

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

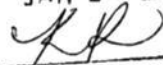
SALAU BOLARINWA,  
(Petitioner),

v.

MICHAEL KUNES [Warden Clinton County Jail]  
Asst. Office Director, REID [ICE ERO Williamsport Sub-office]  
KRISTI NOEM [DHS Secretary]  
(Respondents).

FILED  
SCRANTON

JAN 23 2026

PER   
DEPUTY CLERK

**PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

I, Bolarinwa Salau, hereby petition to this court for a writ habeas corpus pursuant to 28 U.S.C. § 2241, challenging the continued unconstitutional detention of my person by the Department of Homeland Security [DHS] at the clinton county correctional facility in McElhattan, Pennsylvania. I bring this petition because my detention is in violation of my First [1st] Amendment, Fifth [5th] Amendment Due Process clause, and the provision of the Immigration Nationality Act [INA].

I am currently detained because the motivation of my detention is to punish me for exercising free speech in violation of my first amendment right, and the constitutionality violation of the 5th amendment due process clause of § 1226(a) bail provision which places the burden of proof on the government rather than on the defendant in an immigration proceeding. Hence, the immigration judge placement of burden of proof on Salau, to show cause on why he is not a flight risk without giving him adequate opportunity to be heard as a way of retaliation violates such protected due process before the court. ICE and the IJ did not consider Salau's evidence but rather placed such heavy burden of proof on Salau. The IJ determination was procedurally flawed, and as such resulted in an erroneous determination that Salau poses a flight risk. Salau, hereby asks the court to grant him immediate release from this unconstitutional detention while this habeas petition is in review, or in the alternative order that ICE provide him with a new bond hearing whereby the IJ places the burden of proof on the government to show beyond reasonable doubt that salau poses a flight risk.

**FACTUAL BACKGROUND**

Salau, petitioner here, is a native of Nigeria who entered the United States on Aug 2, 2017, as a F-1 non-immigrant student. On February 8, 2018, Salau filed an I-1589, Application for Asylum and withholding of removal with USCIS due to fear of political and social group

persecution he faced while living in Nigeria before coming to the United States, and as of this date that application is pending, making Salau overstay his visa in 2019 while awaiting the result of his asylum application. On June 2, 2018, a notice to appear was issued to Salau, and on December 18, 2023, an immigration judge dismissed the case due to prosecutorial discretion and Salau pending asylum application, and other applications of relief.

Before this current detention, Salau is a resident of the United States who has lived freely in the United States for over 8 years. Salau has never had issues with law enforcements nor evaded justice. Salau has been married to a United States citizen since 2022 and was living with his family (U.S citizen wife and step-son) in New York. Salau's wife has filed an I-130 application, petition for alien relative which has been approved by the USCIS, and due to Salau's claim to United States Citizenship as an alien relative and spouse to a United States Citizen, Salau filed for an I-485 application to adjust to permanent residence. Salau was granted work authorization in the United States, and is certified as a Security Guard, Project Management Professional (PMP), Fire, Life & Safety Department (FLSD) from New York Fire Department (NYFD), holds a job and pay his taxes. On April 12, 2024, Salau I-485 was denied because he missed the timeline for his interview but was approved to appeal or refile, a remedy which salau is currently pursuing as of date.

On November 13, 2024, Salau was indicted in violation of 18 U.S.C. § 1028(a)(7), and he was sentenced to 24 months, with credits for pre-trial time served of 23 months, and an immediate direct appeal of that conviction followed which is currently pending at the Fourth Circuit Court. Salau's conviction is not final for immigration purposes as per BIA precedent, and therefore was not charged by it. Salau has no other criminal records at both state and federal levels. His file contains his expired passport, and there are no evidences of gang affiliations or terrorist group, and he has not been outside of the United States since 2017.

On November 7, 2025, after Salau completed his sentences, and was meant to reunite with his long awaited family which he has been away from with no incentives to flee, the Department of Homeland Security [DHS] served salau with an I-862, Notice To Appear, stating that he stopped going to school, overstayed his visa, and that he is no longer in lawful status, despite Salau pending Asylum application, and an Immigration Judge order that dismissed those charges against Salau with prejudice as at 2023. DHS arrested Salau and took him into custody at the Clinton Cnty. Corr. Facility.

Salau requested a custody determination with an IJ since he is detained under § 1226(a) for visa overstay, but on that custody determination proceedings, Salau's first amendment free speech and fifth amendment due process was blatantly violated by the Immigration Judge, and as a result of that violation, Salau was denied bond as a punishment to him and to compel him to voluntarily depart the country. Salau has appealed this decision to the BIA and that appeal remains pending. Salau has also requested new bond hearing from the Immigration Judge who

Salau, therefore brings this habeas petition to the court as the proper channel for relief seeking reliefs from this unconstitutional detention in form of an Immediate Release Order or in the alternative a New Bond Hearing whereby the burden of proof is heavily placed on the government as squarely reached by the First Circuit on the constitutionality of § 1226(a) bail provisions to consider all evidences and to proof if Salau is a danger or a flight risk to warrant continued detention .

### ARGUMENT

Salau is entitled to habeas relief. Salau continued detention is unconstitutional, punitive and retaliatory, and the purpose of the continued detention is to punish Salau for his free speech. These are violations of the fifth amendment due process, the first amendment, and the § 1226(a) bail conditions. Additionally, Salau is entitled to a new bond hearing before a neutral immigration judge that places the burden of proof heaviliy on the government establish beyond reasonable doubt that he is a flight risk.

#### 1. Salau's First Bond Hearing Is Prejudiced And Is In Violation Of Salau First Amendment Right To Free Speech

On November 18, 2025, Salau was place in immigration proceedings in front of an immigration Judge Leo Finston. Salau, a detained noncitizen, despite bearing a significant burden of proof, was unrepresented and has no right to be appointed counsel in his immigration proceedings. This was his first removal appearance and he was representing himself due to incapacity to secure an attorney or a probono firm. The government has an attorney representing them and was fully prepared to counter Salau should incase any claims was raised in regards to his proceeding. Salau was charged with Visa overstay and detained pursusnt to § 1226(a), Salau tried explaining his reason for his visa overstay as well as reliefs he has pursued till date. Salau requested a bond hearing from the immigration judge in that proceeding since he believes he was entitled to one as a detainee under § 1226(a), but since he was detained and do not know much about the immigration laws, he was oppresively responded to by the Immigration judge stating: "**THIS IS MY COURT ROOM, DON'T SPEAK WHILE I AM SPEAKING AND DO NOT TEACH ME MY JOB**". This reply is an oppressive response to a detainee seeking his right to a fair hearing, and as such is retaliatory in nature in violation of Salau's first amendment right to free speech. Salau, therefore was punished for excercising his free speech right to defend himself, and was placed under a continued punitive detention that violates his due process to a fair 1226(a) bond hearing. The government and the IJ motivation or purpose for detention is to punish petitioner, and that spans beyond the scope of a § 1226(a) custody determination. DHS, and the Immigration Judge contention that Salau poses a flight risk can therefore be characterized as "unsupportive claims", as the government presented nor provided no evidence to support that determination. This presents evidence, that Salau

detention, though discretionary, was motivated by unconstitutional purposes in violation of his first amendment free speech right, and the due process clause. The court can conclude the same in absence of countervailing evidences (*Ozturk v. Trump*, 779 F.Supp. 3D 462 [D. Vt. 2025])

## **2. Placing Burden Of Proof On Salau under 8 U.S.C. § 1226(a) Does Offend Due Process.**

The First Circuit court became the first circuit to squarely reach the constitutionality of the § 1226(a)(1) bail provision, and it concluded that due process requires the government to bear the burden of proving dangerousness or flight risk. [*Hernandez-Lara*, 10 F.4TH at 39. (DHS and the IJ violated petitioner due process by going against this backdrop by placing the burden of proof on petitioner)]. This decision has been adopted by sister courts across the nation that placing the burden of proof was unconstitutionally applied to petitioner at his § 1226(a) bond hearing such that his due process rights were violated. This is the situation here in Salau's first bond hearing proceedings.

To determine whether a 1226(a) detention violates due process, the courts apply the three part test set forth in *Matthews v. Eldridge* 424 U.S 319 (1976), which is used to access the constitutionality of civil commitments. see *Hernandez-Lara*, 10 f.4th at 28. The matthew testcourt must consider,

- [first], the private interest that will be affected by the official action;
- [secondly], the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedurals safeguard;
- and [finally], the government interest including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement will entail.

(A) As to the first factor, petititoner, Salau's, private interest are greatly affected by the government actions as the issue here is his liberty. Salau's freedom from imprisonment, and from custody detention or physical restraint lies at the heart of liberty that the clause protects'. [*Zadvydas*, 533 u.s at 689-90, 121 S. Ct. 2491.] (holding that a noncitizen awaiting removal may not be held indefinitely). Although petitioner has just been detained just over 2 months, i.f id. "the exact length of his detention underr § 1226(a) is impossible to predict and can be quite lengthy". *Hernandez-Lara*, 10 f.4th at 29 (noting that, but for the grant of habeas, she would have been unconstitutionally incarcerated for over two years). Petitioner, has suffered significant loss of liberty; he has now spend an amountable amount of his life in detention, and such unconstitutional detention is foreseeable to be prolonged, and their punitive nature hampers the very existence of his liberty. DHS charged salau with Visa Overstay, and violated his due process by placing burden of proof on him show why he is not a flight risk based off that, but in [*German Santos v Wrden Pike Cnty Corr. Facility*, 965 F.3D 203, 211 (3rd Cir. 2020)], We held that we do not hold an alien's good faith challenge to his removal against him, even if his appeals or applications for relief have drawn out of the proceedings. see also; [*Loho*

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v. Mukasey, 531 F.3d 1016, 1017-19 (9TH Cir. 2008)]..(explaining how a voluntary return to a home country adversely affects an asylum application). According to the the first factor- Salau private interest in his liberty weighs strongly in his favor and mandates his release from detention.

**(B)** The second Matthew factors considers the "erroneous deprivation" of his liberty interest if the burden is shifted to petitioner, together with the "probable value, if any of additional or substitute procedural safeguards." 424 U.S. at 335,96 S. Ct. 893. A detained noncitizen like salau, bears a significant burden but has no right to be provided with counsel in immigration proceedings", will often be unrepresented, and is "likely to experience difficulty in gathering evidences on their own behalf and is unlikely to know about immigration laws and procedures and the particular preferences of individual IJ's." Hernandez-Lara, 10 F.4th at 31-32.

Salau appears not to be a danger to the public nor a flight risk, but the Immigration Judge made an erroneous determination that he is a flight risk based on insufficient evidences on records. Moreso, when considering petitioner's limited resources compared to the government comparative resources, there is quite a room for 'erroneous deprivation' of liberty under this standard of show cause, placing burden of proof on the petitioner as the IJ in Salau first bond hearing has done given the circumstances. This is a violation of fifth amendment due process clause and it weighs heavily in Salau's favor for a new bond hearing or in the alternative immediate release pending review of this habeas petition.

**(C)** Finally, the Matthew factors address the public interest and considers it with the 'fiscal and administrative burdens that the additional or substitute procedural requirement would entail.' Hernandez-Lara, 10 F.4th at 32 (citing Matthews, 424 U.S. at 335, 96 S. Ct. 893). There is no question that 1226(a) authorizes the detention of noncitizens who poses a danger or a significant flight risk, *id.* But, it is not necessarily in the government's best interest to operate under a burden of proof that consistently favors incarceration. see Velasco Lopez, 978 F.3d at 849. "Indeed limiting the use of detention to only noncitizens who are dangerous or a flight risk may save the government and therefore the public, from expending substantial resources on needless detention." Hernandez-Lara, 10 f.4th at 33 (citing velasco lopez, 978 f.3d at 854 n.11 [detention of noncitizens costs taxpayers approximately \$134 per person per day according to ICE estimates]), and at at now the cost of keeping a detsinee incarcerated has significantly increased which poses strong economical burden on the government and the public taxpayers. In this case it will be both in the government and the public interest for the government to bear the burden of establishing that Salau is actually a flight risk beyond reasonable doubt and preponderance of evidence, and to ultimately consider alternatives to detention, rather than waste financial economical resources on an unwarranted unconstitutional detention as this case may be.

Placing the matthew's factor into place, shows that salau first detention hearing was prejudiced. By placing the burden on proof on salau violated his fifth amendment due process.

Despite his limited resources, and his recommendation documents from friends and family to show that he is not a flight risk, he was not given an adequate opportunity to be heard. The comparative burden on the government to prove these elements is especially small, given that, at bond hearings, the government is always represented by an attorney who is prepared to raise arguments in the event the IJ grants bail, then, in addition to conforming the strictures of due process. The government will likely save a significant amount of money during Salau's months of release and therefore should release Salau, grant him a bond hearing before a neutral immigration judge where burden on proof is placed heavily on the government, and to consider alternatives to detention under constitutionally appropriate practice and not in violation of protected due process.

### **3. Conditions Of Confinement Violates Salau Liberty Interest And Support Immediate Release.**

Salau's conditions of confinement at the Clinton County Correctional Facility supports an immediate release from such confinement as it resembles a penal confinement and a criminal incarceration rather than a civil detention. *Muse* 409, f. supp. 3d at 717. Salau is being detained alongside inmates who are criminally charged and serving criminal sentences here at the jail. Where Salau is confined is a county jail but he is a civil detainee who shouldn't be there. Salau should be at home with his family, while pursuing remedies to his immigration proceedings rather he is prejudiced by this detention conditions placed on him by ICE arising out of their violation of his due process, the 1226(a), and the Immigration Nationality Act, and hereby requests relief in forms of immediate release or a new bond hearing before a neutral immigration judge placing burden of proof heavily on government to show if continued detention is warranted.

### **CONCLUSION**

Because the continued detention of Salau addressed at his first individualized bond hearing violated his first amendment right to free speech, and violated his fifth amendment right to due process, where the burden was placed heavily on him while he was not given an adequate opportunity to be heard in contrast to the agreed upon precedent of the First Circuit and its sister circuit courts to place burden of proof in a § 1226(a) bond hearing on the government to prove beyond reasonable doubt; Salau continued detention is unlawful.

#### **Petitioner hereby respectfully request the court:**

- 1) GRANT his petition for Writ of Habeas Corpus Ordering his Immediate Release from detention or in the alternative Grant him a New Bond Hearing which places the burden of proof on the government to establish by reasonable doubt how petitioner is a danger or a flight risk.
- 2) Grant a T.R.O ordering the release of the petitioner while this petition is in review.


3) Require respondents to respond to this expedited motion within 3 business days on why this petition shouldnt be granted.

4) An injunctive relief enjoining DHS/ICE from placing a stay on petitioner's bond amount if granted, and from re-arresting petitioner after release.

Respectfully Submitted on Jan 14, 2026, by:

/s/

BOLARINWA SALAU

  
58 Pine Mountain Rd,  
McElhattan, PA 17748.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on Jan 14th, 2026, a true and correct copy of the foregoing was mailed to the Clerk of Court via regular mail postage prepaid.

BOLARINWA SALAU