UNITED STATES DISTRICT COURT
FOR THE DISTRICT OFMINNESOTA

Aminata TRAORE,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Daren K. Margolin, Director for Executive Office for Immigration Review,

David Easterwood, Director, Fort Snelling Field Office Immigration and Customs Enforcement,

Respondents.

0:26-cv-00788

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Expedited Handling Requested

INTRODUCTION

1. Respondents are detaining Petitioner, Aminata Traore ("Traore") in violation of law.

2. The immigration court maintains it lacks legal authority to set a bond order.

3. The continued detention of Traore serves no legitimate purpose.

4. Pending the adjudication of her Petition, Traore seeks an order restraining the Respondents from transferring her to a location where she cannot reasonably consult with counsel, such a location to be construed as any location outside of Minnesota.

5. Pending the adjudication of this Petition, Petitioners also respectfully request that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Traore.

6. Traore requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hours-notice prior to any removal or movement.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); U.S. Const. art. I, § 9, cl. 2 ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. §

2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), specifically, 8 U.S.C. § 1254a.

8. Custody is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. § 1003.19(d). *Compare also* 8 U.S.C. § 1229(a), *with* 8 U.S.C. § 1226(a). The Board recently confirmed this in *Matter of E-Y-F-G-*, 29 I&N Dec. 103, 105 (BIA 2025.) Because Traore seeks to challenge her custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.

9. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Nielsen v. Preap*, 586 U.S. 392 (2019); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1209–12 (11th Cir. 2016), *vacated,* 890 F.3d 952 (11th Cir. 2018). Despite limitations on judicial review at 8 U.S.C. § 1252, "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). While this case involves pre-removal detention, the logic remains the same. Detention is independent of removal and can be reviewed in a habeas action.

10. Federal district courts have jurisdiction to order release where detention is unlawful. *See, e.g.*, *Angel A.S.R. v. Noem*, 2026 WL 194515 (D. Minn Jan. 26, 2026) (Tunheim, J.) ("The appropriate remedy is release from custody").

11. Federal district courts also have jurisdiction to enforce 8 U.S.C. § 1226(a)(2). This statute, 8 U.S.C. § 1226(a)(2), entitles Petitioner to a bond hearing in which an immigration judge may determine her eligibility for release from custody.

12. The Supreme Court has noted that prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992).

13. The Board's decision in *Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216 (BIA 2025) binds the Board of Immigration Review, *see* 8 C.F.R. § 1003.1(g), and renders administrative appeal a futile exercise. 29 I. & N. Dec. 216. Therefore, there is no exhaustion impediment to the Court exercising jurisdiction.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (e)(1)(B), and 2241(d) because Traore is detained within this District. She is currently detained, upon information at belief at the Bishop Henry Whipple building in Fort Snelling, MN. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

15. Petitioner Traore is a citizen and native of Guinea who entered the United States on December 28, 2022. She is seeking asylum in the United States. Upon information and belief, Petitioner Traore is currently in custody at the Immigration and Customs Enforcement ("ICE") local headquarters at Fort Snelling, MN.

16. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the BIA and the immigration judges through the Executive Office for Immigration Review. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Traore.

17. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises ICE Field Offices, and is legally responsible for pursuing Traore's detention and removal. As such, Respondent Noem is a legal custodian of Traore.

18. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

19. Respondent Daren K. Margolin is the Acting Deputy Director of Executive Office for Immigration Review and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. He is sued in his official capacity.

20. Respondent Executive Office for Immigration Review is the adjudicatory body within EOIR with jurisdiction over the removal and bond cases of Petitioner. Its authority includes individuals detained in Minnesota.

21. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention.

22. Respondent Immigration and Customs Enforcement (ICE) is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.

23. Respondent David Easterwood is being sued in his official capacity as the Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity, Field Director Berg has supervisory authority over the ICE

agents responsible for detaining Traore. The address for the Minneapolis St Paul Field Office is 1 Federal Drive, St 1601, Fort Snelling, Minnesota.

EXHAUSTION

24. ICE asserts authority to detain Traore pursuant to the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(a).

25. No statutory requirement of exhaustion applies to Traore's challenge to the lawfulness of detention. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) ("[T]his Court 'follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.'"); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992)).

26. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).

27. Any appeal to the Board of Immigration Appeals is futile. Respondents' new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, as noted, *Matter of Yajure Hurtado*, the most recent Board of Immigration Appeals decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission.

28. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Every day that Traore is unlawfully detained causes her irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "a loss of liberty" is "perhaps the best example of irreparable harm"); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018), *vacated and remanded,* 946 F.3d 875 (6th Cir. 2020) (holding that "detention has inflicted grave" and "irreparable

harm" and describing the impact of prolonged detention on individuals and their families).

29. Prudential exhaustion is additionally not required in cases where the agency "lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992).

30. Immigration agencies have no jurisdiction over constitutional challenges of the kind Traore raises here. *See, e.g., Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *In Re Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997); *Matter of U-M-*, 20 I. & N. Dec. 327 (BIA 1991).

31. Because requiring Traore to exhaust administrative remedies would be futile, would cause her irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

32. Petitioner Traore is a native and citizen of Guinea.

33. Petitioner Traore entered the United States on December 28, 2022. After entering the U.S., Ms. Traore encountered agents from DHS. These agents detained Ms. Traore for around five days.

34. On December 29, 2022, DHS issued an NTA, directing Petitioner Traore to appear before the immigration court at Fort Snelling, Minnesota on May 9, 2023.

35. January 03, 2023, DHS released Petitioner on an "Order of Release on Own Recognizance" that itself states DHS's custody of Mr. Traore is pursuant to INA 236 [8 U.S.C. 1226]. SEE Exhibit A (Order of Release on own Recognizance). This order referred Traore into "ATD enrollment" and required check-ins with ICE/ISAP.

36. On December 11, 2023, with the assistance of *pro bono* counsel, Petitioner Traore timely filed an I-589 Application.

37. Petitioner's removal proceedings remain pending with EOIR in Fort Snelling, Minnesota.

38. On January 28, 2026, Petitioner presented herself for her ISAP check-in. At that time, she was detained by DHS.

LEGAL FRAMEWORK

39. Removal proceedings are governed under 8 U.S.C. § 1229a, which provides that "[a]n immigration judge shall conduct proceedings for deciding the

inadmissibility or deportability of an alien," 8 U.S.C. § 1229a(a)(1) and that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

40. To initiate removal proceedings, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." 8 U.S.C. § 1229(a)(1).

41. The "[a]pprehension and detention of aliens" is governed under 8 U.S.C. § 1226, which provides that:

> 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. Except as provided in subsection (c) and pending such decision, ***the Attorney General ... may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.***

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

42. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

(b) Warrant of arrest—

> *(1) In general.* ***At the time of issuance of the notice to appear, or at any time thereafter*** *and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.*
>
> *(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.*
>
> *(c) Custody issues and release procedures—*
>
> *(1) In general.*
>
> *(i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1)* ***of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.***

8 C.F.R. § 236.1(b).

43. 8 U.S.C. § 1226(a) is the default detention authority, and it applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a).

44. 8 U.S.C. § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

45. 8 U.S.C. § 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.,* 8 U.S.C. § 1226(c)(1)(A), (C).

46. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* LAKEN RILEY ACT, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E).

47. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanent residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have

not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020) ("specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

48. "The [i]nspection by immigration officers, expedited removal of inadmissible arriving aliens, [and] referral for hearing" is governed under 8 U.S.C. § 1225, which provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

49. "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).

50. "If an immigration officer determines that an alien … who ***is arriving in the United States*** … is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States

without further hearing or review unless the alien indicates either an intention to apply for asylum." 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added).

51. "If the officer determines at the time of the interview that an alien has a credible fear of persecution … the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

52. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

53. 8 U.S.C. § 1225(b)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

54. "Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded. Until that point, nothing in the statutory text imposes a limit on the length of detention, and neither provision says anything about bond hearings." *Jennings v. Rodriguez*, 583 U.S. 281, 282 (2018).

55. By regulation, "[a]*rriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2.

56. Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States).

57. In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely "restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[]

[noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added). *See* also H.R. Rep. No. 104-828, at 210 (same).

58. Respondents' longstanding practice of considering Petitioner as detained under § 1226(a) further supports reading the statute to apply to them. Typically, DHS issues a person Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA).

59. As these arrest documents demonstrate, DHS has long acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country's borders long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *See also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).

60. EOIR regulations have long recognized that individuals like Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court's jurisdiction—provides otherwise.

61. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, EOIR 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." *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

62. In *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 04 (BIA 2020), the Board referenced § 1226(a) as the detention authority for a noncitizen who unlawfully entered the United States the prior year and was detained soon thereafter.

63. The Board's recent decision in *Matter of Yajure Hurtado* is contrary to the plain language of the statute, impermissibly expands the reach of § 1225(b)(2), contradicts legislative history, results in surplusage, and conflicts with the judgments of over thirty district courts.[1]

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[1] Notably, the Board improperly concludes that H.R. Rep. No. 104-469 states that aliens present in the United States without inspection are "seeking admission." *Matter of Jonathan Javier Yajure Hurtado*, 29 I. & N. Dec. 216, 224–225 (BIA 2025). In fact, the House Report only uses the term "seeking admission" to refer to returning Lawful Permanent Residents, indicating that unless a lawful permanent

64. Nearly all district courts that have considered this issue have, after conducting persuasive, well-reasoned analyses of the statutory language and legislative history, rejected Respondent's interpretation of § 1225(b)(2). *Cf. Belsai v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *A.A. v. Olson*, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Herrera Avila v. Bondi*, 25-cv-03741 (D. Minn. Oct. 21, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Hernandez*

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resident has relinquished his status or engaged in criminal activity barring him from re-entry, he is not considered to be "seeking admission." Nowhere in the report does Congress indicating that an alien present without inspection is "seeking admission." H.R. Rep. No. 104-469, pt. 1, at 225.

Marcelo v. Trump, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Chanaguano Caiza v. Scott*, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. TeTraore. Sept. 22, 2025); *Padron Covarubias, v. Vergara*, 2025 WL 2950097 (S.D. TeTraore. Oct. 8, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Luna*

Quispe v. Crawford, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *S.D.B.B. v. Johnson*, WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Contreras-Cervantes, v. Raycraft*, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Morales Chavez v. Director of Detroit Field Office*, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *Sanchez Alvarez v. Noem*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D.

Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Cordero Pelico v. Kaiser*, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Ortiz Donis v. Chestnut*, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Sabi Polo v. Chestnut*, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Cerritos Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cardin Alvarez v. Rivas*, 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Mendoza Guitierrez v. Baltasar*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Aguilar Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

65. The plain language of the statute compels the Court to conclude that Respondents apprehended and detained Petitioner consistent with § 1226, and not § 1225(b)(2).

REMEDY

66. Respondents' detention of Traore under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Traore's ongoing

detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend. V.

67. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

68. Traore seeks immediate release to the extent that Respondents justify her detention under 8 U.S.C. § 1225(b)(2), which plainly does not apply to her. *See Angel A.S.R. v. Noem*, 2026 WL 194515 (D. Minn Jan. 26, 2026) ("[T]he Court is now persuaded that where, as here, (1) Respondents erroneously assert that a detainee is being held pursuant to § 1225(b)(2), and (2) Respondents have not produced a warrant, as is required to effectuate an arrest pursuant to § 1226(a), the appropriate remedy is release from custody."); *Mayamu K. v. Bondi*, 2025 WL 3641819 (D.Minn Oct. 20, 2025) (Blackwell, J.) (Ordering release "under the conditions of her . . . Order of Release on Recognizance."); *see also Gimenez Rivero v. Mina*, 2026 WL 199319 (M.D.Fla Jan. 26, 2026) ("This Court cannot conclude, as some others have, that ordering the Government to provide the detainee with a bond hearing . . .fixes the problem. . . .. With the Government having asserted no lawful basis

for his detainer, this Court could only conclude that Gimenez Rivero was entitled to immediate release.").

69. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008), *judgment entered,* No. 07A1011, 2008 WL 11579668 (U.S. June 19, 2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

70. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *See also Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

71. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy,

federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

72. Traore thus requests her immediate release. *See Mayamu K. v.* Bondi, 2025 WL 3641819 (ordering release under the conditions of [an] "Order of Release on Recognizance.") (D.Minn Oct. 20, 2025). To the extent this Court is not inclined to order outright release, Traore requests a constitutionally adequate custody redetermination hearing in which she is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2) and is instead treated as a detainee under 8 U.S.C. § 1226(a) within seven calendar days.

CAUSE OF ACTION

COUNT ONE: DECLARATORY RELIEF

73. Traore re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

74. Traore requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Traore is not subject to detention under to 8 U.S.C. § 1225(b)(2).

75. Traore requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Traore is detained pursuant to 8 U.S.C. § 1226(a)(1).

76. Traore requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Traore is eligible to seek a bond redetermination hearing under § 1226.

COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1226(a) & 8 U.S.C. § 1225(b)(2)

77. Traore re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

78. 8 U.S.C. § 1226 governs the detention of aliens pending a determination of removal from the United States.

79. Such an alien "may [be] release[d] … on bond of at least $1,500." 8 U.S.C. § 1226(a)(2)(A).

80. The denial of Traore's bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes her eligible for bond.

81. 8 U.S.C. § 1225(b)(2)(A) cannot apply as it only applies to those "seeking admission" at the time of detention and Petitioner was not "seeking admission at the time he was detained. 8 U.S.C. § 1225(b)(2)(A).

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT

82. Traore re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

83. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

84. Traore is not subject to mandatory custody under the Immigration & Nationality Act and is therefore entitled to a bond hearing in which a neutral arbiter may determine the justification for his continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

COUNT FOUR: VIOLATION OF 8 C.F.R. §§ 236.1, 1236.1 AND 1003.19 - UNLAWFUL DENIAL OF RELEASE ON BOND

85. Traore re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

86. 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. at10323 (emphasis added).

87. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.

88. Nonetheless, Respondents maintain that Petitioner is not eligible for a bond redetermination hearing.

89. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. § 236.1, 1236.1, and 1003.19.

COUNT FIVE: VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT – CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

90. Traore re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

91. 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).

92. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

93. 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 the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

94. Nonetheless, the Board has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

95. Respondents through its recent administrative decision failed to articulate any reasoned explanations for new interpretation of the Act. The Board's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

96. 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).

PRAYER FOR RELIEF

WHEREFORE, Petitioner Traore asks this Court for the following relief:

1. Assume jurisdiction over this matter.

2. Issue an order restraining Respondents from attempting to move Traore from Minnesota during the pendency of this Petition.

3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Traore.

4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153.

5. Order Respondents to release Petitioner in accordance with the ordinary habeas remedy, as she is not detained pursuant to 8 U.S.C. § 1225(b)(2). In the alternative, the Court should order a bond redetermination hearing consistent with 8 U.S.C. § 1226 within five business days of this Court's order.

6. Find that Respondents' administrative decision is arbitrary and capricious in violation of the Administrative Procedures Act.

7. Order the Fort Snelling Immigration Court not to follow the Board of Immigration Appeal's decision in *Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216 (BIA 2025) and grant individuals who

entered without inspection a bond redetermination hearing consistent with 8 U.S.C. § 1226.

8. Declare that Petitioner's detention absent a bond hearing violates the Due Process Clause of the Fifth Amendment.

9. Grant Traore reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

10. Grant all further relief this Court deems just and proper.

DATED: January 28, 2026

/s/ Sierra Paulsen
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Verification by
Petitioner Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am Petitioner's counsel. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding my detention status, are true and correct to the best of my knowledge.

/s/ Sierra Paulsen
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