

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

BALDE, Hamidou,

Petitioner,

v.

LOWE, Craig,
Warden, Pike County Correctional
Facility;

ROSE, Michael,
Acting Field Office Director, Philadelphia
Field Office, Enforcement and Removal
Operations, U.S. Immigration and
Customs Enforcement;

NOEM, Kristi,
Secretary, U.S. Department of Homeland
Security;

BONDI, Pamela,
Attorney General, U.S. Department of
Justice;

Respondents.

Case No. 4:26-CV-00430

**PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Hamidou Balde is a twenty-seven-year-old native of Guinea. He came to the United States in 2023, when the U.S. Department of Homeland Security ("DHS" or "Department") encountered, detained, and released him on an Order of Release on Recognizance. DHS also initiated removal proceedings through a Notice to Appear. Mr. Balde moved to the

Bronx, New York, where he created community. He has no criminal convictions. He filed an application for asylum and has waited for a merits immigration court hearing to assess that application.

2. DHS officials re-encountered Mr. Balde in the Bronx, New York, during an enforcement action on October 6, 2025. They were seeking a different individual that was purportedly residing at the apartment where Mr. Balde was located. They then took Mr. Balde into immigration detention and transferred him to the Pike County Correctional Facility. The Department purports to hold Mr. Balde under 8 U.S.C. § 1225(b)(2)(A), a mandatory detention statute. Its detention of Mr. Balde followed a drastic shift away from decades of prior precedent and practice.

3. The Executive Office of Immigration Review (“EOIR”), which adjudicates immigration matters, recently adopted the same reinterpretation of the immigration detention laws as DHS. EOIR held, in *Matter of Yajure Hurtado*, that noncitizens who have entered the United States without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See* 29 I. & N. Dec. 216, 228 (BIA 2025). DHS and EOIR’s new interpretation conflicts with the plain language and structure of the immigration detention statutes. It has been widely rejected by district judges around the country,¹ including within this Circuit. *See, e.g., Mamatkulov v. Rose*, No. 26-cv-99, 2026 WL 456917, at *1 (M.D. Pa. Feb. 18, 2026); *Vasquez Mejia v. Noem*, No. 25-cv-333, 2025 WL 3546427, at *2–4 (W.D. Pa. Dec. 11, 2025); *Demirel v. Fed. Det. Ctr. Philadelphia*, No. 25-cv-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025); *Bethancourt Soto v. Soto*, --- F.

¹ *See* Nate Raymond, Kristina Cooke & Bard Heath, *Courts Have Ruled 4,400 Times that ICE Jailed People Illegally. It Hasn’t Stopped*, Reuters (last updated Feb. 17, 2026), <https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/>.

Supp. 3d ---, 2025 WL 2976572, at *3–7 (D.N.J. Oct. 22, 2025). Respondents’ application of 8 U.S.C. § 1225(b)(2) to Mr. Balde is contrary to law, violating both the Immigration and Nationality Act (“INA”) and the Administrative Procedure Act (“APA”).

4. Respondents’ re-detention of Mr. Balde under Section 1225(b)(2)(A) further violates his substantive and procedural due process rights. Respondents’ categorical detention of all noncitizens who are subject to inadmissibility grounds lacks a “reasonable relation to the purpose for which [noncitizens are] committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Their re-detention of Mr. Balde without any pre-deprivation assessment that Mr. Balde presents a flight or danger risk—the only two valid bases for civil immigration detention, *see id.*—violated his substantive due process right to be free from unwarranted custody.

5. Respondents’ re-detention of Mr. Balde also violates his procedural due process rights for meaningful procedures to prevent an erroneous deprivation of his liberty. Each of the *Mathews v. Eldridge* balancing test favors Mr. Balde, a noncitizen who has resided in this country for over two years without any incident. *See* 424 U.S. 319, 335 (1976). Judges within this District have agreed that Respondents’ procedures are inadequate. *See, e.g., Mamatkulov*, 2026 WL 456917, at *5 (Munley, J.); *Vadel v. Lowe*, No. 25-cv-2452, 2025 WL 3772059, at *6 (M.D. Pa. Dec. 31, 2025) (Mehalchick, J.); *Patel v. O’Neil*, No. 25-cv-2185, 2025 WL 3516865, at *6 (M.D. Pa. Dec. 8, 2025) (Mariani, J.).

6. Mr. Balde respectfully requests that this Court issue a writ of habeas corpus and order Respondents to release him from their custody. *See, e.g., Mamatkulov*, 2026 WL 456917, at *5 (ordering immediate release); *Diallo v. Lowe*, No. 26-cv-286, 2026 WL 458294, at *5 (M.D. Pa. Feb. 18, 2026) (same); *Gonzalez Centeno v. Lowe*, No. 25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Vadel*, 2025 WL 3772059, at *7 (same); *Paredes Quispe v. Rose*,

No. 25-cv-2276, 2025 WL 3537279, at *8 (M.D. Pa. Dec. 10, 2025) (same); *Patel*, 2025 WL 3516865, at *6 (same). In the alternative, Mr. Balde requests that this Court conduct a bond hearing at which (1) Respondents bear a clear-and-convincing burden of proving Mr. Balde presents a flight or danger risk that (2) cannot be ameliorated by any alternatives to detention, and (3) this Court considers Mr. Balde's ability to pay in setting any monetary bond. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020).

PARTIES

7. Petitioner Hamidou Balde is a twenty-seven-year-old native of Guinea. He entered the United States in 2023, when he was encountered by DHS officials. The Department initiated removal proceedings and released Mr. Balde on an Order of Release on Recognizance. Mr. Balde resettled to the Bronx, New York, and applied for asylum. His immigration proceedings are ongoing. DHS re-encountered and re-detained Mr. Balde on October 6, 2025, when they were conducting a targeted immigration enforcement action against another individual. Officers took him into custody and currently detain him at the Pike County Correctional Facility.

8. Respondent Craig Lowe is sued in his official capacity as the Warden of the Pike County Correctional Facility. He has direct custodianship over Petitioner at the Pike County Correctional Facility.

9. Respondent Michael Rose is sued in his official capacity as the Acting Field Office Director of U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations' Philadelphia Field Office. He is responsible for the administration and management of ICE Enforcement Removal Operations in Pennsylvania and exercises administrative control over Petitioner's custody.

10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. DHS is responsible for administering and enforcing the immigration laws, including the decision to detain noncitizens during the course of their removal proceedings. Secretary Noem has ultimate legal custodianship over Petitioner.

11. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She is responsible for the Department of Justice, including the Executive Office of Immigration Review. EOIR adjudicates individual immigration matters, including in removal and custody proceedings.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 2241, 28 U.S.C. § 1331, and 28 U.S.C. § 1361.

13. This Court may grant equitable relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.* and the All Writs Act, 28 U.S.C. § 1651; injunctive relief under the Administrative Procedures Act, 5 U.S.C. § 706; and declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

14. Venue is proper in this District because the Petitioner is detained in Lords Valley, Pennsylvania, which is located within this District. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. There is no statutory exhaustion requirement where a noncitizen challenges the lawfulness of his detention. *See Vadel*, 2025 WL 3772059, at *3 (citing *Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, at *3 (E.D. Pa. Nov. 14, 2025)). Any requirement for exhaustion is imposed at the Court's discretion. *See id.* (“[I]n habeas proceedings, ‘exhaustion


exists as a judicially created doctrine applied at the Court’s discretion.”) (quoting *Kashranov*, 2025 WL 3188399, at *3). In deciding whether to impose exhaustion, habeas courts consider the urgency of the need for immediate review. *See Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (“Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.”). They also consider the practical futility of exhaustion. *See, e.g., Vadel*, 2025 WL 3772059, at *3.

16. Exhaustion would be impractical and futile here because *Matter of Yajure Hurtado* forecloses EOIR from considering Mr. Balde’s request for release from immigration detention, *see id.*, and EOIR does not have jurisdiction to consider Mr. Balde’s constitutional claims, *see Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Resolving Mr. Balde’s petition without requiring administrative exhaustion would also promote judicial efficiency because his petition “involves only” questions of “statutory construction,” specifically the proper “construction of 8 U.S.C. §§ 1225 and 1226.” *Ndiaye v. Jamison*, No. 25-cv-6007, 2025 WL 3229307, at *3 (E.D. Pa. Nov. 19, 2025) (quoting *Vasquez v. Strada*, 684 F.3d 431, 433–34 (3d Cir. 2012)); *see also Loper Bright Enters. v. Raimundo*, 603 U.S. 369, 400–01 (2024) (“[A]gencies have no special competence in resolving statutory ambiguities. Courts do.”).


STATEMENT OF FACTS

17. Mr. Balde came to the United States from Guinea in 2023. *See* Decl. of John Peng, Ex. A (U.S. Dep’t of Homeland Sec., *Record of Deportable/Inadmissible Alien* (Oct. 6, 2025)). He was encountered by DHS officers shortly after entering the country. *See id.* DHS processed Mr. Balde, initiated removal proceedings, and released him on an Order of Release on Recognizance. *See id.* at 2.

18. Mr. Balde resettled to the Bronx, New York, and established community there. He worked to support his wife, children, and other family members. He found a local mosque and regularly attended mosque events. He took English classes.

19. Mr. Balde complied with all the conditions of his removal proceedings and immigration release. He submitted an asylum application. His next scheduled immigration hearing is for March 18, 2026. *See id.*, Ex. B (Exec. Off. of Immigr Rev., *Automated Case Information*, <https://acis.eoir.justice.gov/en/> (last accessed Feb. 20, 2026) (search conducted for A-Number, “”; Country of Birth, “Guinea”)).

20. On October 6, 2025, DHS officers conducted an enforcement action at the building where Mr. Balde was located. They were searching for another individual when they encountered Mr. Balde. DHS officers took Mr. Balde into detention under the basis that he “was present in the United States illegally.” *Id.*, Ex. A at 2. Mr. Balde “ha[d] no previous arrest or criminal record.” *Id.*

21. DHS currently holds Mr. Balde at the Pike County Correctional Facility, in Lords Valley, Pennsylvania. *See id.*, Ex. C (U.S. Immigr. & Customs Enf’t, *Online Detainee Locator System*, <https://locator.ice.gov/odls/#/search> (last accessed Feb. 20, 2026) (search conducted for A-Number, “”; Country of Birth, “Guinea”)).

22. Upon information and belief, Respondents detained Mr. Balde under its revised interpretation of the immigration detention statutes; specifically, their new view that all noncitizens who have not been “admitted” into the United States, 8 U.S.C. § 1101(a)(13)(A), are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

LEGAL FRAMEWORK

I. Section 1226(a) Governs the Detention of People Like Petitioner Who are Detained in the United States and Have Not Previously Been Admitted.

23. The Immigration and Nationality Act contains several provisions authorizing the detention of noncitizens. Title 8 U.S.C. § 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an IJ to determine whether they should be released on bond. *See also* 8 C.F.R. § 1236.1(d). Title 8 U.S.C. § 1225(b), meanwhile, mandates the detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for recent arrivals “seeking admission” under (b)(2).

24. The detention provisions at 8 U.S.C. § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “Upon passing IIRIRA, Congress declared that the new Section 1226(a) ‘restates the current provisions in the predecessor statute,’” which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

25. After IIRIRA’s enactment, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under 8 U.S.C. § 1225, and that they were instead detained under 8 U.S.C. § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly

referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”).

26. In the decades that followed, most people who entered without inspection and were thereafter arrested by DHS were considered for release on bond. They also received bond hearings before an immigration judge, unless their criminal history rendered them ineligible. *See Ndiaye*, 2025 WL 3229307, at *6 (finding that DHS and EOIR “maintained this practice since § 1225(b)(2) first took effect in 1997”). That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

27. Respondents abruptly changed course this past year. On July 8, 2025, ICE Director Todd Lyons issued an internal memorandum stating that, “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal position and believed that 8 U.S.C. § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025).

28. And on September 5, 2025, the BIA followed suit and issued a precedential decision in *Matter of Yajure Hurtado*, holding that noncitizens “who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I. & N. Dec. at 220.

29. The *Yajure Hurtado* interpretation has been soundly rejected by Article III Courts. Judges from all around the country, including from the Middle District of Pennsylvania, have held that people who are present without having been admitted are eligible for bond pursuant to

§ 1226(a). See *Mamatkulov*, 2026 WL 456917, at *1; *Vasquez Mejia*, 2025 WL 3546427, at *2–4; *Demirel*, 2025 WL 3218243, at *5–13 (listing out 288 cases that have rejected *Yajure Hurtado*).

30. As these decisions explain, the BIA’s position in *Yajure Hurtado* defies the INA. The plain text of the statute shows that 8 U.S.C. § 1226(a), not § 1225(b), applies to immigrants like Mr. Balde. Section 1226(a) applies by default to all persons “pending a decision on whether the[y] . . . [are] to be removed from the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 8 U.S.C. § 1226(a) as the “default rule” for the detention of noncitizens pending removal).

31. The text of 8 U.S.C. § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. Just this year, Congress enacted the Laken Riley Act (codified at 8 U.S.C. § 1226(c)(1)(E)) to exclude certain noncitizens who entered without inspection from Section 1226(a)’s default bond provision. Subprovision (E)’s reference to persons inadmissible under 8 U.S.C. § 1182(6)(A), *i.e.*, persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* Court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” 779 F. Supp. 3d at 1256–57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

32. Under the BIA’s interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 220; see 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(13)(A) (defining an admission). This interpretation would therefore render all the grounds of mandatory detention in 8 U.S.C. § 1226(c)

applied to inadmissible noncitizens, including the recently passed Laken Riley Act, superfluous. *Gomes v. Hyde*, 804 F. Supp. 3d 265, 275 (D. Mass. 2025); *Rodriguez*, 779 F. Supp. 3d at 1258; see *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”). This statutory structure demonstrates that Congress did not intend to make 8 U.S.C. § 1226(a) inapplicable to all inadmissible noncitizens, but rather viewed it as the default bond provision for people arrested within the United States, as the Supreme Court confirmed in *Jennings*.

33. By contrast, 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A); see also *Martinez*, 792 F. Supp. 3d at 222 (“[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.”) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287.

34. “The Government’s interpretation of 8 U.S.C. § 1225(b)(2) [indeed] violates the rule against surplusage” because it reads out the phrase, “seeking admission.” *Ndiaye*, 2025 WL 3229307, at *14; see also *Mamatkulov*, 2026 WL 456917, at *4. Section 1225(b)(2) only applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Demirel*, 2025 WL 3218243, at

*9. The BIA’s interpretation makes all applicants for admission subject to mandatory detention, leaving the “seeking admission” criterion unnecessary and superfluous. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 487 (S.D.N.Y. 2025); *Martinez*, 792 F. Supp. 3d at 217.

35. Instead, the phrase “seeking admission” indicates that 8 U.S.C. § 1225(b)(2)(A) applies to people who are taking “some sort of present-tense action;” in other words, coming or attempting to come into the United States. *Martinez*, 792 F. Supp. at 218; *see also Matter of M-C-D-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) (stating that “the use of the present progressive tense . . . denotes an ongoing process”). 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), governs the detention of people, like Mr. Balde, detained within the United States who are not actively seeking admission, as required by the statute.

36. Even were there any lingering ambiguity over Section 1225(b)(2)(A)’s text, Respondents application of the provision to mandate detention for all un-admitted noncitizens presents serious constitutional concerns. This Court should presume that Congress “did not intend the alternative which raises serious constitutional doubts” and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381–82 (2005).

II. The BIA’s Application of Mandatory Detention to Noncitizens Like Petitioner Violates Substantive and Procedural Due Process.

37. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens.

See id. at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

38. Absent adequate procedural protections, substantive due process requires a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; *accord, e.g., Herrera Torralba v. Knight*, 798 F. Supp. 3d 1184, 1199 (D. Nev. 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 25-cv-506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (same); *Luna Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *7 (E.D. Va. Sept. 29, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Zadvydas*, 533 U.S. at 693; *Demore*, 538 U.S. at 528. To withstand constitutional scrutiny, the nature of government-enforced immigration detention must be reasonably related to these purposes.

39. Respondents’ re-detention of Mr. Balde without any pre-deprivation assessment of his flight or danger risks violates his substantive due process rights. When DHS “first released” Mr. Balde in 2023, “it could not have done so validly unless it did not consider him to be a flight risk or a danger to the community.” *Lopez Benitez*, 795 F. Supp. 3d at 495. Its re-detention of Mr. Balde without showing what, if anything, has changed in that calculus was improper. *See, e.g., Kourouma v. Jamison*, No. 26-cv-182, 2026 WL 120208, at *5 (E.D. Pa. Jan. 15, 2026) (“This Court will order the release of Petitioner because he was unlawfully detained.”); *Tumba Huamani v. Francis*, --- F. Supp. ---, 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025) (ordering release after finding “the complete absence of any reason for Petitioner’s arrest” by DHS); *Lopez Benitez*, 795 F. Supp. 3d at 499 (ordering release after rejecting the government’s “suggestion that [its]

agents may sweep up any person they wish, for no reason whatsoever . . . so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release”) (cleaned up).²

40. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *See, e.g., A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen’s procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test from *Mathews*, 424 U.S. at 335, weighing (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Gayle v. Warden Monmouth Cnty Corr. Facility*, 12 F.4th 321, 331 (3d Cir. 2021); *Black v. Decker*, 103 F.4th 133, 147–48 (2d Cir. 2024); *Hernandez-Lara v. Lyons*, 10 F.4th 19 at 28 (1st Cir. 2021) (all quoting *Mathews*, 424 U.S. at 335). Each factor favors providing Mr. Balde additional process.

41. First, the “importance and fundamental nature” of Mr. Balde’s liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Mamatkulov*, 2026

² Mr. Balde’s re-detention further implicates recognized protections from the parole revocation context. The Supreme Court “has made clear that individuals subject to the revocation of their parole are entitled to certain due process rights, including ‘a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.’” *United States v. Patterson*, 957 F.3d 426, 433 (4th Cir. 2020) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972)); *see also* 18 U.S.C. § 3583(e) (requiring courts to consider specific factors prior to modifying or revoking a person’s conditions of supervised release).

WL 456917, at *5 (describing the private interest as “the most elemental of liberty interests”) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *Ashley*, 288 F. Supp. at 670 (“[F]reedom from confinement is a liberty interest of the highest constitutional import.”). For people “who can face years of detention before resolution of their immigration proceedings, ‘the individual interest at stake is without doubt particularly important.’” *Linares Martinez v. Decker*, No. 18-cv-6527, 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018); *see also Mamatkulov*, 2026 WL 456917, at *5 (“The restriction of liberty is particularly acute here where, absent a bond hearing, [the noncitizen] would be detained for months or even years while his case proceeds.”) (quoting *Cunin v. McShane*, No. 25-cv-1887, 2025 WL 3542999, at *2 (M.D. Pa. Dec. 10, 2025)).

42. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the noncitizen “could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone.” 978 F.3d at 851–52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the noncitizen was incarcerated “alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to maintain her employment.” 10 F.4th at 28. Because Mr. Balde has the same core interest in his liberty, the first factor weighs in his favor.

43. Second, Respondents’ blanket detention of all noncitizens who have not yet been “admitted,” 8 U.S.C. § 1101(a)(13)(A), creates a large risk of erroneous deprivation. Particularly, it has led and continues to lead to the detention of many—like Mr. Balde—who the government cannot prove to be a flight risk or a danger to the community. *See, e.g., Mamatkulov*, 2026 WL 456917, at *5 (“[The noncitizen] has been detained erroneously under Section 1225(b) without

any apparent procedural safeguards, including the ability to obtain a bond hearing.”); *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187–88 (D. Minn. 2025) (noting that lack of consideration of “individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals’ private rights”); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because “the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention”). Ensuring Respondents conduct a pre-deprivation assessment prior to the detention of those, like Mr. Balde, who has fully complied with their immigration release requirements, is in the middle of removal proceedings, and has not been convicted of any crimes, strikes the proper procedural balance. The second factor weighs in favor of providing Mr. Balde more process.

44. Finally, the burden on Respondents to conduct pre-deprivation assessments is not a large one. At the time Respondents first released Mr. Balde, “it could not have done so validly unless it did not consider him to be a flight risk or a danger to the community.” *Lopez Benitez*, 795 F. Supp. 3d at 495. The burden, then, on Respondents is a minimal one: showing some change in circumstances justifying detention. Such a burden serves—rather than hampers—the government’s interest because the government has an interest in “minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs.” *Hernandez-Lara*, 10 F.4th at 33 (citation and quotation marks omitted). “The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees.” *Id.* “Those ruptures

in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Id.* The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings. *See Mamatkulov*, 2026 WL 456917, at *5 (finding in favor of the noncitizen on the third factor because, in part, “the government believed releasing the petitioner was the humanitarian thing to do” when he first entered the country). The third factor weighs in affording Mr. Balde additional protections.

45. Given Respondents did not conduct any pre-deprivation assessment of Mr. Balde’s risks prior to his re-detention, he merits release. *See, e.g., id.* (ordering immediate release); *Diallo*, 2026 WL 458294, at *5 (same); *Gonzalez Centeno*, 2026 WL 94642, at *4 (same); *Vadel*, 2025 WL 3772059, at *7 (same); *Paredes Quispe*, 2025 WL 3537279, at *8 (same); *Patel*, 2025 WL 3516865, at *6 (same).

46. If, alternatively, this Court believes Mr. Balde is due a bond hearing it should preside over such a hearing rather than assign it to an EOIR administrative judge. *See Swann v. Charlotte Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (“[T]he scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”); *see also Zadvydas*, 533 U.S. at 700 (authorizing federal courts to “condition[]” a noncitizen’s release “on any of the various forms of supervised release that are appropriate in the circumstances.”). A hearing before an immigration judge does not provide a sufficient assurance of neutrality. Immigration judges, who serve at the pleasure of the U.S. Attorney General—a respondent in this matter—have been removed from service for not following the Executive’s deportation goals. *See, e.g., Joshua Goodman, Military Lawyer Swiftly Fired from Immigration Bench After Defying Trump Deportation Push*, Times Union (updated Dec. 19, 2025), <https://www.timesunion.com/news/politics/article/military-lawyer-swiftly-fired-from->

[immigration-21252504.php](#). And on January 13, 2026, Chief Immigration Judge Teresa L. Riley instructed immigration judges to continue denying bond despite a nationwide declaration against DHS's detention policies in *Maldonado Bautista v. Santacruz*, No. 25-cv-1873, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025). See *Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, AILA Doc. No. 26011404, Am. Immigr. Laws. Ass'n, <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista> (last visited Feb. 20, 2026).

47. At such a bond hearing, due process requires that the Government bear the burden of proof by clear and convincing evidence. See *Gayle*, 12 F.4th at 332 (“[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof.”). Such a “standard of proof serves to [properly] allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision.” *German Santos*, 965 F.3d at 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). The Third Circuit has long ordered for the government to bear a clear and convincing burden at a constitutionally-mandated bond hearing. See, e.g., *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 224 n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held the same for Section 1226(a) detention. *Hernandez-Lara*, 10 F.4th at 39–40; *Velasco Lopez*, 978 F.3d at 855–56. Any assessment of custody should include consideration of alternatives to detention and ability to pay. See, e.g., *Black*, 103 F.4th at 155.

FIRST CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act Unlawful Application of Mandatory Detention Provision

48. Petitioner re-alleges and incorporates by reference the above paragraphs.

49. 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 grounds of inadmissibility. Specifically, it does not apply to Mr. Balde, who has been living in the United States since 2023, for over two years prior to his re-detention in October 2025.

50. Mr. Balde was not “seeking admission” in October 2025. When ICE suddenly detained him, he was no longer engaged in that “present-tense action.” *Martinez*, 792 F. Supp. 3d at 218. He therefore did not meet the requirements of Section 1252(b)(2)(A).

51. Respondents’ unlawful and arbitrary application of 8 U.S.C. § 1225(b)(2) to Mr. Balde violates the INA.

SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act Agency Policy and Practice is Arbitrary, Capricious, and Contrary to Law

52. Petitioner re-alleges and incorporates by reference the above paragraphs.

53. 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 grounds of inadmissibility. Specifically, it does not apply to Mr. Balde, who has been living in the United States since 2023.

54. In taking a contrary position, Respondents have reversed decades of prior practice, and “would expand § 1225(b) face beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application.” *Lopez Benitez*, 795 F. Supp. 3d at 490. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important

aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

55. 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). Respondents’ application of 8 U.S.C. § 1225(b)(2) to Mr. Balde is arbitrary, capricious, and not in accordance with law.

THIRD CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause Detention Without Any Relation to Limited Goals of Civil Immigration Detention Violates Substantive Due Process

56. Petitioner re-alleges and incorporates by reference the above paragraphs.

57. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Substantive due process requires that immigration detention be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690.

58. Respondents’ re-detention of Mr. Balde without any consideration of his particular flight or danger risks bears no relation to the limited goals of immigration detention. Their detention of Mr. Balde—a noncitizen who has complied with the full terms of his immigration release and has never been convicted of a crime—violates his substantive right to be free from unjustified government detention.

FOURTH CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause Detention Without Any Procedures to Limit Erroneous Deprivation of a Core Private Right Violates Procedural Due Process

59. Petitioner re-alleges and incorporates by reference the above paragraphs.

60. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Courts apply the *Mathews* balancing test to determine what procedural protections the due process clause requires. *See Gayle*, 12 F.4th at 331.

61. The first factor is the private interest that will be affected by the official action. *Id.* The deprivation of Mr. Balde’s liberty is a particularly weighty interest. *See Morrissey*, 408 U.S. at 482 (describing the substantial private interest in remaining out of custody, which “enables [one] to do a wide range of things open to persons” who are free from custody).

62. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Respondents’ blanket application of Section 1225(b)(2)(A) to all noncitizens who have not been admitted creates great risk of unnecessary detention because their interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. Respondents’ procedures—or lack thereof—create an erroneously high risk of wrongly depriving those, like Mr. Balde, their protected interest in being free from government custody.

63. The final factor is the government’s interest and burden in providing additional procedures. *See Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining those like Mr. Balde when detention is not necessary to ensure his appearance at future hearings

or protect the community, and less restrictive measures like a reasonable bond could serve those same purposes. *Hernandez-Lara*, 10 F.4th at 32–33; *see also Ousman D. v. Decker*, No. 20-cv-9646, 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (holding that due process requires consideration of less restrictive alternatives to detention that would address the government’s legitimate purpose); *Hechavarría v. Whitaker*, 358 F. Supp. 3d 227, 241–42 (W.D.N.Y. 2019) (same). Affording noncitizens pre-deprivation review of their flight or danger risks presents a minimal burden and serves the government’s interest in ensuring only those individuals that need to be detained are detained. *See Velasco Lopez*, 978 F.3d at 857 (the government “has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community” and the public has an “interest in seeing that individuals who need not be jailed are not incarcerated”). Respondents’ re-detention of Petitioner without any assessment of whether that detention is necessary violates procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a) Assume jurisdiction over this matter;
- b) Issue an order administratively staying Respondents from transferring Petitioner outside of this Court’s geographic jurisdiction pending the Court’s adjudication of the petition;³

³ Petitioner requests a stay of his transfer to ensure that should this Court grant him relief, he may quickly and reasonably access such relief. *See, e.g.,* Order, ECF No. 3, *Lantiguez Alvarado v. Bondi*, No. 26-cv-768 (S.D.N.Y. Jan. 29, 2026) (administratively staying the noncitizen from transfer out of the Southern and Eastern Districts of New York, or the District of New Jersey).

At a recent show cause hearing, Judge Jerry W. Blackwell of the U.S. District Court for the District of Minnesota outlined the collateral difficulties of acquiring adequate government compliance if the government transfers a noncitizen outside of the habeas court’s jurisdiction. He explained that it takes “repeat, after repeat, after follow-up, after follow-up with the Government” to receive information and procure a noncitizen’s return. Tr. of Show Cause Hr’g, ECF No. 19, *Segundo*

c) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

d) Issue a Writ of Habeas Corpus and order Petitioner's immediate release from custody;

e) In the alternative, conduct a custody hearing at which Respondents must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;

f) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on

A.P.G. et al. v. Bondi, No. 26-cv-603 (D. Minn. Feb. 3, 2026), at 11. And he traced the difficulty in prescribing adequate remedies, describing:

For example, if we say, release the person immediately, then we learn that, having transported [the noncitizen] to El Paso or New Mexico, [the government] do[esn't] bring him back. We learn that somebody is put out on the street with just the clothes on their backs and have to figure out how to get back here when they should not have been arrested here in the first place, let alone flown halfway across the continent of North America. And have to – so now we have to address that. We have to say, bring them back.

And then we say, all right, so you brought them back. We can't have them released when it's minus 14 outside. And so now we have to address that. Don't release them in the circumstances that might endanger their health or safety.

And so once that's addressed, then we learn they've been released, but now conditions have been imposed. That somebody who should not have been arrested in the first place is now being told, you're going to be released if you wear an ankle monitor, which the Court didn't order because the person was unlawfully detained in the first place. Then we have to go back and address that now.

Id. at 33–34.

any other basis justified under law, *see Michelin v. Warden Moshannon Valley Corr. Ctr.*, --- F.4th ---, 2026 WL 263483 (3d Cir. Feb. 2, 2026); and

g) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Nhu-Y Ngo

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Pro Bono Counsel for Petitioner

DATED: Feb. 20, 2026
Brooklyn, New York

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the Middle District of Pennsylvania.

/s/ Nhu-Y Ngo

Nhu-Y Ngo

DATED: Feb. 20, 2026
Brooklyn, New York