UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CABDIFITAX IBRAHIM, (A[redacted],	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 25-13706
KRISTI NOEM, Secretary, U.S Department of Homeland Security; and SAMUEL OLSON, Interim Field Office Director, Chicago Field Office, Immigration and Customs Enforcement,	)	
	)	
Respondents.	)	

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, CABDIFITAX IBRAHIM[1], by and through his own and proper person and through his attorneys, MAYA A. FLORES and ERIN C. COBB, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention, in violation of his constitutional and statutory rights.

Introduction

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at the Broadview Detention Center, located in Broadview, Illinois.
2. Petitioner is a native and citizen of Somalia. He has been present in the United States for about four years. He entered the U.S. without being admitted or inspected, and not at a port of entry in November 2021. Upon his entry, Petitioner presented himself to immigration officials and he passed a credible fear interview. Petitioner was released into the U.S. and the

[1] Petitioner's name in the ICE Detainee Locator system is listed as Ibrahina Caboifitay-Cabdi.

U.S. Department of Homeland Security ("DHS") issued a Notice to Appear dated December 15, 2021. Ex. 1. However, the U.S. DHS did not file Petitioner's Notice to Appear with immigration court.

3. Presently, Petitioner has a pending affirmative asylum application with the asylum office in the State of Washington, where he lives with his wife and children.
4. Petitioner has no criminal history.
5. Petitioner's detention is a substantial deprivation and burden that puts Petitioner at risk.
6. Petitioner's detention became unlawful on November 5, 2025, when he was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") agents. His continued detention is an unlawful violation of due process and an incorrect interpretation of immigration law.
7. On November 5, 2025, Petitioner was arrested by ICE agents at a truck weigh station in Indiana where he was lawfully working as a truck driver. The ICE agents arrested Petitioner despite having no criminal record.
8. To date, the U.S. DHS has not properly filed a Notice to Appear against Petitioner, which would place him in removal proceedings. His affirmative asylum application remains pending.
9. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's release and enjoin Respondents' continued detention of Petitioner to ensure his due process rights.
10. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

Jurisdiction and Venue

11. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

12. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

13. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

15. Venue is proper in the Northern District of Illinois because Petitioner is presently detained by Respondents at Broadview Detention Center – which is located within the Northern District. 28 U.S.C. § 1391(b), (e)(1).

Parties

16. Petitioner CABDIFITAX IBRAHIM is a native and citizen of Somalia. Petitioner is presently detained at Broadview Detention Center, located in Broadview, Illinois.

17. Respondent KRISTI NOEM is being sued in her official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant NOEM, through her

delegates, has broad authority over the operation and enforcement of the immigration laws.

18. Respondent SAMUEL OLSEN is being sued in his official capacity only, as the Interim Field Office Director of the Chicago Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Chicago Field Office.

Custody

19. Petitioner CABDIFITAX IBRAHIM is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

Factual and Procedural Background

20. Petitioner CABDIFITAX IBRAHIM is a native and citizen of Somalia. He has been present in the United States for about four years. He entered the U.S. without being admitted or inspected, and not at a port of entry in November 2021. Upon his entry, Petitioner presented himself to immigration officials and he passed a credible fear interview. Petitioner was released into the U.S. and the U.S. Department of Homeland Security ("DHS") issued a Notice to Appear dated December 15, 2021. Ex. 1. However, the U.S. DHS did not file Petitioner's Notice to Appear with immigration court.

21. Presently, Petitioner has a pending affirmative asylum application with the asylum office in the State of Washington, where he lives with his wife and children.

22. Petitioner has no criminal history.

23. On November 5, 2025, Petitioner was arrested by ICE agents at a truck weigh station in Indiana where he was lawfully working as a truck driver. The ICE agents arrested Petitioner despite having no criminal record.

24. On July 8, 2025, ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. Specifically, ICE is arguing that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings, and that all others, including those paroled into the U.S., are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion. *See id.* This is a reversal of ICE's longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). *Rocha Rosado v. Figueroa*, 2025 WL 2337099, (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is.").
25. Petitioner's continued detention, without the possibility to request a bond hearing, separates him from his family and inhibits him from being able to proceed with his asylum application by making it difficult to gather evidence, afford legal representation, among other related harm. He remains detained across the country away from his family, counsel, and support system.
26. Because Petitioner is not presently in removal proceedings and is not subject to expedited proceedings, there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

Legal Framework

Due Process Clause

27. "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).

28. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

29. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

Detention Provisions under the Immigration and Nationality Act

30. The Immigration and Nationality Act is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

31. The INA authorizes detention for noncitizens under four distinct provisions:

    1) **Discretionary Detention. 8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

    2) **Mandatory Detention of "Criminal" Noncitizens. 8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

    3) **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended soon after crossing the border.

    4) **Detention Following Completion of Removal Proceedings 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

32. This case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.[2]

33. Following enactment of the IIRIRA, the Executive Office for Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of

[2] Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) ***will be eligible for bond and bond redetermination***") (emphasis added).

34. For nearly thirty years, the practice of ICE, which operates under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years (as opposed to "arriving" at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *9 (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is."). If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the bond amount set by the IJ in full. 8 U.S.C. § 1226(a)(2)(A).

35. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were paroled into the country at the border, released into the United States after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested

within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994).[3] After passing the IIRIRA, Congress declared the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. *See also* H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

36. Yet, ICE has—without warning and without any publicly stated rationale—reversed course and adopted a policy of attempting to treat all individual noncitizens that were not previously admitted to the U.S. that are contacted in the interior of the U.S. at any time after their entry as "arriving" and ineligible for bond regardless of the particularities of their case.

37. As a result, ICE is now ignoring particularities that have been historically relevant in determining whether a noncitizen should remain in custody or be released—such as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention

[3] *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. Immigration & Naturalization Serv.*, 180 F.3d 992, 994 (9th Cir. 1999) (noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

is in the community's best interest. Though no public announcement of this sweeping new interpretation of these statutes was announced, ICE now reasons that the mandatory detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection who are alleged to be subject to grounds of inadmissibility at § 1182.

38. 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 in agreement with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Lopez Benitez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention ***only*** as a matter of discretion under § 1226(a)") (emphasis added).

39. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. For decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which applies to noncitizens "already in the country." *Id.* at 289. Petitioner has been in the United States for about four years, and has never been placed in immigration proceedings, as his Notice to Appear was never filed with immigration court.

40. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. *See Reynosa Jacinto v. Trump,*

et al, 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025); *see, e.g., Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025); *Rocha Rosado*, 2025 WL 2337099; *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).

41. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

42. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.").

43. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does

not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

44. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

45. The government's interpretation also renders portions of the newly enacted provisions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.

46. Additionally, "[w]hen Congress adopts a new law against the backdrop of a

longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. __, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States for over two years. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4.

47. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]." By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

48. District Courts across the country have rejected DHS's interpretation and implementation of the mandatory detention provision. *See, e.g., Jose J.O.E., 2025 WL 2466670; Maldonado, 2025 WL 2374411; Ferrera Bejarano v. Bondi, 25-cv-03236 (D. Minn. Aug 18, 2025); Aguilar Vazquez v. Bondi, 25-cv-03162 (D. Minn. Aug 19, 2025);Tiburcio Garcia v. Bondi, 25-CV-03219 (D. Minn. Aug. 29, 2025); Carmona-Lorenzo v. Trump, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); Cortes Fernandez v. Lyons, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) ; Palma Perez v. Berg, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); Jacinto v. Trump, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); Garcia Jimenez v. Kramer, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025);Anicasio v. Kramer, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); Arce v. Trump, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025);*

Giron Reyes v. Lyons, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); Campos Leon v. Forestal, No. 1:25-CV-01774 (S.D. Ind. Sept. 22, 2025); Alejandro v. Olson, 1:25-cv-02027 (S.D. In. Oct. 11, 2025); B.D.V.S. v. Forestal, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); Ochoa Ochoa v. Noem, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025); Mariano Miguel v. Noem, 1:25-cv-11137 (N.D. Ill. Oct. 21, 2025); Patel v. Noem, 1:25-cv-11180 (N.D. Ill. Oct. 24, 2025); Magallanes Sanchez v. Olson, Case No. 25-cv-13226 (N.D. Ill. Nov. 3, 2025); Sanchez Guzman v. Noem, 1:25-cv-13415 (N.D. Ill. Nov. 6, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); Jimenez v. FCI Berlin, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); Doe v. Moniz, No. 1:25-CV-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); Romero, 2025 WL 2403827; Martinez, 2025 WL 2084238; dos Santos v. Noem, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); Choglio Chafla v. Scott, 2025 WL 2688541 (D. Me. Sept. 21, 2025);Chiliquinga Yumbillo v. Stamper, No. 2:25-CV-00479-SDN, 2025 WL 2688160 (D. Me. Sept. 19, 2025);Lopez Benitez, 2025 WL 2371588; Samb v. Joyce, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); Leal-Hernandez v. Noem, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Kostak v. Trump, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025);Lopez-Arevelo v. Ripa, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); Hasan v. Crawford, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); Beltran Barrera v. Tindall, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); Singh v. Lewis, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); Pizarro Reyes v.

Raycraft, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); Sanchez Ballestros v. Noem, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); Sanchez Alvarez v. Noem, 1:25-cv-1090 (W.D. Mich. Oct. 17, 2025); Rodriguez Carmona v. Noem, 1:25-cv-1131 (W.D. Mich. Oct. 24, 2025); Cervantes Rodriguez v. Noem, 1:25-cv-1196 (W.D. Mich. Oct. 29, 2025); Marin Garcia v. Noem, 1:25-cv-1271 (W.D. Mich. Oct. 29, 2025); Ramirez v. Noem, 1:25-cv-1261 (W.D. Mich. Oct. 31, 2025); Ruiz Mejia v. Noem, 1:25-cv-1227 (W.D. Mich. Oct. 31, 2025); Salgado Mendoza v. Noem, 1:25-cv-1252 (W.D. Mich. Nov. 4, 2025); Rodriguez v. Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); Cuevas Guzman v. Andrews, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); Caicedo Hinestroza v. Kaiser, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); Zaragoza Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); Hernandez Nieves v. Kaiser, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025);Garcia v. Noem, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Arrazola-Gonzalez v. Noem, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); Lepe v. Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); Jabara Oliveros v. Kaiser, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); Castellanos v. Kaiser, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); Leon Espinoza v. Kaiser, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); Rosado, 2025 WL 2337099; Alvarez Martinez v. Noem, et al., 5:25-CV-01007-JKP (W.D. TX Sept. 8, 2025) (finding section 1225 does not apply); see also

Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

49. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

Petitioner's Detention Violates Due Process

50. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews*, 424 U.S. 319 at 335.

51. As to the first *Mathews* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)). Petitioner was detained without a warrant and has been separated from his wife and children who live in Washington, preventing him from caring for his family, going to work, and participating in his community.

52. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that

risk could be reduced by additional safeguards. As explained above, ICE agents detained Petitioner without a warrant at a truck weigh station while he was working. At the time of his detention, Petitioner had a pending affirmative asylum application. Now, Respondents claim Petitioner is subject to mandatory detention under § 1225(b)(2). The current procedures followed by Respondents have caused an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. While he was issued a Notice to Appear in December 2021, it was never filed in immigration court to initiate removal proceedings against Petitioner. In fact, to date, no new Notice to Appear has been filed with the immigration court. He has followed the proper procedures to file for asylum affirmatively with the asylum office in the State of Washington, demonstrating he is not a flight risk. Further, Petitioner has no criminal history that would suggest he is a danger to the community.

53. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. This "policy and procedure" was never officially published by DHS and was only discovered by the press observing an intraoffice memo mere weeks ago on July 8, 2025.

54. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted without the violation." *Id.* (citation omitted) (internal quotations omitted). "To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal

quotations omitted).

55. Certainly, if DHS did not arbitrarily detain Petitioner without a warrant at a truck weigh station while he was working, he would not be presently detained. Petitioner would be home with his wife and children, continuing their asylum case with the asylum office in Washington. His continued detention unilaterally invoked by ICE as a result of "interim guidance" via interoffice memo despite the unlawful arrest and misinterpretation of immigration law is actual prejudice.

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

56. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

57. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

58. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

59. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their

independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

60. Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By keeping Petitioner detained today, his detention is unconstitutional as applied to him and in violation of his due process rights. Petitioner should have the opportunity to have his affirmative asylum application heard, especially since he has already passed a credible fear interview.

61. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

62. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.

63. Since Petitioner's arrest was conducted without a warrant, presumably DHS now argues that he is detained subject to 8 U.S.C. § 1225(b)(2) instead of 8 U.S.C. § 1226.

64. 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. Mandatory detention does not apply to those who previously entered

the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

100. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

101. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Order the immediate release of Petitioner pending these proceedings;

C. Order Respondents not to transfer Petitioner out of the Seventh Circuit during the pendency of these proceedings to preserve jurisdiction and access to counsel;

D. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violates the Immigration and Nationality Act;

E. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody, or, in the alternative, order Respondents to show cause why this Petition should not be granted within three days;

F. Award reasonable attorneys' fees and costs for this action; and

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

Dated: November 7, 2025

Respectfully Submitted,

/s/ Maya A. Flores
One of her attorneys

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