

1 Mary Chicorelli, Esq.  
Equal Access Legal Services  
2 6703 Germantown Ave.  
Suite 200/210-4  
3 Philadelphia, PA, 19119  
(267) 888-6703  
4 Attorney for Petitioner

5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF PENNSYLVANIA

7 MAKHA TANGOUDIA,

8 A 

Petitioner,

Case No.

9 v.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

10  
11 BRIAN MCSHANE, in his official capacity,  
Acting Field Office Director of Enforcement  
and Removal Operations, Philadelphia, PA  
12 Field Office, Immigration and Customs  
Enforcement;  
13

14 SIRCE OWEN, in his official capacity, Acting  
Director, Executive Office of Immigration  
Review,  
15

16 KRISTI NOEM, in her official capacity,  
Secretary, U.S. Department of Homeland  
Security;  
17

18 U.S. DEPARTMENT OF HOMELAND  
SECURITY;

19 PAMELA BONDI, in her official capacity, U.S.  
Attorney General; EXECUTIVE OFFICE FOR  
20 IMMIGRATION REVIEW;

21 TODD LYONS, in his official capacity, Acting  
Director, United States Immigration and  
22 Customs Enforcement (ICE),  
23  
24

1 JAMAL JAMISON, in his official capacity, as  
2 warden of the Federal Detention Center,  
Philadelphia, PA

3 Respondents.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

## INTRODUCTION

1  
2 1. Petitioner Makha Tangoudia is in the physical custody of Respondents at the  
3 PHILADELPHIA FEDERAL DETENTION CENTER. He now faces unlawful detention  
4 because the Department of Homeland Security (DHS) and the Executive Office of Immigration  
5 Review (EOIR) have concluded Petitioner is subject to mandatory detention.

6 2. Petitioner is charged with, *inter alia*, having entered the United States without  
7 inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

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

14 4. Petitioner is detained pending his removal proceedings without access to a  
15 hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to  
16 determine whether his detention is warranted based on danger or flight risk, pursuant to the  
17 BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and *Matter of*  
18 *Q. Li*, 29 I&N Dec. 66 (BIA 2025).

19 5. *Matter of Yajure Hurtado*, which holds that 8 U.S.C. § 1225(b)(2) makes  
20 noncitizens like Petitioner who are apprehended in the United States but have never been  
21 admitted subject to mandatory detention without a bond hearing, violates the statute. Instead, 8  
22 U.S.C. § 1226(a) applies and authorizes release on bond after a hearing before an immigration  
23 judge. The BIA's interpretation conflicts with the plain language and structure of the statute, as  
24

1 well as decades of uncontroverted agency practice. Therefore, the application of § 1225(b)(2) to  
2 Petitioner is contrary to law and violates the Immigration and Nationality Act (INA) and the  
3 Administrative Procedure Act (APA).

4 6. Additionally, *Matter of Q. Li*, holds that certain noncitizens arrested shortly after  
5 entering the U.S. are considered "arriving aliens" and are subject to mandatory detention under  
6 INA § 235(b). In that case, the noncitizen entered the country without inspection and was issued  
7 humanitarian parole after a brief initial detention. DHS then terminated the parole years later  
8 because she was arrested for criminal conduct. The BIA held that she was subject to mandatory  
9 detention under § 1225(b)(2). *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

10 7. Although the reasoning in *Matter of Q. Li* applies only to noncitizens released on  
11 humanitarian parole, DHS has relied on the case to argue that all noncitizens apprehended near  
12 the United States border have always been subject to § 1225(b)(2)—regardless of their manner of  
13 entry, the basis for their release from custody, how long they have been at liberty in the United  
14 States, and whether they are in removal proceedings.

15 8. Petitioner does *not* seek a bond redetermination hearing before an immigration  
16 because it is futile. Indeed, the DHS policy states it was issued in coordination with the  
17 Department of Justice (DOJ).

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

1 10. Respondents' new legal interpretation is plainly contrary to the statutory  
2 framework and contrary to decades of agency practice applying § 1226(a) to people like  
3 Petitioner.

4 11. In the alternative, if the statute does authorize Petitioner's detention without a  
5 bond hearing, it violates his rights to substantive and procedural due process. Detention of all  
6 noncitizens who are subject to inadmissibility grounds, like Petitioner, without any  
7 individualized hearing does not "bear a reasonable relation to the purpose for which the  
8 individual was committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, application  
9 of the *Mathews v. Eldridge* balancing test shows that a bond hearing is necessary to protect  
10 Petitioner from an unnecessary deprivation of liberty. See 424 U.S. 319, 335 (1976).

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

### 13 JURISDICTION

14 13. Petitioner is in the physical custody of Respondents. Petitioner is detained at the  
15 PHILADELPHIA FEDERAL DETENTION CENTER, Philadelphia, PA.

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

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

1 **VENUE**

2 16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-  
3 500 (1973), venue lies in the United States District Court for the Eastern District of  
4 Pennsylvania, the judicial district in which Petitioner currently is detained.

5 17. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
6 Respondents are employees, officers, and agencies of the United States, and because a  
7 substantial part of the events or omissions giving rise to the claims occurred in the Eastern  
8 District.

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 18. There is no statutory requirement of exhaustion of administrative remedies where  
11 a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892,  
12 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely  
13 discretionary. See *Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at \*2 (M.D. Pa. Aug.  
14 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed  
15 by immigration detainees is a prudential benchmark which is not compelled by statute.”).

16 19. In making that decision, the Court should consider the urgency of the need for  
17 immediate review. “Where a person is detained by executive order . . . the need for collateral  
18 review is most pressing. . . . In this context the need for habeas corpus is more urgent.”  
19 *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive  
20 detainees).

21 20. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*,  
22 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of  
23 administrative remedies may not be required when available remedies provide no opportunity for  
24

1 adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial  
2 constitutional question.” *Id.* at 666-67.

3 21. The Board of Immigration Appeals has issued a published decision holding that  
4 people like the Petitioner who entered the United States without inspection and therefore have  
5 not been admitted are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). Immigration  
6 judges and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1). Exhaustion before the  
7 BIA would therefore be futile.

8 22. Further, the BIA does not have jurisdiction to adjudicate constitutional issues.  
9 *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); see also *Ashley*, 288 F.  
10 Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be futile  
11 because petitioner raises a constitutional due process claim. *Qatanani*, 144 F.4th at 500.

#### 12 **REQUIREMENTS OF 28 U.S.C. § 2243**

13 23. The Court must grant the petition for writ of habeas corpus or order Respondents  
14 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
15 order to show cause is issued, the Respondents must file a return “within three days unless for  
16 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17 24. Habeas corpus is “perhaps the most important writ known to the constitutional  
18 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
19 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the  
20 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and  
21 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208  
22 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

**PARTIES**

1  
2 25. Petitioner MAKHA TANGOUDIA is a citizen of Mauritania who has been in  
3 immigration detention since December 2, 2025. After arresting Petitioner in Philadelphia,  
4 Pennsylvania, ICE detained Petitioner at the Federal Detention Center. Petitioner has resided in  
5 the United States since June 9, 2023.

6 26. Respondent BRIAN MCSHANE is the Acting Director of the Philadelphia Field  
7 Office of ICE's Enforcement and Removal Operations division. As such, BRIAN MCSHANE is  
8 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is  
9 named in his official capacity.

10 27. Respondent KRISTI NOEM is the Secretary of the Department of Homeland  
11 Security. She is responsible for the implementation and enforcement of the Immigration and  
12 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.  
13 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

14 28. Respondent DEPARTMENT OF HOMELAND SECURITY (DHS) is the federal  
15 agency responsible for implementing and enforcing the INA, including the detention and  
16 removal of noncitizens.

17 29. Respondent PAMELA BONDI is the Attorney General of the United States. She  
18 is responsible for the Department of Justice, of which the Executive Office for Immigration  
19 Review and the immigration court system it operates is a component agency. She is sued in her  
20 official capacity.

21 30. Respondent SIRE OWNEN is the Acting Director of the Executive Office for  
22 Immigration Review (EOIR), the federal agency responsible for implementing and enforcing the  
23  
24

1 INA in removal proceedings, including for custody redeterminations in bond hearings, and is  
2 sued in his official capacity.

3 31. Respondent JAMAL JAMISON is named in his official capacity as the Warden of  
4 the Federal Detention Center, where Petitioner is detained. He has immediate physical custody of  
5 Petitioner.

### 6 LEGAL FRAMEWORK

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

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

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

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

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

20 37. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the  
21 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.  
22 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section  
23  
24

1 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,  
2 139 Stat. 3 (2025).

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

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

15 40. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
16 rejected well-established understanding of the statutory framework and reversed decades of  
17 practice.

18 41. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
19 Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without  
20 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore  
21 are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies  
22

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

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

3 42. In a May 22, 2025, unpublished decision from the Board of Immigration Appeals  
4 (BIA), EOIR adopts this same position.<sup>2</sup> That decision holds that all noncitizens who entered the  
5 United States without admission or parole are considered applicants for admission and are  
6 ineligible for immigration judge bond hearings.

7 43. ICE and EOIR have adopted this position even though federal courts have  
8 rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration  
9 court stopped providing bond hearings for persons who entered the United States without  
10 inspection and who have since resided here, the U.S. District Court in the Western District of  
11 Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §  
12 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.  
13 *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24,  
14 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass.  
15 July 7, 2025) (granting habeas petition based on same conclusion).

16 44. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court  
17 explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b),  
18 applies to people like Petitioner.

19 45. Section 1226(a) applies by default to all persons “pending a decision on whether  
20 the [noncitizen] is to be removed from the United States.” These removal hearings are held under  
21 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”  
22  
23

---

24 <sup>2</sup> Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1           46.     The text of § 1226 also explicitly applies to people charged as being inadmissible,  
2 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph  
3 (E)’s reference to such people makes clear that, by default, such people are afforded a bond  
4 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress  
5 creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions,  
6 the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove*  
7 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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

11           48.     By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who  
12 recently entered the United States. The statute’s entire framework is premised on inspections at  
13 the border of people who are “seeking admission” to the United States. 8 U.S.C. §  
14 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme  
15 applies “at the Nation’s borders and ports of entry, where the Government must determine  
16 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583  
17 U.S. 281, 287 (2018).

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

**FACTS**

1  
2 50. Petitioner is a citizen and national of Mauritania. He is not married and does not  
3 have any children. He entered the United States without inspection or parole on June 9, 2023. He  
4 has resided in the United States since that time, and has lived in first New York City, and then  
5 later in Philadelphia, Pennsylvania.

6 51. Petitioner worked and lived in Philadelphia, PA, prior to his detention and does  
7 not have a criminal record. Petitioner has friends and extended family in the United States.

8 52. On December 2, 2025, Petitioner was arrested when he went to his ICE Check in  
9 in Philadelphia, Pennsylvania at the local ICE facility located at 114 N. 8<sup>th</sup> Street, Philadelphia,  
10 PA. Petitioner is now detained at the Federal Detention Center, Philadelphia. *See* Exhibit A.

11 53. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §  
12 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

13 54. Petitioner is neither a flight risk nor a danger to the community. Petitioner lives  
14 with other community members, and is supported by a network of community organizations that  
15 support him.

16 55. Petitioner is represented by undersigned counsel *pro bono* in his asylum matter  
17 currently pending in Immigration Court.

18 56. Following Petitioner's arrest and transfer to Federal Detention Center, ICE issued  
19 a custody determination to continue Petitioner's detention without an opportunity to post bond or  
20 be released on other conditions.

21 57. Petitioner remains in detention. Without relief from this court, he will face the  
22 prospect of months, or even years, in immigration custody, separated from his extended friends  
23 and community.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**COUNT II**

**Violation of Due Process**

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

63. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

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

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

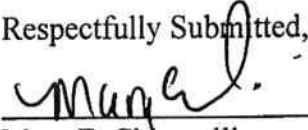
**PRAYER FOR RELIEF**

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

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;
- c. 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
- d. Grant any other and further relief that this Court deems just and proper.

1 DATED this 3 of December, 2025.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Respectfully Submitted,  
By:   
\_\_\_\_\_  
Mary F. Chicorelli  
Equal Access Legal Services  
6703 Germantown Ave.  
Suite 200/210-4  
Philadelphia, PA 19119