpretation is plainly contrary to the statutory framework
5 and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

6 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released
7 unless Respondents provide a bond hearing under § 1226(a) within seven days.

8 JURISDICTION

9 8. Petitioner is in the physical custody of Respondents. Petitioner is detained at "FDC,"
10 in Philadelphia, PA.

11 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C.
12 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
13 Suspension Clause).

14 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment
15 Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

16 VENUE

17 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
18 500 (1973), venue lies in the United States District Court for the Eastern District of Pennsylvania,
19 the judicial district in which Petitioner currently is detained.

20 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
21 Respondents are employees, officers, and agencies of the United States, and because a substantial
22 part of the events or omissions giving rise to the claims occurred in the Eastern District of
23 Pennsylvania.

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1 18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security.
2 She is responsible for the implementation and enforcement of the INA, and oversees ICE, which
3 is responsible for Petitioner’s detention. She has ultimate custodial authority over Petitioner and
4 is sued in her official capacity.

5 19. Respondent Department of Homeland Security (“DHS”) is the federal agency
6 responsible for implementing and enforcing the INA, including the detention and removal of
7 noncitizens.

8 20. Respondent Pamela Bondi is the Attorney General of the United States. She is
9 responsible for the Department of Justice, of which the Executive Office for Immigration Review
10 and the immigration court system it operates is a component agency. She is sued in her official
11 capacity.

12 21. Respondent Executive Office for Immigration Review (“EOIR”) is the federal
13 agency responsible for implementing and enforcing the INA in removal proceedings, including for
14 custody redeterminations in bond hearings.

15 **LEGAL FRAMEWORK**

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

18 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
19 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
20 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
21 while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject
22 to mandatory detention, *see* 8 U.S.C. § 1226(c).

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1 24. Second, the INA provides for mandatory detention of noncitizens subject to
2 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
3 referred to under § 1225(b)(2).

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

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

7 27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
8 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-
9 –208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a)
10 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat.
11 3 (2025).

12 28. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
13 that, in general, people who entered the country without inspection were not considered detained
14 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
15 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
16 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

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1 30. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
2 rejected well-established understanding of the statutory framework and reversed decades of
3 practice.

4 31. The new policy, entitled “Interim Guidance Regarding Detention Authority for
5 Applicants for Admission,”¹ claims that all persons who entered the United States without
6 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
7 policy applies regardless of when a person is apprehended, and affects those who have resided in
8 the United States for months, years, and even decades.

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

13 33. Since Respondents adopted their new policies, dozens of federal courts, including
14 this Honorable Court and several others in the Third Circuit, have rejected their new interpretation
15 of the INA’s detention authorities. These courts have likewise rejected *Matter of Yajure Hurtado*,
16 which adopts the same reading of the statute as ICE. *See e.g., Cantu Cortes v. O’Neill et al.*, No.
17 25-CV-6338-CFK, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025) (“ICE’s mandatory detention of
18 Petitioner under U.S.C. § 1225(b)(2)(A) violates the laws of the United States and Petitioner’s
19 rights under the Due Process Clause.”); *Kashranov v. Jamison, et al.*, No. 2:25-CV-05555-JDW,
20 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025) (same); *Del Cid v. Bondi et al.*, No. 3:25-CV-00304,
21 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025) (finding Special Immigrant Juvenile Status applicant

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24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 was not detained under section 1225, but rather under section 1226(a); *Bethancourt Soto v. Soto*
2 *et al.*, 1:25-CV-16200 (D.N.J. Oct. 22, 2025) (similar).

3 34. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,
4 Washington Immi Court stopped providing bond hearings for persons who entered the United
5 States without inspection and who have since resided here. There, the U.S. District Court in the
6 Western District of Washington found that such a reading of the INA is likely unlawful and that §
7 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United
8 States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

9 35. Subsequently, court after court has adopted the same reading of the INA's detention
10 authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-
11 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
12 11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*,
13 No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and*
14 *recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug.
15 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug.
16 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug.
17 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285
18 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass.
19 Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19,
20 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21,
21 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,
22 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27,
23 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670

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1 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL
2 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025
3 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS
4 (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546,
5 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025
6 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025
7 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a)
8 and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025
9 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
10 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

11 36. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it
12 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
13 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

14 37. Section 1226(a) applies by default to all persons “pending a decision on whether
15 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
16 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

17 38. The text of § 1226 also explicitly applies to people charged as being inadmissible,
18 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s
19 reference to such people makes clear that, by default, such people are afforded a bond hearing
20 under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates
21 ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute
22 generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic*

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1 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299,
2 at *7.

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

6 40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
7 recently entered the United States. The statute’s entire framework is premised on inspections at
8 the border of people who are “seeking admission” to the United States. 8 U.S.C.
9 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
10 applies “at the Nation’s borders and ports of entry, where the Government must determine whether
11 a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281,
12 287 (2018).

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

16 **FACTS**

17 42. Petitioner is a 35-year-old citizen and national of Mauritania. He has continuously
18 resided in the United States since May 9, 2023, and lives in Philadelphia, Pennsylvania.

19 43. Petitioner was paroled into the United States under 8 U.S.C. § 1182(d)(5) on May
20 11, 2023. Petitioner timely applied for asylum affirmatively with the U.S. Citizenship and
21 Immigration Services (“USCIS”) on April 1, 2024.

22 44. On November 14, 2025, Petitioner was arrested by ICE officers, following a
23 purported routine check-in at the ICE Philadelphia Field Office. Petitioner was not provided a
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1 particular reason for arrest at this check-in, and he had attended all prior check-ins and been
2 compliant with ICE's conditions set forth during his entry to the United States. Petitioner was then
3 transferred to FDC in Philadelphia, Pennsylvania, where he currently remains detained.

4 45. DHS placed Petitioner in removal proceedings before the Elizabeth, New Jersey
5 Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being
6 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without
7 inspection.

8 46. Petitioner fled his native Mauritania, where he had been a victim of modern-day
9 slavery. He was enslaved by brutal slave masters, who forced him to work on their land without
10 remuneration, and physically abused him for years. Following his entry to the United States, he
11 applied for asylum. Up until his detention by ICE, he resided in West Philadelphia and maintained
12 steady employment as a cook at the ShopRite grocery store. Petitioner also has extended family
13 members in the Philadelphia area. Since his arrive in the United States, Petitioner has complied
14 with the conditions of his parole and has no criminal record. Accordingly, Petitioner is neither a
15 flight risk nor a danger to the community.

16 47. Following Petitioner's arrest and transfer to FDC, ICE issued a custody
17 determination to continue Petitioner's detention without an opportunity to post bond or be released
18 on other conditions.

19 48. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
20 Petitioner's bond request.

21 49. As a result, Petitioner remains in detention. Without relief from this court, he faces
22 the prospect of months, or even years, in immigration custody, separated from their family and
23 community.

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1 **CLAIMS FOR RELIEF**

2 **COUNT I**
3 **Violation of the INA**

4 50. Petitioner incorporates by reference the allegations of fact set forth in the preceding
5 paragraphs.

6 51. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
7 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
8 relevant here, it does not apply to those who previously entered the country and have been residing
9 in the United States prior to being apprehended and placed in removal proceedings by Respondents.
10 Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c),
11 or § 1231.

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

14 **COUNT II**
15 **Violation of the Bond Regulations**

16 53. Petitioner repeats, re-alleges, and incorporates by reference each and every
17 allegation in the preceding paragraphs as if fully set forth herein.

18 54. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
19 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
20 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
21 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
22 without having been admitted or paroled (formerly referred to as [noncitizens] who entered without
23 inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis
24 added). The agencies thus made clear that individuals who had entered without inspection were

1 eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its
2 implementing regulations.

3 55. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice
4 of applying § 1225(b)(2) to individual like Petitioner.

5 56. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
6 detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

7 **COUNT III**
8 **Violation of Due Process**

9 57. Petitioner repeats, re-alleges, and incorporates by reference each and every
10 allegation in the preceding paragraphs as if fully set forth herein.

11 58. The government may not deprive a person of life, liberty, or property without due
12 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
13 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause
14 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

15 59. Petitioner has a fundamental interest in liberty and being free from official restraint.

16 60. The government’s detention of Petitioner without a bond redetermination hearing
17 to determine whether he is a flight risk or danger to others violates his right to due process.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 20 a. Assume jurisdiction over this matter;
- 21 b. Order that Petitioner shall not be transferred outside the Eastern District of
22 Pennsylvania while this habeas petition is pending;
- 23 c. Issue an Order to Show Cause ordering Respondents to show cause why this
24 Petition should not be granted within three days as required by 28 U.S.C. § 2243;

- 1 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
2 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a)
3 within seven days;
- 4 e. Declare that Petitioner’s detention is unlawful;
- 5 f. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
6 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under
7 law; and
- 8 g. Grant any other and further relief that this Court deems just and proper.

9 DATED this Seventeenth Day of November, 2025.

10 *s/Mana Aliabadi*

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