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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

MESSERE, Thierno A# [REDACTED]

Case No.:

Petitioner

v.

TONY NORMAND in his official capacity as Warden of Folkston ICE Processing Center, LADEON FRANCIS, in his official capacity as the acting Atlanta Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, and PAMELA BONDI, in her official capacity as United States Attorney General.

Respondents.

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

Petitioner respectfully petitions this Honorable Court for Writ of Habeas Corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner, Thierno Messere (hereinafter "Petitioner") is a 37 year-old noncitizen born in Senegal, who is in the custody of the United States Department of

1 Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), and
2 is currently detained at Folkston D. Ray ICE Processing Center. Petitioner was
3 detained on or about January 15, 2025, while reporting, as instructed, to the Charlotte,
4 North Carolina, Enforcement and Removal Office ("ERO"). He now faces unlawful
5 detention because the Department of Homeland Security ("DHS") and the Executive
6 Office of Immigration Review ("EOIR") will conclude that Petitioner is subject to
7 mandatory detention.

8 2. Petitioner entered the United States for the first and only time on or
9 about October 2021. Fearing for his safety in Senegal, Petitioner came to the United
10 States seeking asylum. After approximately a 9 month journey to the United States,
11 mostly on foot across various countries in central America, he arrived at the U.S. -
12 Mexican border near Del Rio, Texas. At that time, Petitioner was processed by ICE
13 ERO officers and Released on his own Recognizance, with an additional
14 determination regarding Custody which stated:

15 "PURSUANT TO A REVIEW CONDUCTED TO COMPLY WITH
16 REQUIREMENTS OF FRALHAT V. ICE - F. Supp. 3d - 2020 WL 1932570
17 (C.D. Cal. Apr. 20, 2020) YOU HAVE BEEN IDENTIFIED AS HAVING
18 ONE OR MORE OF THE RISK FACTORS IDENTIFIED BY THE
19 DISTRICT COURT AS PLACING YOU "AT HEIGHTENED RISK OF
20 SEVERE ILLNESS AND DEATH UPON CONTRACTING THE COVID 19
21 VIRUS." The Risk Factor in your case are that you: Have a Chronic Care
22 Condition (As confirmed by a medical professional)..... It has been
23 determined that you will: be released from custody." *SEE ATTACHED*
24 *EXHIBIT A*

25 3. Petitioner was also ordered to report yearly to his local ICE office which
26 he did and fully complied every year, indicating he is not a flight risk, and is serious
27 about following the rules and pursuing his asylum claim. While reporting to ERO,
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1 as instructed on the date of his appointment, and in good faith compliance with his
2 prior Release on Recognizance at the border, Petitioner was arrested and detained
3 and continues to be detained at Folkston Processing Center. No one explained to
4 Petitioner why his release at the border on an Order of Release on Recognizance was
5 being terminated.

6 4. Upon information and belief, the agents for DHS and/or ICE arrested
7 Petitioner without a warrant, suddenly detaining him placing him in Removal
8 proceedings where he is charged with having entered the United States without
9 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

10 5. Based on this allegation in Petitioner's removal proceedings, DHS has
11 **already denied** Petitioner's release from immigration custody (*SEE ATTACHED*
12 *EXHIBIT B*), consistent with a new DHS policy issued on July 8, 2025, instructing
13 all Immigration and Customs Enforcement (ICE) employees to consider everyone
14 inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the U.S. without
15 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A)
16 and therefore ineligible to be released on bond.

17 6. Similarly, on September 5, 2025, the Board of Immigration Appeals
18 ("BIA or Board") issued a precedent decision, binding on all immigration judges
19 ("IJs"), holding that an IJ has no authority to consider bond requests for any person
20 who entered the U.S. without admission. *See Matter of Yajure Hurtado*, 29 I. & N.
21 Dec. 216 (BIA 2025). The Board determined that such individuals are subject to
22 detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on
23 bond.

24 7. Petitioner's detention on this basis violates the plain language of the
25 Immigration and Nationality Act ("INA"). Section 1225(b)(2)(A) does not apply to
26 individuals like Petitioner who previously entered and are now residing in the U.S.
27 Instead, such individuals are subject to a different statute, § 1226(a), that allows for
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1 release on conditional parole or bond. That statute expressly applies to people who,
2 like Petitioner, are charged as inadmissible for having entered the U.S. without
3 inspection. Petitioner's Order of Release on Recognizance specifically states his
4 release is pursuant to § 1226(a) NOT 1225(b)(2)(A) . *SEE ATTACHED EXHIBIT C*
5 *PAGE 1*.

6 8. Petitioner is detained pending his removal proceedings without access
7 to a hearing conducted by a neutral decisionmaker—a federal judge or an immigration
8 judge—to determine whether his detention is warranted based on a danger or flight
9 risk, pursuant to the BIA's recent decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA
10 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11 9. These decisions, which hold that 8 U.S.C. § 1225(b)(2) makes
12 noncitizens like Petitioner who are apprehended in the United States but have never
13 been admitted subject to mandatory detention without a bond hearing, violate the
14 statute. Instead, 8 U.S.C. § 1226(a) applies and authorizes release on bond after a
15 hearing before an immigration judge. The BIA's interpretation conflicts with the plain
16 language and structure of the statute, and Respondents' new legal interpretation is
17 plainly contrary to the statutory framework and contrary to decades of agency practice
18 applying § 1226(a) to people like Petitioner. Therefore, the application of §
19 1225(b)(2) to Petitioner is contrary to law and violates the Immigration and
20 Nationality Act (INA) and the Administrative Procedure Act (APA).

21 10. In the alternative, if the statute does authorize Petitioner's detention
22 without a bond hearing, it violates his rights to substantive and procedural due
23 process. Detention of all noncitizens who are subject to inadmissibility grounds, like
24 Petitioner, without any individualized hearing does not "bear a reasonable relation to
25 the purpose for which the individual was committed." *Zadvydas v. Davis*, 533 U.S.
26 678, 690 (2001). The application of *Mathews v. Eldridge* balancing test shows that
27 a bond hearing is necessary to protect Petitioner from an unnecessary deprivation of
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1 liberty. *See* 424 U.S. 319, 335 (1976).

2 11. Moreover, on November 20, 2025, the district court granted partial
3 summary judgment on behalf of individual plaintiffs and on November 25, 2025,
4 certified a nationwide class and extended declaratory judgment to the certified class.
5 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----
6 , 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial
7 summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v.*
8 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403,
9 at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed
10 nationwide Bond Eligible Class, incorporating and extending declaratory judgment
11 from Order Granting Petitioners' Motion for Partial Summary Judgment).

12 12. The declaratory judgment held that the Bond Denial Class members are
13 detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for
14 release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at
15 *11. The court then issued a final judgment in favor of the class on December 18,
16 2025.

17 13. Nonetheless, the EOIR and its subagency the Immigration Court and the
18 DHS, have blatantly refused to abide by the declaratory relief and have unlawfully
19 ordered that class members be denied the opportunity to be released on bond.

20 14. IJs have informed class members in bond hearings that they have been
21 instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not
22 controlling, even with respect to class members, and that instead IJs remain bound to
23 follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216
24 (BIA 2025).

25 15. Petitioner therefore respectfully requests that this Court issue a Writ of
26 Habeas Corpus and order Petitioner's immediate release from custody, with
27 appropriate conditions of supervision if necessary. In the alternative, Petitioner
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1 requests that this Court conduct or order an immigration judge to conduct a bond
2 hearing immediately at which (1) the government bears the burden of proving flight
3 risk and/or dangerousness by clear and convincing evidence and (2) the reviewing
4 court considers alternatives to detention that could mitigate risk of flight. *See German*
5 *Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

6 **PARTIES**

7 16. Petitioner, Thierno Messere, is a 37 year-old asylum seeker, a citizen of
8 Senegal, who has been in immigration detention since January 15, 2026 pending
9 removal proceedings. Petitioner was detained and subsequently turned over into ICE
10 custody, who did not set bond, and Petitioner is unable to obtain review of his
11 custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29
12 I. & N. Dec. 216 (BIA 2025).

13 17. Respondent Tony Normand is employed as Warden by the GEO Group,
14 Inc., a private company that contracts with ICE to run the Folkston D. Ray James ICE
15 Processing Center where Petitioner is detained. He has immediate physical custody
16 of Petitioner. He is sued in his official capacity.

17 18. Respondent Ladeon Francis is named in his official capacity as the
18 acting Field Office Director for Atlanta ICE ERO. In this capacity, Respondent
19 Francis is Petitioner's immediate custodian and is responsible for Petitioner's
20 detention and removal, exercising direct control over Petitioner's custody at Folkston
21 Processing Center.

22 19. Respondent Todd Lyons is named in his official capacity as the Acting
23 Director of ICE. In this capacity, Respondent Lyons is responsible for the
24 administration of federal immigration law and the execution of detention and removal
25 determinations, and, as such, he is a legal custodian of Petitioner. Respondent
26 Lyons's office is located at 500 12th Street, S.W., Washington, D.C., 20536.

27 20. Respondent Kristi Noem is the Secretary of the U.S. Department of
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1 Homeland Security. DHS oversees ICE, which is responsible for administering and
2 enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of
3 Petitioner. She is sued in her official capacity. Respondent Noem's office is located
4 at U.S. Department of Homeland Security, Washington, D.C., 20528.

5 21. Respondent Pamela Bondi is named in her official capacity as the
6 Attorney General of the United States. In this capacity, she is responsible for the
7 administration of the immigration laws as exercised by the Executive Office for
8 Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1103(g), routinely
9 transacts business in the Southern District of Georgia, is legally responsible for
10 administering Petitioner's removal proceedings and the standards used in those
11 proceedings, and as such is the legal custodian of Petitioner. Respondent Bondi's
12 address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington,
13 District of Columbia 20530.

14 JURISDICTION AND VENUE

15 22. This action arises under the Fifth and Fourteenth Amendments to the
16 U.S. Constitution.

17 23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241,
18 Art. I §9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C.
19 § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. §
20 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and the All
21 Writs Act, 28 U.S.C. § 1651.

22 24. The United States has waived sovereign immunity for this action for
23 declaratory and injunctive relief against one of its agencies and that agency's officers
24 are sued in their official capacities. *See* 5 U.S.C. § 702.

25 25. Venue is proper in this District because the Petitioner is detained in
26 Folkston D. Ray ICE Processing Cener located in Folkston, Georgia, in this district.
27 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

1 26. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
2 484, 493- 500 (1973), venue lies in the United States District Court for the Southern
3 District of Georgia, the judicial district in which Petitioner currently is detained.

4 27. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)
5 because Respondents are employees, officers, and agencies of the U.S., and because
6 a substantial part of the events or omissions giving rise to the claims occurred in the
7 Southern District of Georgia.

8 **REQUIREMENTS OF 28 U.S.C. § 2243**

9 28. The Court must grant the petition for Writ of Habeas Corpus or order
10 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief.
11 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return
12 “within three days unless for good cause additional time, not exceeding twenty days,
13 is allowed.” *Id.*

14 29. Habeas corpus is “perhaps the most important writ known to the
15 constitutional law . . . affording as it does a *swift* and imperative remedy in all cases
16 of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis
17 added). “The application for the writ usurps the attention and displaces the calendar
18 of the judge or justice who entertains it and receives prompt action from him within
19 the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir.
20 2000) (citation omitted).

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 30. There is no statutory requirement of exhaustion of administrative
23 remedies where a noncitizen challenges the lawfulness of his detention. *Arango*
24 *Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). In cases, like Petitioner's, which
25 “hinge almost totally on statutory construction, the Court finds that exhaustion of
26 administrative remedies is likely excused on that ground.” *Del Cid Del Cid v. Bondi*,
27 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025), at 23 (noting also that in the case of a
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1 similarly situated petitioner, requiring exhaustion by means of BIA appeal prior to
2 litigating a claim before this Court, would be futile). Any requirement of
3 administrative exhaustion is therefore purely discretionary. *See Santos v. Lowe*, No.
4 1:18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. Aug. 2020) (“The exhaustion
5 requirement imposed by courts relating to habeas corpus petitions filed by
6 immigration detainees is a prudential benchmark which is not compelled by statute.”).

7 31. In making that decision, the Court should consider the urgency of the
8 need for immediate review. “Where a person is detained by executive order . . . the
9 need for collateral review is most pressing. . . . In this context the need for habeas
10 corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving
11 administrative exhaustion for executive detainees).

12 32. Moreover, the exhaustion “doctrine is not without exception.” *Ashley*
13 *v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the
14 exhaustion of administrative remedies may not be required when available remedies
15 provide no opportunity for adequate relief, an administrative appeal would be futile,
16 or if plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.

17 33. The Board of Immigration Appeals has issued a published decision
18 holding that people like Petitioner who entered the United States without inspection
19 and therefore have not been admitted are ineligible for bond pursuant to 8 U.S.C.
20 § 1225(b)(2)(A). Immigration judges and the BIA are bound by this decision.
21 8 C.F.R. § 1003.1(g)(1). Exhaustion before the BIA would therefore be futile.

22 34. Further, neither the Immigration Judge nor the BIA have jurisdiction to
23 adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500
24 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Therefore,
25 any administrative proceedings would be futile because Petitioner raises a
26 constitutional due process claim. *Qatanani*, 144 F.4th at 500.

27 **STATEMENT OF FACTS**
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1 35. Petitioner is a 37 year-old citizen and national of Senegal, who has
2 resided in the US since he entered without inspection on or about October 2021
3 through the U.S.-Mexico border. There he was subsequently issued an Order of
4 Release on Recognizance with instructions to check in regularly with his local ICE
5 office. *See Exhibit. C.*

6 36. Within one year of entry to the US, Petitioner applied for Asylum,
7 Withholding and CAT with USCIS and obtained a work authorization valid through,
8 September 15, 2030, and a social security number. He began working and paying
9 taxes. Petitioner was working at his current employer for over 3 years at the time he
10 was detained. Petitioner has never been arrested in the United States. Petitioner
11 works to support himself in the United States without any public benefits. Petitioner
12 has a US citizen fiancée to whom he was about to be married when he was suddenly
13 detained.

14 37. Petitioner regularly reported to ICE in Charlotte North Carolina, as part
15 of the conditions of his release. On January 15, 2026, while reporting to ICE in
16 Charlotte as part of regular check-ins, Petitioner was arrested and detained.

17 38. ICE then transported him and detained him at the the Folkston D. Ray
18 Processing Center in Folkston, Georgia, where he currently resides.

19 39. DHS initiated a Notice to Appear (“NTA”) on January 15, 2026 and
20 subsequently initiated removal proceedings before the Atlanta Immigration Court.

21 40. ICE has charged Petitioner with, inter alia, being inadmissible under 8
22 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the U.S. without inspection.

23 41. Petitioner’s next immigration court, a Master hearing, is scheduled for
24 March 16, 2026 at 9am, with an IJ at the Atlanta Immigration Court.

25 42. Pursuant to *Matter of Yajure Hurtado*, the IJ is jurisdictionally barred
26 from granting Petitioner a bond during at the conclusion of a custody redetermination
27 hearing. Additionally, despite being a member of the certified nationwide class
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1 pursuant to *Maldonado Bautista v. Santacruz*, the EOIR and its subagency the
2 Immigration Court and the DHS have blatantly refused to abide by the declaratory
3 relief for class members similarly situated to this petitioner before the Atlanta
4 Immigration Court and other Immigration Courts across the country.

5 43. As a result, Petitioner remains in detention. Without relief from this
6 court, he faces the prospect of months, or even years, in immigration custody,
7 separated from his family and community.

8 LEGAL FRAMEWORK

9 **I. Section 1226(a) Governs the Detention of People** 10 **Like Petitioner Who are Detained in the United States** 11 **and Have Not Previously Been Admitted**

12 44. The Immigration and Nationality Act contains several provisions
13 authorizing the detention of noncitizens. Section 1226(a) entitles most noncitizens
14 with pending removal proceedings to a hearing before an Immigration Judge to
15 determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. §
16 1236.1(d). Section 1226(c) creates an exception to section 1226(a) and provides that
17 noncitizens who are removable by virtue of certain criminal convictions must be
18 detained without a bond hearing. Section 1225(b) provides for mandatory detention
19 of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other
20 recent arrivals “seeking admission” under (b)(2). Finally, section 1231 governs the
21 detention of noncitizens with a final order of removal.

22 45. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as
23 part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)
24 of 1996, Pub. L. No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to
25 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the
26 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “Upon passing IIRIRA,
27 Congress declared that the new Section 1226(a) restates the current provisions in the
28 predecessor statute,” which allowed noncitizens who entered without inspection to

1 be released on bond. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash.
2 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

3 46. Following the enactment of the IIRIRA, EOIR drafted new regulations
4 explaining that, in general, people who entered the country without inspection were
5 not considered detained under § 1225 and that they were instead detained under §
6 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal
7 of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
8 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are
9 present without having been admitted or paroled (formerly referred to as aliens who
10 entered without inspection) will be eligible for bond and bond redetermination.”).

11 47. Thus, in the decades that followed, most people who entered without
12 inspection and were thereafter arrested and placed in standard removal proceedings
13 were considered for release on bond and also received bond hearings before an
14 Immigration Judge, unless their criminal history rendered them ineligible. *Diaz*
15 *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, -- F. Supp. 3d --, at *4 (D.
16 Mass. July 24, 2025). That practice was consistent with many more decades of prior
17 practice, in which noncitizens who had entered the United States, even if without
18 inspection, were entitled to a custody hearing before an Immigration Judge or other
19 hearing officer. *See* 8 U.S.C. §§ 1252(a) (1994).

20 48. In recent months, Respondents have abruptly changed course. On July
21 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that,
22 “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal
23 position and believed that § 1225, not § 1226, governs the detention of noncitizens
24 who are present in the United States without having been admitted. *Diaz Martinez*,
25 2025 WL 2084238, at *4. The new policy, entitled “Interim Guidance Regarding
26 Detention Authority for Applicants for Admission,”¹ claims that all persons who

27 ¹ Available at [https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
28 admission.

1 entered the U.S. without inspection shall now be subject to mandatory detention
2 provision under § 1225(b)(2)(A). The policy applies regardless of when a person is
3 apprehended and affects those who have resided in the U.S. for months, years, and
4 even decades.

5 49. On September 5, 2025, the BIA followed suit and issued a precedential
6 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held
7 that noncitizens “who are present in the United States without admission are
8 applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C.
9 § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”
10 29 I&N Dec. at 220.

11 50. Since Respondents adopted their new policies, dozens of federal courts
12 have rejected their new interpretation of the INA’s detention authorities. Courts have
13 likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the
14 statute as ICE.

15 51. Even before ICE or the BIA introduced these nationwide policies, IJs in
16 the Tacoma, Washington, immigration court stopped providing bond hearings for
17 persons who entered the U.S. without inspection and who have since resided here.
18 There, the United States District Court in the Western District of Washington found
19 that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b),
20 applies to noncitizens who are not apprehended upon arrival to the U.S. *Rodriguez*
21 *Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

22 52. Subsequently, court after court has adopted the same reading of the
23 INA’s detention authorities and rejected ICE and EOIR’s new interpretation. *See, e.g.*,
24 *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7,
25 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL
26 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR
27 (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation*
28 *adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13,

2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

40. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

53. This District Court, in fact, has also rejected DHS’s and EOIR’s new interpretation, as well. *See, e.g., Villa v. Normand*, 5:25-cv-89, consolidated cases.

54. As these decisions explain, the BIA's position in *Matter of Yajure Hurtado* defies the INA. The plain text of the statute shows that § 1226(a), not § 1225(b), applies to people like Petitioner.

55. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 1226(a) as the "default rule" for people detained pending removal). These removal hearings are held under § 1229a, to "decide the inadmissibility or deportability of a [noncitizen]."

56. The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 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. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

57. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the U.S., including those who are present without admission or parole.

58. 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)(14) (defining an admission). Therefore, this interpretation would render all the grounds of mandatory detention in § 1226(c) applying to inadmissible

1 noncitizens, including the recently-passed Laken Riley Act, superfluous. *Gomes*,
2 2025 WL 1869299, at *7; *Rodriguez*, 779 F. Supp. 3d at 1258; see *Marx v. Gen.*
3 *Revenue Corp.*, 568 U.S. 371, 386 (2103) (“The canon against surplusage is strongest
4 when an interpretation would render superfluous another part of the same statutory
5 scheme.”). This statutory structure demonstrates that Congress did not intend to make
6 § 1226(a) inapplicable to all inadmissible noncitizens, but rather viewed it as the
7 default bond provision for people arrested within the United States.

8 59. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry
9 or who very recently entered the United States. The statute’s entire framework is
10 premised on inspections at the border of people who are “seeking admission” to the
11 United States. 8 U.S.C. § 1225(b)(2)(A); see also *Diaz Martinez*, 2025 WL 2084238,
12 at *8 (“Our immigration laws have long made a distinction between those
13 [noncitizens] who have come to our shores seeking admission . . . and those who are
14 within the United States after an entry, irrespective of its legality.” (quoting *Leng*
15 *May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has
16 explained that this mandatory detention scheme applies “at the Nation’s borders and
17 ports of entry, where the Government must determine whether a [noncitizen] seeking
18 to enter the country is admissible.” *Jennings*, 583 U.S. at 287.

19 60. The BIA’s interpretation “would render the phrase ‘seeking admission’
20 in 8 U.S.C. § 1225(b)(2)(A) mere surplusage.” *Lopez Benitez*, 2025 WL 2371588, at
21 *6. That section applies to people who are (1) applicants for admission; (2) seeking
22 admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C.
23 § 1225(b)(2)(A); *Lopez Benitez*, 2025 WL 2371588, at *6; *Diaz Martinez*, 2025 WL
24 2084238, at *2. The BIA’s interpretation makes all applicants for admission subject
25 to mandatory detention, leaving the “seeking admission” criterion unnecessary and
26 violating the rule against surplusage. *Lopez Benitez*, 2025 WL 2371588, at *6; *Diaz*
27 *Martinez*, 2025 WL 2084238, at *6. See also *Bethancourt Soto v. Soto*, No. 1:25-cv-
28 16200 at 12 (D.N.J. Oct. 22, 2025).

61. Instead, the phrase “seeking admission” indicates that § 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. *Diaz Martinez*, 2025 WL 2084238, at *6; *see also Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that “the use of the present progressive tense . . . denotes an ongoing process”). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute.

62. Applying § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the government’s longstanding practice, which “can inform a court’s determination of what the law is.” *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA’s abrupt change in policy. *Maldonado*, 2025 WL 2374411, at *11.

63. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the U.S. at the time they were apprehended.

64. The BIA’s interpretation of § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the 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). Therefore, § 1226(a), which permits bond hearings, not § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

65. Finally, as mentioned above, on November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the

certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

66. Despite this declaratory judgment holding that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A), class members are being blatantly refused bond hearings across the country. *Maldonado Bautista*, 2025 WL 3289861, at *11.

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

67. "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 v. Davis*, 533 U.S. 678, 690 (2001); see also *id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process 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).

68. Absent adequate procedural protections, substantive due process requires a "special justification" that "outweighs the individual's constitutionally

1 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; *accord*,
2 *e.g.*, *Torralba v. Knight*, No. 2:25-cv-1366, 2025 WL 2581792, at *12 (D. Nev. Sept.
3 5, 2025) (describing the standard for a substantive due process violation); *Fernandez*
4 *v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (same).
5 In the immigration context, the Supreme Court has recognized only two valid
6 purposes for civil detention—to mitigate the risks of danger to the community and to
7 prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional
8 scrutiny, the nature and duration of mandatory immigration detention must be
9 reasonably related to these purposes.

10 69. In *Demore*, the Supreme Court upheld the constitutionality of § 1226(c)
11 against a facial challenge, specifically citing evidence that had been before Congress
12 about noncitizens with criminal convictions. 538 U.S. at 518-520. This justification
13 does not apply, however, to noncitizens with no criminal record whatsoever who have
14 lived in the community for years. The broad policy set forth in *Matter of Yajure*
15 *Hurtado* is not reasonably related to the purposes of prevent danger to the community
16 or flight risk and violates substantive due process.

17 70. Additionally, procedural due process protects noncitizens against
18 deprivation of liberty without adequate procedural protections, including notice and
19 the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump*
20 *v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851
21 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen’s
22 procedural due process rights under the Fifth Amendment, courts apply the three-part
23 balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (1) “the
24 private interest that will be affected by the official action;” (2) “the risk of an
25 erroneous deprivation of such interest through the procedures used, and the probable
26 value, if any, of additional or substitute procedural safeguards;” and (3) “the
27 Government’s interest, including the function involved and the fiscal and
28 administrative burdens that the additional or substitute procedural requirement would

entail.” *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth C’ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara*, 10 F.4th at 28; *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Here, the BIA’s interpretation of the statute to require detention of all people in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

71. First, the “importance and fundamental nature” of an individual’s liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); see also *Ashley*, 288 F. Supp. at 670 (“Freedom 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 (JMF), 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018).

72. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the petitioner, “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 petitioner there 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.

73. Second, absent any individualized bond hearing, people will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether their detention is necessary. See, e.g., *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at *8 (D. Minn. May 21, 2025) (noting that lack of consideration of “individualized or particularized facts

1 ... increases the potential for erroneous deprivation of individuals' private rights");
2 *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because
3 "the Government has not proved that Petitioner presents an identified and articulable
4 threat to an individual or the community so as to justify his continued detention"). A
5 bond hearing would have significant value because it is designed to assess the
6 individualized facts of each case and determine whether less restrictive measures can
7 fulfill the same goals.

8 74. Finally, the burden on the government of returning to the longstanding
9 practice of holding bond hearings for people like Petitioner does not outweigh the
10 liberty interest at stake. To the contrary, the government has an interest in
11 "minimizing the enormous impact of incarceration in cases where it serves no
12 purpose." *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33
13 (noting that "limiting the use of detention to only those noncitizens who are
14 dangerous or a flight risk may save the government, and therefore the public, from
15 expending substantial resources on needless detention"). Additionally, "unnecessary
16 detention imposes substantial societal costs. . . . The needless detention of those
17 individuals thus separates families and removes from the community breadwinners,
18 caregivers, parents, siblings and employees. Those ruptures in the fabric of communal
19 life impact society in intangible ways that are difficult to calculate in dollars and
20 cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks
21 omitted). The cost to the government and society of detaining people unnecessarily
22 for long periods of time is greater than the cost of providing individualized hearings,
23 and weighs in favor of additional procedural protections.

24 75. At these bond hearings, due process requires that the Government bear
25 the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332
26 ("When such a severe deprivation is at issue, the Government must bear the burden
27 of proof."). "A standard of proof serves to allocate the risk of error between the
28 litigants and reflects the relative importance attached to the ultimate decision."

German Santos v. Warden Pike C'ty Corr. Facility, 965 F.3d 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing, it has placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York City 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 that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

FIRST CLAIM FOR RELIEF
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

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

77. 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 Petitioner, who has been living in the United States since October 2021, prior to being apprehended and placed into removal proceedings by respondents on January 15, 2026.

78. The fact that Petitioner was previously detained and released at the border does not undermine this conclusion. First, Mr. Messere was released on his own recognizance at the border pursuant to 8 U.S.C. § 1226, not paroled pursuant to 8 U.S.C. § 212(d)(5). See *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023) (describing this distinction). Therefore, he was never treated as an “arriving alien” or subject to the “entry fiction” that comes with parole, “whereby noncitizens are physically permitted to enter the country but are nonetheless treated for legal purposes as if stopped at the border.” *Diaz Martinez*, 2025 WL 2084238, at *3

(quoting *Dep't of Homeland Sec. v. Thuraissigam*, 591 U.S. 103, 139 (2020)). Therefore, the procedural history of Mr. Messere's case shows that it is distinguishable from *Matter of Q. Li* and falls squarely within the scope of 8 U.S.C. § 1226(a). *Diaz Martinez*, 2025 WL 2084238, at *4; *Gomes*, 2025 WL 1869299, at *8; accord *Rosado*, 2025 WL 2337099, at *6.

79. In any event, that initial arrest “is not what is at issue in this case,” rather it is his 2026 arrest and detention. See *Lopez Benitez*, 2025 WL 2371588. Even if Mr. Messere was “seeking admission” within the meaning of § 1252(b)(2)(A) at the time of his entry and initial apprehension, he was no longer engaged in that “present-tense action” when he was arrested in the Charlotte ICE office on January 15, 2026, and therefore no longer meets the requirements of § 1252(b)(2)(A) discussed above. See *Diaz Martinez*, 2025 WL 2084238, at *6.

80. Petitioner is detained under § 1226(a) and is eligible for release on bond. Respondents' unlawful application of § 1225(b) to Petitioner violates the INA.

SECOND CLAIM FOR RELIEF
Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19
Unlawful Denial of Release on Bond

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

82. 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. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before Immigration Judges under 8 U.S.C. § 1226 and its implementing regulations.

83. The regulation at 8 C.F.R. § 1003.19 lays out bond procedures, and

1 § 1003.19(h)(2) delineates categories of noncitizens who are subject to mandatory
2 detention and not entitled to a bond hearing. The fact that noncitizens within the
3 United States who are subject to inadmissibility grounds are not included on this list
4 shows that the agencies did not intend them to be subject to mandatory detention.

5 84. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy
6 and practice of applying § 1225(b)(2) to individuals like Petitioner.

7 85. The application of § 1225(b)(2) to Petitioner unlawfully mandates his
8 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. The BIA's
9 interpretation thus violates the regulations and unlawfully denies Petitioner a bond
10 hearing.

11 **THIRD CLAIM FOR RELIEF**
12 **Violation of the Administrative Procedure Act**
13 **Contrary to Law and Arbitrary and Capricious Agency Policy**

14 86. Petitioner re-alleges and incorporates by reference the above
15 paragraphs.

16 87. The APA provides that a "reviewing court shall . . . hold unlawful and
17 set aside agency action, findings, and conclusions found to be . . . arbitrary and
18 capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C.
19 § 706(2)(A).

20 88. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not
21 apply to all noncitizens residing in the United States who are subject to grounds of
22 inadmissibility. Specifically, it does not apply to Petitioner, who has been living in
23 the United States since approximately October 2021 prior to being apprehended and
24 placed into removal proceedings by respondents. Petitioner is detained under §
25 1226(a) and is eligible for release on bond.

26 89. In taking a contrary position, the BIA has reversed decades of prior
27 practice, and "would expand § 1225(b) face beyond how it has been enforced
28 historically, potentially subjecting millions more undocumented immigrants to
mandatory detention, while simultaneously narrowing § 1226(a) such that it would

1 have extremely limited (if any) application.” *Lopez Benitez*, 2025 2371588, at *8.
2 Respondents have failed to articulate reasoned explanations for their decisions, which
3 represent changes in the agencies’ policies and positions; have considered factors that
4 Congress did not intend to be considered; have entirely failed to consider important
5 aspects of the problem; and have offered explanations for their decisions that run
6 counter to the evidence before the agencies.

7 90. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and
8 not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

9 **FOURTH CLAIM FOR RELIEF**
10 **Violation of the Fifth Amendment Due Process Clause**
11 **Substantive Due Process**

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

13 92. The Due Process Clause of the Fifth Amendment forbids the government
14 from depriving any “person” of liberty “without due process of law.” U.S. Const.
15 amend. V. Substantive due process requires that immigration detention without a
16 bond hearing be reasonably related to the goals of ensuring the appearance of
17 noncitizens at future proceedings and preventing danger to the community. *Zadvydas*,
18 533 U.S. at 690.

19 93. The BIA’s application of mandatory detention under § 1225(b)(2) is not
20 reasonably related to those goals and thus violates substantive due process. Since his
21 entry in approximately October 2021, Petitioner has been living peacefully in
22 Charlotte. Petitioner has applied for Asylum based on political, racial, ethnic, and
23 social group persecution, and for withholding of removal under the Convention
24 against Torture. Petitioner’s fiancée is filing an I-130 Petition for Alien Relative as
25 soon as their marriage can take place after being delayed by detention. Petitioner is
26 not a flight risk as he has lived in Charlotte for the past few years and has the
27 direction of legal counsel, as well as viable forms of relief from removal. He has
28 employment and community ties to Charlotte; his job ties him economically to
Charlotte where he will go back to work full-time upon release. Finally, Petitioner

1 **has no criminal history**, in the United States or anywhere else in the world. *See id.*
2 He has never been involved in violence, terrorism, or any disqualifying activities
3 under INA § 236. *Id.*

4 94. Petitioner has a fundamental interest in liberty and being free from
5 official restraint.

6 95. The government's detention of Petitioner without a bond redetermination
7 hearing to determine whether he is a flight risk or danger to others violates his right
8 to due process.

9 **FIFTH CLAIM FOR RELIEF**
10 **Violation of the Fifth Amendment Due Process Clause**
11 **Procedural Due Process**

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

13 97. The Due Process Clause of the Fifth Amendment forbids the
14 government from depriving any "person" of liberty "without due process of law."
15 U.S. Const. amend. V. Courts apply the *Mathews v. Eldridge* balancing test to
16 determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

17 98. The first factor is the private interest that will be affected by the official
18 action. *Id.* Here, the deprivation of Petitioner's liberty is a particularly weighty
19 interest. Petitioner is being held despite being bond-eligible and having no criminal
20 history. Petitioner is being detained without access to a custody redetermination
21 before a neutral decisionmaker.

22 99. The second factor is the risk of erroneous deprivation of such interest
23 through the procedures used, and the probable value, if any, of additional safeguards.
24 *Id.* Here, there is a great risk of unnecessary detention because the BIA's
25 interpretation of the statute does not permit any individualized determination of
26 whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp.
27 2d at 670. At a hearing before a neutral decisionmaker, Petitioner could show that his
28 detention is not necessary because he is neither a danger to society nor a flight risk.
Petitioner has never been arrested and thus poses no danger to society.

1 100. Further, Petitioner has a bona fide claim for asylum, has been living
2 peacefully, working, paying his taxes, and following all of the rules ICE has imposed
3 upon him. Petitioner also has a path to permanent residence status through his US
4 citizen fiancée who will file an I-130 Petition for Alien Relative, on behalf of
5 Petitioner. All of this supports a grant of reasonable bond. A hearing at which the
6 government bears the burden of proof by clear and convincing evidence would
7 protect the substantial liberty interest at stake. *German Santos*, 965 F.3d at 213-14.

8 101. The final factor is the Government's interest. *Gayle*, 12 F.4th at 331. The
9 government has no legitimate interest in detaining Petitioner when detention is not
10 necessary to ensure appearance at future hearings or protect the community, and less
11 restrictive measures like a reasonable bond would serve those purposes. *Hernandez-*
12 *Lara*, 10 F.4th at 32-33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441,
13 at *4 (holding that due process requires consideration of less restrictive alternatives
14 to detention that would address the government's legitimate purpose); *Hechavarria*
15 *v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). The bond
16 hearing requested was initiated by the Petitioner and is separate and apart from
17 removal proceedings. Therefore, the government does not have an interest in
18 detaining Petitioner without a bond hearing that outweighs his substantial liberty
19 interest in such an individualized determination.

20 102. Respondents' detention of Petitioner without any hearing to determine
21 whether that detention is necessary violates procedural due process.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner respectfully requests that this Court grant the
24 following relief:

25 103. Assume jurisdiction over this matter;

26 104. Order that Petitioner shall not be transferred outside Southern District
27 of Georgia while this habeas petition is pending;

28 105. Issue an Order to Show Cause ordering Respondents to show cause why

- 1 this Petition should not be granted within three (3) days;
- 2 106. Issue a Writ of Habeas Corpus requiring Respondent's to immediately
- 3 release Petitioner or in the alternative, provide Petitioner with a bond
- 4 hearing pursuant to 8 U.S.C. § 1226(a) within seven (7) days; at which
- 5 the government must establish by clear and convincing evidence that
- 6 Petitioner presents a risk of flight or danger, even after consideration of
- 7 alternatives to detention that could mitigate any risk that Petitioner's
- 8 release would present;
- 9 107. Declare that Petitioner's continued detention is unlawful in violation of
- 10 the Immigration and Nationality Act, the Administrative Procedure Act,
- 11 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth
- 12 Amendment to the U.S. Constitution;
- 13 108. Award Petitioner his costs and reasonable attorney fees in this action as
- 14 provided for by the Equal Access to Justice Act, as amended, 5 U.S.C.
- 15 § 504 and 28 U.S.C. § 2412, and on any other basis justified under law;
- 16 and
- 17 109. Grant such further relief as the Court deems just and proper.
- 18

19 Dated: February 23, 2026

20 Respectfully submitted,
21 /s/Matthew Boles
22 Matthew Boles, Esq.
23 GA 904287/LA 37593
24 Manji Law, P.C.
25 5745 Lawrenceville Hwy
26
27
28

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

EXHIBIT	DOCUMENT DESCRIPTION
A	DHS form I831 Notice of Custody Determination, Oct. 29, 2021
B	ICE Email response to bond request, Feb. 14, 2026
C	Order of Release on Recognizance sec. 236 Oct. 29, 2021

Dated: February 23, 2026

Respectfully submitted,
/s/Matthew Boles
Matthew Boles, Esq.
GA 904287/LA 37593
Manji Law, P.C.
5745 Lawrenceville Hwy
Tucker, GA 30084
Matt@manjilaw.co
m 941-524-7913

U.S. Department of Homeland Security

Continuation Page for Form

Alien's Name

Messere, Thierno

File Number

A

Date

10/29/2021

NOTICE OF CUSTODY DETERMINATION
(Continuation)

Pursuant to a review conducted to comply with requirements in *Fralhat v. ICE*, --- F. Supp. 3d ---, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020), you have been identified as having one or more of the Risk Factors identified by the district court as placing you "at heightened risk of severe illness and death upon contracting the COVID-19 virus."

The Risk Factor(s) in your case are that you:

- ☐ Are age 55 or over
- ☐ Are Pregnant
- ☒ Have a Chronic Care Condition (As confirmed by a medical professional)
Condition: Smoker, Asthma

Upon review of the totality of the circumstances present in your case, it has been determined that you will:

- ☒ Be released from custody.
- ☐ Remain detained, and the following justification forms the basis for your continued detention: Select ONE

Select Option and Provide Comment

Comments:

Signature

S. LADWIG

Title

AFOD

Exhibit A

FW: TO officer assigned to A [REDACTED] Thierno Messere (with attachment)

From: DRay.outreach (dray.outreach@ice.dhs.gov)

To: jewlska@yahoo.com

Date: Saturday, February 14, 2026 at 03:23 PM EST

Greetings,

A review of the case was conducted, the decision was made to continue detention as the case falls within the current priorities set by the Department of Homeland Security and the January 20th, 2025, Presidential Executive Order Protecting the American People Against Invasion

D Ray Outreach Team
DHS/ICE/ ERO-Enforcement and Removal Operations
FIPC
3026 Highway 252 E.
Folkston, GA. 31537
Disclosure Warning:

****Unauthorized Disclosure Prohibited**** This communication, along with any attachments, is covered by federal and State law governing electronic communications and may contain sensitive or legally privileged information. If the reader is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please notify the sender immediately and delete or destroy this message.

-----Original Message-----

From: Jewls Rogowska <jewlska@yahoo.com>
Sent: Wednesday, February 4, 2026 9:32 AM
To: Folkston.Outreach <folkston.outreach@ice.dhs.gov>
Subject: Fw: TO officer assigned to A [REDACTED] Thierno Messere (with attachment)

[You don't often get email from jewlska@yahoo.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Please use the Cofense Report Phishing button to report. If the button is not present, click here <mailto:SPAM@ice.dhs.gov?subject=FW:%20Suspicious%20Email%20&body=Please%20select%20the%20suspicious%20email%20in%20your%20outlook%20in%20box%20and%20drag%20it%20into%20the%20body%20of%20this%20message.> and follow instructions.

----- Forwarded Message -----

From: Jewls Rogowska <jewlska@yahoo.com>
To: Folkston.Outreach@ice.dhs.gov <folkston.outreach@ice.dhs.gov>
Sent: Wednesday, February 4, 2026 at 09:23:47 AM EST
Subject: TO officer assigned to A [REDACTED] Thierno Messere

Hi,

I am the attorney for Mr. Messere. I respectfully request that you review your decision to recently detain him at his ICE checkin. As you know he has been here for 4.5 years already and in compliance with all your reporting requests. In addition, attached you will see that at entry he was already initially detained and a determination was made to release him as he has a CHRONIC CARE CONDITION. That condition is now exacerbated by current detention and he is currently quite ill and suffering. You have the power to set a bond, release him again on ROR or release on ADT. He has a US citizen fiancée with children they are raising together, and has held a steady job for the past 3 years. He is in no way a flight risk. Please consider this and let me know.

Sincerely,
Jewls Rogowska

Exhibit B

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF CUSTODY DETERMINATION

Alien's Name: MESSERE, THIERNO

A-File Number: [REDACTED]

Date: 10/29/2021

Event ID: [REDACTED]

Subject ID: [REDACTED]

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

☐ Detained by the Department of Homeland Security.

☒ Released (check all that apply):

☐ Under bond in the amount of \$ _____

☒ On your own recognizance.

☐ Under other conditions. [Additional document(s) will be provided.]

LADWIG, S. 3412

Name and Signature of Authorized Officer

10/29/2021 07:46 AM

Date and Time of Custody Determination

Assistant Field Office Director

Title

ICE ERO OAKDALE Sub Office 2 WHATLEY RD OAKDALE, LA 71463

Office Location/Address

You may request a review of this custody determination by an immigration judge.

☒ I acknowledge receipt of this notification, and

☐ I do request an immigration judge review of this custody determination.

☒ I do not request an immigration judge review of this custody determination.

Signature of Alien

NOV 04 2021

Date

The contents of this notice were read to MESSERE, THIERNO

(Name of Alien)

In the

English

(Name of Language)

language.

R. 8543 Ainsley

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

DO
Title

Exhibit C p1

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
ORDER OF RELEASE ON RECOGNIZANCE

Name: MESSERE, THIENHO

File No.: [REDACTED]

Date: NOV 04 2021

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

- ☒ You must report for any hearing or interview as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review.
- ☒ You must surrender for removal from the United States if so ordered.
- ☒ You must report in (writing) (person) to Duty officer at Local ICE Office on 11/11/2021 09:00 as directed.

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

- ☒ You must not change your place of residence without first securing written permission from the officer listed above.
- ☒ You must not violate any local, State or Federal laws or ordinances.
- ☒ You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.

☐ Other: Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.

If fitted with a U.S. Immigration and Customs Enforcement GPS tracking ankle bracelet, do not tamper with or remove the device. Under federal law, it is a crime to willfully damage or attempt to damage property of the United States. Damaging or attempting to damage the GPS tracking ankle bracelet or any of its associated equipment (including, but not limited to, the charging station, batteries, power cords, etc.) may result in your arrest, detention, and prosecution under 18 U.S.C. § 1361 and/or 18 U.S.C. § 641, each punishable by a fine, up to ten years imprisonment, or both.

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.

AFOD S. LADWIG
(Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under an Order of Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[Signature]
(Signature of ICE Official Serving Order)

NOV 04 2021

Date

X
(Signature of Alien)

I hereby cancel this order of release because:

- ☐ The alien failed to comply with the conditions of release.
- ☐ The alien was taken into custody for removal.

[Signature]
(Signature of ICE Official Cancelling Order)

Date

Exhibit C p2

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE
(ADDENDUM)

Name: MESSER, THIERNO

File No.: [REDACTED]

Date: NOV 04 2021

- ☒ That you do not associate with known gang members, criminal associates, or be associated with any such activity.
- ☐ That you register in a substance abuse program within 14 days and provide ICE with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a counselor.
- ☐ That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.
- ☐ That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide ICE with written proof of such within 10 days.
- ☒ That you do not commit any crimes while on this Order of Release on Recognizance.
- ☐ That you report to any parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.
- ☐ That you continue to follow any prescribed doctor's orders whether medical or psychological including taking prescribed medication.
- ☒ That you provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.
- ☒ That you provide ICE with written responses from the Embassy or Consulate regarding your request.
- ☒ Any violation of the above conditions will result in revocation of your employment authorization document.
- ☒ Any violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.
- ☐ Other:

x

3

(Signature of Alien)

Exhibit C p3