IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.:

MOUSSA KOMARA, an individual,

Petitioner,

v.

PAMELA J. BONDI, Attorney General,
KRISTI L.A. NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director of Immigration and Customs Enforcement,
Immigration and Customs Enforcement,
DAREN K. MARGOLIN, Director for Executive Office for Immigration Review,
Executive Office for Immigration Review,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement,
and,
JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Respondents are detaining Petitioner, Moussa Komara ("Komara") in violation of law.

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

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

4. Pending the adjudication of his Petition, Komara seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of Colorado.

5. Pending the adjudication of this Petition, Petitioner also respectfully request that Respondents be ordered to provide 72-hour notice of any movement of Komara.

6. Komara requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests a 72-hour 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 Komara seeks to challenge his 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 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 his eligibility for release from custody.

11. 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).

12. The Board's decision in *Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216 (BIA 2025) binds the Board of Immigration Appeals, *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.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (e)(1)(B), and 2241(d) because Komara is detained within this District. He is currently detained at the Denver Contract Detention Facility in Aurora, Colorado. 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

14. Petitioner Moussa Komara ("Mr. Komara") is a citizen and native of Guinea who entered the United States on February 5, 2024. He is seeking asylum in the United States. Mr. Komara is currently in custody at the Immigration and Customs Enforcement ("ICE") Denver Contract Detention Facility in Aurora, Colorado.

15. 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 Mr. Komara.

16. 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 Colorado, supervises ICE Field Offices, and is legally responsible for pursuing Mr. Komara's detention and removal. As such, Respondent Noem is a legal custodian of Mr. Komara.

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

18. 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.

19. 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 Colorado.

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

21. 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.

22. Respondent Robert Hagan is being sued in his official capacity as the Field Office Director for the Denver Field Office for ICE within DHS. In that capacity, Field Director Hagan has supervisory authority over the ICE agents responsible for detaining Mr. Komara. The address for the Denver Field Office is 12445 E. Caley Avenue, Centennial, CO 80111.

23. Respondent Warden Juan Baltazar is being sued in his official capacity as the Warden responsible for the Denver Contract Detention Facility in Aurora, Colorado. Because Petitioner is detained in the Denver Contract Detention Facility, Respondent has immediate day-to-day control over Petitioner.

EXHAUSTION

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

25. No statutory requirement of exhaustion applies to Mr. Komara'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) ("this 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 Mr. Komara is unlawfully detained causes him and his family 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 Mr. Komara 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 Mr. Komara to exhaust administrative remedies would be futile, would cause him 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. Mr. Komara is a native and citizen of Guinea.

33. Mr. Komara entered the United States on February 5, 2024. Mr. Komara surrendered to Border Patrol and was detained for about two days, before (upon information and belief)

being released on an "Order of Release on Own Recognizance" pursuant to 8 U.S.C. § 1226.

34. On February 29, 2024, DHS issued an NTA, directing Petitioner Komara to appear before the immigration court at Fort Snelling, Minnesota on March 10, 2025.

35. On January 29, 2025, after working with pro bono counsel, Mr. Komara timely filed an I-589 Application.

36. On March 10, 2025, as directed by the first NTA, Mr. Komara appeared before the Fort Snelling immigration court; the immigration court cancelled the hearing because the immigration court could not locate an interpreter who could functionally communicate in Mandingo-Koniaka with Mr. Komara. The immigration court scheduled a new hearing for Mr. Komara on May 28, 2025; once again the immigration court was unable to locate an interpreter who could functionally communicate in Mandingo-Koniaka with Mr. Komara.

37. At Mr. Komara's May 28, 2025, immigration court hearing, DHS (orally, and for the first time) moved to dismiss its removal action against him. Even though Mr. Komara had no opportunity to participate in the hearing (due to the lack of a functional interpreter), the immigration court granted DHS' motion to dismiss the removal action.

38. When Mr. Komara exited the immigration courtroom on May 28, 2025, ICE arrested him, apparently as part of a national scheme.[1] Mr. Komara has been in ICE custody since May 28, 2025. Mr. Komara was detained in Minnesota, then Iowa, then Louisiana, and finally Colorado.

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[1] *See, e.g.*, Sarah Matusek, "New phase of Trump deportation push: ICE arrests at immigration court," *Christian Science Monitor* (May 28, 2025), https://www.csmonitor.com/USA/Politics/2025/0528/immigration-court-ice-deportation-trump.

39. On June 4, 2025, Mr. Komara appealed to the BIA the immigration court's decision dismissing his removal proceedings. Briefing in the matter concluded on August 13, 2025. DHS did not file a brief.

40. On September 3, 2025, DHS published the U.S.-Uganda ACA with Uganda. 90 Fed. Reg. at 42597. The U.S.-Uganda ACA expressly applies prospectively ("third-country nationals present in the United States of America who may seek protection against return"). 90 Fed. Reg. at 42599.

41. On October 15, 2025, the Board of Immigration Appeals dismissed Mr. Komara's appeal, on the basis that DHS "was not seeking to remove" Mr. Komara. *See* Exhibit A.

42. Despite having previously moved to dismiss its first removal proceedings, on October 24, 2025, DHS filed its second removal action against Mr. Komara by issuing a second, successive "Notice to Appear" (raising the same charges of inadmissibility) with the immigration court in Aurora, Colorado. Along with this Notice to Appear, ICE served, for the first time (notwithstanding it being dated May 28, 2025) an I-200 administrative arrest warrant that again indicates Mr. Komara is being detained "pursuant to section[] 236 … of the Immigration and Nationality Act." *See* Exhibit B.

43. On November 3, 2025, Mr. Komara put DHS and EOIR on notice of his pending defensive asylum application by re-filing his January 29, 2025 I-589 application.

44. On January 12, 2026, Mr. Komara was scheduled for a previously-request bond hearing with Immigration Judge Melanie Corrie in Aurora, Colorado. At that hearing, Immigration Judge Corrie held she had no jurisdiction to grant bond—notwithstanding that Komara is currently detained pursuant to a *second* NTA that commenced removal proceedings after he'd already been physically present in the U.S. for almost two years,

and the Central District of California grant of classwide relief in Maldonado *Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025),[2] because she (erroneously) found *Matter of Yajure Hurtado* deprived immigration courts of the authority to hear bond requests or grant bond to aliens who are present in the United States without admission. *See* Exhibit C.

45. Respondents maintain that Petitioner is not eligible to seek a bond redetermination rehearing consistent with § 1226.

46. Respondents maintain that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

LEGAL FRAMEWORK

47. 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).

48. 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).

[2] Apparently, EOIR leadership has directed immigration judges to ignore this District Court order. *See* ("Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista.*") https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista.

49. 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).

50. 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).

51. 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).

52. 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).

53. 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).

54. 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).

55. 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)).

56. "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).

57. "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).

58. "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).

59. "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).

60. "[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).

61. 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).

62. "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).

63. 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.

64. "[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to … [a]rriving aliens in removal proceedings, including aliens

paroled after arrival pursuant to section 212(d)(5) of the Act." 8 C.F.R. § 1003.19(h)(2)(i)(B).

65. As such, arriving aliens are not entitled to bond, nor, arguably, are aliens falling within the confines of 8 U.S.C. § 1225(b).

66. 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).

67. 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).

68. 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).

69. 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).

70. 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.

71. 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.

72. 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.

73. 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.[3]

74. 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 Marcelo v. Trump*, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Sampiao v. Hyde*,

[3] 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, Respondent*, 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 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.

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. TeKomara. Sept. 22, 2025); *Padron Covarubias, v. Vergara*, 2025 WL 2950097 (S.D. TeKomara. 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).

75. 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

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

77. 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)).

78. Komara seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.

79. 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.").

80. 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.").

81. 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.").

82. Komara thus requests his immediate release. *See Mayamu K. v. Bondi*, No. Civ. 25-3035, 2025 WL 3641819 (D. Minn. Oct. 20, 2025)(ordering "immediate[] release[] from detention under the conditions of [the petitioner's previous] Order of Release on Recognizance"); *Javier Giminez Rivero v. Mina*, No. 6:26-cv-66, 2026 WL 199319 (M.D. Fla. Jan. 26, 2026) (ordering immediate release); *Adrian Conejo Arias v. Noem*, No. SA-26-CV-415-FB, 2026 WL 255706 (W.D. Tex. Jan. 31, 2026) (ordering immediate release, and noting habeas relief in these circumstances is "nothing more than some modicum of due process and the rule of law"). To the extent this Court is not inclined to order outright release, Komara requests a constitutionally adequate custody redetermination hearing in which he 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

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

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

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

86. Komara requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Komara 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)

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

88. 8 U.S.C. § 1226 governs the detention of aliens pending a determination of removal from the United States.

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

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

91. 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

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

93. 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.

94. Komara 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

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

96. 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).

97. 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.

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

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

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

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

101. 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).

102. 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).

103. 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.

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

105. 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.

106. 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, Mr. Komara, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Mr. Komara from Colorado during the pendency of this Petition.
3. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Mr. Komara.
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. ch. 153.
5. Order Respondents to provide Petitioner with 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 Procedure Act.
7. Order the Aurora Immigration Court not to follow the Board of Immigration Appeals 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 Komara 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.

February 6, 2026

/s/ *Perry L. Glantz*
Perry L. Glantz, Atty. Reg. #16869
Stinson LLP
1144 Fifteenth Street, Suite 2400
Denver, CO 80202

Verification by
Petitioner's Attorney Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am his attorney. As Petitioner's attorney, I hereby verify that the factual statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 6, 2026.

s/ Perry L. Glantz
Perry L. Glantz