UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

ABDERRAHMANE MAMADOU GUEYE,
A [redacted]

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Case No. 1:26-cv-94

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Abderrahmane Mamadou Gueye ("Mr. Gueye") came to the United States seeking asylum in May 2018. Although he was treated as an "arriving alien" at the border, the subsequent actions by the Immigration and Customs Enforcement ("ICE") and the Executive Office of Immigration Review ("EOIR") establish that the government ceased considering him as "arriving" and he cannot now be subjected to detention under 8 U.S.C. § 1225. Thus, the agency is unlawfully holding him without providing the opportunity for his release.

For decades it has been universally understood that individuals who have entered the United States, even unlawfully, are entitled to seek release on bond absent past criminal convictions that would subject them to mandatory detention. Yet in 2025, the government abruptly reversed the statutory interpretation it embraced for decades, choosing to interpret the Immigration and Nationality Act ("INA") to mandate the detention of anyone who entered without inspection pending their removal, regardless of how long they have resided in this country. The government has detained Mr. Gueye since May 2025, however, as evidenced by their response, Respondents are inconsistent on the statutory basis by which it claims provides the authority to detain Mr. Gueye

these past eight months, asserting he was and has always been subject to detention under 8 U.S.C. § 1225(b)(1), and arguing that detention under § 1225(b)(2) is proper for individuals, like Mr. Gueye, who entered the United States years ago without inspection. Neither purported statute applies in these circumstances. Accordingly, this Court should order Respondents to release Mr. Gueye, or in that alternative, order a bond hearing before a neutral arbitrator.

ARGUMENT

I. Mr. Gueye cannot be detained under 8 U.S.C. § 1225(b)(1)

The government correctly notes that when Mr. Gueye applied for admission at the border in 2018, he was an applicant for admission who was seeking admission. Yet, the Department of Homeland Security did not ultimately process him for expedited removal because it could not complete the credible fear process.[1] *See* ECF No. 8-1 ¶¶ 8-9. Thus, as a threshold matter, he is not subject to any part of § 1225(b)(1). Moreover, from the point that DHS placed Mr. Gueye in removal proceedings until his most recent detention, every action taken by ICE and EOIR occurred under 8 U.S.C. § 1226(a).

First, ICE placed Mr. Gueye into removal proceedings before an immigration judge. ECF No. 1-2. On December 17, 2018, and immigration judge ordered Mr. Gueye to be released from custody on a $12,000 bond. ECF No. 8-1, ¶ 11. This bond hearing was conducted pursuant to the injunction issued by the Ninth Circuit in the *Rodriguez* class action. *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). ECF No. 1-3, Custody Order ("Rodriguez" written above the title

[1] While Deportation Officer Benner states that Mr. Gueye was initially processed for expedited removal, ECF No. 8-1, ¶ 5, he also admits that such processing was not continued. ECF No. 8-1, ¶ 8. Notably, ICE made clear that it was not referring Mr. Gueye for removal proceedings under the expedited removal provisions because the boxes relating to the issuance of proceedings after the vacatur of a Section 235(b)(1) order are not checked on the Notice to Appear. ECF No. 1-2, Notice to Appear.

"Order of the Immigration Judge with Respect to Custody"). Critically, custody hearings provided under *Rodriguez* were provided under 8 U.S.C. § 1226(a), as the Ninth Circuit upheld the district court's injunction stating that for individuals held for more than six months under § 1225(b), continued "detention is authorized by [8 U.S.C.] § 1226(a) and a bond hearing is required." *Id.* at 1144. Thus, when the immigration judge released Mr. Gueye on bond in 2018, he was released pursuant to 8 U.S.C. § 1226(a) and has been living in the United States since that time.

Furthermore, Respondents' subsequent actions make clear Respondents considered Mr. Gueye subject to § 1226(a) in the years that followed his initial release. According to Deportation Officer Kevin Benner, on August 11, 2020, when Mr. Gueye was in state custody, ICE officers "placed a detainer with the jail." ECF No. 8-1, ¶ 13. ICE policy requires that it must issue a I-200, Warrant of Arrest, with each detainer it issues. ICE Policy 10074.2 ¶ 2.4 (2017), https://perma.cc/RFQ4-YHTY (last visited Jan. 29, 2026). The detainer policy explicitly states: "The Department of Homeland Security's detainer authority, codified in section 287.7 of title 8 of the Code of Federal Regulations (C.F.R.), arises from the Secretary of Homeland Security's power under section 103(a)(3) of the Immigration and Nationality Act [8 U.S.C. § 1103(a)(3)] to provide regulations 'necessary to carry out his authority,' and from ICE's general authority to arrest and detain aliens subject to removal or removal proceedings, pursuant to sections 236 [8 U.S.C. § 1226], 241 [8 U.S.C. § 1231], and 287 [8 U.S.C. § 1357] of the INA." *Id.* The warrant itself states, "To: Any immigration officer authorized [to serve an arrest warrant for immigration violations] pursuant to sections 236 [8 U.S.C. § 1226] and 287 [8 U.S.C. § 1357] of the Immigration and Nationality Act" and its implementing regulations. *See* Sample Warrant for Arrest of Alien, *available at* https://www.ice.gov/sites/default/files/documents/Document/

2017/I-200_SAMPLE.PDF (last visited Jan. 29, 2026). Thus, when ICE agents took Mr. Gueye into custody on September 20, 2020, they did so under the authority of § 1226(a). 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States….").

ICE again considered Mr. Gueye subject to § 1226(a) in 2021 when ICE released Mr. Gueye on an Order of Release on Recognizance ("ROR"). ECF No. 1 (Pet.), ¶ 27 (citing ECF No. 1-5, Notice of Custody Determination). This notice of custody determination states, "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226] and [8 C.F.R. § 236 et al.], I have determined that, pending a final administrative determination in your case, you will be: Released under other conditions." *Id.* Separately, the ROR states, "You have been arrested and placed in removal proceedings. In accordance with section 236 of the INA [8 U.S.C. § 1226] and the applicable provision of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with" the conditions as listed. Pet. ¶ 28 (citing ECF No. 1-6, Order of Release on Recognizance). Once again, ICE operated under the statutory authority of 8 U.S.C § 1226 in placing conditions on Mr. Gueye when releasing him from custody, including regular check-ins.

Without acknowledging any of the documents indicating ICE's processing of Mr. Gueye under 8 U.S.C. § 1226(a), Respondents argue that Mr. Gueye was actually released on a parole under 8 U.S.C. § 1182(d)(5), and thus his status reverted back to that of applicant for admission. *See* ECF No. 8 (Resp.), at 10-11 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)). Respondents are incorrect in this argument because Mr. Gueye was never paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). He has only been released from detention on bond or a ROR. Thus, the citation to *Garcia v. United States*, No. 2:25-cv-1053-KCD-DNF, 2025 WL

3537592, at *1 (M.D. Fla. Dec. 10, 2025), is inapposite. *See J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *6 (E.D.N.Y. Sept. 29, 2025) ("Release on recognizance constitutes a form of conditional parole from detention housed in the provisions of § 1226's discretionary detention.") (citing *Cruz-Miguel v. Holder*, 650 F.3d 189, 191, 198 (2d Cir. 2011) (distinguishing between being paroled into the United States and being released on recognizance, noting that they serve "distinct functions"); *see also Lopez Benitez v. Francis, et al.*, 795 F. Supp. 3d 475, 484–86 (S.D.N.Y. 2025) (where petitioner was initially arrested under § 236 and later released on recognizance, finding that petitioner was detained under § 1226); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (where a petitioner was released on her own recognizance, concluding that it "does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ('[i]n accordance with section 236 of the Immigration and Nationality Act')"); *Gomes v. Hyde*, 25-CV-11571 (JEK), — F. Supp. 3d —, 2025 WL 1869299, *5 (D. Mass July 7, 2025) (noting that "the government may release a noncitizen detained under Section 1226(a) on an Order of Recognizance, which is a form of conditional parole"); *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)[.]")).

Ultimately, Respondents have repeatedly treated Mr. Gueye as subject to 8 U.S.C. § 1226(a), and not an individual subject to expedited removal under § 1225(b)(1). Thus, ICE's position is that Mr. Gueye is currently detained under § 1225(b)(1) is a clear violation of the INA and this Court should order his immediate release from custody. *Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) ("If this Court ordered a hearing, it would require

the immigration judge to do that which, in light of BIA precedent, the judge would not believe he had any authority to do. *See Matter of Yajure-Hurtado*, 29 I. & N. Dec. at 229 ("The Immigration Judge . . . lacked authority to hear the respondent's request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under . . . § 1225(b)(2)(A).")).

II. Mr. Gueye cannot be detained under 8 U.S.C. § 1225(b)(2)

Respondents also rely on their overwhelmingly debunked legal theory that even though Mr. Gueye has lived in the United States for over seven years, he remains an applicant for admission who is seeking admission into the United States. District courts throughout the Tenth Circuit have almost universally concluded that noncitizens like Mr. Gueye who have entered the United States without admission and have continued residing in the United States for years after entry are subject to detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2). *Orellana v. Noem*, No. 25-CV-03976-PAB, 2025 WL 3706417 (D. Colo. Dec. 22, 2025); *Ramos v. Dedos*, No. 1:25-CV-00975-MLGKRS, 2025 WL 3653928 (D.N.M. Dec. 17, 2025); *Colin v. Holt*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Cortez-Gonzalez v. Noem*, --- F. Supp. 3d ----, 2025 WL 3485771 (D.N.M. Dec. 4, 2025); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-CV01031-KG-JFR, 2025 WL 3187432 (D.N.M. Nov. 14, 2025); *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Mendoza Gutierrez Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Velasquez Salazar v. Dedos*, --- F. Supp. 3d ----, 2025 WL 2676729 (D.N.M. Sept. 17, 2025). The statute's plain text and Supreme Court precedent should compel this Court to do so again.

Contrary to Respondents' assertions, § 1225(b)(2) does not apply to all applicants for admission. It mandates the detention only of those who are "seeking admission" and only if an "examining immigration officer determines that [they are] not clearly and beyond a doubt entitled

to be admitted." 8 U.S.C. § 1225(b)(2)(A). Respondents counter that the "language Congress used in § 1225 confirm[s] that it deemed, as a matter of law, *anyone* falling within the category of "applicant for admission" to be "seeking admission" by virtue of that status. *See* Resp. 7. Relying on an out of district case that is an outlier even within the Western District of Oklahoma, Respondents posit that because under 8 U.S.C. § 1225(a)(3), "applicants for admission" are subject to inspection because they fall within the broader class of those "seeking admission," then the statute necessarily treats "seeking admission" as a condition that attaches to anyone deemed an "applicant for admission." Resp. 6-9 (citing *Montoya v. Holt, et al.*, No. CIV-25-01231, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025)). A decision from within this District, however, has held that the "presumption of consistent usage and the meaningful-variation canon" instruct[] that "[i]n a given statute, the same term usually has the same meaning and different terms usually have different meanings." *Loa Caballero*, 2025 WL 2977650, at *6 (quoting *Pulsifer v. United States*, 601 U.S. 124, 149 (2024)). "[B]y treating the terms 'applicant for admission' and 'alien seeking admission' as synonymous, Respondents' interpretation violates the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 795 F. Supp. 3d at 488 (S.D.N.Y. 2025); *see also Castanon Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, 2025 WL 3552514, at *9 (7th Cir. Dec. 11, 2025) ("[I]t is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an 'applicant for admission' to 'an alien present in the United States who has not been admitted or who arrives in the United States.' It could easily have included noncitizens who are 'seeking admission' within the definition but elected not to do so.") (internal citation omitted).

Mr. Gueye is not subject to § 1225(b)(2) because he cannot be described as "seeking

admission" to the country he has lived in for the past seven years. While he was seeking admission when he came to the United States in early 2018, he was released him into the interior of the country upon a grant of bond under 8 U.S.C. § 1226(a).

Respondents heavily cite the Supreme Court's decision in *Jennings v. Rodriguez* to argue that "[s]ection 1225(b) applies to all applicants for admission, not just arriving aliens or those who unlawfully entered the country recently." Resp. 7-8. Yet *Jennings* affirmed that § 1226(a) rather than § 1225(b)(2) "applies to aliens already present in the United States." *Jennings*, 583 U.S. at 303. The Court acknowledged that "once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission," but explained that "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal." *Id.* at 288 (emphasis added). Mr. Gueye belongs to "that group of aliens" and his detention is governed by § 1226(a). *See also id.* at 289 ("In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).").

Finally, Respondents' new interpretation of the statute renders the amendments to the INA in the Laken Riley Act superfluous. Section 1225(b)(2) had been on the books for almost three decades when Congress passed the Laken Riley Act. In that time, neither the courts nor the Government had ever interpreted § 1225(b)(2) to mandate the detention of all noncitizens like Mr. Gueye who was released into the United States without admission. It was against that backdrop that Congress passed the Laken Riley Act. When it did, Congress did not feel compelled to clarify the interpretation of § 1225(b)(2) that had been universally accepted since its inception. Instead, it

mandated detention for certain classes of inadmissible noncitizens—individuals that would already have been subject to mandatory detention under Respondents' novel reading of § 1225(b)(2). *See* 8 U.S.C. § 1226(c). If Congress believed the courts and the Government were misapplying § 1225(b)(2) it had three decades to correct the error. It did not. And the Court should reject Respondents' attempt to subvert the legislative process and amend a thirty-year old statute through a new "interpretation" that renders subsequent acts of Congress null and void.

Respondents' arguments that prior agency practice and legislative history are consistent with their new interpretation also fail. First, Respondents' do not dispute that for almost thirty years it afforded noncitizens like Mr. Gueye who is present in the United States without admission a bond hearings under § 1226(a) consistent with a plain text reading of the statute, nor can they. The Department cannot argue that it released noncitizens subject to § 1225(b) on bond for thirty years, as a matter of discretion, when individuals subject to that statute are only eligible for release on parole under 8 U.S.C. § 1182(d)(5)(A), not bond. *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.").

The legislative history relied upon by Respondents in fact *supports* the position that Congress has always distinguished between individuals seeking to enter (or, post IIRIRA, be "admitted" to) the United States and those who are already physically within the country. Resp. 9-10. Moreover, Respondents' discussion of the legislative history omits the fact that the predecessor statute included discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994)) ("[A]ny such [noncitizen] taken into custody may, in the discretion of the Attorney General ... be continued in custody ... [or] be released under bond[.]"). When it passed IIRIRA, Congress explained that the new § 1226(a) "restates the current provisions in section 242(a)(1) [1252(a)(1)] regarding the

authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Mendoza Gutierrez*, 2025 WL 2962908, at *8 (quoting H.R. REP. 104-469, 229). "Because noncitizens like [Mr. Gueye] were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports [Mr. Gueye's] position that he too is subject to discretionary detention." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025).

Finally, Respondents' refusal to allow Mr. Gueye to seek release on bond also violates his constitutional right to due process. Respondents contend that Mr. Gueye has "'only those rights regarding admission that Congress has provided by statute,' and 'the Due Process Clause provides nothing more.'" Resp. 15 (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). Yet this argument rests on a misinterpretation of *Thuraissigiam*, 591 U.S. 103, 118-19 (2020). *Thurassigiam* merely affirmed what the Supreme Court has held for years—that for noncitizens on "the threshold of initial entry," "whatever the procedure authorized by Congress is, it is due process as far as a [noncitizen] denied entry is concerned." *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Thuraissigiam*, 591 U.S. at 138-39.

Yet Mr. Gueye is not at "the threshold of entry." He entered the United States over seven years ago when he was released on bond and has resided here ever since. As the Supreme Court has stressed, once Mr. Gueye "enter[s] the country, [his] legal circumstances change[], for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (distinguishing noncitizens arriving at our shores from those "who have never been naturalized, nor acquired any domicil or residence within the United States"). Thus, even if the Court were to accept

Respondents' erroneous argument that Mr. Gueye is subject to § 1225(b)(2), that statutory distinction is not determinative of the process he is due under the Constitution. Because he entered the United States over seven years ago, his proceedings must "conform to traditional standards of fairness encompassed in due process of law." *Mezei*, 345 U.S. at 212. Respondents cite no case even suggesting that the general constitutional principle limiting the due process rights of those denied entry should be extended to those like Mr. Gueye who have "passed through our gates." His detention must comport with due process. For the reasons set forth in his Petition, it does not.

Respondents next argue that Mr. Gueye has not been prejudiced because he is not "being denied procedures in his immigration proceedings, where he can challenge the determination that § 1225(b)(2)(A) applies." Resp. 15. First, that is precisely what he has been denied. DHS Policy and BIA precedent deny him any opportunity to argue that he is entitled to bond under § 1226(a) and is not subject to § 1225(b)(2). Second, Mr. Gueye's continued detention without the opportunity to seek release on bond is clearly prejudicial. "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*, 533 U.S. at 690. Indeed, freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Accordingly, "[g]overnment detention violates th[e Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and 'narrow' nonpunitive 'circumstances' where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (emphasis in original) (internal citations omitted). Respondents have not put forth any special justification for Mr. Gueye's continued detention, and the Government's general interest in ensuring Mr. Gueye's appearance at his removal proceedings and protecting the community does not outweigh his

constitutionally protected interest in avoiding physical restraint, particularly where an immigration judge would necessarily consider those interests when deciding whether to set bond. *See Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255, at *10 (E.D. Va. Sept. 19, 2025) ("Any interest that the federal respondents may have in securing Hasan's presence at immigration proceedings has been accounted for by the IJ's imposition of bond."). The Court should likewise reject Respondents' argument that *Demore v. Kim*, 538 U.S. 510 (2003), which upheld the constitutionality of mandatory detention for certain classes of criminal noncitizens should extend to noncitizens like Mr. Gueye whom Congress did not identify as posing a danger to the community. Resp. 16. Demore "upheld the constitutionality of a mandatory detention procedure as 'applie[d] to a class of noncitizens who had already been convicted (beyond a reasonable doubt) of committing certain serious crimes" based on legislative findings "suggesting their likelihood of not appearing for removal hearing and their likelihood of subsequent arrests before deportation proceedings began." *Doe v. Moniz*, --- F. Supp. 3d ----, 2025 WL 2576819, at *10 (D. Mass. Sept. 5, 2025) (quoting *Hernandez-Lara v. Lyons*, 10 F.4th 19, 35 (1st Cir. 2021)) (emphasis in original). That holding addressing the process due to convicted criminals does not justify the continued detention of Mr. Gueye without any process to determine whether his continued detention would serve the government's interest in protecting the community or ensuring his appearance for removal proceedings.

CONCLUSION

For the foregoing reasons and for the reasons set forth in Mr. Gueye's Petition, the Court should grant the writ of habeas corpus and order Mr. Gueye's release, or in the alternative a bond hearing at which 8 U.S.C. § 1225(b)(2)(A) cannot be invoked to deny bond, DHS bears the burden of proof, and the immigration judge considers Mr. Gueye's ability to pay bond as part of the factors in setting bond.

Dated: January 29, 2026

Respectfully submitted,

/s/ Sarah L. Vuong

SARAH L. VUONG
CA Bar No. 258528
Ariela Lake Law & Consulting PLLC
3355 Hudson St., #7098
Denver, CO 80207
Ph: (202) 996-5757
Email: sarah@allc.law