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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MOHAMED SYLLA,

Petitioner,

v.

BOBBY THOMPSON, Warden, South Texas ICE Processing Center;

MIGUEL VERGARA, Acting/Director of the San Antonio Field Office U.S. Immigration and Customs Enforcement;

TODD LYONS, Acting Director, Immigration and Customs Enforcement

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and

PAMELA BONDI, Attorney General of the United States, in their official capacities,

Respondents.

Case No. 5:25-cv-01663

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Mohamed Sylla is in the physical custody of Respondents at the South Texas ICE Processing Center in Pearsall, Texas. **Exh. A, Form I-830E Notice to EOIR: Alien Address.** He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner was first detained and released in March 2024 under DHS's discretionary detention authority pursuant to 8 U.S.C § 1226. **Exh. B, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance.** Over a year later, DHS re-detained Petitioner at his scheduled ICE check-in on October 30, 2025. **Exh. C, Form I-213 Record of Deportable/Inadmissible Alien** (noting inadmissibility under section 212(a)(6)(A)(i) of the INA).
3. DHS now alleges that Petitioner is no longer subject to DHS's discretionary detention authority under 8 U.S.C § 1226 as it previously determined. Instead, Petitioner anticipates that DHS now alleges that Petitioner is subject to mandatory detention under a different statutory provision governing arriving aliens apprehended at the border–8 U.S.C § 1225.
4. Petitioner contends that his detention is in violation of constitutional Due Process and in violation of the Immigration and Nationality Act.
5. Federal district courts across the nation have reached a clear consensus: Section 1225(b) does not apply to Petitioner's circumstances, and Respondents' reliance on this inapplicable statute renders his detention unlawful. Because Petitioner cannot be detained under Section 1225(b)(1) or Section 1225(b)(2), the only lawful basis for continued detention would be Section 1226—which provides for individualized bond

determinations. However, Respondents do not assert they are detaining Petitioner under Section 1226. By detaining Petitioner under a statute that does not authorize his detention while simultaneously refusing to apply the statute that does, Respondents hold him in unlawful custody. Petitioner is therefore entitled to immediate release.

6. The present petition filed on behalf of the Petitioner is one of a number of recent lawsuits with similar facts challenging the federal government's authority to detain noncitizens during the pendency of removal proceedings under 8 U.S.C. § 1225(b). Overwhelmingly, federal district courts have ruled in favor of Petitioners. *See e.g Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*,, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser,* No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

7. Accordingly, to preserve Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a Writ of Habeas Corpus for the reasons stated *infra*. Absent an order from this Court, Petitioner will continue to suffer an unconstitutional deprivation of his right to liberty, as well as extreme irreparable harm given the personal facts of his

situation. Petitioner asks this Court to find that his detention is unconstitutional and order immediate release from detention.

JURISDICTION

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

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

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

11. Here, Petitioner challenges the legality of his detention, asserting that he is held in violation of both the Constitution and federal immigration statutes. Such claims fall squarely within the habeas corpus jurisdiction of federal district courts. None of the jurisdiction stripping provisions found at 8 U.S.C. § 1252(a)(2)(A), § 1252(g) and § 1252(b)(9) apply.

12. Federal district courts have consistently held that these jurisdictional bars do not preclude habeas review of the proper application of INA detention provisions. *See Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *2-4 (W.D. Tex. Oct. 16, 2025) (finding a case 'falls squarely outside' the jurisdictional bars where Petitioner was only 'challenging whether certain INA provisions require his detention without a bond hearing'); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (rejecting government's jurisdictional arguments in nearly identical

case); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) (same); *Castellanos v. Kaiser,* No. 25-CV-07962, 2025 WL 2689853, at *4 (N.D. Cal. Sept. 18, 2025) (same). As these courts have recognized, habeas jurisdiction exists to review whether the government is detaining a noncitizen under the correct statutory authority and with adequate procedural protections. That is precisely the question presented here.

VENUE

13. Venue is proper with this Court because Petitioner is detained at the South Texas ICE Processing Center in Pearsall, Texas, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for Writ of Habeas Corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

15. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

16. Petitioner, Mohamed Sylla, is a native and citizen of Guinea. He is currently detained at South Texas ICE Processing Center in Pearsall, Texas. He is in the custody, and under the direct control, of Respondents and their agents.

17. Respondent Bobby Thompson is the Warden of the South Texas ICE Processing Center and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

18. Respondent Miguel Vergara is sued in his official capacity as the Acting Field Office Director of the San Antonio Field Office of U.S. Immigration and Customs Enforcement. Respondent Vergara is a legal custodian of Petitioner and has authority to release him.

19. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

20. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's custody. Respondent Noem is a legal custodian of Petitioner.

21. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

22. Petitioner is a 29-year-old native and citizen of Guinea. On or around March 17, 2024, he entered the United States without inspection around Sasabe, Arizona and was taken into custody after turning himself in to immigration authorities. **Exh. D, Form I-862, Department of Homeland Security, Notice to Appear.**

23. That same day, he was issued a Notice to Appear, along with a Notice of Custody Determination determining that he would be released on his own recognizance pursuant to 8 U.S.C. § 1226(a). ***Id.*** The same day he was served an Order of Release on Recognizance issued pursuant to 8 U.S.C. § 1226(a) and was released from custody. **Exh. B, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance.** He proceeded to check-in with DHS repeatedly without incident.

24. On October 30, 2025, Petitioner attended his check-in with ICE and DHS took him into custody. **Exh. A, Form I-830E Notice to EOIR: Alien Address.** ***See also*** **Exh. C, Form I-213 Record of Deportable/Inadmissible Alien.**

25. Petitioner has been detained by ICE for over a month. Petitioner anticipates that DHS will not release him because they assert that 8 U.S.C. 1225(b) forecloses EOIR's jurisdiction to release him, or in fact any non-citizen in a similar situation, on bond.

LEGAL FRAMEWORK

26. Two statutes principally govern the detention of noncitizens pending removal proceedings: 8 U.S.C. §§ 1225 and 1226. Section 1225 applies to "applicants for admission," who are, as relevant here, noncitizens "present in the United States who [have] not been admitted." 8 U.S.C. § 1225(a)(1). All applicants for admission must be inspected by an immigration officer. Id. § 1225(a)(3). Certain applicants for admission

are then subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09 (2020). In other cases, if the examining immigration officer determines that an applicant for admission is not "clearly and beyond a doubt entitled to be admitted," Section 1225(b)(2) provides that the applicant for admission "shall be detained for" standard removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *see Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018). A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled "for urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5)(A). *Jennings*, 583 U.S. at 300 ("That express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released.").

27. Whereas Section 1225(b) "authorizes the Government to detain certain aliens *seeking admission* into the country," Section 1226 "authorizes the Government to detain certain *aliens already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphases added). Section 1226(a) establishes a discretionary detention framework for noncitizens arrested and detained "[o]n a warrant issued by the Attorney General." For such individuals, the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on ... bond of at least $1,500," or (3) "may release the alien on ... conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). The arresting immigration officer makes an initial custody determination, but noncitizens have the right to request a custody redetermination (i.e., bond) hearing before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1).

28. In addition to bond, the government may release a noncitizen detained under Section 1226(a) on an Order of Recognizance, which is a form of conditional parole. *See* 8 U.S.C.

§ 1226(a)(2)(B); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023) ("The respondents were ... released on their own recognizance pursuant to DHS' conditional parole authority under ... 8 U.S.C. § 1226(a)(2)(B)[.]"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [government] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).

29. Section 1226(c) is the sole exception to Section 1226(a)'s discretionary detention framework. *See* 8 U.S.C. § 1226(a) ("Except as provided in subsection (c) ... the Attorney General ... may"); id. § 1226(c)(1) Section 1226(c) requires the detention of noncitizens who are inadmissible or deportable and who have been arrested, charged with, or convicted of certain crimes. *See id.* §§ 1226(c)(1)(A)-(D).

30. This case concerns the detention provisions at §§ 1226(a) and 1225(b), and specifically whether Petitioner is lawfully detained under Section 1225(b), as the government now contends, or is instead subject to discretionary detention under Section 1226(a), as the government represented in its initial Notice of Custody Determination issued in 2024.

31. Section 1226(a) "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," *Jennings*, 583 U.S. at 289, and it applies when a noncitizen is "arrested and detained" "[o]n a warrant issued by the Attorney General," 8 U.S.C. § 1226(a); *See Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (B.I.A. 2023) (holding that an immigration judge erred in treating release on recognizance of non-citizens "detained soon after their unlawful entry" as constructive humanitarian parole where Government had not followed the "procedures for parole under [section 1182(d)(5)]").

32. The policy position of Respondents is that Petitioner is subject to mandatory detention without the right to a bond hearing pursuant to the plain language of 8 U.S.C. § 1225(b), despite the fact that he was initially released on his own recognizance under 8 U.S.C. 1226(a) and has been living in the U.S. for nearly a year and a half. This position has been resoundingly and repeatedly rejected by federal district courts across the country, including courts in the Fifth Circuit and the Western District of Texas. *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-CV-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, (W.D. Tex. Sept. 22, 2025).

33. Respondents' own documents and actions, the plain text of the statute, traditional canons of statutory construction, and DHS' longstanding practices all establish that § 1226(a) governs Petitioner's detention.

34. When Petitioner was initially detained and released in March 2024, the Order of Release on Recognizance issued the following day provided that he was released "[i]n accordance with section 236 of the [INA] and the applicable provisions of Title 8 of the Code of Federal Regulations." **Exh. B, Form I-220A U.S. Department of Homeland Security Order of Release on Recognizance.** All documents are devoid of any reference to § 1225.

35. In all, "the government's treatment of Petitioner since his arrival in the United States in [December 2021], establishes that Petitioner was detained pursuant to the government's discretionary authority under § 1226(a)." *See J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025).

36. As district courts across the country have repeatedly concluded, Respondents' "interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (citing *Alejandro v. Olson*, 2025 WL 2896348, at *6 (S.D. Ind. Oct. 11, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.' ") (cleaned up) *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system.") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

37. In addition, "CBP's decision to conditionally parole [Petitioner] under Section 1226(a) is consistent with its longstanding practice of conditionally paroling noncitizens arrested near the border. *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *3, f.7 (D. Mass. July 7, 2025) (citing Transcript of Oral Argument, at 44:24-45:2, *Biden v. Texas,* 597 U.S. 785 (2022) (No. 21-954) (Solicitor General representing that "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.").

38. The Board of Immigration Appeals has issued two recent precedent decisions involving mandatory detention under 8 U.S.C. § 1225. *Matter of Q. Li*, 27 I&N Dec. 66 (BIA 2025, and *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Both cases purport to apply the "catchall" provision of § 1225(b)(2) to require the mandatory detention of persons like the Petitioner. However, neither of those cases are implicated in the Petitioner's case because he was already released from custody based on a determination by DHS that his release is governed by § 1226. It is important to note as well that this Court does not owe deference to the BIA's interpretations of these provisions, and is free to conduct its own independent analysis. *See Loper Bright Enterprises v. Raimundo*, 603 U.S. 369, 144 S. Ct. 2244 (2025). After being arrested in March 2024, the Petitioner was immediately issued a Notice to Appear and then conditionally paroled on an Order of Recognizance issued under Section 1226(a). **Exh. D. Notice to Appear, Exh. B, From I-220A, Order of Release on Recognizance.** Over one year and three months later, he was taken into custody at his ICE check-in without explanation and without any opportunity to plead for his release from custody. Importantly, the BIA's reasoning in *Q. Li* is inapposite here because the Petitioner was released on his own recognizance and not on parole. Similarly, *Yajure* does not provide guidance for Petitioner's case because DHS made the determination that his detention would be governed by § 1226 and then arbitrarily changed course at his ICE check-in. The Petitioner's release under § 1226 created a reliance interest in his continued liberty, and his arbitrary detention violates his due process rights by taking away his liberty without any explanation or opportunity to seek release.

39. Respondents' actions implicate constitutional due process. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003). "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those 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, 96 S.Ct. 893.

40. As to the first element, "'[t]he interest in being free from physical detention' is 'the most elemental of liberty interests.' " *Martinez v. Noem,* 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004)). Petitioner possesses a cognizable interest in his freedom from detention because he spent over three years at liberty in the United States. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) ("Because he spent nearly three years at liberty in the United States, Lopez-Arevelo possesses a cognizable interest in his freedom from detention.")

41. Under the second *Mathews* factor, the Court considers "whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Martinez v. Noem*, 2025 WL 2598379, at *3 (quoting *Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025)).

Because the immigration judge declined to exercise jurisdiction at Petitioner's bond hearing, this hearing "'did not in fact provide ... an opportunity to contest the existence, nature, or significance of [any] supervision violations' or otherwise make an individualized assessment of the need to re-detain him." *Lopez-Arevelo*, 2025 WL 2691828, at *11 (citing *Espinoza v. Kaiser,* No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025). Further, given "the BIA's interpretation of mandatory detention in *Yajure Hurtado* [and *Q. Li*], that appeal is almost certainly a futile exercise. " *Id.* "Thus, there is a high risk that [Petitioner] has been and will continue to be erroneously deprived of his liberty." *Id.*

42. On the final factor, Respondents cannot identify any meaningful countervailing interest, other than perhaps their generalized interest in enforcing the INA as they interpret it. "But the decision to release [Petitioner] on his own recognizance [nearly four] years ago, in and of itself, 'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.'" *Lopez-Arevelo*, 2025 WL 2691828, at *11 (citing *Saravia v. Sessions,* 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd 905 F.3d 1137 (9th Cir. 2018)). Mr. Dominguez Vega diligently pursued relief and complied with all conditions of release. In fact, he went above and beyond by appearing at an ICE Field Office to request a new report date. Nor has he committed any crimes or endangered anyone during his three years at liberty in the United States.

43. Overwhelmingly, federal courts have sided with immigrant detainees challenging their detention on virtually indistinguishable grounds, on statutory and constitutional grounds, including courts in this district. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK,

2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.,*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser,* No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

44. "The appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to status quo ante, i.e., the last uncontested status which preceded the pending controversy." *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). "With regard to the specifics of the relief that might be ordered, in recent weeks many federal district courts" –including the Western District of Texas– "have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights." *Id; See Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at *13 (W.D. Tex. Oct. 1, 2025); *See also J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *M.S.L. v.*

Bostock, 2025 WL 2430267, at *1(D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025)

45. Petitioner strenuously urges this Court to order his immediate release given that no circumstances in Petitioner's situation have changed that would warrant DHS's arbitrary custody redetermination. Nevertheless, alternatively, at the very least Petitioner would ask that the Court order a bond hearing as a habeas remedy where the burden is on the government to show that the Petitioner is now a flight risk or a danger to the community, given that the government already made a previous determination that he was neither. Indeed "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasco Lopez,* 978 F.3d at 855 n.14 (citations omitted). "Allocating the burden in this manner reflects the concern that '[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" (citing *German Santos*, 965 F.3d at 214). "And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence." *Id.* ; *Velasquez Salazar v. Dedos,* No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo,* No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); Espinoza, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar;*, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025).

CAUSES OF ACTION

COUNT ONE
Violation of 8 U.S.C. § 1226(a)
Unlawful Re-detention after being released under 8 U.S.C. 1226(a)

46. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

47. The mandatory detention provisions at 8 U.S.C. § 1225(b) do not apply to noncitizens residing in the United States who have already been determined by DHS to be subject to discretionary detention under 8 U.S.C. 1226(a). The application of § 1225(b) to re-detain Petitioner and bar him from receiving a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act.

COUNT TWO
Violation of Fifth Amendment Right to Due Process

48. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

49. 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).

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

51. The government's re-detention of Petitioner after his initial release pursuant to 8 U.S.C. § 1226, in spite of the lack of any changed circumstances and without the possibility of a bond redetermination hearing to determine whether he is now a flight risk or danger to others, violates his right to Due Process pursuant to the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter and maintain jurisdiction to the extent necessary to ensure Respondents' compliance with any order this Court may issue;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(3) Declare that the refusal to allow Petitioners a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act and the Due Process clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release the Petitioner, or, in the alternative, provide a custody redetermination hearing before an impartial Immigration Judge within two days where the Government bears the burden to prove by clear and convincing evidence that the Petitioner is a flight risk or poses a danger to the community;

(5) Order further relief as this Court deems just and appropriate.

Respectfully submitted this 5th of December,

/s/ Mark Kinzler
Mark Kinzler, Esq.
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Attorney for Petitioner

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

I represent the Petitioner, and I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 5, 2025.

/s/ Mark Kinzler
Mark Kinzler, Esq.
Oregon State Bar No. 05298-8
Attorney for Petitioner

CERTIFICATE OF SERVICE

Sylla v. Thompson et all

5:25-cv-01663

I hereby certify that on December 5, 2025, I have mailed by United States Postal Service the Verified Petition for Writ of Habeas Corpus and Exhibits by certified mail to the following:

Stephanie Rico
Civil Process Clerk Office of the United States Attorney for the Western District
of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Bobby Thompson
Warden at South Texas ICE Processing Center
566 Veterans Drive
Pearsall, TX 78061

Miguel Vergara
San Antonio Field Office Director of Enforcement and Removal Operations
1777 NE Loop 410
Floor 15
San Antonio, TX 78217

Todd M. Lyons
Acting Director of Immigration Customs Enforcement
500 12th St SW
Washington, DC 20536

Secretary of Homeland Security Kristi Noem
2707 Martin Luther King Jr., Ave., SE
Washington, DC 20528-0485

U.S. Attorney General Pamela Bondi
950 Pennsylvania Ave NW
Washington, DC 20530

The above respondents were also named in the CM/ECF habeas corpus filing with the Western District of Texas court

/s/ Mark Kinzler