UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PENNSYLVANIA

FALILOU BAH,

Petitioner,

v.

JAMAL L. JAMISON,
Warden, Federal Detention Center, Philadelphia;

BRIAN MCSHANE,
Field Office Director, Immigration and Customs Enforcement, Philadelphia Field Office;

TODD M. LYONS,
Acting Director, Immigration and Customs Enforcement;

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

PAMELA J. BONDI,
Attorney General of the United States;

U.S. DEPARTMENT OF HOMELAND SECURITY; and

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner is a noncitizen from Guinea, who is in the physical custody of the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), and is currently detained at the Federal Detention Center in Philadelphia ("FDC"). *See* Exhibit 1, ICE Detainee Locator Results. Petitioner now faces unlawful detention because Respondents have concluded that he is subject to mandatory detention.

2. Petitioner, fleeing political and ethnic persecution in his home country to seek protection in the United States, entered the United States without inspection on or about November 30, 2023 and was apprehended by DHS.

3. Shortly thereafter, on or about December 1, 2023, DHS released Petitioner into the United States on his own recognizance in accordance with 8 U.S.C. 1226. *See* Exhibit 2, Order of Release on Recognizance.

4. DHS commenced removal proceedings against Petitioner in immigration court, charging Petitioner of being subject to removal pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) for having entered the United States without admission or parole.

5. These removal proceedings entitled Petitioner to present an asylum claim with the due process rights provided by 8 U.S.C. § 1229a, and Petitioner timely filed his asylum application on September 13, 2024.

6. For the next two years after Petitioner's release from DHS custody, Petitioner lived in Clifton Heights, Pennsylvania and complied with every request, demand and

requirement imposed on him by DHS, in addition to complying with all the court deadlines for his asylum case. He has never been arrested for a crime or apprehended by law enforcement apart from his detention by immigration authorities.

7. On December 8, 2025, after more than two years of continuous presence in the United States, Respondent appeared at a legally required ICE check-in, whereupon DHS arrested and detained him without reason.

8. Respondent's detention is consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

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

10. The BIA's reinterpretation of Section 1225(b) conflicts with the plain language and structure of the statute, as well as nearly thirty years of legal precedence and uncontroverted agency practice.

11. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.

12. Therefore, the application of § 1225(b)(2) to Petitioner is contrary to law and violates the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA).

13. Accordingly, Petitioner respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody, with appropriate conditions of supervision if necessary.

PARTIES

14. Petitioner Filiou Bah is a noncitizen currently in the physical custody of Respondents. Petitioner is detained at the Philadelphia Federal Detention Center, located at 700 Arch Street, Philadelphia, Pennsylvania 19106.

15. Respondent Jamal L. Jamison is the Warden of the FDC. In his capacity as Warden, he oversees the administration and management of the FDC. Accordingly, Mr. Jamison is the immediate custodian of Petitioner. He is sued in his official capacity. Respondent Jamison's office is located at Federal Detention Center, 700 Arch Street, Philadelphia, Pennsylvania 19106.

16. Respondent Brian McShane is named in his official capacity as the Philadelphia Field Office Director for ICE. In this capacity, Respondent McShane is responsible for administration and management of ICE Enforcement Removal Operations in Pennsylvania and exercises control over Petitioner's custody at FDC. Respondent McShane's office is located at 114 North 8th Street, Philadelphia, Pennsylvania 19107.

17. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a

legal custodian of Petitioner. Respondent Lyons's office is located at 500 12th Street, S.W., Washington, D.C. 20536.

18. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity. Respondent Noem's office is located at U.S. Department of Homeland Security, 1790 Ash Street SE, Washington, District of Columbia 20593.

19. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity. Respondent Bondi's office is located at U.S. Department of Justice, 950 Pennsylvania Ave., NW Washington, District of Columbia 20530.

20. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens. DHS is located at 1790 Ash Street SE, Washington, District of Columbia 20593.

21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. EOIR is located at 5107 Leesburg Pike, Falls Church, Virginia 22041.

JURISDICTION AND VENUE

22. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361.

24. 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.

25. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

26. Venue lies in this District because the Petitioner is detained in this district. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973).

27. Venue is also proper in this Court because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Pennsylvania. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

REQUIREMENTS OF 28. U.S.C. § 2243

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

29. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

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

32. Moreover, the exhaustion "doctrine is not without exception." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). "Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question." *Id.* at 666-67.

33. The Board of Immigration Appeals has issued a published decision holding that people like Petitioner who entered the United States without inspection and therefore have not been admitted are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). Immigration judges

and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1). Exhaustion before the BIA would therefore be futile.

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

STATEMENT OF FACTS

35. Petitioner has resided in the United States since November 30, 2023 and lives in Clifton Heights, Pennsylvania.

36. On December 8, 2025, Petitioner appeared at a legally required ICE check-in, whereupon DHS arrested and detained him without reason. Petitioner is now detained at FDC.

37. DHS placed Petitioner in removal proceedings before the Philadelphia Immigration Court, pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

38. Petitioner is neither a flight risk nor a danger to the community.

39. To the contrary, Petitioner is a beloved member of the community. Upon information and belief, Petitioner regularly attends prayers at his local mosque, works at a restaurant, and has been attending classes at the Community College of Philadelphia, with the hope of becoming a medical assistant.

40. Pursuant to *Matter of Yajure Hurtado*, it is now the position of DHS that an immigration judge ("IJ") is unable to consider a bond request from the Petitioner.

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

LEGAL FRAMEWORK

I. Section 1226(a) Governs the Detention of People Like Petitioner

42. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

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

44. First, 8 U.S.C. § 1226 governs the detention of noncitizens in standard 1229a removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Under § 1226(a), an individual is generally entitled to a bond hearing at the outset of their detention, and may be released if he does not present a danger to persons or property and is not a flight risk. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Matter of Guerra, 24 I&N Dec. 37 (BIA 2006). Section 1226(a) subjects only noncitizens who have been arrested, charged with, or convicted of certain crimes to mandatory detention.

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

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

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

48. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). "Upon passing IIRIRA, Congress declared that the new Section 1226(a) 'restates the current provisions in the predecessor statute,'" which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

49. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

50. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. *Diaz Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025). That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994).

51. In recent months, Respondents have abruptly changed course. On May 15, 2025, the BIA issued a decision holding that a noncitizen who entered without inspection and was apprehended and paroled near the border was subject to mandatory detention under § 1225(b)(2)(A) when her parole was terminated and she was re-detained. *Matter of Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025).

52. On July 8, 2025, Respondent Todd M. Lyons, ICE Director, issued an internal memorandum stating that, "in coordination with the Department of Justice (DOJ)," DHS had "revisited" its legal position and believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez*, 2025 WL 2084238, at *4.

53. On September 5, 2025, the BIA adopted this same position in a precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that *all* noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and "must be detained for the duration of their removal proceedings." 29 I&N Dec. at 220.

54. A legal ruling in *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025), had previously rejected this position, but Respondents continue to maintain that noncitizens who entered the United States without inspection are not eligible for bond redetermination hearings, because they are "applicants for admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A).

55. Since Respondents adopted their new policies, dozens of federal courts, including this District, have rejected their reinterpretation of the INA's detention authorities, holding that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to

noncitizens who are not apprehended upon arrival to the United States. *See, e.g.*, *Anirudh v. McShane,* No. 25-CV-6468, 2025 U.S. Dist. LEXIS 254674 (E.D. Pa. Dec. 9, 2025); M-L-Z- v. Noem, No. 25-cv-5479, 2025 WL 3470046 (E.D. Pa. Dec. 2, 2025); *Soumare v. Jamison*, No. 25-CV-6490, 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025); *Yilmaz v. Warden of Fed. Det. Ctr. Phila.*, No. 25-CV-6572, 2025 WL 3459484 (E.D. Pa. Dec. 2, 2025); *Buele Morocho v. Jamison*, No. 5:25-CV-5930, 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025); *Diallo v. O'Neill*, No. 24-CV-6358, 2025 WL 3298003 (E.D. Pa. Nov. 26, 2025); *Ibarra v. Warden of Fed. Det. Ctr. Phila.*, No. 25-CV-6312 (E.D. Pa. Nov. 25, 2025); *Patel v. McShane*, No. 25-cv-5975, 2024 WL 3241212 (E.D. Pa. Nov. 20, 2025); *Ndiaye v. Jamison*, No. 25-CV-6007, 2025 U.S. Dist. LEXIS 227253 (E.D. Pa. Nov. 19, 2025); *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-cv-5488, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025); *Kashranov v. Jamison*, No. 2:25-CV-05555, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025); *Cantu-Cortes v. O'Neill*, No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 U.S. Dist. LEXIS 157214 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No.

3:25-cv-01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Jacinto v. Trump*, No. 4:25-cv-03161, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025); and *Anicasio v. Kramer*, No. 4:25-cv-03158, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025).

56. As these courts have explained, Respondent's new interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

58. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 2025 WL 2084238, at *8 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme

Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

59. The plain reading of the phrase "seeking admission" indicates that § 1225(b)(2)(A) applies to people who are taking some "affirmative, present-tense action," in other words, coming or attempting to come into the United States. *Ndiaye*, 2025 U.S. Dist. LEXIS 227253 at *13 ; *Diaz Martinez*, 2025 WL 2084238, at *6; *see also Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that "the use of the present progressive tense . . . denotes an ongoing process"). Noncitizens who have resided in the country for longer periods than those who are just arriving or have recently arrived in the country do not "seek admission" because they have "already entered the country without seeking admission." *Anirudh*, 2025 U.S. Dist. LEXIS 254674, at *10-11.

60. Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute. *See Anirudh*, 2025 U.S. Dist. LEXIS 254674, at *9. ("A noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226.").

61. Additionally, the BIA's new interpretation of § 1225(b) - that any noncitizen who is present in this country but has not been admitted is an "applicant for admission" and therefore subject to mandatory detention under § 1225(b)(2)(A) - would violate the rule against surplusage. *Anirudh*, 2025 U.S. Dist. LEXIS 254674, at *10; *Ndiaye,* 2025 U.S. Dist. LEXIS 227253 at *14-15; *Lopez Benitez*, 2025 U.S. Dist. LEXIS 157214, at *17-18. Section 1225(b) applies to a noncitizen who meets three enumerated criteria: (1) one who is an "applicant for admission;" (2) who is "seeking admission;" and (3) who is "not clearly and beyond a doubt

entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez*, 2025 U.S. Dist. LEXIS 157214, at *17-18; *Diaz Martinez*, 2025 WL 2084238, at *2. The BIA's interpretation makes all "applicants for admission" subject to mandatory detention, leaving the "seeking admission" criterion unnecessary. *Lopez Benitez*, 2025 U.S. Dist. LEXIS 157214, at *17-18; *Diaz Martinez*, 2025 WL 2084238, at *6.

62. Furthermore, the BIA's new interpretation of § 1225(b) "would nullify" the newly-amended text of 8 U.S.C. § 1226(c)(1)(E), which Congress enacted just this year through the Laken Riley Act, mandating detention for noncitizens who meet certain criminal and inadmissibility criteria. *Ndiaye,* 2025 LX 503509 at *15-17. But if "a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment," which requires detention for noncitizens who are both inadmissible and meet certain criminal criteria, "would have no effect." *Lopez Benitez*, 2025 U.S. Dist. LEXIS 157214, at *21-22 (quoting *Diaz Martinez*, 2025 WL 2084238, at *7).

63. Applying § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the government's longstanding practice, which "can inform a court's determination of what the law is." *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA's abrupt change in policy. *Maldonado*, 2025 WL 2374411, at *11.

64. Finally, as discussed below, the BIA's interpretation of § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the Court should presume that Congress "did not intend the alternative which raises serious constitutional doubts" and reject that construction. *Clark v.*

Martinez, 543 U.S. 371, 381-82 (2005). Therefore, § 1226(a), which permits bond hearings, not § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

II. The BIA's Application of Mandatory Detention to Noncitizens Like Petitioner Violates Substantive and Procedural Due Process

65. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

66. Absent adequate procedural protections, substantive due process requires a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690; *accord, e.g.*, *Torralba v. Knight*, No. 2:25-cv-1366, 2025 WL 2581792, at *12 (D. Nev. Sept. 5, 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

67. In *Demore*, the Supreme Court upheld the constitutionality of § 1226(c) against a facial challenge, specifically citing evidence that had been before Congress about noncitizens with criminal convictions. 538 U.S. at 518-520. This justification does not apply, however, to noncitizens with no criminal record whatsoever who have lived in the community for years. The broad policy set forth in *Matter of Yajure Hurtado* is not reasonably related to the purposes of preventing danger to the community or flight risk and violates substantive due process.

68. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (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." *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth C'ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara*, 10 F.4th 19, 28 (1st Cir. 2021); *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Here, the BIA's interpretation of the statute to require detention of all people in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

69. First, the "importance and fundamental nature" of an individual's liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F. Supp. at 670 ("[F]reedom from confinement is a liberty interest of the highest constitutional import."). For people "who can face years of detention before resolution of their immigration proceedings, 'the individual interest at stake is without doubt particularly important.'" *Linares Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018).

70. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be "on any calculus, substantial," observing that the petitioner, "could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone." 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated "alongside criminal inmates" at a jail where "she was separated from her fiancé and unable to maintain her employment." 10 F.4th at 28.

71. Second, absent any individualized bond hearing, people will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether their detention is necessary. *See, e.g.*, *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at *8 (D. Minn. May 21, 2025) (noting that lack of consideration of "individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals' private rights"); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because "the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention"). A

bond hearing would have significant value because it is designed to assess the individualized facts of each case and determine whether less restrictive measures can fulfill the same goals.

72. Finally, the burden on the government of returning to the longstanding practice of holding bond hearings for people like Petitioner does not outweigh the liberty interest at stake. To the contrary, the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"). Additionally, "unnecessary detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings, and weighs in favor of additional procedural protections.

73. At these bond hearings, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 ("[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof."). "A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision." *German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing, it is placed the burden on the

government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York C'ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

COUNT I
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

74. Petitioner re-alleges and incorporates by reference the above paragraphs 1-72.

75. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility.

76. Specifically, 8 U.S.C. § 1225(b)(2) does not apply to Petitioner, who had been living in the United States for more than two years prior to being detained by Respondents on December 8, 2025 and was no longer engaged in that "present-tense action" of "seeking admission" at the time of his arrest in Philadelphia, Pennsylvania. *See Diaz Martinez*, 2025 WL 2084238, at *6.

77. Additionally, the Petitioner was never treated as an "arriving alien" or subject to the "entry fiction" that comes with parole, "whereby noncitizens are physically permitted to enter the country but are nonetheless treated for legal purposes as if stopped at the border." *Diaz Martinez*, 2025 WL 2084238, at *3 (quoting *Dep't of Homeland Sec. v. Thuraissigam*, 591 U.S. 103, 139 (2020)). Petitioner was released on his own recognizance at the border pursuant to 8

U.S.C. § 1226, not paroled pursuant to 8 U.S.C. § 212(d)(5). Exhibit 2; *see Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023) (describing this distinction). Therefore, the Petitioner's case is distinguishable from *Matter of Q. Li* and falls squarely within the scope of 8 U.S.C. § 1226(a). *Diaz Martinez*, 2025 WL 2084238, at *4; *Gomes*, 2025 WL 1869299, at *8; *accord Rosado*, 2025 WL 2337099, at *6.

78. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

79. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

80. Petitioner has not been, and will not be, provided with a bond hearing as required by law.

81. Petitioner's continuing detention is therefore unlawful.

COUNT II
Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19
Unlawful Denial of Release on Bond

82. Petitioner re-alleges and incorporates by reference the above paragraphs.

83. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained 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." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

84. The regulation at 8 C.F.R. § 1003.19 lays out bond procedures, and § 1003.19(h)(2) delineates categories of noncitizens who are subject to mandatory detention and not entitled to a bond hearing. The fact that noncitizens within the United States who are subject to inadmissibility grounds are not included on this list shows that the agencies did not intend them to be subject to mandatory detention. The BIA's interpretation thus violates the regulations and unlawfully denies Petitioner a bond hearing.

COUNT III
Violation of the Administrative Procedure Act
Contrary to Law and Arbitrary and Capricious Agency Policy

85. Petitioner re-alleges and incorporates by reference the above paragraphs.

86. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

87. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. Specifically, it does not apply to Petitioner, who had been living in the United States for more than two years prior to being detained by Respondents. Petitioner is detained under § 1226(a) and is eligible for release on bond.

88. In taking a contrary position, the BIA has reversed decades of prior practice, and "would expand § 1225(b) face beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application." *Lopez Benitez*, 2025 U.S. Dist. LEXIS 157214, at *22-23. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies'

policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

89. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT IV
Violation of the Fifth Amendment Due Process Clause
Procedural Due Process

90. Petitioner re-alleges and incorporates by reference the above paragraphs.

91. 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. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

92. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Petitioner's liberty is a particularly weighty interest. Petitioner has no criminal history and has deep ties to the community, where he is an active member of his local mosque, and where he studies at the Community College of Philadelphia, in hopes of eventually training to become a medical assistant.

93. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Here, there is a great risk of unnecessary detention because the BIA's interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670.

94. At a hearing, Petitioner could show that his detention is not necessary because Petitioner has complied with every requirement imposed on him by DHS for two years, including but not limited to appearing at the ICE check-in where DHS detained him. He has no criminal history and has formed deep ties to the community, where he has friends, regularly attends mosque services, and attends classes at the Community College of Philadelphia.

95. A hearing at which the government bears the burden of proof by clear and convincing evidence would protect the substantial liberty interest at stake. *German Santos*, 965 F.3d at 213-14.

96. The final factor is the Government's interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes. *Hernandez-Lara*, 10 F.4th at 32-33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at *4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). Therefore, the government does not have an interest in detaining Petitioner without a bond hearing that outweighs his substantial liberty interest in such an individualized determination.

97. Respondents' detention of Petitioner without any hearing to determine whether that detention is necessary violates procedural due process.

COUNT V
Violation of the Fifth Amendment Due Process Clause
Substantive Due Process

98. Petitioner re-alleges and incorporates by reference the above paragraphs.

99. 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. Substantive due process requires that immigration detention without a bond hearing be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

100. The BIA's application of mandatory detention under § 1225(b)(2) is not reasonably related to those goals and thus violates substantive due process.

101. Here, Petitioner has complied with every requirement imposed on him by DHS for two years, including but not limited to appearing at the ICE check-in where DHS detained him. He has no criminal history and has formed deep ties to the community.

102. Petitioner is neither a flight risk nor a danger to the community, and therefore, his detention is not reasonably related to the above-referenced goals.

103. Considering these factors, Petitioner respectfully requests that this Court order his immediate release from custody. *See Ndiaye*, 2025 U.S. Dist. LEXIS 227253, at *23, n. 5 (ordering immediate release and declaring a bond hearing "unnecessary" where petitioner "is not likely to flee or harm the community" and holding a bond hearing would "only serve to delay relief").

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Order that Petitioner not be transferred outside of this District;

3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

4) Declare that a bond hearing is unnecessary because Petitioner is not likely to flee or harm the community;

5) Issue a Writ of Habeas Corpus and order Petitioner's immediate release from custody;

6) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

7) Grant such further relief as the Court deems just and proper.

Dated: December 11, 2025

Respectfully submitted,

/s/ Brian C. Lin

Brian C. Lin, Esq.
Attorney for Petitioner
Best Law Associates, LLC
915 Spring Garden Street Suite 206
Philadelphia, PA 19123
PA ID No. 328262
Tel: (215) 995-2900
Email: lin@bestlawassociates.com

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

I represent the Petitioner, Falilou Bah, and submit this verification on his behalf. 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 this 11th day of December, 2025.

/s/ Brian C. Lin
Brian C. Lin, Esq.
Attorney for Petitioner
Best Law Associates, LLC
915 Spring Garden Street Suite 206
Philadelphia, PA 19123
PA ID No. 328262
Tel: (215) 995-2900
Email: lin@bestlawassociates.com