**UNITED STATES DISTRICT COURT**
**DISTRICT OF COLORADO**

**OUSSEMANE BA** [redacted]
**MOHAMED SY** [redacted]

***Petitioners,***

**v.**

**ROBERT HAGAN, Field Office Director, Denver Field Office, Immigration and Customs Enforcement; and JUAN BALTAZAR, Warden of Denver Contract Detention Facility; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General;**

***Respondents.***

**Case No. 1:26-cv-867**

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

## INTRODUCTION

1. Petitioners Oussemane Ba and Mohamed Sy are both natives and citizens of Mauritania. They entered the United States at the southern border in June 2024 and June 2023, respectively, without being admitted or inspected. Both were encountered near the border when they arrived and each Petitioner was released on his own recognizance. Without any change in circumstances other than a change in detention policy (that this and other courts have struck down over the last several months), the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) recently detained each of them and now claims that they are subject to mandatory detention under 8 U.S.C. § 1225(b).

2. DHS's actions in this case are clear violations of the Immigration and Nationality Act as well as Petitioners' due process rights. DHS chose at the time of encountering each petitioner to allow them to proceed into the United States outside of detention. Neither has a criminal history and both have become active in their communities. Nothing has changed

except a change in DHS detention policies that courts across the country have resoundingly rejected. *See Singh v. Baltazar*, -- F. Supp. 3d --, 2026 WL 352870, at *3 (D. Colo. Feb. 9, 2026).

3. This Court should therefore intervene and grant Petitioners' petition for a writ of habeas corpus and order each of their release from immigration custody. Alternatively, the Court should order the immigration court to conduct bond hearings at which 8 U.S.C. § 1225(b) cannot be applied and at which ICE bears the burden of proof.

## JURISDICTION AND VENUE

4. Petitioners are both detained at the Denver Contract Detention Facility in Aurora, Colorado, and are in physical custody of Respondents. *See* Ex. 1, ICE Detainee Locators.

5. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Petitioners' detention by Respondents is a "severe restraint" on their individual liberty. *See Hensley v. Municipal Court, San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

6. 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.

7. Venue is proper because Petitioners' immediate custodian at Denver Contract Detention Facility is located in this District and a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1).

## PARTIES

8. Petitioner Oussemane Ba is a native and citizen of Mauritania. As of the filing of this Petition, ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado.

9. Petitioner Mohamed Sy is a native and citizen of Mauritania. As of the filing of this Petition, ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado.

10. Respondent Robert Hagan is the Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Petitioners are held. He is sued in his official capacity.

11. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility and is the immediate custodian of Mr. Ba and Mr. Sy. He is sued in his official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioners' detention. Secretary Noem has ultimate authority over the policies that have subjected Petitioners to detention and is sued in her official capacity.

13. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for overseeing the Executive Office for Immigration Review, which is a sub-component of the Department of Justice and houses the immigration courts. She has ultimate authority over the policies that have subjected Petitioners to detention and is sued in her official capacity.

## REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for a 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, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. 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).

16. Petitioners request the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on their liberty and clear Constitutional violations in this case.

**TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT**

17. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

18. Courts both in and outside this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arostegui-Maldonado v. Baltazar*, --- F. Supp. 3d ---, 2025 WL 2280357, at *15-16 (D. Colo. Aug. 8, 2025) (listing cases).

19. Petitioners request that this Court invoke the All Writs Act to prevent any transfer out of the District of Colorado during the pendency of this habeas action, given the likelihood that they will be ordered released or, alternatively, to appear at a bond hearing shortly after this Court rules upon the habeas petition. Petitioners' immigration counsel is located in Colorado, and their immigration proceedings are docketed in Colorado, as well. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district

where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, 785 F. Supp. 3d 128, 148 (E.D. Va. May 6, 2025).

**EXHAUSTION**

20. The failure to exhaust administrative remedies does not bar Petitioners' claim unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)); *Cervantes Arredondo v. Baltazar*, No. 1:25-cv-03040-RBJ, Dkt. 26 (citing *Quintana Casillas v. Sessions*, Civ. 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. Jul. 20, 2017) (internal citations omitted)) (recognizing that "in the immigration context, 'exhaustion of remedies is statutorily required only for appeals of final orders of removal.'"); *P.M. v. Joyce*, No. 22-CV-6321, 2023 WL 2401458, at *1 n.2 (S.D.N.Y. Mar. 8, 2023) ("[F]ailure to appeal the denial of bond does not preclude [a petitioner] from seeking a writ of habeas corpus for the unconstitutional deprivation of a bond hearing" especially if appealing to the Board of Immigration Appeals is futile).

21. Moreover, detaining Petitioners without a significant likelihood of removal in the reasonably foreseeable future violates their rights to due process, and administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

22. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile insofar as Petitioners are arguing that their continued detention violates their due process rights.

**JOINDER**

23. Federal Rule of Civil Procedure 20(a) allows plaintiffs to join together if they "assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and if "any question of law or fact common to all plaintiffs will arise in the action." When deciding whether to allow joinder, the Court should consider factors such as possible prejudice to any parties in the litigation, delay of the moving party in seeking amendment to pleadings, the motive the moving party has in seeking joinder, the closeness of the relationship between parties, any effect of joinder on the Court's jurisdiction, and notice to the new party of the pending action. *See Chrisco v. Scoleri*, 2018 WL 4742540, at *1 (D. Colo. Oct. 2, 2018) (collecting cases).

24. ICE's detention determinations for individuals such as Petitioners stem from the same policy and statutory construction solely based on a noncitizen's status of being inside the United States without being admitted. ICE makes these determinations without regard for individualized facts relating to individual noncitizens.

25. The dispositive issue is the same for both Petitioners in this case: did DHS's initial release of Mr. Ba and Mr. Sy on their own recognizance so they could proceed in immigration proceedings before an immigration judge mean the government did not process either petitioner under 8 U.S.C. § 1225(b)? Consequently, is the government precluded from detaining either Petitioner under § 1225(b) at this point?

26. Because the relevant inquiry in both cases is the same, allowing Petitioners to proceed in the same case saves judicial and government resources, and prejudices neither party.

## STATEMENT OF RELEVANT FACTS

27. Mr. Ba entered the United States in June 2024 without admission or inspection and was shortly thereafter encountered by immigration officials. DHS prepared a Notice to Appear and released him on his own recognizance. However, ICE did not file the Notice to Appear with the immigration court, failing to initiate removal proceedings.[1]

28. Mr. Ba thereafter filed an affirmative application for asylum because he was not in immigration proceedings. *See* Exhibit 2, Receipt Notice.

29. At some point thereafter, DHS terminated Mr. Ba's affirmative application and placed him into expedited removal proceedings. However, Mr. Ba did not receive notice of that action.

30. In June 2025, Mr. Ba was detained at his home, and given a credible fear interview. He was thereafter served with a new Notice to Appear, charging him with removability under 8 U.S.C. §§ 1182(a)(6)(A)(i), and (a)(7)(A)(i)(I), because he was in the United States without being admitted or paroled and did not have a valid visa. Exhibit 3, Notice to Appear. This Notice to Appear does not indicate that Mr. Ba's proceedings were referred to immigration court under 8 U.S.C. § 1225(b)(1).

31. An immigration judge recently pretermitted Mr. Ba's asylum application on the theory that he could be removed under an Asylum Cooperative Agreement to a country other than Mauritania, and issued a removal order. Mr. Ba has filed an appeal with the Board of Immigration Appeals, which remains pending. Thus any order is not final.

32. Mr. Sy entered the United States in June 2003 without admission or inspection, was encountered by DHS shortly thereafter, and was placed in removal proceedings with the

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[1] *See* Mary Cheng, Updated Guidance for Receipt of Notices to Appear Filed by the Department of Homeland Security (PM 24-01) (Aug. 24, 2024), available at: https://www.justice.gov/eoir/media/1364931/dl?inline (last visited March 2, 2026) (describing a "failure to prosecute" when DHS does not file the Notice to Appear with the immigration court).

issuance of a Notice to Appear. Exhibit 4, Notice to Appear. He was released from custody on his own recognizance.

33. In October 2025, Mr. Sy attended a check-in with ICE, at which time he was arrested and placed in immigration custody. On February 18, 2026, an immigration judge denied his request for relief and issued a removal order. An appeal of that order remains pending before the Board of Immigration Appeals.

34. Both Mr. Ba and Mr. Sy remain detained in the Denver Contract Detention Facility in Aurora, Colorado.

## LEGAL BACKGROUND

35. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, which set forth separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. §§ 1226 ("Apprehension and detention of aliens"), 1229a ("Removal proceedings"). For those individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

36. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who

entered illegally or without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth the rule for noncitizens subject to discretionary detention under § 1226. Under 8 U.S.C. § 1226(a), on a warrant issued by the government, a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]" 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

37. Under 8 C.F.R. § 236.1(c)(8), "any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act [8 U.S.C. § 1226(c)(1)], under the conditions at section 236(a)(2) and (3) of the Act [8 U.S.C. § 1226(a)(2) and (3)]; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."

38. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

39. Separate from this process, IIRIRA created an expedited removal process to be implemented during inspection at the border for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United

States waters)." 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

40. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *See* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens "determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for if so designated by DHS.").

41. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

42. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of "an applicant for admission" when "the examining immigration officer determines" that the noncitizen who "seeking admission is not clearly and beyond a doubt entitled to be admitted."

43. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g.*, *Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 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."). This is because these individuals are not "seeking admission." *See Lopez Benitez v. Francis*, 795

F. Supp. 3d 475 (S.D.N.Y. 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

44. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

45. Yet in July 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had embraced when IIRIRA was first enacted and over three decades since. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission."[2] This policy has since been vacated. *Bautista*, 2025 WL 3713987, *32.

46. In September 2025, the Board of Immigration Appeals adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point. *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25. On

[2] Available at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited March 2, 2026).

February 18, 2026, this decision was vacated. *Maldonado Bautista, et al. v. Santacruz, et al.*, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026).

47. Courts that have reviewed this issue—including every case within this district—have almost universally rejected Respondents' new reading of the statute. *See, e.g., Martinez-Orellana*, 1:26-cv-355 at p. 4-5; *Singh*, 2026 WL 352870, at *2; *Garcia Abanil v. Baltazar*, -- F. Supp. 3d --, 2026 WL 100587, at *4 (D. Colo. Jan. 14, 2026); *Flores Marin v. Baltazar*, 2025 WL 3677019 (D. Colo. Dec. 18, 2025); *Hernandez Vazquez v. Baltasar*, 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar*, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar*, No. 1:25-cv-2966 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez*, 2025 WL 2962908; *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Galdamez Martinez v. Noem, et al.*, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

48. Notwithstanding the resounding rejection of DHS and DOJ's policy and the *Maldonado Bautista* court's vacatur of the policy and Board decision in *Yajure Hurtado*, Respondents continue to defend the policy, insisting that all noncitizens who have not been admitted to the United States are considered subject to mandatory detention under 8 U.S.C. § 1225(b).

49. Upon information and belief, ICE is so unwavering in its position that it will invoke the automatic stay provision in 8 C.F.R. § 1003.6(c) to preclude a noncitizen from being released on a bond set by an immigration judge if the judge finds the noncitizen to be a member of the *Maldonado Bautista* bond eligible class.

## CLAIMS FOR RELIEF

### COUNT ONE
***Violation of the Immigration and Nationality Act***
***Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

50. Petitioners reallege and incorporate by reference the paragraphs above.

51. This Court should rule that Petitioners are not subject to detention under 8 U.S.C. § 1225(b).

52. Neither Petitioner has been processed for removal under 8 U.S.C. § 1225. *See* Exhibits 3 and 4. Thus, they are not subject to mandatory detention under § 1225(b)(1).

53. Neither Petitioner is an applicant for admission who is "seeking admission" who, at the time of inspection for admission, an examining officer determined was not clearly and beyond a doubt inadmissible. 8 U.S.C. § 1225(b)(2)(A).

54. To apply § 1225(b) to Petitioners is contrary to the INA. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Petitioners were both detained after living in the United States for more than one year, and have been proceeding before an immigration judge to seek relief from removal.

55. Rather, 8 U.S.C. § 1226(a) is the only potentially applicable statute of detention. That section focuses on individuals who are in the United States and the government is seeking to remove through removal proceedings. *Jennings*, 583 U.S. at 303. The titles of 8 U.S.C. § 1225 and § 1226 statutory sections make this distinction clear. *Compare* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving

aliens; referral for hearing"), *with* 8 U.S.C. § 1226 ("Apprehension and detention of aliens").

56. Indeed, Petitioners cannot be deemed "seeking admission" because such statutory reasoning would render the phrase "seeking admission" superfluous because it violates principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez*, 795 F. Supp. 3d at 489; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant."); *accord Mendoza Gutierrez*, 2025 WL 2962908, at *7. Section 1225's mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be "an 'applicant for admission' (a 'term of art' in the INA that includes noncitizens who 'arrive[] in the United States,' as well as those already 'present in the United States who ha[ve] not been admitted," second, the noncitizen must be "actively 'seeking admission' to the country," and third, the noncitizen must be "one whom an examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'"); *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 214).

57. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E), unnecessary. *Sampiao v. Hyde*, 799 F. Supp. 3d 14, 28 (D. Mass. 2025); *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239, 1259 (W.D. Wa. 2025); *Gomes v. Hyde*, 2025 WL 1869299, *7 (D. Mass July 7, 2025). Section 1225(c) requires mandatory detention for individuals who are present in the United States without being admitted or paroled and who are subject to specific criminal conduct criteria.

*Sampiao*, 799 F. Supp. 3d at 28. If Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be surplusage. *Id.* (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). For these reasons, the plain language of § 1225(b)(2)(A) demonstrate that neither Mr. Ba nor Mr. Sy are an "applicant for admission" who is "seeking admission" to the United States.

58. Thus, the Court must find that subjecting Petitioners to mandatory detention under 8 U.S.C. § 1225(b) is a clear violation of the INA and order their immediate release. *Hotak v. Baltazar,* 1:25-cv-610-CNS, Docket Entry 14 (D. Colo. Feb. 25, 2026) (granting immediate release); *Yanez Chavez v. Baltazar*, 1:26-cv-556-SKC, Doc. 17 (D. Colo. Feb. 25, 2026) (same); *see also Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted Vargas v. Bondi*, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025).

**COUNT TWO**
***Violation of Substantive Due Process***
***Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

59. Petitioners reallege and incorporate by reference the paragraphs above.

60. 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 (2001). Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

61. Petitioners have a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of each of them as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) without any avenue to challenge that detention violates their substantive rights to due process.

62. Respondents have granted that liberty right to both Petitioners in the past, releasing each of them on their own recognizance upon first encountering them when they came into the United States in 2023 and 2024. Neither Petitioner has a criminal record and both have followed all laws and reporting obligations set by ICE on their release. "In such circumstances, where Respondents have already determined that it is proper to release Petitioner[s] under § 1226," there is "no reason to prolong [their] detention now." *Singh*, 2026 WL 352870, at *3 (citing *Valera v. Baltazar*, No. 1:25-cv-03744-CNS, 2025 WL 3496174, at *3 (D. Colo. Dec. 5, 2025) (ordering noncitizen's immediate release where Respondents have already determined that the noncitizen is neither a flight risk nor a danger to the community)).

63. Respondents' application of § 1225 to either Petitioner is a violation of his due process rights. The Court should order his release.

**COUNT THREE**
***Violation of Procedural Due Process***
***Arbitrary Detention; 8 U.S.C. §§ 1225 and 1226***

64. Petitioners reallege and incorporate by reference the paragraphs above.

65. The Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, neither

Mr. Ba nor Mr. Sy is on the threshold of initial entry. It is well established that noncitizens like Mr. Ba and Mr. Sy who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Because Petitioners are not properly detained under § 1225(b)(2), their detention does not comply with due process.

66. Mr. Ba and Mr. Sy each have a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

67. While the government has an interest in ensuring Petitioners' appearance at proceedings and protecting the community, the government cannot plausibly justify its position that Petitioners are subject to mandatory detention based on "administrative burdens" when it

willingly released each Petitioner on their own recognizance when they were first encountered when coming into the United States.

68. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Petitioners without any process. Without an order from this Court, there is a high probability that Petitioners will continue to be detained even though their continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure compliance with any orders.

69. In Respondents' contrasting version of the INA, Petitioners are stripped of any mechanism to require the government to justify their detention. Such a lack of any process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution. Release is the appropriate remedy. Alternatively, a bond hearing before a neutral arbiter at which the government bears the burden of proof and at which the immigration judge must consider the ability to pay is the only constitutionally sufficient process outside release without conditions. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024).

70. Notably, civil detention is non-punitive and there is an important liberty interest at play such that the government must show a compelling justification for continued detention absence criminal activity. *L.G.*, 744 F. Supp. 3d at 1187 (D. Colo. 2024); *Diaz-Ceja v. McAleenan*, 2019 WL 2774211, at *8 (D. Colo. July 2, 2019); *Martinez Escobar v. Baltazar*, 2026 WL 503313, at *5 (D. Colo. Feb. 24, 2026).

**PRAYER FOR RELIEF**

Based on the foregoing, Petitioners requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Petitioners not be removed from this District while this petition is pending:

(3) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(4) Declare that 8 U.S.C. § 1225(b) does not govern Petitioners' immigration detention;

(5) Order that Petitioners be released from immigration custody with all of his personal belongings with no additional conditions of release imposed by ICE;

(6) Alternatively, order a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b) cannot be applied, DHS bears the burden of proof, and the immigration judge considers Petitioners' ability to pay bond as part of the factors in setting bond; and

(7) Grant leave to file an application for attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*;

(8) Grant any further relief this Court deems just and proper.

Dated: March 3, 2026

Respectfully submitted,

*/s/ Jessica A. Dawgert*
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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioners because I am Petitioners' immigration attorney. I have reviewed documents provided by Petitioners and have knowledge of the events described in this Petition. Based on those discussions and documents that have been provided to me, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 3, 2026

Respectfully submitted,

*/s/ Nicole Murad*
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