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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Mamadou Cisse,

15 Petitioner,

16 v.

17 Michael Bernacke, *et al.*,

18 Respondents.

Case No. 2:26-cv-00387-JAD-BNW

**Reply in Support of First Amended
Petition**

INTRODUCTION

Mamadou Cisse came to the United States in 2023.¹ He was placed into removal proceedings, and he applied for asylum.² He was given a work permit, and Cisse was working for Amazon.³ Cisse was arrested for a domestic violence offense on April 6, 2025 (a first offense).⁴ He was initially charged with a felony.⁵ He was taken into custody by ICE on April 7, 2025, after he posted bail with the Clark County Detention Center.⁶

On May 7, 2025, Cisse filed a motion for a bond hearing.⁷ On May 15, 2025, the Immigration Judge denied Cisse bond because he “has not established that he is not a danger to the community.” The IJ’s decision appears to be based on the alleged victim’s (of the domestic violence offense) inconsistent testimony in court.⁸ On June 5, 2025, Cisse pled no contest to a misdemeanor; the felony charge was dismissed.⁹

Cisse has not had the opportunity to seek release on bond for 10 months. His prolonged detention without a bond hearing violates his due process rights under the Fifth Amendment of the United States Constitution.

Cisse respectfully requests that the Court expeditiously grant relief on Ground One and order him immediately released from custody, or in the alternative, order the government to provide a constitutionally adequate hearing to

¹ ECF No. 9-1 at 3.

² ECF No. 9-1 at 2.

³ *Id.*

⁴ ECF No. 9-3.

⁵ *Id.*

⁶ ECF No. 9-1 at 3.

⁷ ECF No. 9-1.

⁸ ECF No. 9-1 at 19-20.

⁹ ECF No. 9-4.

1 seek release on bond. He is entitled to relief on Ground One because he is detained
2 under the discretionary authority of 8 U.S.C. § 1226(a) and has been deprived of
3 material interests without due process. In the alternative, if the Court finds that
4 Cisse is detained under the mandatory detention authority of 8 U.S.C. § 1225(b),
5 then he requests that the Court order a meaningful detention hearing to take place.

6 **I. Cisse is entitled to relief on Ground One because he is detained**
7 **under the discretionary authority of 8 U.S.C. § 1226(a) and has been**
8 **deprived of material interests without due process.**

9 Cisse challenges his prolonged detention in ICE custody without the
10 opportunity to seek release on bond while his immigration case is pending. He has
11 been detained for nearly 12 months, even though he is seeking asylum. During this
12 detention, Cisse has not been afforded the opportunity to seek release on bond for
13 10 months.¹⁰ His detention is unlawful, and the Court should grant habeas relief.

14 The government argues Cisse faces mandatory detention under 8 U.S.C.
15 § 1225(b)(2)(A) without the opportunity for a bond hearing. The position—which the
16 government newly adopted last year, after decades of contrary practice—is
17 incorrect. A court in this district has already reached this conclusion in
18 substantially similar cases, notwithstanding the Fifth Circuit’s unpersuasive
19 decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). *See Escobar*
20 *Salgado v. Mattos*, 809 F. Supp. 3d 1123, 1134 (D. Nev. Nov. 17, 2025); *see also, e.g.,*
21 *Ramirez v. Noem*, No. 2:25-cv-2136, 2026 WL 310090 (D. Nev. Feb. 5, 2026); *See,*
22 *e.g., Perez v. Bondi*, No. 2:26-cv-00315, 2026 WL 509441 (D. Nev. Feb. 24, 2026). The
23 government’s position should be rejected.

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¹⁰ See ECF No. 10.

1 **A. Cisse is detained under 8 U.S.C. § 1226(a) because he is not an**
2 **“arriving alien” or “applicant for admission.”**

3 Cisse is detained under the discretionary authority of 8 U.S.C. § 1226(a) and
4 is not subject to mandatory detention as an “applicant for admission” or “arriving
5 alien.” Cisse was detained in the interior of the United States—in Las Vegas,
6 Nevada—by ICE agents conducting internal enforcement rather than border
7 enforcement. Accordingly, the only legal authority under which he may lawfully be
8 detained is 8 U.S.C. § 1226(a), which is the detention authority that applies to
9 noncitizens detained in the interior of the U.S. who do not fall into a different
10 category of mandatory detention. Under § 1226(a), detention of noncitizens is
11 discretionary, and only warranted where the noncitizen is determined to present a
12 flight risk or danger to the community. *See Escobar Salgado v. Mattos*, 809 F. Supp.
13 3d 1123, 1134 (D. Nev. Nov. 17, 2025).

14 Notwithstanding, in mid-2025, ICE began arguing in immigration courts
15 around the country that noncitizens who entered the U.S. without admission,
16 regardless of how long they have lived in the U.S. or whether ICE encountered them
17 in the interior of the country, should be viewed as “seeking admission” like those
18 presenting themselves at the border, and therefore subject to mandatory detention
19 under 8 U.S.C. § 1225(b)(2). The BIA adopted this novel statutory interpretation in
20 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

21 Nevertheless, “Judges across the country—the vast majority who have
22 considered this question—have told the Government many times in the past few
23 months that its interpretation of the law is wrong. . . . This is no partisan stance:
24 judges appointed by every President from Ronald Reagan through Donald Trump
25 have said so.” *Gimenez Rivero v. Mina*, No. 6:26-CV-66-RBD-NWH, 2026 WL
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1 199319, at *5 (M.D. Fla. Jan. 26, 2026). At least 373 judges nationwide have ruled
2 against the government's argument.¹¹

3 In this District, ICE's argument has been rejected in scores of cases. *See*
4 *Jacobo Ramirez v. Noem*, No. 2:25-CV-02136-RFB-MDC, 2026 WL 310090, at *1 n.1
5 (D. Nev. Feb. 5, 2026) (“[T]his Court has granted individualized relief—both
6 preliminary and on the merits—to habeas petitioners in well over sixty similar
7 challenges and counting.”); *see also Escobar Salgado*, 809 F. Supp. 3d at 1157. Cisse
8 urges this Court to adopt the thorough reasoning and statutory interpretation in
9 *Escobar Salgado*. 809 F. Supp. 3d at 1143-58.

10 Because Cisse was detained by ICE in Las Vegas, Nevada, the ICE officers
11 were not at the border, were not considered inspecting officers, and were not
12 inspecting him pursuant to a request for admission. *See* 8 U.S.C. §§ 1225(b)(2)(A),
13 (b)(4); §§ 1225(a)(3), (b)(1), (b)(2), (d). As a result, Cisse cannot be detained as an
14 “arriving alien” pursuant to § 1225(b). “[T]he notion that an ICE officer conducting
15 removal operations within the continental United States, far from any port of entry,
16 is engaging in ‘Inspection of Applicants for Admission’ as contemplated in § 1225(b)
17 contradicts the plain meaning of the text when placed in context of the overall
18 Section and its headings.” *Escobar Salgado*, 809 F. Supp. 3d at 1148. The
19 distinction is crucial because noncitizens “who have established connections in this
20 country” have greater due process rights than a noncitizen “at the threshold of
21 initial entry.” *Id.* at 1150–51 (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591
22 U.S. 103, 107 (2020)). Cisse had been living in the United States for nearly two
23 years when he was detained; his job, some family members, and friends are here.

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26 ¹¹ Kyle Cheney, *Even Trump’s Own Appointees Are Ruling Against ICE’s*
27 *Mass Detention Strategy*, POLITICO (Feb. 12, 2026),
[https://www.politico.com/news/2026/02/12/donald-trump-judges-mandatory-
detention-rulings-00778256?utm_medium=twitter&utm_source=dlvr.it](https://www.politico.com/news/2026/02/12/donald-trump-judges-mandatory-detention-rulings-00778256?utm_medium=twitter&utm_source=dlvr.it).

1 This demonstrates that he was no longer “arriving,” but rather had “established
2 connections in this country” affording him greater due process protection. *Id.*

3 Cisse was not an applicant for admission when he was detained in April 2026
4 as Respondents contend. Rather, he was detained in the interior of the United
5 States after living here for nearly two years. This is obvious as Cisse had a bond
6 hearing.¹² When a “petitioner has been ‘treated by Respondents as subject to
7 discretionary detention under section 1226, rather than mandatory detention under
8 section 1225,’ the former applies.” *Gomez v. Bondi*, No. 2:26-cv-00264-RFB-BNW, ECF
9 No. 18 at *3 (D. Nev. March 20, 2026) (referencing *Del Valle Castillo v. Wamsley*, No.
10 2:25-CV-02054-TMC, 2025 WL 3524932, at *5 (W.D. Wash. Nov. 26, 2025) (quoting
11 *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *8 (D. Mass. Aug. 19,
12 2025)).

13 Therefore, Cisse could only be discretionarily detained under § 1226(a) after a
14 finding that he presents a flight risk or danger to the community. *See Escobar*
15 *Salgado*, 809 F. Supp. 3d at 1134. Now that Cisse has been detained for over 10
16 months without a renewed bond hearing, he is requesting a constitutionally
17 adequate hearing in which he can seek release on bond, with the burden on the
18 government to prove that he should continue to be detained. This bond hearing
19 should be granted as Cisse’s circumstances have changed since his last bond
20 hearing. His first (and only) bond hearing was in May 2025;¹³ at that time he was
21 facing felony charges. But in June 2025, the felony charges were dismissed when
22 Cisse pled no contest to a misdemeanor, his only criminal conviction.¹⁴ Indeed,

25 ¹² ECF No. 9-1.

26 ¹³ ECF No. 9-1.

27 ¹⁴ ECF No. 9-4.

Cisse's continued detention without a bond hearing violates his rights under the Due Process Clause of the United States Constitution.

B. Respondents' reliance on *Buenrostro-Mendez* is unavailing.

Respondents urge this Court to follow the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) and other nonbinding case law. A court in this district has already considered and declined to follow that decision. In *Ruiz Rodriguez*, a court in this district explained it

is not persuaded to reconsider its statutory analysis by the small pool of nonbinding case law Respondents cite, including the recent Fifth Circuit decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701, 2026 WL 323330 (slip op.) (5th Cir. Feb. 6, 2026), for many of the reasons identified in dissent by Judge Douglas, *see id.*, at *10-18 (Douglas, J., dissenting), and by other district courts. *See, e.g., Carbajal v. Wimmer*, No. 2:26-CV-00093, 2026 WL 353510, at *4 (D. Utah Feb. 9, 2026); *Singh v. Baltazar*, No. 1:26-CV-00336-CNS, 2026 WL 352870 (D. Colo. Feb. 9, 2026).

No. 2:26-cv-00316-RFB-EJY, ECF No. 14, p. 3 (D. Nev. March 2, 2026).

The Ninth Circuit has not addressed this question, and *Buenrostro-Mendez* is not binding on this Court. A court in this district has developed a thorough decision on the application of § 1225(b)(2)(A) to interior arrestees. There is no reason to depart from it.

II. Cisse's prolonged detention without a proper bond hearing violates his right to due process under the Fifth Amendment of the United States Constitution.

In the alternative, if this Court finds that Cisse is subject to mandatory detention under 8 U.S.C. § 1225(b), his continued detention in ICE custody without a proper bond hearing violates his procedural due process rights under the Fifth Amendment to the United States Constitution.

"The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e] any 'person ... of ... liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical

1 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*,
2 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

3 “Arbitrary civil detention is not a feature of our American government. ‘[L]iberty is
4 the norm, and detention prior to trial or without trial is the carefully limited
5 exception.’” *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (quoting
6 *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

7 In considering the issue of prolonged detention in ICE custody pursuant to
8 mandatory detention under 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c), the Ninth
9 Circuit has expressed “grave doubts that any statute that allows for arbitrary
10 prolonged detention without any process is constitutional or that those who founded
11 our democracy precisely to protect against the government’s arbitrary deprivation of
12 liberty would have thought so.” *Rodriguez*, 909 F.3d at 256. Addressing a similar
13 issue, Justice Kennedy, concurring in *Demore v. Kim*, 538 U.S. 510, 532 (2003),
14 pronounced that “since the Due Process Clause prohibits arbitrary deprivations of
15 liberty, a lawful permanent resident alien such as respondent could be entitled to
16 an individualized determination as to his risk of flight and dangerousness if the
17 continued detention became unreasonable or unjustified.” Other circuits have
18 similarly determined that unreasonably prolonged detention violates a noncitizen’s
19 due process rights. See *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024); *Reid v.*
20 *Donelan*, 17 F.4th 1, 7 (1st Cir. 2021).

21 Cisse’s continued mandatory detention without a bond hearing is the type of
22 arbitrary deprivation of liberty the Due Process Clause of the Constitution protects
23 against. See *Rodriguez*, 909 F.3d at 257 (“The Fifth Amendment says that ‘[n]o
24 person shall be . . . deprived of life, liberty, or property without due process of law.’
25 An alien is a ‘person.’ To hold him without bail is to deprive him of bodily ‘liberty.’
26 And, where there is no bail proceeding, there has been no bail-related ‘process’ at
27 all. The Due Process Clause—itsself reflecting the language of the Magna Carta—

1 prevents arbitrary detention.” (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 330
2 (2018) (Breyer, J., dissenting) (internal citations omitted)).

3 There is no precedent from the Supreme Court or the Ninth Circuit on the
4 question of when prolonged mandatory detention in immigration custody becomes
5 unconstitutional. However, as outlined above, both the Supreme Court and the
6 Ninth Circuit have suggested that, at some point, continued detention during
7 removal proceedings without a constitutionally satisfactory bond hearing will run
8 afoul of the due process guarantee of the Constitution. Furthermore, “[n]early all
9 district courts that have considered the issue agree that prolonged mandatory
10 detention pending removal proceedings, without a bond hearing, will—at some
11 point—violate the right to due process.” *Vargas v. Wolf*, No. 2:19-cv-02135-KJD-
12 DJA, 2020 WL 1929842, at *7 (D. Nev. Apr. 21, 2020) (quoting *Banda v. McAleenan*,
13 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019), *appeal dismissed*, 2019 WL 5885047
14 (9th Cir. Oct. 9, 2019)); *see also De Leon v. Mayorkas*, No. 2:23-cv-02073-GMN-VCF,
15 2024 WL 343437 (D. Nev. Jan. 29, 2024); *Ortiz-Castillo v. United States*, No. 2:23-
16 cv-01485-RFB-MDC, 2024 WL 756075 (D. Nev. Feb. 23, 2024); *Arechiga v.*
17 *Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023 WL 5207589 (D. Nev. Aug. 11,
18 2023) (acknowledging that prolonged mandatory detention in immigration custody
19 without a bond hearing can violate the Due Process Clause).

20 Courts in this circuit have used various legal tests to determine whether due
21 process compels a bond hearing in a particular case. Many courts, including in the
22 District of Nevada, have used the test from *Mathews v. Eldridge*, 424 U.S. 319
23 (1976), to evaluate whether an ICE detainee’s continued detention without a bond
24 hearing has become unconstitutional. *See, e.g., De Leon*, 2024 WL 343437.
25 Recognizing that “due process is flexible and calls for such procedural protections as
26 the particular situation demands,” *Mathews* lays out a three-factor test to analyze
27 whether a claimant has been provided with adequate due process. *Ortiz-Castillo*,

1 2024 WL 756075, at *2 (citing *Mathews*, 424 U.S. at 333). These familiar factors
2 are: (1) “the private interest that will be affected by the official action”; (2) “the risk
3 of erroneous deprivation of such interest through the procedures used, and probable
4 value, if any, of additional or substitute procedural safeguards”; and (3) “the
5 Government’s interest, including the function involved and the fiscal and
6 administrative burdens that the additional or substitute procedural requirements
7 would entail.” *Mathews*, 424 U.S. at 334–35.

8 The *Mathews* factors provide an appropriate framework to analyze the
9 constitutionality of Cisse’s continued detention. As applied to his case, the factors
10 this Court should consider are: (1) Cisse’s liberty interest; (2) the risk that Cisse is
11 erroneously deprived of his liberty due to his continued mandatory detention
12 without a proper bond hearing, and the probable value of a bond hearing in
13 ensuring that he is not erroneously deprived of his liberty; and (3) the government’s
14 interest in detaining Cisse without affording him a bond hearing, and the fiscal and
15 administrative burdens that affording him a bond hearing would entail

16 Contrary to Respondents’ assertions, the *Mathews* factors weigh in Cisse’s
17 favor. (See ECF No. 10 at 8-13, fully incorporated here). To the extent Respondents
18 claim Cisse is a “danger to the community” because of the domestic violence
19 allegations against him—those allegations resulted in a no contest plea to a
20 misdemeanor.¹⁵ He has no other criminal record. And as detailed in his amended
21 petition, he was working at Amazon at the time of his detention and has significant
22 community support (ECF No. 9-5; ECF No. 10).

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27 ¹⁵ ECF No. 9-4.

1 **III. Cisse is entitled to release, or in the alternative, a bond hearing on**
 2 **the merits.**

3 The federal habeas corpus statute “does not limit the relief that may be
 4 granted to discharge of the applicant from physical custody.” *Carafas v. LaVallee*,
 5 391 U.S. 234, 238 (1968). “Its mandate is broad with respect to the relief that may
 6 be granted.” *Id.* “It provides that ‘[t]he court shall ... dispose of the matter as law
 7 and justice require.’” *Id.* (quoting 28 U.S.C. § 2243). Release from detention is the
 8 “typical remedy” for “unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674,
 9 693 (2008). “Numerous courts across the country have ordered the release of
 10 individuals stemming from ICE’s illegal detention.” *Meza v. Lewis*, No. 4:25-CV-171-
 11 RGJ, 2026 WL 92102, at *12 (W.D. Ky. Jan. 13, 2026) (collecting cases).

12 Alternatively, if this Court does not find release is the appropriate remedy,
 13 Cisse respectfully requests this Court order that he receive a constitutionally
 14 adequate bond hearing to address whether he may be detained under § 1226(a),
 15 with the burden of proof on the government to establish by clear and convincing
 16 evidence that he presents a flight risk or danger to the community. *See Arechiga v.*
 17 *Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023 WL 5207589, at *1 (D. Nev. Aug.
 18 11, 2023) (ordering the same); *Nunez Figueroa v. Mattos*, No. 2:26CV00184-RFB-
 19 MDC, 2026 WL 432582, at *1 (D. Nev. Feb. 16, 2026) (ordering the same). If Cisse is
 20 not promptly granted a constitutionally adequate bond hearing, this Court should
 21 order that he be released from his unconstitutional detention. *See, e.g., Lopez Reyes*
 22 *v. Bonnar*, 362 F. Supp. 3d 762, 778 (N.D. Cal. 2019) (granting relief and ordering
 23 the government to hold a timely bond hearing or to release the petitioner);
 24 *Henriquez-Osorio v. Noem*, No. 2:26-cv-00234-RFB-BNW, 2026 WL 686843, at *2 (D.
 25 Nev. Mar. 11, 2026) (same).

1 Even if the Court agrees with Respondents that 8 U.S.C. § 1225(b)(2)(A)
2 controls, Cisse is still entitled to a bond hearing. The Due Process Clause compels
3 this result, regardless of which statute Cisse is detained under (see section II).
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5 Dated March 25, 2026.
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7 Respectfully submitted,

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9 Federal Public Defender

10 /s/ Kimberly Sandberg
11 Kimberly Sandberg
12 Assistant Federal Public Defender
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