UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FRANKLIN OCHOA MOLINA,

***Petitioner*,**

v.

LUIS SOTO,
in his official capacity as Warden of Delaney Hall Detention Facility;

KRISTI NOEM,
in her official capacity as Secretary, U.S. Department of Homeland Security;

TODD M. LYONS,
in his official capacity as Acting Director of Immigration & Customs Enforcement; and

PAMELA BONDI,
in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-CV-16880-EP

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner has been unlawfully detained by Respondents, and separated from his U.S citizen wife and child, since October 8, 2025. Respondents do not assert that Petitioner poses a danger or a flight risk, nor that they had an individualized reason to detain him. As authority for his detention, Respondents point to 8 USC § 1187, and the Board of Immigration Appeals ("BIA") precedential decision of *Matter of A.W.*, 25 I. & N. Dec. 45, 47 (BIA 2009) ("*Matter of A.W"*).

Respondents' interpretation of statutory authority is wrong. *Matter of A.W.* has been rejected by numerous federal district courts, including at least four from this Court. *See Gjergj G. v. Edwards*, No. 19-5059 (SDW), 2019 WL 1254561, at *2 (D.N.J. March 18, 2019) (finding 8 U.S.C. § 1226(a), and not 8 USC § 1187, governs the detention of VWP violators who made an entry into the United States and have not been convicted of a crime which would give rise to mandatory detention); *Emila N. v. Ahrendt*, No. 19-5060 (SDW), 2019 WL 1123227, at *3 (D.N.J. March 12, 2019) (same); *Szentkiralyi v. Ahrendt*, No. 17-1889 (SDW), 2017 WL 3477739, at *3-*5 (D.N.J. Aug 14, 2017) (same); *Sutaj v. Rodriguez*, 16-5092 (JMV), 2017 WL 66386, at *5 (D.N.J. Jan. 5, 2017) (same). *See also Romance v. Warden York County Prison*, 3:20-cv-00760 (JFS), 2020 WL 6054933 at *4 (M.D. Pa. July 28, 2020) (finding 8 U.S.C. § 1226(a) governs the detention of VWP violators who made an entry into the United States and have not been convicted of a crime which would give rise to mandatory detention).

Indeed, in their Answer to Verified Petition for Writ of Habeas Corpus, ECF 4 ("Answer") Respondents *do not cite to a single case other than Matter of A.W. for the proposition that 8 USC § 1187 governs herein*. As will be shown below, *Mater of A.W.* is legally dubious, and, post-*Loper Bright,* is owed no deference. This Court should therefore follow the precedent that has rightfully rejected *Matter of A.W.*, and order Petitioner's immediate release, or, as an alternative, a bond hearing.

ARGUMENT

I. Respondents Are Wrong About the Statute of Detention

Respondents are wrong about the statutory authority for Petitioner's detention. 8 U.S.C. § 1226(a) applies here, and not 8 USC § 1187. As observed by Judge Wignenton in finding that 8 U.S.C. § 1226(a) applies to VWP overstays:

> The lynchpin of the BIA's determination in *A.W.* is the BIA's determination that § 1187(c)(2)(E) provides statutory authority for the detention of VWP aliens independent of the general authority to detain aliens pending removal pursuant to § 1226. Section 1187(c)(2)(E), which is titled 'repatriation of aliens,' however, *contains no language which expressly authorizes the detention of VWP aliens*. Instead, that subsection states that
>
> > [in order to qualify for the VWP t]he government of the country [wishing to qualify must] accept[ ] for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.
>
> 8 U.S.C. § 1187(c)(2)(E). *Indeed, this language expressly states that it is intended not to create any right or duty regarding the "removal or release" of detained aliens*.

See Szentkiralyi, 2017 WL 3477739, at *3 (emphasis added) (alterations in original). Judge Wigenton continued:

> § 1187 is silent about the detention of aliens pending their removal under the VWP, while § 1226 expressly provides for the detention of aliens during the pendency of their removal proceedings. Likewise, this Court agrees that the transfer of authority from the Attorney General to the Department of Homeland Security did not deprive the Secretary of Homeland Security of the authority to delegate bond authority to IJs just as the Attorney General had done, and there is nothing in the relevant statutes suggesting an intention on Congress's part to remove any delegated authority through this transfer of authority.

See id., at *4.

Other Courts have similarly ruled. *See Sutaj*, 2017 WL 66386, at *5 ("[T]he BIA arbitrarily and capriciously interpreted the effect of transferring the delegation of immigration enforcement and administrative functions from the Attorney General to the Secretary of Homeland Security. The

transfer of authority did not expressly strip the Secretary of Homeland Security of the authority to delegate to an IJ the powers under 8 C.F.R. § 1236.1(d) previously delegated to the Attorney General, and there is no reason to believe there was an intention to do so. Furthermore, a plain reading of 8 C.F.R. § 1208.2(c)(3)(i) suggests that it limits only the substantive relief from removal for VWP entrants or violators. Allowing VWP violators who are in custody to request a bond redetermination hearing under 8 C.F.R. § 1236.1(d) does not frustrate the intent of the VWP program to limit the types of substantive relief available. A bond determination is a procedural, not substantive, function."). *See also Romance*, 2020 WL 6054933 at *4 (M.D. Pa. July 28, 2020); *Gjergj G.*, 2019 WL 1254561, at *2; *Emila N.*, 2019 WL 1123227, at *3; *Neziri v. Johnson*, 187 F. Supp. 3d 211, 213 (D. Mass 2016) ("Defendants ask the court to defer to the BIA's decision in Matter of A–W–, 25 I. & N. Dec. 45 (BIA 2009), where the BIA held that an Immigration Judge did not have jurisdiction to re-determine the conditions of custody of an alien admitted pursuant to the Visa Waiver Program . . . . Here, 8 U.S.C. § 1226 explicitly provides for detention and release of aliens during their removal proceedings. Although the relevant statutory sections refer to the Attorney General's authority, the Homeland Security Act of 2002 . . . transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. Accordingly, Congress has directly spoken to the precise question at issue, giving the Secretary of Homeland Security the authority to detain and release aliens under 8 U.S.C. § 1226. The regulations implementing 8 U.S.C. § 1226(a) provide for a bail hearing for a detained alien in front of an Immigration Judge. 8 C.F.R. § 1236.1(d).") (citation omitted) (*dicta*).

Finally, the above caselaw was written in the *Chevron* era, and the courts therein specifically rejected Respondents' requests to accord *Chevron* deference to the rationale of *Matter of A.W.* *See, e.g., Szentkiralyi*, 2017 WL 3477739, at *4 ("Ultimately, in light of the express language of § 1226, and the lack of any detention authorization in § 1187(c)(2)(E), the BIA's determination in *A.W.* is

not entitled to *Chevron* deference . . . ."). Post-*Loper Bright*, Respondents' hand is even weaker. *See, e.g., Ramos v. Rakosky*, No. 25-cv-15892 (EP), 2025 WL 3063588, at *8 ("'[C]ourts must exercise independent judgment in determining the meaning of statutory provisions.'") (*quoting Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394) (2024)).

II. Respondents Other Arguments are Red Herrings

Other than their incorrect statutory argument, Respondents offer no credible defense for Petitioner's detention. As several courts have recently concluded in other, but similar contexts, summary and purposeless detention is unconstitutional and merits immediate release. *See Zumba v. Bondi* No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025) ("For the reasons set forth above, petitioner's mandatory detention under § 1225 violates the INA and the Due Process Clause of the Fifth Amendment. The Court grants the writ of habeas corpus and orders respondents to release petitioner from detention within 24 hours."). *See also Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528 (AT), 2025 WL 1927931 (S.D.N.Y. July 13, 2025); *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025); *Lopez Benitez v. Francis*, --- F.Supp.3d ----, 2025 WL 2371588, at *9-*12 (S.D.N.Y. August 13, 2025). This Court should find the same.

First, Respondents do not allege Petitioner's re-detention was due to danger or flight risk, the sole two lawful bases for immigration detention. Nor can they, since Petitioner's re-detention was part of a campaign with no individualized basis. Without a lawful justification, Petitioner's detention violated his right to substantive due process. *See Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023). Second, Respondents do not claim they provided Petitioner notice or process before re-detaining him. The well-known test for constitutionality of process set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) is applicable to due-process challenges, and as recent decisions confirm, the deprivation of Petitioner's liberty

interest without so much as a word of explanation, nor an opportunity to be heard, does not pass constitutional muster. *See Zumba*, 2025 WL 2753496, at *10 ("Here, the first and second *Mathews* factors weigh heavily in petitioner's favor, as she has been deprived of her liberty, erroneously subjected to mandatory detention under § 1225 during her removal proceedings, and denied due process protections, including the right to seek bond. The third *Mathews* factor also weighs in her favor as neither the government nor the public has a significant interest in detaining a long-term resident of the United States with no criminal history who is participating in cancellation of removal proceedings, which are civil in nature."). *See also Betancourt Soto v. Soto,* --- F. Supp. 3d ---, 2025 WL 2976572 (D.N.J. Oct. 22, 2205) (similarly applying *Mathews*). The risk of erroneous deprivation in the absence of any individualized custody determination is enormous—and the public interest in detention nonexistent. *See Zumba*, 2025 WL 2753496, at *10.

Rather than confront these facts, Respondents raise arguments which are legally irrelevant. Respondents cite to *Zadvydas v. Davis* and other cases which address the length of time a non-citizen is in detention. *See* Answer at 8-9. But as Respondents surely know, such caselaw is inapposite, as these decisions discuss situations where non-citizens *are legally and properly detained* under pre-removal or post-removal statutes as a *prima facie* matter, but are making claims that the *length of such detention* violates the Constitution. In such cases, length of confinement does come into play. But here, Petitioner is claiming that he is illegally detained by Respondents *in the first instance*. If the Court agrees, whether he has been detained for one day, one month, or one year, does not change the analysis.

Second, Respondents repeatedly point out that Petitioner may not be successful in fighting his removal from the United States. *See, e.g.,* Answer at 2 & n.1. Whether or not Respondents are correct is irrelevant to his current argument about his statutory detention. Indeed, once again,

as Respondents surely know, courts frequently grant habeas petitions even for individuals who have already been ordered removed from the United States (which Petitioner has not).

III. Interim Release is Warranted.

Because the Respondents "have not argued in the alternative that Petitioner should be detained under § 1226(a), the Court [should not] construe the record to authorize his continued detention on that basis," and the Court should order Petitioner's immediate release and permanently enjoin Respondents from re-detaining him under 8 USC § 1187. *See Betancourt Soto*, --- F. Supp. 3d ---, 2025 WL 2976572, at *9*; Zumba*, 2025 WL 2753496, at *11 (ordering immediate release).[1]

CONCLUSION

For the foregoing reasons, Petitioner asks the Court to order his immediate release from custody.

Dated: November 7, 2025

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[1] If the Court does not order an immediate release then, in the alternative, Respondents should afford Petitioner an immediate bond hearing. *See Szentkiralyi*, 2017 WL 3477739, at *6.

CERTIFICATE OF SERVICE

I, Michael Z. Goldman, certify that on November 7, 2025, I electronically filed the attached the foregoing Petitioner's Reply in Support of Petition for Writ of Habeas Corpus and accompanying Exhibit with the Clerk of the Court for the United States District Court for the District of New Jersey using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

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