

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

MBENGUE, ALIOUNE BADARA,

Petitioner,

v.

JASON STREEVAL, Warden, Stewart
Detention Center in his official capacity,

Respondent.

Case No.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Agency number:



INTRODUCTION

1. The facts of the matter are not in dispute. Petitioner is being held by ICE without bond due to ICE and the Board of Immigration Appeals' ("BIA") interpretation of "applicants for admission" that was rejected by this Court. *See J.A.M. v. Streeval*, No. 4:25-CV 342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-CV-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), and, *Lazaro Maldonado Bautista et al v. Ernesto SantaLopez Garcia Jr et al*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025). The Court should continue to reject this line of reasoning and order the Petitioner released. In the alternative, this Court should find that he is entitled to a fair and adequate custody determination hearing under 8 U.S.C. § 1226(a).

2. Petitioner, Mbengue, Alioune Badara, is in the physical custody of Respondent at the Stewart Detention Center in Lumpkin, GA. He now faces unlawful detention because the Department of Homeland Security (DHS).

3. Petitioner has lived in the United States for over two years. Petitioner, an Uber driver, was detained by DHS on November 1, 2025, after being arrested for criminal trespass the previous month when he went to pick up his friend, Cheick Gueye, from the airport when he was arrested for Criminal Trespass and was not released thereafter.

4. Petitioner was placed in removal proceedings, where he is charged with, *inter alia*, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). He is represented by counsel in his removal proceedings. Petitioner is eligible for Asylum and has applied for Asylum, Withholding of Removal and Convention against Torture on October 8, 2025.

5. On July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under Section 1182(a)(6)(A)(i)—

i.e., those who entered the United States without inspection—to be an “applicant for admission” under Section 1225(b)(2)(A) and therefore subject to mandatory detention. Consistent with this policy, DHS has denied Petitioner release from immigration custody.

6. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released, or in the alternative, that he be provided a prompt bond hearing under Section 1226(a).

JURISDICTION

7. Petitioner is in the physical custody of Respondent. Petitioner is detained at Stewart Detention Center in Lumpkin, GA.

8. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

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

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District.

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

PARTIES

14. Petitioner Alioune Badara Mbengue is a citizen of Senegal who has resided in the United States since approximately July 2023. He has been in immigration detention since November 2025.

15. Respondent Jason Streeval, Warden is the Warden of the Stewart Detention Center where Petitioner is currently detained. He is an immediate custodian of the Petitioner. He is sued in his official capacity.

FACTUAL BACKGROUND

16. Petitioner is a 26-year-old national of Senegal. He entered the United States without inspection on July 20, 2023, and has lived here ever since. He lived in Atlanta, Georgia prior to his detention.

17. Alioune Badara Mbengue entered the United States on or about July 20, 2023, and was placed in removal proceedings at the Lumpkin Immigration Court. See Notice to Appear, marked Tab A. He seeks relief from removal through an Application for Asylum and Withholding of Removal (Form I-589). See Copy of Asylum Application, marked Tab B. Alioune was born in Senegal on [REDACTED] and is a citizen, subject, and national of Senegal. Prior to his detention, Alioune was employed as an Uber driver, where he maintained steady employment. If released from custody, he will reside with his friend, a United States citizen. His friend has sworn under oath that he will provide accommodation and ensure Alioune attends all future court appearances.

18. Alioune has had minor legal incidents in the United States. In April 2024, he was charged with driving without a license while using an international license. See Tab E – International License. In October 2024, he was charged with misdemeanor violations and jailed for three days while driving a borrowed car without knowledge that it lacked valid insurance. See Tab F – Warrantless Arrest Probable Cause. On May 1, 2025, he was charged with criminal trespass, held briefly, and released after paying the fine. See Tab G – Citation. On October 22, 2025, he was arrested for solicitation (charges dropped) and criminal trespass while picking up a friend from the airport and was not immediately released.

19. In November 2025, Petitioner was arrested by DHS without a warrant. Petitioner is now detained at Stewart Detention Center in Lumpkin, Georgia. DHS placed Petitioner in removal proceedings before the Stewart Immigration Court pursuant to 8 U.S.C. § 1229a by filing a Notice to Appear. Exhibit A. ICE charged Petitioner with, *inter alia*, being inadmissible under U.S.C. § 1182(a)(6)(A)(i) as one who entered the United States without inspection. *Id.*

20. Through an attorney, petitioner requested a bond hearing on December 10, 2025, but the IJ found that the court lacked jurisdiction.

21. Pursuant to the Respondent's new policy, discussed *infra*, Petitioner remains in mandatory detention. Absent relief from this Court, he faces a substantial risk of death due to his acute medical condition, and his continued detention constitutes a violation of the Immigration and Nationality Act and his Fifth Amendment due process rights.

EXHAUSTION OF REMEDIES

22. No statutory requirement of administrative exhaustion applies to Petitioner's case. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

23. However, Petitioner had a custody redetermination hearing at the Stewart Immigration Court in December 2025, and an IJ denied bond for lack of jurisdiction. Since then, an attorney for Petitioner reached out to ICE, particularly since his health has deteriorated.

LEGAL FRAMEWORK

I. Detention Authority and Respondent's Efforts to Expand Detention

24. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). This court should continue to follow its own precedent.

25. Respondent have recently taken various steps seeking to expand their use of mandatory detention under Section 1225(b)(2) beyond its plain language.

26. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of

practice. *See* U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025).

27. The new policy claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225 and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States.

28. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

II. Respondent’s Policy on Section 1225(b)(2) Is Incorrect

29. Respondent’s policy, that all undocumented noncitizens who entered without inspection are considered applicants for admission and subject to mandatory detention under Section 1225(b)(2)(A), is incorrect. Instead, the statutory text, the statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation – including this one – limit Section 1225(b)(2)’s scope to recently arrived noncitizens seeking admission at a border or port of entry.

a. Statutory Text

30. The text of Section 1225, along with its placement in the overall detention scheme of the INA, make clear that the terms “applicant for admission” and “seeking admission” in Section 1225(b)(2) do not include individuals who have entered without inspection and are apprehended when already inside the United States.

31. Section 1225 is titled: “Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing.” (emphasis added). As courts have recognized, “[t]he added word of ‘arriving’ indicates that the statute governs ‘arriving’ noncitizens, not those present already.” *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025)). This limitation is particularly clear when compared to Section 1226’s general title: “Apprehension and detention of aliens.”

32. Further, Section 1225(b)(2)’s specific subheading, “Inspection of Other Aliens,” subsection 1225(b)(2)(B)’s mention of “crew[m]e[n]” and “stowaway[s],” and subsection 1225(b)(2)(C)’s use of the active language “arriving,” reinforce the limited scope of Section 1225(b)(2)’s applicability to those who have recently arrived at a border or port of entry.

33. Finally, the term “seeking” in “seeking admission” “implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.” *Lopez-Campos*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *see also Beltran Barrera*, 2025 WL 2690565, at *4. Noncitizens who are present in the country for years are not “seeking admission.” *Lopez-Campos*, at *6; *Beltran Barrera*, at *4.

b. Statutory Framework

34. The statutory framework further supports that Section 1225(b)(2) does not apply to noncitizens, like Petitioner, who have lived in the United States for years and who were apprehended while residing within the United States.

35. The INA’s entire framework is premised on Section 1225 governing detention of “arriving [noncitizens]” while Section 1226 “applies to [noncitizens] already present in the United States.” *Jennings*, 583 U.S. at 288, 301; *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937

(DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) (“[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’”) (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (“The idea that a different detention scheme would apply to non-citizens ‘already in the country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system”) (cleaned up) (citing *Jennings*, 583 U.S. at 289).

36. A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) (“one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]”) (cleaned up). The government’s current reading of Section 1225(b)(2) violates this principle.

37. Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents’ interpretation, there are noncitizens who have not been admitted and that are not governed by Section 1225’s mandatory detention scheme. Indeed, if the government’s interpretation were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2).

38. The recent amendment to Section 1226(c) confirms this statutory framework. Just this year, Congress passed the Laken Riley Act, which added additional categories of Section 1226(a) carve outs that are now subject to mandatory detention under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act mandates the detention of noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens “present in the United States without being admitted or paroled”), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged with, or convicted of certain crimes. *Id.* Again, if Section 1225(b)(2) were already meant to subject these groups of inadmissible noncitizens to mandatory detention, it would render this portion of the Laken Riley Act redundant. *See Beltran Barrera*, 2025 WL 2690565, at *4; *Lopez-Campos*, 2025 WL 2496379, at *8.

III. Due Process Clause

39. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To determine whether civil detention violates a noncitizen’s Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

40. Under *Mathews*, courts weigh the following three factors: 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.” 424 U.S. at 335.

a. Private Interest

41. As to the first *Mathews* factor, “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained for four months at Steward Detention Center in conditions that are indistinguishable from criminal incarceration. This detention prevents him from liberty and caring for his deteriorating health.

b. *Risk of Erroneous Deprivation*

42. As to the second *Mathews* factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). The current procedures cause an erroneous deprivation of Petitioner’s liberty interest in remaining free from detention.

43. As discussed above, the statutory text, statutory framework, Congressional intent, the longstanding practice of the agency, and the decisions of many federal courts across the nation leave no doubt that Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry, not noncitizens who entered without inspection and were detained inside the country.

44. Here, Petitioner was not arriving at a border or port of entry when He was detained, nor was he ever seeking admission to the country. Instead, He entered without inspection, never had any encounter with DHS officials, and lived in the United States for 2 years before being detained. As such, Petitioner is not subject to mandatory detention under Section 1225(b)(2).

45. Therefore, it is clear that the government’s current procedure, subjecting Petitioner to mandatory detention under Section 1225(b)(2), creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement.

46. Additionally, there are reasonable alternatives available for Respondent to pursue. As discussed above, Section 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under Section 1226(a) but first requires a bond hearing to make an individualized determination of [his] risk of flight or dangerousness. Such a hearing has not happened. Without it, the risk of erroneous deprivation of Petitioner's freedom is high. *See Singh v. Lewis*, 2025 WL 2699219, at *9 ("the risk of erroneously depriving him of his freedom is high if the IJ fails to assess his risk of flight or dangerousness.").

c. Government Interest

47. As to the third *Mathews* factor, the government's interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b)(2) – that people like Petitioner who have resided in the United States for years are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge will consider Petitioner's individualized facts and circumstances to determine whether He is a danger to the community or a flight risk.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

48. Petitioner incorporates by reference the allegations of fact set forth in the preceding 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 the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being detained and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. But Respondents' actions here violate § 1226(a) too because, to date, Respondents have refused to consider petitioner for bond.

50. The application of § 1225(b)(2) to Petitioner unlawfully mandates [his] continued detention and violates the INA.

COUNT II
Violation of Due Process

51. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

52. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

53. Petitioner has a fundamental interest in liberty and being free from official restraint.

54. Petitioner entered the country without inspection, had no contact with any DHS officials, and lived in the United States for 2 years before being detained. Such an individual may only be subject to discretionary detention under 8 U.S.C. § 1226, which provides for release on bond. Respondents now erroneously detain Petitioner under the mandatory provision in § 1225(b)(2).

55. Under the *Mathews v. Eldridge* three-part test, the deprivation of Petitioner's liberty without a bond hearing or individualized assessment of his risk is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that Respondents immediately release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;
- c. Enjoin Respondents from moving Petitioner outside the jurisdiction of this Court pending adjudication of this petition;
- d. Declare that Petitioner's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;
- e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- f. Grant any other and further relief that this Court deems just and proper.

DATED this 25 of February 2026

//s//Matthew Boles
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 25th day of February, 2026.

//s//Matthew Boles

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