UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Mouhamed GUEYE, Petitioner, v. Tony NORMAND, *in his official capacity as Warden of Folkston D Ray ICE Processing Center;* Ladeon FRANCIS, *Field Office Director ICE Atlanta Field Office;* Todd LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement;* and Kristi NOEM, *Secretary of Homeland Security,* Respondents.	)	Case No. **PETITION FOR WRIT OF HABEAS CORPUS** A# 245-253-954

I. INTRODUCTION

1. Petitioner Mouhamed Gueye is a 30-year-old citizen and national of Senegal who has lived in Greensboro, North Carolina, since 2023. He is currently detained by the Department of Homeland Security (DHS) at the Folkston D. Ray ICE Processing Center in Folkston, Georgia (Folkston).

2. This case does not arise from expedited removal or any detention under INA § 235, 8 U.S.C. § 1225. Mr. Gueye entered the United States without inspection near the southern border, immediately surrendered to U.S. officials, and was processed from the outset into full removal proceedings under INA § 240, 8 U.S.C. § 1229a. After a short period of custody, DHS issued him a Notice to Appear (NTA) placing him in § 240 proceedings and released him into the interior on an Order of Release on

Recognizance expressly issued "in accordance with section 236."

3. DHS never placed Petitioner into expedited removal under INA § 8 U.S.C. § 1225(b)(1), never processed him for inspection and admission under 8 U.S.C. § 1225(b)(2), and never granted or revoked parole under 8 U.S.C § 1182(d)(5), INA § 212(d)(5). Instead, it deliberately chose the § 240 track and exercised its detention-and-release authority under 8 U.S.C. § 1226(a).

4. For more than two years, Petitioner complied with ICE's reporting requirements while pursuing relief from removal in Immigration Court. Then, in November 2025, after a routine check-in in Charlotte, North Carolina, ICE suddenly re-detained him and transported him to Folkston. DHS now asserts that because he entered without having been formally "admitted," he is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and categorically ineligible for bond.

5. That position is unlawful. It is inconsistent with the statutory text, structure, and history of the Immigration and Nationality Act, with DHS's own original processing decisions in this case, and with the overwhelming weight of federal district court authority addressing similar fact patterns. Courts around the country—including this Court—have rejected the government's effort to re-label long-present noncitizens in INA § 240 proceedings as INA § 235(b) detainees to strip them of bond rights.

6. In *Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 LX 442534 (S.D. Ga. Nov. 4, 2025) (consolidated cases), a judge of this Court recently held that detention for noncitizens in INA § 240 removal proceedings is governed by § 1226(a), not § 1225(b)(2),

rejected *Matter of Yajure Hurtado* as unpersuasive, and ordered access to § 1226(a) bond hearings for a Folkston detainee. Other courts, facing cases where noncitizens were apprehended near the border but processed into INA § 240 and later re-detained at check-ins, have held that § 1226(a) governs and that the government may not retroactively convert such cases into § 1225(b) mandatory detention.

7. Petitioner seeks a writ of habeas corpus directing Respondents to treat his custody as governed by INA § 236(a) and seeks an order for his immediate release on the conditions imposed by DHS in 2023. In the alternative, he seeks a writ of habeas corpus directing Respondents to provide him a prompt, individualized bond hearing before a neutral adjudicator under § 1226(a), at which the Government bears the burden to show by clear and convincing evidence that he is a danger or flight risk. Petitioner also seeks an order prohibiting Respondents from transferring him outside this District during the pendency of these proceedings.

II. VENUE AND JURISDICTION

8. This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331 and Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause). Habeas relief is available to challenge the legality of civil immigration detention and to compel a bond hearing or release.

9. Venue lies in the Waycross Division because Petitioner is confined at the Folkston D Ray ICE Processing Center within this Division and Respondent Normand is his immediate custodian. *See* 28 U.S.C. §§ 2241(d), 1391(e).

III. PARTIES

10. Petitioner Mouhamed Gueye is a 30-year-old Senegalese national who resides in Greensboro, North Carolina. He is currently detained at Folkston.

11. Respondent Tony Normand is the Warden of Folkston. As such, Respondent is responsible for the operation of the detention center where Mr. Gueye is detained. Because ICE contracts with private prisons such as Folkston to house immigration detainees such as the Petitioner, Respondent Normand has immediate physical custody of the Petitioner.

12. Respondent Ladeon Francis is the Atlanta Field Office Director ("FOD") for ICE Enforcement and Removal Operations ("ERO"). As such, Respondent Sterling is responsible for the oversight of ICE operations at Folkston. Respondent Francis is being sued in his official capacity.

13. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement ("ICE"). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

14. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (hereinafter "DHS"). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

IV. EXHAUSTION AND FUTILITY

15. No statute imposes an exhaustion requirement for habeas petitions under

28 U.S.C. § 2241 in this context. Any prudential exhaustion requirement is excused.

16. Immigration Judges in the Atlanta and Stewart Immigration Courts handling detainees from Folkston are bound by *Matter of Yajure Hurtado* and *Matter of Q. Li* and, upon information and belief, have been declining bond jurisdiction for noncitizens the government characterizes as "applicants for admission" under § 235(b)(2)(A). In Petitioner's case, DHS has already taken the position that he is detained under § 235(b) and categorically ineligible for bond. A custody redetermination request would therefore be futile.

17. The question presented here is purely legal: which detention statute governs a noncitizen who (1) was apprehended at or near the border, (2) was never processed under § 235, (3) was instead placed from the outset into § 240 removal proceedings and released "in accordance with section 236," and (4) is later re-detained at a routine check-in. Petitioner faces an ongoing deprivation of physical liberty, and prompt judicial review is necessary.

V. STATEMENT OF FACTS

18. Petitioner Mouhamed Gueye is a citizen and national of Senegal, born on September 6, 1995. He is 30 years old and, upon information and belief, has no significant physical or mental health conditions. **Exhibit A (CBP Alien Initial Health Interview Questionnaire and A-File Jacket Starter).**

19. Petitioner entered the United States at or near Lukeville, Arizona, on or about September 19, 2023. Upon entry, he promptly surrendered himself to officers of U.S. Customs and Border Protection (CBP) and was taken into custody. Exhibit A.

20. After his apprehension, Petitioner was transported to a CBP facility for processing. CBP completed an Alien Initial Health Interview Questionnaire documenting his basic biographical and health information and an A-File Jacket Starter. The A-File Jacket Starter portion of Exhibit A contains checkboxes for several possible processing disposition options, including expedited removal, reinstatement of a prior removal order, voluntary return, and issuance of a Notice to Appear or withdrawal of application for admission, as well as a line to record whether the individual claims fear and various program codes. On Petitioner's form, none of the processing-disposition options is marked, there is no notation that he was placed into expedited removal or a credible-fear track, and there is no reference to INA section 235. Exhibit A.

21. On September 21, 2023, DHS, through CBP in Nogales, Arizona, served Petitioner with a Notice to Appear in removal proceedings under section 240 of the Immigration and Nationality Act. The NTA charges him as removable under INA section 212(a)(6)(A)(i) as an alien present in the United States without having been admitted or paroled, alleges that he arrived in the United States at or near Lukeville, Arizona on or about September 19, 2023, and lists his then current address as 216 Helen Street, Fayetteville, North Carolina. The NTA orders him to appear before the Immigration Court in Charlotte, North Carolina. **Exhibit B (Notice to Appear).**

22. Also on September 21, 2023, DHS issued Petitioner an Order of Release on Recognizance, Form I-220A. That document states that he had been arrested and placed in removal proceedings and that, in accordance with section 236 of the

Immigration and Nationality Act and applicable regulations, he was being released on his own recognizance subject to specified conditions, including appearing for all hearings and interviews and surrendering for removal if so ordered. **Exhibit C (Order of Release on Recognizance).**

23. On or about September 21, 2023, DHS released Petitioner from custody on the Order of Release on Recognizance. Petitioner settled in Greensboro, North Carolina, where he has resided continuously since his release. He has complied with ICE's reporting requirements, including a check-in on or about November 6, 2023, and, upon information and belief, an additional check-in in November 2024. **Exhibit D (OREC G-56, ICE Reporting Information and Check-in stamp).**

24. On or about November 20, 2025, Petitioner appeared for another scheduled ICE check-in at the ICE office in Charlotte, North Carolina. Petitioner had not violated any condition of his release. Nonetheless, at that appointment, ICE officers took him into custody without prior notice or any individualized explanation for the change in custody status.

25. On the same day, ICE transported Petitioner to Folkston, where he remains confined.

26. DHS continues to treat Petitioner's removal proceedings as § 240 proceedings and has not issued any Form I-860 (Notice and Order of Expedited Removal), any credible-fear or reasonable-fear documentation, or any other paperwork placing him into the expedited removal track under INA § 235(b).

27. Despite never having processed Petitioner under § 235, DHS now asserts

that his detention is governed by § 235(b)(2)(A), not § 236(a), based solely on the fact that he entered without inspection and has not been formally "admitted." On that basis, ICE and EOIR have taken the position that he is categorically ineligible for bond and that Immigration Judges lack custody-redetermination jurisdiction.

28. Petitioner has not filed a custody-redetermination request in Immigration Court because DHS and the BIA's position makes any such request futile and because, under recent precedent, Immigration Judges have been declining jurisdiction over similarly situated individuals on the theory that § 235(b)(2)(A) governs their detention.

VI. LEGAL FRAMEWORK FOR RELIEF SOUGHT

29. INA § 236(a), 8 U.S.C. § 1226(a), governs discretionary civil immigration detention for "any alien" who is arrested and detained pending a decision on removal, unless § 236(c) applies. It authorizes release on bond or "conditional parole" and, by regulation, provides for custody redetermination by an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(d)(1), 1003.19(a).

30. INA § 235(b), 8 U.S.C. § 1225(b), governs inspection and expedited removal at or near the border. Section 235(b)(1) authorizes expedited removal for certain arriving and designated noncitizens encountered within two years of entry who lack valid documents or present fraud. Section 235(b)(2) governs detention of aliens who "are applicants for admission" and "are not clearly and beyond a doubt entitled to be admitted," during the inspection and admission process. By regulation, the classes subject to expedited removal are limited to those described in published

Federal Register notices, and interior expedited removal is restricted to specific encounters within two years of entry.

31. For decades, DHS and the immigration courts treated noncitizens like Petitioner—individuals who entered without inspection, were not placed into expedited removal, and were instead charged directly into § 240 proceedings and released on I-220As citing § 236—as detained, if at all, under § 1226(a), with access to IJ bond review.

32. In *Matter of Yajure Hurtado* and *Matter of Q. Li*, the Board of Immigration Appeals announced a new position: that noncitizens who have not been formally "admitted" can be treated as § 235(b) detainees even when they are in § 240 removal proceedings and, in Li's case, even after prior bond or release orders. DHS has used those decisions to argue that such individuals are subject to mandatory detention under § 235(b) with no bond jurisdiction.

33. Federal district courts around the country have overwhelmingly rejected the Government's attempt to expand § 235(b) in that manner. They have held that detention for noncitizens in § 240 proceedings, including individuals who entered without inspection and were later arrested or re-detained at check-ins, is governed by § 1226(a), not § 1225(b)(2), and that the new BIA decisions are not entitled to deference post-*Loper Bright*.

34. These decisions reflect a broad, emerging consensus: INA § 236(a) governs detention for noncitizens in § 240 proceedings who, like Petitioner, were never placed into expedited removal under § 235, were released into the interior "in

accordance with section 236," and are later re-detained at check-ins. The government's effort to retroactively reclassify such individuals as § 235(b)(2) detainees, in order to avoid bond jurisdiction, is contrary to the statute and unsupported by the case law.

VII. CAUSES OF ACTION
COUNT ONE
STATUTORY CLAIM (Detention Governed by INA § 236(a))

35. Petitioner incorporates paragraphs 1 through 34 as if fully set out herein.

36. Section 235(b)(2)(A) does not govern Petitioner's detention. Petitioner was never processed under § 235(b)(1) or § 235(b)(2), was never issued a Form I-860, and was never placed into the expedited removal track. Instead, DHS charged him directly into § 240 removal proceedings and released him from custody "in accordance with section 236" on an Order of Release on Recognizance. That election placed him squarely within the scope of INA § 236(a), which governs discretionary detention and release during the pendency of § 240 proceedings.

37. Reading § 1225(b)(2)(A) to govern Petitioner's detention would collapse the statute's two-track structure by allowing DHS to treat any never-admitted noncitizen in § 240 proceedings as a perpetual "applicant for admission," regardless of how they were actually processed. That interpretation would render § 1226(a) a dead letter for a large category of noncitizens, contrary to the structure recognized in *Jennings v. Rodriguez* and in the recent Laken Riley Act amendments to § 1226(c).

38. The phrase "is an alien … who is seeking admission" in § 1225(b)(2)(A) is in the present tense and belongs in the inspection context. It does not extend to

noncitizens like Petitioner who were never processed under § 235, were affirmatively placed into § 240 proceedings, and have lived in the interior for years while complying with ICE reporting and litigating their cases in Immigration Court.

39. Under INA § 236(a) and its implementing regulations, Petitioner is entitled to release pursuant to the 2023 Order of Release on Recognizance, or a prompt bond hearing before a neutral adjudicator, at which the Government bears the burden to justify continued detention. By refusing to treat his detention as governed by § 1226(a) and by denying him release or access to bond review, Respondents are acting in excess of their statutory authority.

COUNT TWO
PROCEDURAL DUE PROCESS (U.S. Const. amend. V)

40. Petitioner incorporates paragraphs 1 through 39 as if fully set out herein.

41. Prolonged civil detention without a neutral bond hearing violates procedural due process. If Respondents' position categorically forecloses any IJ bond review for interior arrestees like Petitioner, it denies a meaningful opportunity to be heard and invites arbitrary confinement. At minimum, due process requires a prompt bond hearing at which the Government bears the burden to justify detention by clear and convincing evidence.

COUNT THREE
SUBSTANTIVE DUE PROCESS (U.S. Const. amend. V)

42. Petitioner incorporates paragraphs 1 through 41 as if fully set out herein.

43. Civil detention must remain reasonably related to its purposes of ensuring appearance and protecting the community. Detaining Petitioner without any individualized assessment, solely on a categorical theory rejected by this Court days ago, bears no reasonable relation to any legitimate aim and is excessive in relation to its purposes.

PRAYER FOR RELIEF

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

1) Assume jurisdiction over this matter;
2) Issue a writ of habeas corpus declaring that Petitioner's detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), and not § 235(b)(2), 8 U.S.C. § 1225(b)(2);
3) Order Petitioner's immediate release from custody pursuant to the 2023 Order of Release on Recognizance;
4) In the alternative, order Respondents to provide Petitioner with an individualized bond hearing under § 1226(a) before an Immigration Judge within seven (7) days of the Court's order, at which the Government bears the burden to show, by clear and convincing evidence, that Petitioner is a danger to the community or a flight risk and to demonstrate that no reasonable alternative to detention would suffice;
5) Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of these proceedings;
6) Order Respondents to answer the petition within 3 business days; and
7) Grant such other relief as the Court deems just and proper.

Respectfully submitted this 15th day of December, 2025

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

Respectfully submitted this 15th day of December, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify that the document to which this certificate is attached has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1 for documents prepared by computer.

Respectfully submitted this 15th day of December, 2025

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