

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mamadou Macka Sow, A# 

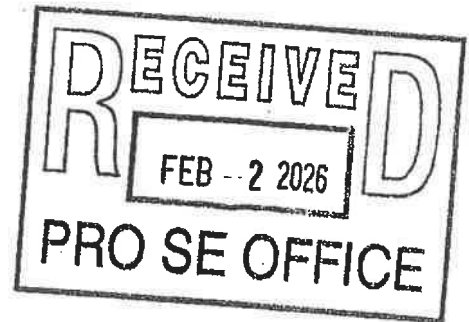
Petitioner,

Pro Se,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
DIRECTOR, ICE NEW YORK FIELD OFFICE;
WARDEN, William P. Joyce,

Respondents.



EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

28 U.S.C. § 2241

**AND REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTIVE RELIEF**

NOTICE OF EMERGENCY AND REPRESENTATION STATUS

Petitioner files this Petition pro se due to the urgent and time-sensitive nature of the relief sought. Petitioner faces a substantial and imminent risk of immigration detention following a scheduled Credible Fear Interview ("CFI"). Counsel admitted to practice law in the New York State Appellate Division, Second Department has assisted in preparation of this Petition and will promptly seek admission pro hac vice pursuant to S.D.N.Y. Local Civil Rule 1.3 upon initiation of detention or upon direction of the Court.¹

I. PRELIMINARY STATEMENT

This is an emergency habeas action challenging the anticipated civil immigration detention of Mamadou Macka Sow, a Guinean national who has lived continuously in the United States since March 2022, was previously released on parole by the Department of Homeland Security

¹ S.D.N.Y. Local Civil Rule 1.3.

(“DHS”), and has since established strong employment, housing, and community ties in New York.

Petitioner affirmatively applied for asylum with U.S. Citizenship and Immigration Services (“USCIS”). In 2025, USCIS canceled Petitioner’s asylum application and scheduled a Credible Fear Interview on December 31, 2025. Based on ICE’s well-documented enforcement practices, individuals who undergo CFIs are frequently detained thereafter and, in many cases, transferred outside New York within a short period of time, often before courts can meaningfully review the legality of detention.²

Respondents increasingly assert that individuals who once entered the United States without inspection—regardless of the passage of years—are subject to mandatory detention under 8 U.S.C. § 1225(b) and categorically barred from bond. That position is inconsistent with the text and structure of the Immigration and Nationality Act (“INA”), violates the Administrative Procedure Act (“APA”), and contravenes basic due-process principles.

Absent judicial intervention, Respondents are likely to detain Petitioner and may effectuate a rapid out-of-state transfer, causing irreparable harm by severing access to counsel and frustrating this Court’s habeas jurisdiction.

II. JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. § 2241, which authorizes federal courts to grant writs of habeas corpus to persons held in custody in violation of the Constitution or laws of the United States.
2. Habeas jurisdiction does not require completed physical incarceration. Custody exists where government action imposes present restraints on liberty, or where detention is imminent as a practical certainty.³
3. The Second Circuit has long recognized that constructive or imminent custody satisfies the jurisdictional requirement for habeas review.⁴
4. Although Petitioner is not presently detained, Respondents’ actions have placed him under a credible and immediate threat of custody sufficient to trigger habeas jurisdiction, particularly where delay risks loss of judicial review through transfer.
5. Courts in this District routinely exercise habeas jurisdiction where imminent immigration detention and potential transfer threaten to frustrate judicial review.⁵

III. VENUE

6. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(e) because Petitioner resides in New York, Respondents exercise authority within this District, and any detention is expected to occur here.

² Shabazz v. Decker, 2019 WL 4673432, at 3 (S.D.N.Y. Sept. 25, 2019).

³ Hensley v. Municipal Court, 411 U.S. 345, 351 (1973).

⁴ Simmonds v. INS, 326 F.3d 351, 354–55 (2d Cir. 2003).

⁵ Shabazz v. Decker, 2019 WL 4673432, at 3–4 (S.D.N.Y.)

IV. PARTIES

7. Petitioner Mamadou Macka Sow, A [REDACTED] is a citizen of Guinea residing in New York.
8. Respondent Kristi Noem is Secretary of the Department of Homeland Security and responsible for immigration detention policy.
9. Respondent Todd Lyons is Acting Director of U.S. Immigration and Customs Enforcement (“ICE”).
10. Respondent ICE New York Field Office Director exercises legal custody authority over Petitioner.
11. Respondent Warden will be Petitioner’s immediate custodian if detention occurs.

V. FACTUAL BACKGROUND

12. Petitioner entered the United States without inspection in March 2022.
13. DHS detained Petitioner for approximately ten days and then released him on parole, reflecting DHS’s own determination that Petitioner posed no danger or flight risk.
14. Petitioner has lived continuously in the United States for nearly four years since that release.
15. Petitioner works two jobs as a Home Health Aide, pays rent for an apartment in New York, earned an English-language certificate, and has no criminal history.
16. A patient’s family has submitted a letter attesting to Petitioner’s reliability, compassion, and importance to their household.
17. Petitioner fears political and ethnic persecution in Guinea and affirmatively applied for asylum.
18. In 2025, USCIS canceled Petitioner’s asylum application and scheduled a Credible Fear Interview for December 31, 2025.
19. Based on ICE’s enforcement practices, Petitioner faces a substantial risk of detention and potential transfer following the CFI.

VI. STATUTORY FRAMEWORK AND LEGAL ERROR

20. The INA establishes distinct detention regimes:
 - (a) 8 U.S.C. § 1225(b) governs arriving noncitizens and those seeking admission;
 - (b) 8 U.S.C. § 1226(a) governs noncitizens already present in the United States pending removal proceedings;
 - (c) 8 U.S.C. § 1231(a) governs detention after a final order of removal.
21. Section 1226(a) is the default detention provision governing interior noncitizens like Petitioner.
22. Applying § 1225(b) to long-present interior residents would collapse Congress’s carefully structured detention framework and render § 1226(a) a nullity.

23. Courts in this District have expressly rejected DHS's attempt to apply § 1225(b) to noncitizens apprehended years after entry.⁶

VII. EXPEDITED REMOVAL IS INAPPLICABLE

24. Expedited removal under 8 U.S.C. § 1225(b)(1) applies only to recent entrants apprehended shortly after entry.
25. Individuals with more than two years of continuous physical presence are categorically excluded, even under DHS's expanded enforcement guidance.⁷
26. Petitioner has been present since March 2022 and therefore cannot lawfully be placed in expedited removal.⁸

VIII. CLAIMS FOR RELIEF

COUNT I — Unlawful Detention (INA)

27. Respondents' anticipated attempt to detain Petitioner under § 1225(b) would be ultra vires.
28. Any detention must be governed by 8 U.S.C. § 1226(a), which requires an individualized custody determination.

COUNT II — Administrative Procedure Act

29. Respondents' interpretation and application of the detention statutes is arbitrary, capricious, and contrary to law, in violation of 5 U.S.C. § 706.

COUNT III — Fifth Amendment Due Process

30. Civil immigration detention is subject to constitutional limits and requires individualized justification.⁹
31. Automatic detention without meaningful review violates procedural and substantive due process.
32. Even detention labeled "mandatory" must yield to constitutional constraints.¹⁰

COUNT IV — Unlawful Transfer and Interference with Habeas Jurisdiction

33. Any transfer of Petitioner outside New York during the pendency of this habeas action would sever access to counsel and frustrate this Court's habeas jurisdiction, constituting irreparable harm.

⁶ *Tumba Huamani v. Francis*, No. 25-cv-8110, slip op. at 14–18 (S.D.N.Y. Nov. 4, 2025).

⁷ 8 C.F.R. § 235.3(b).

⁸ *Tumba Huamani*, slip op. at 10–12; *Lopez Benitez v. Francis*, No. 25-cv-5937, ECF No. 24 at 6–8 (S.D.N.Y. 2025).

⁹ *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001).

¹⁰ *Black v. Decker*, 103 F.4th 133, 143–46 (2d Cir. 2024).

34. Courts in this District routinely enjoin such transfers and order return where unlawful transfer interfered with judicial review.¹¹

IX. REQUEST FOR TEMPORARY RESTRAINING ORDER

35. Petitioner seeks a Temporary Restraining Order preventing Respondents from transferring him outside the State of New York in the event he is taken into immigration custody, while this Court adjudicates the legality of detention.

36. Petitioner satisfies the requirements for interim relief: likelihood of success on the merits, irreparable harm, balance of equities, and the public interest.¹²

X. PRAYER FOR RELIEF

Petitioner respectfully requests that the Court:

- A. Grant the writ of habeas corpus;
- B. Declare that 8 U.S.C. § 1226(a) governs Petitioner's detention;
- C. Enjoin Respondents from transferring Petitioner outside New York;
- D. Order individualized custody review if detention occurs;
- E. Grant such other relief as the Court deems just and proper.

XI. VERIFICATION

I declare under penalty of perjury that the foregoing is true and



Mamadou Macka Sow, Pro Se

A# 

Dated: January 30, 2026

New York, New York

¹¹ *Sengkeo v. Horgan*, 670 F. Supp. 2d 283, 287–88 (S.D.N.Y. 2009); *Lopez Benitez*, ECF No. 28 (S.D.N.Y. 2025).

¹² *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008).