

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

FILED  
SCRANTON  
DEC 05 2025  
PER DJ  
DEPUTY CLERK

**ALEX GYIMAH AGYEMANG,**

**Petitioner,**

**v.**

**WARDEN, CLINTON COUNTY CORRECTIONAL FACILITY, et al.,**

**Respondents.**

**Civil Action No. 3:25-cv-1417 (Mehalchick, J.)**

**PETITIONER'S REPLY MEMORANDUM IN FURTHER SUPPORT OF  
EMERGENCY TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION**

Petitioner respectfully submits this Reply Memorandum in further support of his Emergency Motion for a Temporary Restraining Order and Preliminary Injunction (Docs. 9, 10), and in response to Respondent's Opposition (Doc. 16). The Government's opposition is legally incorrect, factually incomplete, contradicted by its own exhibits, and fails to address the constitutional violations raised.

Petitioner continues to seek: (1) reinstatement of the valid 2019 bond; or (2) immediate release; or (3) in the alternative, a constitutionally compliant §1226(a) bond hearing with the

Government bearing the burden. The TRO remains necessary to prevent transfer and prevent use

of the automatic stay at 8 C.F.R. §1003.19(i)(2).

### **I. THE GOVERNMENT'S OPPOSITION MISAPPLIES §1231 AND IGNORES CONTROLLING LAW**

Respondent asserts that Petitioner is "lawfully detained under §1231(a)" because he "has a final order." (Doc. 16 at 12–15.) This argument falls for several independent reasons.

#### **A. Withholding of Removal Means the Government Has No Present Authority to Remove**

Petitioner cannot be removed to Ghana due to the IJ's grant of withholding of removal. The Supreme Court, Congress, and multiple circuits agree that §1231(a) is triggered only when DHS has present authority to remove someone. See *Jama v. ICE*, 543 U.S. 335, 341 (2005).

DHS has not identified any third country, has no acceptance documentation, and no evidence of ongoing removal negotiations. Therefore:

- the removal period has not begun, and
- detention cannot be under §1231(a)(2).

#### **B. DHS's Own Documents Show Petitioner Is Classified as 237(a)(1)(B) — NOT Criminal Grounds**

The Government's own I-213 (Exhibit 1 to Doc. 16) lists:

"Current Administrative Charge: 237(a)(1)(B) – Nonimmigrant Overstay."

**There is:**

- no criminal charge listed,

- no reference to §237(a)(2),

- and DHS acknowledges in the same document: "PACER check confirms Petitioner has an active appeal."

**Thus the Government:**

1. knew the conviction was not final, and
2. did not treat the conviction as the basis for detention.

This defeats their claim of "change in circumstances."

**II. THE 2019 BOND WAS ILLEGALLY REVOKED AND THE REVOCATION IS VOID**

The Government claims the bond was revoked under §1226(b). (Doc. 16 at 10–11.)

This is incorrect.

**A. Revocation Requires Notice to the Noncitizen AND the Surety**

8 C.F.R. §1236.1(d) requires:

- written notice to detainee,
- written notice to obligor/surety,
- service certificate,
- explanation of revocation reasons.

**DHS produced:**

- no notice,
- no certificate of service,
- no proof the obligor was ever informed,

- no individualized assessment.

**The I-391 supplied by DHS:**

- contains no date of service,
- no mailing record,
- and simply states “conditions satisfied”—not “revoked for criminal activity.”

Therefore the cancellation is invalid under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

**B. DHS Used a Different Arrest Warrant — That Is Not Permitted**

The original April 11, 2019 Form I-200 is NOT the same warrant ICE used on June 22, 2024.

§1226(b) requires re-arrest under the original warrant for revocation.

Using a new warrant breaks the statutory chain → revocation void.

**III. THE GOVERNMENT DOES NOT DISPUTE NINE MONTHS OF DETENTION WITHOUT A HEARING**

Petitioner has been detained since March 4, 2025 (nine months). That alone triggers:

- *Mathews v. Eldridge* due-process violation,
- Third Circuit prolonged-detention protections (*German Santos*),
- §1231(a)(6) post-90-day constitutional limits.

The Government’s silence on this point is telling.

#### **IV. GOVERNMENT'S CLAIM THAT TRO=HABEAS IS WRONG**

Respondents argue the TRO "seeks the same relief as the habeas petition."

Incorrect.

#### **The TRO:**

- prevents transfer,
- prevents automatic stay abuse,
- preserves jurisdiction,
- and prevents agency manipulation before merits are reached.

This is not the same as the habeas request for final merits relief.

#### **V. THE COURT SHOULD REJECT RESPONDENT'S POST-HOC RATIONALIZATIONS**

All of DHS's "reasons" for revocation appear nowhere in the I-391, nowhere in the warrant, and nowhere in the I-213.

Post-hoc rationalizations are barred under *SEC v. Chenery Corp.*, 332 U.S. 194 (1947).

DHS cannot invent new reasons during litigation to justify an unlawful revocation.

#### **VI. REMEDY – REINSTATEMENT OF 2019 BOND OR IMMEDIATE RELEASE**

#### **Given:**

- unlawful revocation,

- lack of notice,
- no service on obligor,
- wrong warrant used,
- no lawful §1231 detention authority,
- no foreseeable removal,
- nine months detention without process,

Immediate release or reinstatement of the 2019 bond is required.

Alternatively, the Court must order a §1226(a) hearing within 7 days with clear-and-convincing evidence burden on the Government.

#### **CONCLUSION**

For these reasons and those previously briefed, Petitioner respectfully requests that the Court GRANT the Motion for TRO/PI, reinstate the 2019 bond, or order immediate release.

**Respectfully submitted,**

**/s/ Alex Gyimah Agyemang**

**Pro Se Petitioner**

**Clinton County Correctional Facility**

**Date: November 17, 2025**