IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.:

ALIOU A. JABATEH, an individual,

Petitioner,

v.

PAMELA J. BONDI, Attorney General,
KRISTI L.A. NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director of Immigration and Customs Enforcement,
Immigration and Customs Enforcement,
DAREN K. MARGOLIN, Director for Executive Office for Immigration Review,
Executive Office for Immigration Review,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement,
and,
JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Aliou Jabateh, through undersigned counsel, hereby brings this Verified Petition for Writ of Habeas Corpus, as follows:

INTRODUCTION

1. Respondents are detaining Petitioner Aliou Jabateh ("Mr. Jabateh") in violation of law. Mr. Jabateh, an asylum seeker, files this petition for a writ of habeas corpus to obtain his release from custody or, in the alternative, an order requiring that the U.S. Government provide him with a constitutionally compliant bond hearing that does not apply *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and shifts the burden to the government, within seven days of the granting of this petition.

2. The U.S. Government, through its representatives, has unlawfully detained Mr. Jabateh since May 28, 2025, when he was taken into custody in violation of his legal rights after he voluntarily appeared *pro se* for a regularly scheduled master calendar hearing at the Fort Snelling Immigration Court in Minnesota. At that hearing, which only lasted five minutes, Immigration Judge ("IJ") Monte Miller called Mr. Jabateh's case. The IJ referred to "the continued removal proceedings in the matter of Aliou Jabateh" and noted that Mr. Jabateh appeared "in person, unrepresented" (i.e., without counsel) while the U.S. Government appeared through counsel.

3. The IJ, speaking to Mr. Jabateh through an interpreter, asked Mr. Jabateh—a Liberian citizen whose native language is Mandingo-Koniaka and who had timely filed a claim for asylum in April 2024—if he understood the interpreter. The interpreter reported that Mr. Jabateh answered in the affirmative. Mr. Jabateh stated his name, and after a brief exchange in which he confirmed the address where he was living in Minnesota, the U.S. Government moved to dismiss the removal proceedings against Mr. Jabateh because dismissal was "in the best interest of the government." The IJ—failing to explain the significance of the motion, advise Mr. Jabateh of his right to consult with counsel, or provide any time to meaningfully respond to the motion, stated only that the government had "the right to take [Mr. Jabateh] out of the proceedings" and considered on the spot the government's unnoticed motion to dismiss the removal proceedings. The IJ orally dismissed the removal proceedings against Mr. Jabateh and Mr. Jabateh exited the courtroom at his own liberty.

4. Once Mr. Jabateh entered the courthouse lobby, however, Immigration and Customs Enforcement ("ICE") agents arrested him, along with several other Mandingo-Koniaka speakers, in violation of his legal rights. During his arrest, ICE agents never explained the basis

for taking him into custody. They did not serve Mr. Jabateh with an I-200 warrant for his arrest or any other document, nor did they allege any violation or revocation of the I-220 Order of Release on Own Recognizance ("OREC") dated February 2, 2024, that acknowledges the Department of Homeland Security's ("DHS") original apprehension and release of Mr. Jabateh pursuant to "section 236 of the" Immigration and Nationality Act ("INA") (8 U.S.C. § 1226). *See* OREC, Exhibit A.

5. Mr. Jabateh timely appealed the IJ's dismissal order. Despite this timely filing, he has never received a briefing schedule for his appeal.

6. After arresting Mr. Jabateh in the courthouse lobby, ICE agents shuffled him through a series of detention facilities in Iowa, Louisiana, and ultimately the Aurora Detention Center (officially known as the Denver Contract Detention Facility), a privately run ICE facility operated by The Geo Group in Aurora, Colorado. Mr. Jabateh remains in this facility.

7. Since Mr. Jabateh's detainment, the Board of Immigration Appeals ("BIA") has announced that IJs lack legal authority to set bond for various detainees. Mr. Jabateh, however, is not lawfully detained. At the time of his detention, he lived in Minnesota while awaiting adjudication of his timely filed asylum application—just as the OREC prescribes. *See* OREC, Exhibit A. Likewise, the OREC mandates that Mr. Jabateh "report for any hearing or interview as directed by [DHS] or the Executive Office for Immigration Review" ("EOIR"), yet he was detained in the courthouse lobby without legal justification after attending his master calendar hearing in which he appeared *pro se*.

8. Mr. Jabateh's May 28, 2025 detention was unlawful, as is his continued detention, which serves no legal or legitimate purpose. Mr. Jabateh was released on his own recognizance in February 2024, and he fully complied with every condition imposed including appearing at both

of his scheduled immigration hearings and remaining law abiding. Despite this, Mr. Jabateh was arrested without cause and without a warrant. He is thus entitled to immediate release under the habeas corpus remedy, the legal protection found in the U.S. Constitution that dates back many centuries. U.S. Const., art. 1, § 9; *see also* Letter from Thomas Jefferson to A. H. Rowan (Sept. 26, 1798), in *The Writings of Thomas Jefferson: Being His Autobiography, Correspondence, Reports, Messages, Addresses, and Other Writings, Official and Private* (New York: John C. Riker, 1854), Vol. IV, pp. 256-57 ("The Habeas Corpus secures every man here, alien or citizen, against everything which is not law, whatever shape it may assume.").

9. Pending adjudication of this Petition, Mr. Jabateh seeks an order restraining Respondents from transferring him outside the State of Colorado, as such a transfer would materially impair his ability to consult with counsel and pursue relief.

10. As set forth below, the Fifth Amendment guarantees Mr. Jabateh a meaningful opportunity to be heard at a meaningful time. Accordingly, he requests that the Court order Respondents to provide at least 72 hours' advance notice prior to any transfer or removal so that he may assert his legal rights and seek appropriate relief.

JURISDICTION AND VENUE

11. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); U.S. Const. art. I, § 9, cl. 2 ("Suspension Clause"); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the INA.

12. Custody is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. § 1003.19(d); *compare* 8 U.S.C. § 1229(a), *with* 8 U.S.C.

§ 1226(a). The BIA recently confirmed this in *Matter of E-Y-F-G-*, 29 I & N Dec. 103, 105 (BIA 2025). Because Mr. Jabateh seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this Court. After the U.S. Government, through its representative at the master calendar hearing on May 28, 2025, moved to dismiss the regular removal proceedings against Mr. Jabateh, the U.S. Government has detained Mr. Jabateh without legal authority and without even providing a briefing schedule for Mr. Jabateh's appeal of the IJ's dismissal order.

13. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Nielsen v. Preap*, 586 U.S. 392 (2019); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1209–12 (11th Cir. 2016), *vacated,* 890 F.3d 952 (11th Cir. 2018). Despite limitations on judicial review at 8 U.S.C. § 1252, "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). While this case involves pre-removal detention, the logic remains the same. Detention is independent of removal and can be reviewed in a habeas action. *See, e.g.*, *Valera v. Baltazar*, No. 1:25-CV-03744-CNS, 2025 WL 3496174 at *2 (D. Colo. Dec. 5, 2025); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1143 (D. Minn. 2025). "Challenges to immigration detention are properly brought directly through habeas." *Hernandez v. Baltazar*, Civil Action No. 26-cv-0276-WJM-TPO, 2026 WL 304362, at *1 (D. Colo. Feb. 5, 2026) (quoting *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004)).

14. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1226(a)(2). This statute entitles Petitioner to a bond hearing in which an immigration judge may determine his eligibility for release from custody.

15. The Supreme Court has noted that prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).

16. The BIA's decision in *Matter of Yajure Hurtado* binds the BIA, *see* 8 C.F.R. § 1003.1(g), and renders any administrative appeal a futile exercise. 29 I. & N. Dec. 216. Therefore, there is no exhaustion impediment to this Court exercising jurisdiction.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (e)(1)(B), and 2241(d) because Mr. Jabateh is detained within this District. He is currently detained at the Denver Contract Detention Facility in Aurora, Colorado. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents operate in this district.

PARTIES

18. Mr. Jabateh is a citizen and native of Liberia who entered the United States on January 31, 2024. He seeks asylum in the United States, and has timely filed an application for asylum and for withholding of removal. Mr. Jabateh is currently in custody at the ICE Denver Contract Detention Facility in Aurora, Colorado.

19. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the head of the United States Department of Justice, which encompasses the BIA and the IJs through the EOIR. Attorney General Bondi shares responsibility for

implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Mr. Jabateh.

20. Respondent Kristi Noem is sued in her official capacity as the Secretary of DHS. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the INA (8 U.S.C. § 1103(a)), routinely transacts business in the District of Colorado, supervises ICE Field Offices, and is legally responsible for pursuing Mr. Jabateh's detention and any removal proceedings. As such, Respondent Noem is a legal custodian of Mr. Jabateh. DHS is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

21. Respondent Daren K. Margolin is the Acting Deputy Director of the EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond hearings. He is sued in his official capacity. The EOIR is the adjudicatory body within the federal government with jurisdiction over removal and bond cases. It has authority over individuals detained in Colorado.

22. Respondent Todd M. Lyons is the Acting Director of ICE and is sued in his official capacity. Respondent Lyons is responsible for Petitioner's detention. ICE is the subagency within DHS responsible for implementing and enforcing the INA, including through the detention of noncitizens.

23. Respondent Robert Hagan is sued in his official capacity as the Field Office Director for the Denver Field Office for ICE within DHS. In that capacity, Field Director Hagan has supervisory authority over the ICE agents responsible for detaining Mr. Jabateh. The address of the Denver Field Office is 12445 E. Caley Avenue, Centennial, CO 80111.

24. Respondent Warden Juan Baltazar is being sued in his official capacity as the Warden responsible for the Denver Contract Detention Facility in Aurora, Colorado. Because Petitioner is detained in the Denver Contract Detention Facility, Respondent has immediate day-to-day control over Petitioner.

EXHAUSTION

25. No statutory requirement of exhaustion applies to Mr. Jabateh's challenge to the lawfulness of his detention. *See, e.g.*, *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019)) ("[T]he Court follows the vast majority of cases that have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal."); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (citing *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997)).

26. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *Madigan*, 503 U.S. at 148.

27. Any appeal to the BIA is futile. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the most recent BIA decision on this issue, erroneously held that all noncitizens in removal proceedings who, like Petitioner, initially entered the U.S. without inspection, are subject to mandatory detention as applicants for admission, thus predetermining the issue here.

28. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim."

Madigan, 503 U.S. at 147. Every day that Mr. Jabateh is unlawfully detained causes him irreparable harm. *See Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "a loss of liberty" is "perhaps the best example of irreparable harm"); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018), *vacated and remanded,* 946 F.3d 875 (6th Cir. 2020) (holding that "detention has inflicted grave" and "irreparable harm," and describing the impact of prolonged detention on individuals and their families).

29. Prudential exhaustion is additionally not required in cases where the agency "lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *Madigan*, 503 U.S. at 147–48.

30. Immigration agencies have no jurisdiction over constitutional challenges of the kind Mr. Jabateh raises here. *See, e.g.*, *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *In Re Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997); *Matter of U-M-*, 20 I. & N. Dec. 327 (BIA 1991).

31. Because requiring Mr. Jabateh to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

32. Mr. Jabateh is a native and citizen of Liberia who speaks Mandingo-Koniaka and virtually no English, and thus needs translation services to navigate the U.S. immigration system.

33. Mr. Jabateh came to the United States seeking asylum, and he timely filed an application for asylum and withholding of removal based on political opinion, membership in a particular social group, and the Torture Convention. In Liberia, he endured severe persecution, including threats, physical assaults, sexual assaults, unlawful detention, and torture. He was severely beaten, detained by members of an influential secret society, and held captive under threat of death while being repeatedly abused. Because these violent acts occurred at the hands of local authorities and the Liberian government was unwilling or unable to protect him, Mr. Jabateh fled Liberia and sought refuge in the United States based on a well-founded fear of torture, political persecution, and other forms of persecution.

34. Mr. Jabateh entered the United States on January 31, 2024. At some point after he crossed into the U.S., Mr. Jabateh turned himself in to immigration officials. Officials initially detained him on January 31, 2024, before releasing him soon thereafter pursuant to a February 2, 2024 OREC that acknowledges DHS's custody of Mr. Jabateh under the "discretionary detention" regime in INA § 236(a)[1] (8 U.S.C. § 1226(a)) and that he was neither a flight risk nor a public safety danger.

35. After his release, Mr. Jabateh resided in Brooklyn Park, Minnesota, where he lives with his sponsor and assists his sponsor's family with childcare and household duties. Mr. Jabateh obtained a work permit. Mr. Jabateh receives primary health care from the Community University Health Care Center (CUHCC), where he was diagnosed with post-traumatic stress disorder. Mr.

[1] 8 U.S.C. § 1226(c), which governs mandatory detention for noncitizens charged or convicted for certain criminal (or related) acts is irrelevant to Mr. Jabateh's detention as he has never been charged, let alone arrested for or convicted of, any crime in the U.S.

Jabateh's detention negatively impacts his ability to obtain the necessary health care to manage this health condition and prevent the suffering of his mental and physical health.

36. On April 24, 2024, after working with *pro bono* counsel and interpretation services, Mr. Jabateh timely filed an Application for Asylum and for Withholding of Removal (Form I-589) with the immigration court at Fort Snelling, Minnesota.

37. On March 5, 2025, Mr. Jabateh appeared *pro se* and in person for a master calendar hearing at the Fort Snelling Immigration Court, consistent with the directives on his February 2, 2025, Notice to Appear. After Mr. Jabateh and other Mandingo-Koniaka speakers arrived, they were told that the Court had not been able to secure a Mandingo-Koniaka speaking interpreter, and that the master calendar hearing would be rescheduled.

38. On May 28, 2025, Mr. Jabateh appeared *pro se* before the Fort Snelling Immigration Court for a rescheduled master calendar hearing. During his perfunctory, five-minute hearing and apparently as part of a national scheme, DHS then made an unnoticed, unsupported, and unexplained motion to dismiss removal proceedings.[2] *See* Notarized Transcript of May 28, 2025 Hearing, Exhibit B.

39. As soon as he exited the courtroom, Mr. Jabateh was arrested by U.S. Immigration and Customs Enforcement ("ICE") and taken into custody. At the time of his arrest, DHS did not explain the basis for taking him into custody. DHS agents did not serve Mr. Jabateh with an I-200 warrant for his arrest (or any other document), nor did DHS allege any violation (or revocation) of the I-220 "Order of Release on Own Recognizance" dated February 2, 2024, which acknowledges that DHS originally apprehended—and then released Mr. Jabateh—pursuant to "section 236 of

[2] *See, e.g.*, Sarah Matusek, "New phase of Trump deportation push: ICE arrests at immigration court," *Christian Science Monitor* (May 28, 2025), https://www.csmonitor.com/USA/Politics/2025/0528/immigration-court-ice-deportation-trump.

the" INA [8 U.S.C. 1226]. Mr. Jabateh has remained in ICE custody since May 28, 2025. He has been transferred from Minnesota to Iowa, then to Louisiana, and ultimately to Colorado, where he is currently detained.

40. On June 10, 2025, Mr. Jabateh timely appealed the immigration court's dismissal of his removal proceedings to the BIA. This timely appeal means the IJ's May 28, 2025 order dismissing removal proceedings is not "administratively final," and Mr. Jabateh remains in ongoing removal proceedings under 8 U.S.C 1229a. *See, e.g.*, EOIR Prac. Man. Ch 6.2 ("After an Immigration Judge issues a final decision on the merits of a case . . . the order is automatically stayed for the 30-day period for filing an appeal with the Board… If a party appeals an Immigration Judge's decision on the merits of the case… The stay remains in effect until the Board renders a final decision in the case.").

41. Although Mr. Jabateh has been detained by DHS for over 280 days, that appeal remains pending. Binding regulations require the Board to issue "a decision on the merits as soon as practicable, **with a priority for cases or custody appeals involving detained noncitizens.**" 8 C.F.R. 1003.1(e)(8) (emphasis added). Yet, as of the submission of this habeas corpus petition, no decision has been rendered. *See* ACIS Docket, Exhibit C.

42. As a result of the actions of Respondents, Mr. Jabateh has remained in custody for more than nine months without a meaningful hearing or opportunity to be heard on his asylum claim, and no such hearing on his application for asylum and for withholding of removal is currently scheduled.

43. Presumably, although Mr. Jabateh was previously living in Minnesota and voluntarily appeared at his master calendar hearing on May 28, 2025, Respondents will maintain that Petitioner is not eligible to seek release from custody on bond. For the reasons set forth in this

habeas corpus petition, however, Petitioner is entitled to be released from custody pending a resolution of his application for asylum and for withholding of removal.

LEGAL FRAMEWORK

44. Removal proceedings are governed by 8 U.S.C. § 1229a, which provides that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien," 8 U.S.C. § 1229a(a)(1), and that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States." 8 U.S.C. § 1229a(a)(3).

45. To initiate removal proceedings, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." 8 U.S.C. § 1229(a)(1).

46. The "[a]pprehension and detention of aliens" is governed by 8 U.S.C. § 1226, which provides that:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, ***the Attorney General … may release the alien on , , , bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.***

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

47. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody; and that such a person is subject to release on bond. The regulation states:

(b) Warrant of arrest—

> *(1) In general.* ***At the time of issuance of the notice to appear, or at any time thereafter*** *and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.*
>
> *(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.*

(c) Custody issues and release procedures—

> *(1) In general.*
>
> > *(i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1)* ***of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.***

8 C.F.R. § 236.1(b).

48. 8 U.S.C. § 1226(a) is the default detention authority, and it applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a).

49. 8 U.S.C. § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

50. 8 U.S.C. § 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.,* 8 U.S.C. § 1226(c)(1)(A), (C).

51. The Laken Riley Act ("LRA") added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E).

52. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanent residents who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g.*, *Barton v. Barr*, 590 U.S. 222, 234 (2020) ("'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

53. "The [i]nspection by immigration officers, expedited removal of inadmissible arriving aliens, [and] referral for hearing" is governed under 8 U.S.C. § 1225, which provides that "[a]n alien 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 an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

54. "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).

55. "If an immigration officer determines that an alien . . . who ***is arriving in the United States*** . . . is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution" 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added).

56. "If the officer determines at the time of the interview that an alien has a credible fear of persecution … the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

57. "[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 of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

58. 8 U.S.C. § 1225(b)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

59. "Read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention of applicants for admission until certain proceedings have concluded. Until that point, nothing in the statutory text imposes a limit on the length of detention, and neither provision says anything about bond hearings." *Jennings v. Rodriguez*, 583 U.S. 281, 282 (2018).

60. By regulation, "[a]*rriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2.

61. "[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to … [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act." 8 C.F.R. § 1003.19(h)(2)(i)(B).

62. Accordingly, arriving aliens are not entitled to bond, nor arguably are aliens falling within the confines of 8 U.S.C. § 1225(b).

63. Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States).

64. In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely "restates the current provisions in section 242(a)(1) 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 (emphasis added). *See* also H.R. Rep. No. 104-828, at 210 (same).

65. Respondents' longstanding practice of considering individuals like Petitioner as detained under § 1226(a) further supports reading the statute to apply to him. Typically, DHS issues a person Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA).

66. As these arrest documents demonstrate, DHS has long acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country's borders long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).

67. EOIR regulations have long recognized that individuals like Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court's jurisdiction—provides otherwise.

68. In fact, the EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. At that time, the EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

69. In *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 04 (BIA 2020), the BIA referenced § 1226(a) as the detention authority for a noncitizen who unlawfully entered the United States the prior year and was detained soon thereafter.

70. The BIA's recent decision in *Matter of Yajure Hurtado* is contrary to the plain language of the statute, impermissibly expands the reach of § 1225(b)(2), contradicts legislative history, results in surplusage, and conflicts with the judgments of over thirty district courts.[3]

71. Nearly all district courts that have considered this issue have, after conducting persuasive, well-reasoned analyses of statutory language and legislative history, rejected Respondent's interpretation of § 1225(b)(2), including numerous decisions from the District of Colorado involving petitioners similarly situated to Mr. Jabateh. *See Diallo v. Baltazar*, 1:25-cv-3548-SKC, 2026 WL 237296 (D. Colo. Jan. 29, 2026); *Hernandez v. Baltazar*, No. 1:25-cv-3688-SKC-SBP, 2025 WL 3718159, at *1 (D. Colo. Dec. 23, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Barreno v. Baltasar*, No. 025-CV-03017-GPG-TPO, 2025 WL 3190936, at *4 (D. Colo. Nov. 14, 2025); *Garcia Cortez v. Noem*, No. 1:25-CV-02677-CNS, 2025 WL 2652880, at *5 (D. Colo. Sept. 16, 2025); *see also Riky A.M.L. v. Bondi*, No. 26-1429 (JRT/JFD), 2026 WL 452419 (D. Minn. Feb. 17, 2026); *Belsai v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *A.A. v. Olson*, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*,

[3] Notably, the BIA improperly concluded that H.R. Rep. No. 104-469 states that aliens present in the United States without inspection are "seeking admission." *Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216, 224–225 (BIA 2025). In fact, the House Report only uses the term "seeking admission" to refer to returning Lawful Permanent Residents, indicating that unless a lawful permanent resident has relinquished his status or engaged in criminal activity barring him from re-entry, he is not considered to be "seeking admission." Nowhere in the report does Congress indicate that an alien present without inspection is "seeking admission." H.R. Rep. No. 104-469, pt. 1, at 225.

2025 WL 2374411 (D. Minn. Aug. 15, 2025); *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); *Herrera Avila v. Bondi*, 25-cv-03741 (D. Minn. Oct. 21, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Hernandez Marcelo v. Trump*, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Sampiao v. Hyde*, 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*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Chanaguano Caiza v. Scott*, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Padron*

Covarubias, v. Vergara, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *S.D.B.B. v. Johnson*, WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Contreras-Cervantes, v. Raycraft*, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Morales Chavez v. Director of Detroit Field Office*, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *Sanchez Alvarez v. Noem*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 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*, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Cordero Pelico v. Kaiser*, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Ortiz Donis v. Chestnut*, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Sabi Polo v. Chestnut*, 2025 WL 2959346

(E.D. Cal. Oct. 17, 2025); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Cerritos Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cardin Alvarez v. Rivas*, 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Aguilar Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

72. Recently, the U.S. Court of Appeals for the Fifth Circuit issued a contrary decision holding that all "applicants for admission" are necessarily "seeking admission," a reading that would subject any noncitizen who has not been lawfully admitted to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The Fifth Circuit's analysis adopts a strained interpretation of the statutory text that, by its own acknowledgment, results in statutory surplusage, conflicts with more than 350 prior decisions granting habeas relief (including precedential decisions from this Court) and departs from the government's consistent application of immigration law over the past three decades. *Id.* at *3, 5, 8. The opinion is not only legally unsound, but also impractical and inconsistent with foundational constitutional principles, as its reasoning would permit the warrantless and prolonged detention of millions of individuals within the United States without due process. *See id.* at *10 (Douglas, J., dissent) ("Congress … does not, one might say, hide elephants in mouseholes") (internal citations omitted).

73. This district has rightly rejected the Fifth Circuit's poorly reasoned analysis and should continue to do so. *See, e.g.*, *Singh v. Baltazar*, 1:26-cv-00336-CNS, 2026 WL 352870 at *4-5 (D. Colo. Feb. 9, 2026); *Chavez v. Baltazar, et al.*, 1:26-CV-00556-SKC (D. Colo. Feb. 25, 2026); *Ravinder v. Bondi, et al.*, 26-CV-00486-CYC (D. Colo. Feb. 25, 2026); *Hernandez v. Baltazar, et al.*, 26-CV-0524-WJM (D. Colo. Feb. 24, 2026).

74. The plain language of the statute warrants the conclusion that Respondents apprehended and detained Petitioner consistent with § 1226, and not § 1225(b)(2).

REMEDY

75. Respondents' ostensible detention of Mr. Jabateh under 8 U.S.C. § 1225(b)(2) is arbitrary and capricious, in violation of law, and violates the Due Process Clause of the United States Constitution. Mr. Jabateh's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend. V.

76. Due process requires that detention "bear[] a reasonable relation to the purpose for which the individual was committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

77. Removal proceedings must also satisfy the requirements of procedural due process under the Fifth Amendment. *Michelson v. INS*, 897 F.2d 465, 467–68 (10th Cir. 1990); *Rodriguez-Casillas v. Lynch*, 618 F. App'x 448, 452 (10th Cir. 2015).

78. Mr. Jabateh seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b) which plainly does not apply to him. *See Singh v. Baltazar*, 2026 WL 352870 (D. Colo. Feb. 9, 2026) (ordering immediate release, with no additional conditions of release or supervision, of petitioner to whom § 1225(b) did not apply because "a § 1226 bond hearing [was not] the appropriate remedy"); *see also Murzi v. Noem*, 2026 WL 395111 (D. Colo. Feb. 12, 2026) (same); *Ramírez-Francisco v. Bondi et al.*, 2026 WL 479057 (D. Colo. Feb. 20, 2026) (finding same with respect to § 1225(b) and § 1226 and ordering immediate release and transportation of petitioner back to Florida at government's expense); *Diallo*, 2026 WL 237296, at *3 (D. Colo. Jan. 29, 2026) (granting immediate release of petitioner after concluding the

warrantless arrest was also unlawful); *see also Angel A.S.R. v. Noem,* Civ. No. 26-502 (JRT/EMB), 2026 WL 194515, at *1 (D. Minn Jan. 26, 2026) ("[T]he Court is now persuaded that where, as here, (1) Respondents erroneously assert that a detainee is being held pursuant to § 1225(b)(2); and (2) Respondents have not produced a warrant, as is required to effectuate an arrest pursuant to § 1226(a), the appropriate remedy is release from custody."); *Mayamu K. v. Bondi,* Civ. No. 25-3035(JWB/LIB), 2025 WL 3641819, at *8 (D. Minn Oct. 20, 2025) (Ordering release "under the conditions of her ... Order of Release on Recognizance."); *see also Gimenez Rivero v. Mina*, No. 6:26-CV-66-RBD-NWH, 2026 WL 199319, at *4 (M.D. Fla Jan. 26, 2026) ("This Court cannot conclude, as some others have that ordering the Government to provide the detainee with a bond hearing . . . fixes the problem . . . . With the Government having asserted no lawful basis for his detainer, this Court could only conclude that Gimenez Rivero was entitled to immediate release.").

79. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008), *judgment entered,* No. 07A1011, 2008 WL 11579668 (U.S. June 19, 2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

80. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

81. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513

U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under a court's broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

82. Mr. Jabateh thus requests his immediate release from his unlawful detention. Mr. Jabateh was released on his own recognizance under an OREC in February 2024, and he complied with all directives of his OREC including appearing at all immigration hearings and remaining law abiding. Despite this, the government arrested Mr. Jabateh without cause and without a warrant - the proper remedy is release not a new bond determination. Permitting the government to relitigate Mr. Jabateh's custody status where he committed no violations of his agreement with the government violates fundamental principles of fairness and procedural due process. *See Singh*, 2026 WL 352870 (D. Colo. Feb. 9, 2026) (ordering immediate release); *see also Murzi*, 2026 WL 395111 (D. Colo. Feb. 12, 2026) (same); *Ramírez-Francisco*, 2026 WL 479057 (D. Colo. Feb. 20, 2026) (same); *Diallo*, 2026 WL 237296, at *3 (D. Colo. Jan. 29, 2026) (granting immediate release of petitioner after concluding the warrantless arrest was also unlawful); *Mendoza Gutierrez*, 2025 WL 2962908 at *14 (same); *Mayamu K. v. Bondi*, No. Civ. 25-3035, 2025 WL 3641819 (D. Minn. Oct. 20, 2025) (ordering "immediate[] release[] from detention under the conditions of [the petitioner's previous] Order of Release on Recognizance"); *Javier Giminez Rivero v. Mina*, 2026 WL 199319 at *6; *Adrian Conejo Arias v. Noem*, No. SA-26-CV-415-FB, 2026 WL 255706, at *1

(W.D. Tex. Jan. 31, 2026) (ordering immediate release, and noting habeas relief in these circumstances is "nothing more than some modicum of due process and the rule of law").

83. In the alternative, if the Court declines to order Mr. Jabateh's immediate release, he respectfully requests a constitutionally adequate custody redetermination hearing within seven calendar days. At that hearing, he should not be treated as subject to mandatory detention under 8 U.S.C. § 1225(b), but rather as a detainee under 8 U.S.C. § 1226(a). Furthermore, if this Court elects to order a bond hearing, this Court should make clear that Mr. Jabateh is detained under 8 U.S.C. 1226(a), and order that the *ultra vires Matter of Yajure Hurtado* should not apply in his bond hearing.

84. Mr. Jabateh further requests that, at any such bond hearing, the Court require the government to bear the burden of proving that he poses a flight risk or a danger to the community. *L.G. v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024). Mr. Jabateh has endured prolonged and indeterminate immigration detention. In *L.G. v. Choate*, a division of this court applied the *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing framework and held that, in cases involving prolonged immigration detention, the Fifth Amendment requires placing the burden on the government at a bond hearing to establish flight risk and danger to the community. *Choate*, 744 F. Supp. 3d at 1185.

CAUSES OF ACTION

COUNT ONE: DECLARATORY RELIEF

85. Mr. Jabateh re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

86. Mr. Jabateh requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Mr. Jabateh is not subject to detention under 8 U.S.C. § 1225(b)(2).

87. Mr. Jabateh requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Mr. Jabateh is detained pursuant to 8 U.S.C. § 1226(a)(1).

88. Mr. Jabateh requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Mr. Jabateh is eligible to be released or seek a bond redetermination hearing under § 1226.

COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1226(a) & 8 U.S.C. § 1225(b)

89. Mr. Jabateh re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

90. 8 U.S.C. § 1226 governs the detention of aliens pending a determination of removal from the United States. As his order of Release on own Recognizance confirms, Mr. Jabateh was in February 2024 apprehended by DHS after entering the U.S. and released under 8 U.S.C. 1226(a).

91. Such an alien "may [be] release[d] . . . on bond of at least $1,500." 8 U.S.C. § 1226(a)(2)(A).

92. The denial of Mr. Jabateh's bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes him eligible for bond.

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT, INA

93. Mr. Jabateh re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

94. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

95. Mr. Jabateh is not subject to mandatory custody under the INA and was arrested without a warrant and is therefore entitled to release or, in the alternative, a bond hearing in which

a neutral arbiter may determine the justification for his continued detention under 8 U.S.C. § 1226(a)(2)(A), the denial of which constitutes a violation of the Fifth Amendment's guarantee of due process.

COUNT FOUR: VIOLATION OF 8 C.F.R. §§ 236.1, 1236.1 AND 1003.19 - UNLAWFUL DENIAL OF RELEASE ON BOND

96. Mr. Jabateh re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

97. In 1997, after Congress amended the INA through IIRIRA, the EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added).

98. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration courts under 8 U.S.C. § 1226 and its implementing regulations.

99. Nonetheless, Respondents maintain that Petitioner is not eligible for a bond redetermination hearing.

100. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. § 236.1, 1236.1, and 1003.19.

COUNT FIVE: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT – CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

101. Mr. Jabateh re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

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

103. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B).

104. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

105. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

106. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being 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.

107. Nonetheless, the BIA has adopted a policy and practice of applying § 1225(b)(2) to Petitioner and others in the same position.

108. Respondents have failed to articulate any reasonable explanation for their new interpretation of these provisions. The BIA's decision represents a change in the agencies' policies and positions that negates the plain language of the Act, the will of Congress, and decades of administrative precedent.

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

COUNT SIX: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDEMENT: SUBSTANTIVE DUE PROCESS

110. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

111. "[T]he Due Process Clause applies to all 'persons' within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. at 693; *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And "[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.

112. Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

113. Immigration detention is civil detention and must "bear a reasonable relation to the purpose for which the individual was committed" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (stating that detention must be a proportional—not excessive—response to a legitimate state objective).

114. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas,* 533 U.S. at 690–91.

115. To satisfy substantive due process under the Fifth Amendment, a noncitizen's detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690.

116. Neither purpose is served by Petitioner's detention. Respondents have not made any claim that Petitioner presents a flight risk or a danger to the community, nor could they. When Petitioner was previously released on his own recognizance into the country, the government came to precisely the opposite conclusion—that he did not present any risk of flight or danger. See 8 C.F.R. 236.(c)(8) (Requiring, **as a prerequisite** for release on own recognizance, that the noncitizen "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)."

117. After Petitioner was paroled into the country two years ago, Petitioner's ties to this country grew substantially. He built a life and cultivated a community by connecting to the University of Minnesota's Community University Health Care Clinic Services. *See Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 173-75 (3d Cir. 2018). Petitioner has no criminal record and appeared at all immigration hearings, *pro se*.

118. Because the government is not detaining Petitioner to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release.

COUNT SEVEN: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSITUATION, PROCEDURAL DUE PROCESS

119. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

120. Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746.

121. Courts use the three-factor *Mathews v. Eldrige* test to determine what process is due to noncitizens challenging detention. *See* 424 U.S. 319 (1976). The *Mathews* factors assess: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

122. The first *Mathews* factor weighs decisively in Petitioner's favor. Petitioner possesses a fundamental liberty interest in freedom from physical restraint—an interest at the core of the Due Process Clause. That interest is especially compelling here, where DHS previously released him into the community under an OREC and permitted him to live at liberty in Minnesota for more than a year. He was then re-arrested without a warrant and without any allegation that he violated the terms of his release or engaged in any misconduct whatsoever. The government's unexplained reversal of its own release determination only heightens the weight of Petitioner's liberty interest under *Mathews*. *See Garcia Cortes v. Noem*, No. 1:25-CV-02677-CNS, 2025 WL 2652880, at *4 (D. Colo. Sept. 16, 2025) (concluding the arbitrary detention of a noncitizen in removal proceedings whose custody was governed by 1226(a) violated due process); *see also Faqeri v. Scott*, 2:26-CV-00003-JHC, 2026 WL 194475, at *3 (W.D. Wash. Jan. 26, 2026) (holding that "the government allowed Petitioner to remain in the community for more than four years on parole only strengthened this interest.").

123. The second *Mathews* factor also weighs in Petitioner's favor. Petitioner was previously released from detention on parole after being found that he is neither a danger nor a flight risk and his re-detention—without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond—makes the risk of erroneous deprivation of liberty not just high, but certain. His detention is the direct result of insufficient safeguards and lack of procedure. Under these circumstances, the risk of erroneous deprivation of their liberty is high and the second *Mathews* factor weighs heavily in Petitioner's favor.

124. The third factor favors Petitioner as well. Petitioner's erroneous detention imposes high fiscal and administrative burdens on Respondents. Releasing Petitioner and requiring the government to provide a pre-deprivation hearing before re-detaining him stands to save the government money and effort wasted on erroneous detention. And unlawful detention and violation of noncitizens' constitutional rights disserve the public interest.

125. Respondents violated procedural due process by re-detaining Petitioner without a warrant and without adequate procedural protections before or after deprivation of liberty. *See, e.g.*, *Feisal O. v. Noem*, No. 26-CV-81 (JMB/EMB), 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (concluding that the redetention of a person previously ordered released without any pre-redetention process violated the Due Process Clause). Therefore, this Court should order Petitioner's release without any restraints on liberty and prohibit any re-detention absent pre-deprivation process. *Id.* (ordering release on that basis); *see also Mahad S. v. Noem*, No. 26-CV-476 (JMB/JFD), 2026 WL 177860, at *3 (D. Minn. Jan. 22, 2026); *Faqeri v. Scott*, 2:26-CV-00003-JHC, 2026 WL 194475, at *3 (W.D. Wash. Jan. 26, 2026) (granting writ of habeas corpus for OAW/OAR recipient on due process grounds); *Shinwari v. Hermosillo*, 2:26-CV-00009-RAJ,

2026 WL 262605, at *3 (W.D. Wash. Jan. 30, 2026) (same); *Walizada v. Trump*, 2:25-CV-00768, 2025 WL 3551972, at *20 (D. Vt. Dec. 11, 2025) (same).

PRAYER FOR RELIEF

WHEREFORE, Mr. Jabateh asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an order restraining Respondents from attempting to move Mr. Jabateh from Colorado during the pendency of this Petition.
3. Issue an order requiring Respondents to provide a minimum of 72 hours of notice to Mr. Jabateh and his counsel of any intended movement of Mr. Jabateh.
4. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. ch. 153.
5. Order Respondents to immediately transport Petitioner, at their own expense, back to Minnesota and release him there from federal detention under the conditions of his "Order of Release on Own Recognizance." *Accord, e.g.*, *Diallo v. Baltazar*, 1:25-cv-3548-SKC, 2026 WL 237296, at *3 (D. Colo. Jan. 29, 2026); *see also Riky A.M.L. v. Bondi*, No. 26-1429 (JRT/JFD), 2026 WL 452419 (D. Minn. Feb. 17, 2026); *Mayamu K. v. Bondi, et al.*, No. 25-CV-03035-JWB-LIB, 2025 WL 3641819 at *8 (D. Minn. Oct. 20, 2025); *Fausto O.I. v. Noem, et al.*, No. 26-CV-854 (MJD/LIB), 2026 WL 357652, at *10 (D. Minn. Feb. 4, 2026); *Aminata T. v. Bondi, et al.*, No. 26-CV-788 (JWB/DLM), at *8 (D. Minn. Jan. 30, 2026).
6. In the alternative, to set a bond hearing consistent with 8 U.S.C. § 1226 within seven days of this Court's order where Respondents are estopped from arguing his detention under 8 U.S.C. § 1225, and order Respondents to bear the burden of

proving Petitioner is either a flight risk or a danger to the community. *Accord L.G. v. Choate*, 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024). Additionally, Petitioner requests that if the IJ determines release on bond is appropriate that no onerous conditions of release be unilaterally imposed by Respondents, including mandating the Petitioner wear GPS monitoring, submit to mandatory reporting, or have his movements otherwise restricted.

7. Find that Respondents' administrative decision is arbitrary and capricious and in violation of law and constitutional right in violation of the APA.

8. Order the Aurora Immigration Court not to follow the BIA decision in *Matter of Jonathan Javier Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and grant individuals who entered without inspection a bond hearing consistent with 8 U.S.C. § 1226.

9. Declare that Petitioner's detention is unlawful, in contravention of Petitioner's legal rights, and violative of the Due Process Clause of the Fifth Amendment.

10. Declare that Petitioner's detention absent a bond hearing violates the Due Process Clause of the Fifth Amendment and Petitioner's legal rights.

11. Grant Mr. Jabateh leave to seek reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A). *Daley v. Ceja*, 158 F.4th 1152, 1155 (10th Cir. 2025).

12. Grant all further relief that this Court deems just and proper.

March 4, 2026

/s/ *Alex J. Gunning*
Alex J. Gunning, Atty. Reg. #50323
Stinson LLP
1144 Fifteenth Street, Suite 2400
Denver, CO 80202

Verification by
Petitioner's Attorney Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am his attorney. As Petitioner's attorney, I hereby verify that the factual statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 4, 2026.

s/ Alex J. Gunning
Alex J. Gunning