IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMIT KANAUT	
Petitioner,	CIVIL ACTION
v.	No. 25-cv-06869
MICHAEL T. ROSE, et. al.,	
Respondents.	

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR HABEAS CORPUS

Petitioner Amit Kanaut is a citizen and national of India and asylum applicant who has been held in ICE custody at the Federal Detention Center (FDC) in Philadelphia, PA and subsequently Moshannon Valley Processing Center in Philipsburg, PA since December 3, 2025. *See* Petition, ECF 1, ¶ 15. Respondents are Michael T. Rose, Philadelphia ICE Field Office Director (FOD), Kristi Noem, Secretary of the Department of Homeland Security (DHS), Pamela Bondi, U.S. Attorney General, and Jamal Lawrence, Warden of the Philadelphia FDC.

Petitioner filed this petition against Respondents for a violating the Immigration and Nationality Act (INA) by applying the incorrect detention statute and holding Petitioner in custody without a bond redetermination hearing (Count 1), violating the Agency's bond regulations (Count 2) and violating Petitioner's substantive and procedural Fifth Amendment constitutional right to due process of law by holding him in mandatory immigration detention without the opportunity for a bond hearing (Counts 3 and 4). Respondents filed a response to Petitioner's complaint arguing the court lacks jurisdiction to consider the petition, that Petitioner is properly detained under 8 U.S.C. § 1225(b), and that Petitioner's detention does not violate

due process. *See* Resp. Opp. Br.; ECF No. 3. Petitioner now files this reply to Respondents' response arguing the court retains jurisdiction over the petition, that Respondent is detained pursuant to 8 U.S.C. § 1226(a), and that his continued detention violates due process. Petitioner respectfully requests the Court grant Petitioner's petition for writ of habeas corpus.

ARGUMENT

I. The Court retains jurisdiction to hear and decide the petition for habeas corpus

A district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). It has been deemed a "vital instrument" to secure freedom from unlawful restraint, which a "fundamental precept of liberty…" *See Boumediene v. Bush*, 55 U.S. 723, 739 (2008). The right to challenge confinement through such writ extends to individuals challenging their detention immigration custody. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.").

A. Section 1252(g) does not strip this Court of jurisdiction because the petition does not arise from the decision to commence or adjudicate removal proceedings or effectuate deportation.

Respondents first argue that § 1252(g) bars judicial review of this petition because it "arises from 'the decision or action' to 'commence' proceedings or 'adjudicate [those] cases.'" *See* Resp. Opp. Br. at 6; ECF No. 3, p. 6. In making this argument, Respondents cite the Eleventh Circuit's decision in *Alvarado v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016), and district court decisions not arising in EDPA. *See id.* For the government "to prevail [on jurisdictional grounds] it must overcome ... the strong presumption in favor of judicial review of

administrative action." *INS v. St. Cyr*, 533 U.S. 289, 298 (2001).

The Supreme Court in *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) ("AADC"), rejected the argument that § 1252(g) referred to all claims arising from deportation proceedings, instead holding that it "only applies to three discrete actions…[the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482. This portion of the statute was meant to safeguard agency discretion, as each "represent[s] the initiation or prosecution of various stages in the deportation process," and "at each stage, the Executive has discretion to abandon the endeavor…" *Id.* at 483. The Third Circuit – as well as other circuit courts – have stated that § 1252(g) is to be interpreted "narrowly and precisely" to prevent review only of the three narrow discretionary decisions or actions referred to in the statute. *See Garcia v. Att'y Gen.*, 553 F.3d 724, 729 (3d Cir. 2009) (holding that the jurisdiction stripping provision of § 1252(g) was not applicable where the petitioner was challenging the government's authority to commence removal proceedings, but not their discretionary decision to commence those proceedings).

Respondents' reliance on *Alvarez* is misplaced and does not give authorization to circumvent the Supreme Court's holding in *AADC* and the Third Circuit's holding in *Garcia*. The *Alvarez* court found that Alvarez's petition contained allegations that "arose from the decision to initiate his removal proceedings, and others that arose from the execution of his removal order," and thus his detention was "closely connected to the decision to commence proceedings." *Alvarez*, 818 F.3d at 1203. Alvarez was held in mandatory detention during his removal proceedings due to a felony criminal conviction, and then subsequently was held pursuant to being issued a final order of removal for the government to effectuate his removal to a third country. *Id.* at 1197-98. The facts of *Alvarez* differ greatly from the petition at hand.

Alvarez challenged the very initiation of his removal proceedings due to a stipulation in his plea deal that state the government would put forth its "best efforts… to reach a timely determination of his immigration status." *Id.* at 1203. The government deciding to initiate removal proceedings against Alvarez necessarily included his detention, as he was transferred from criminal to immigration custody and was held in mandatory custody due to his criminal convictions.

Respondents' argument that the "decision to detain is a 'specification of the decision to 'commence proceedings'" is mistaken in Petitioner's case. When Petitioner was apprehended by ICE and served his Notice to Appear in immigration court, Respondents made the specific decision not to detain Petitioner and rather released him from ICE custody both through DHS's parole mechanism and by releasing him on his own recognizance under § 1226. *See* Petition, ECF 1, Exhs. A, B. Had Respondents' chosen to keep Petitioner detained from the outset, that argument may hold more weight. *See Cordon-Linarez v. Garland*, 2024 WL 4652824 (M.D. Pa. Nov. 1, 2024); *Saadulloev v. Garland*, Civ. No. 23-0106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024). Respondents' decision to detain Petitioner at this juncture, after they already made a custody determination and found he is neither a danger to the community or a flight risk, has no correlation to their decision to commence removal proceedings. The Western District of Pennsylvania decisions cited in Respondents' brief discuss this "threshold" detention decision that necessarily flows from the decision to commence proceedings. However, Respondents' decision to detain Petitioner at this juncture cannot be considered a threshold decision.

Contrary to the case in *Alvarez*, Petitioner is challenging his detention pre-order of removal, not post-order, and his detention is not in any way tied to the commencement of his removal proceedings nor the effectuation of his removal post-order. Like *Garcia*, Petitioner is

challenging the government's *authority* to detain him throughout the pendency of his removal proceedings without access to a bond hearing, which is separate and apart from its discretionary decision to commence proceedings, adjudicate cases, or execute removal orders.

Respondents cite to a handful of recent district court cases in the Western District of Pennsylvania, the Middle District of Pennsylvania, and the Northen District of Illinois in support of the position that this Court lacks jurisdiction under § 1252(g). Although a spattering of judges across the country have made this finding, most of them, including at least eight in the Eastern District of Pennsylvania, have found the courts retain jurisdiction and have found in favor of the Petitioner on this matter. Judge Diamond, in the EDPA, recently found the same, and that the government violated the INA by continuing to detain the petitioner without a bond hearing, and in doing so collected a list of 282 district court decisions from across the country finding in favor of the petitioner. *See Demirel v. FDC Philadelphia*, et al., No. 25-cv-05488 at *6 (E.D. Pa. Nov. 18, 2025) (Diamond, J.); *see also* Petition, ECF 1, Exh. E. At least 282 courts, a number that is certainly higher now, have found they are not stripped of jurisdiction under § 1252(g) or any other jurisdiction stripping provision. *See id.*

Petitioner is not challenging the Respondents' authority to commence removal proceedings against him, adjudicate any applications he files while in removal proceedings, or execute his removal if and when a removal order is entered by the immigration court. Petitioner timely filed an application for asylum as relief from removal and Respondents then exercised their discretion to commence proceedings. To date, a removal order has not been entered against Petitioner, and his asylum application remains pending. Rather, Petitioner argues that Respondents have exceeded their authority concerning the lawfulness of his continued detention without a bond hearing, and how the removal proceedings are being conducted, not whether they

should be conducted in the first place. *See Ibarra-Perez v. United States*, No. 24-631, at *18 (9th Cir. Aug. 27, 2025) (finding section 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders.").

Importantly, Petitioner is not even arguing that Respondents do not have the authority to detain him during removal proceedings—his argument rests on which detention statute applies, and that, since § 1226(a) is the appropriate detention statute, he is entitled to a bond hearing before a neutral immigration judge. Petitioner is also arguing that he should have been afforded this bond hearing before he was re-detained, and since that did not occur, the appropriate remedy is immediate release. Accordingly, section 1252(g) does not divest this Court of jurisdiction over the petition.

B. Section 1252(b)(9) does not prevent this Court from retaining jurisdiction because the petition is a collateral issue and is not a request to review a decision made in the course of Petitioner's removal proceedings.

Respondents further argue this Court lacks jurisdiction under § 1252(b)(9) because the proper venue for this type of claim lies with the circuit court via a petition for review, which provides "'judicial review of all…decisions and actions leading up to or consequent upon final orders of deportation, including 'non-final order[s].'" *See* Resp. Opp. Br. at 7-8; ECF No. 3, p. 7-8. Respondents cite *Jennings v. Rodriguez* in support of their position, stating that § 1252(b)(9) bars claims that "'challeng[e] the decision to detain them in the first place.'" *See id.* at 8. Importantly, Petitioner was not detained in the first instance when he was apprehended by ICE—he was released from custody with requirements to check-in with ICE after a finding that he was not a danger to the community or a flight risk. Petitioner does not challenge Respondents' detention decision in the first instance; he challenges their arbitrary decision to detain Petitioner almost three years later with no cogent explanation.

Petitioner is challenging the legal authority for detaining him without the opportunity for a bond hearing and the Respondent's argument that he is detained under § 1225(b) of the statute. The *Jennings* Court "cautioned that the phrase 'order of removal' should be construed narrowly," and "where the petition is not 'asking for review of an order of removal' or 'challenging any part of the process by which their removability will be determined … § 1252(b)(9) does not present a jurisdictional bar.'" *See Quispe-Ardiles, et al. v. Noem, et al.*, 25-cv-01382 at *6 (E.D. Va. Sep. 30, 2025) (Nacmanoff, J.) (quoting *Jennings*, 583 U.S. at 294-95). The Ninth Circuit decision in *J.E. F.M. v. Lynch*, on which Respondents rely heavily, specifically states that claims "independent from or collateral to" removal proceedings are not precluded from review by district courts, and that "§ 1252(b)(9) 'does not apply to federal habeas corpus provisions that do not involve final orders of removal.'" *See* 837 F.3d 1026, 1032-33 (9th Cir. 2016), *quoting Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006).

The Supreme Court's later decision in *Nielsen v. Preap* clarifies any ambiguity leftover from *Jennings* regarding this issue. In *Preap*, the Supreme Court found that § 1252(b)(9) did not bar jurisdiction in petitions filed by detainees who were denied bond hearings and subjected to mandatory detention pursuant to 8 U.S.C. § 1226(c). *See Nielsen v. Preap,* 586 U.S. 392 (2019). The facts here are similar—the Petitioner is not alleging Respondents had no authority at all to detain him, but rather the challenge is to the authority to *detain him without a bond hearing*, and to the underlying detention statute to which Petitioner is subject. The Ninth Circuit, to which Respondents cite to establish the "breathtaking scope" of section 1252(b)(9) has held similarly. *See Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)) ("[C]laims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process.").

The Third Circuit has recognized that there are certain instances where review of certain immigration-related claims cannot wait. *See E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 180 (3d Cir. 2020). There, the circuit court analyzed the scope of § 1252(b)(9) in the context of both a challenge to the petitioners' inclusion in the Migrant Protection Protocols (MPP) and a habeas petition concerning their continued detention at Berks County. *See id.* at 183-84. The court found that neither the issue of the petitioners' interim return to Mexico under MPP nor their continued detention were "arising from" those proceedings. *Id.* at 185.

There are limitations to § 1252(b)(9), and "claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *See J.E. F.M.*, 837 F.3d at 1032. Section § 1252(b)(9) does not strip jurisdiction when the court cannot meaningfully provide the relief sought at the PFR stage—it is meant to consolidate claims into one single petition, "not to bar claims that do not fit within that process." *See E.O.H.C.*, 950 F.3d at 186.

The claims Petitioner brings concerning the legality of his continued detention without access to a bond hearing are wholly collateral to and independent from his removal proceedings. *See Gonzalez*, 975 F.3d at 810; *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). They also come before he has been issued an order of removal. *J.E. F.M.*, 837 F.3d at 1033. Petitioner is not challenging the legitimacy of his removal proceedings, nor any issues that arose from the merits of his removal proceedings. Instead, he challenges the independent determination of Respondents to detain him during the pendency of those proceedings, essentially challenging the scope of his detention, which is specifically permissible under *Jennings*. *See Jennings*, 583 U.S. at 294. Requiring Petitioner to wait until his removal proceedings have concluded to appeal this issue via a PFR would prevent meaningful review of his unlawful detention and which detention statute controls. It would not provide the adequate relief required, which would be Petitioner's

release from custody or a finding that he must be afforded a bond hearing. Specifically, it would render Petitioner's argument partially moot, as a different detention statute governs once a final order of removal is entered, which prevents a meaningful review of Petitioner's legal argument. Accordingly, § 1252(b)(9) does not strip this Court of jurisdiction.

C. Section 1252(a)(2)(B)(ii) similarly does not strip this Court of jurisdiction because it is not a request to review a discretionary agency decision, but a review of a legal interpretation of the statute.

Lastly, Respondents argue this Court lacks jurisdiction under § 1252(a)(2)(B)(ii) because "no court shall have jurisdiction to review" a discretionary decision made by the Attorney General or the Secretary of Homeland Security. 8 U.S.C. § 1252(a)(2)(B); Resp. Opp. Br. at 9; ECF No. 3, p. 9. Petitioner does not ask this Court to review a discretionary agency decision; he asks the Court to review a purely legal question concerning the applicable detention statute and the legal authority of Respondents to hold him in mandatory immigration custody absent a bond hearing. This is a question of statutory interpretation, not an appeal of a discretionary decision. The Supreme Court has held that the government's statutory detention power is "not a matter of discretion." *Zadvydas*, 533 U.S. at 688; *see also Demirel,* No. 25-cv-05488 at *6 (E.D. Pa. Nov. 18, 2025) (Diamond, J.)

At least eight judges in the Eastern District of Pennsylvania who have decided this issue have agreed with the Petitioners. *See Demirel v. FDC Philadelphia*, et al., No. 25-cv-05488 at *6 (E.D. Pa. Nov. 18, 2025) (Diamond, J.); *Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399 at *4 (E.D. Pa. Nov. 14, 2025) (Wolson, J.); *Cantu-Cortes v. O'Neill, et al.*, No. 25-cv-6338, 2025 WL 3171639, at *1 (E.D. Pa. Nov. 13, 2025) (Kenney, J.); *Patel v. McShane, et al.*, No. 25-cv-5975 (E.D. Pa. Nov. 20, 2025) (Brody, J.); *Ndiaye v. Jamison, et al.*, No. 25-cv-6007 (E.D. Pa. Nov. 19, 2025) (Sanchez, J.); *Centeno-Ibarra v. Warden of the Federal Detention*

Center Philadelphia, et al., No. 25-cv-06312 (E.D. Pa. Nov. 25, 2025) (Rufe, J.); *Juarez Velasquez v. O'Neill, et al.*. Np. 25-cv-06191 (E.D. Pa. Dec. 3, 2025) (Henry, J.); *Anirudh v. McShane, et al.*, 2:25-cv-06458-HB (E.D. Pa. Dec. 9, 2025) (Bartle III, J.)

Judge Wolson found that the challenge was not to a discretionary decision to detain, but rather to the legal question of which detention statute applies, which in turn informs whether a bond hearing is mandatory. *See Kashranov*, 2025 WL 3188399 at *4. Judge Kenney similarly found that the petition is not challenging a discretionary decision to deny bond but challenging the government's statutory interpretation that no bond hearing is required. *See Cantu-Cortes,* 2025 WL 3171639 at *1.

As Petitioner does not seek review of a discretionary agency decision, § 1252(a)(2)(B)(ii) does not bar jurisdiction.

II. Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and thus must be afforded a bond redetermination hearing.

A. Respondents' argument runs afoul of the plain text of the statute.

Respondents' argument that 8 U.S.C. § 1225(b) controls Petitioner's detention is contrary to the plain text of the statute. Section 1225(b) provides that: "in 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 [removal] proceeding." 8 U.S.C. § 1225(b)(2)(A). Petitioner does not dispute that he is an applicant for admission under the law. *See* 8 U.S.C. § 1225(a)(1). However, being an applicant for admission and *making* an application for admission (or *seeking* admission) are two different things. *See Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) (finding court in *Minto* impermissibly conflated term "applicant for admission" from INA § 235(a)(1) with term "application for admission" in INA § 212(a)(7)).

Respondents argue that since Petitioner is an applicant for admission, he must be detained pursuant to Section 1225(b)(1) or 1225(b)(2). This is an incorrect reading of the statute. All individuals who entered the United States without lawful admission, including those who were never apprehended by immigration officials and have bene living in the interior of the United States for a number of years, are nonetheless considered applicants for admission. 8 U.S.C. § 1225(a)(1). Sections 1225(b)(1) and 1225(b)(2) are reserved for those who are deemed to be seeking admission, which carries with it a temporal requirement that the person be apprehended and detained while they are seeking admission to the United States. *See Jennings*, 583 U.S. at 287 (discussing § 1225 as part of a process "that generally begins at the Nation's borders and ports of entry…"); *see also Morales Rodriguez v. Arnott et al.*, No. 25-cv-00836 (W.D. Mo. Nov. 18, 2025) (finding one who is "'seeking admission' is presently attempting to gain admission into the United States."), citing *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (discussing plain meaning of "seeking"); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, *7 (S.D.N.Y. Aug. 13, 2025) (interpreting "seeking admission" to mean a person who is actively "seeking" lawful entry).

Section 1226(a) provides that: "[o]n 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." 8 U.S.C. § 1226(a). Except as provided in subsection (c) of § 1226, individuals detained pursuant to § 1226 are entitled to a bond hearing. 8 C.F.R. § 1236.1(d)(1). The *Jennings* Court stated that "aliens already in the country pending the outcome of removal proceedings" may be detained pursuant to § 1226(a). *Jennings*, 583 U.S. at 289. This includes individuals who entered the United States without inspection and admission but are nonetheless still considered applicants for admission. *Id.* at 288.

Petitioner was detained at his routine ICE check-in on December 3, 2025, after he had already been in the United States for almost three years. *See* Petition, ECF 1, ¶ 26. Thus, Petitioner could not be deemed to be "arriving" or "seeking admission" into the United States at that time—he had already been living in the United States for a significant period of time. Respondents argue that § 1225 and § 1226 are not mutually exclusive, and an individual can be subject to both provisions. *See* Resp. Opp. Br. at 14; ECF No. 3, p. 14. This again ignores the portion of § 1225(b)(2) that states the applicant for admission must also be seeking admission for that provision to apply. The government has acknowledged on several occasions that the provisions are indeed mutually exclusive. *See Romero v. Hyde*, No. 25-cv-11631, 2025 WL 2403827 at *11 (D. Mass. Aug. 19, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588 at *4 (S.D.N.Y. Aug. 13, 2025); *see also Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019) ("[S]ection 235 (under which detention is mandatory) and section 236(a) (under which detention is permissive) can be reconciled only if they apply to different classes of aliens.").

Additionally, Respondents' interpretation of the statute is inconsistent with recent amendments to § 1226 and would render those changes superfluous. In 2025, Congress passed the Laken Riley Act, which created a mandatory detention provision for noncitizens who are inadmissible to the United States pursuant to § 1182(a)(6)(A) (present in the United States without having been admitted or paroled), § 1182(a)(6)(C) (willful misrepresentation of a material fact), or § 1182(a)(7) (individuals at the time of application for admission who were not in possession of a valid unexpired immigration visa or other valid entry document) and who "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to

another person." 8 U.S.C. § 1226(c)(1)(E). Under Respondents' interpretation of § 1225(b)(2) and § 1226, the individuals described in § 1226(c)(1)(E) would already be subject to mandatory detention pursuant to § 1225(b)(2) as they are all considered applicants for admission, since they were not lawfully admitted into the country.

This renders § 1226(c)(1)(E) wholly superfluous, not merely redundant, as the BIA found in *Yajure Hurtado* and the Respondents echo in their response. *See* Resp. Opp. Br. at 13; ECF No. 3, p. 13. "[O]ne of the most basic interpretive canons [is] that '[a] statue should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up); *see also Stone v. INS*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."). The Respondents' argument and interpretation render the passage of the LRA void and nonsensical. If Respondents' interpretation was in line with the plain language of the statute and the intended statutory construction, there would have been no need for Congress to pass the LRA.

When Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which enacted §§ 1226(a) and 1225(b)(2), EOIR drafted new bond regulations. Those regulations clearly explained that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a), despite the fact they were considered applicants for admission. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

In the decades that followed the passage of IIRIRA, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their

criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)). Nearly three decades of practice was upended with DHS's July 8 policy memo (coordinated in conjunction with the DOJ) that abruptly changed the government's position on this issue. *See* Petition, ECF 1, ¶ 44. The DOJ, via the Board of Immigration Appeals, solidified that position when it decided *Hurtado* in September 2025. Despite this policy change, it is clear that this was not Congress's intent, nor was it EOIR's intent when it issued the final bond regulations.

For these reasons, Respondents' interpretation of § 1225 is not supported by the plain meaning of the statute, the statutory construction given the recent passage of the LRA, or the legislative intent as described in the Federal Register.

B. Respondents have treated Petitioner as detained pursuant to § 1226(a) since his arrival in the United States.

Contrary to Respondents' argument, Petitioner has been treated by the government as detained pursuant to § 1226(a) since he arrived in the United States. He was apprehended by ICE in December 2022 and was both released on his own recognizance pursuant to section 236 of the Act (8 U.S.C. § 1226(a)) and paroled into the United States. *See* Petition, ECF 1, Tab A. On information and belief, Petitioner was arrested pursuant to an administrative warrant under § 1226 in December 2025.

The Department of Homeland Security has a breadth of discretion when it comes to the commencement and adjudication of removal proceedings. Immigration officials and the Department of Justice (DOJ) have long taken the position that immigration officials have broad

discretion not to apply the detention and expedited removal procedures § 1225(b), and whether to classify individuals encountered inside the United States shortly after crossing the border as subject to § 1225(b) detention or § 1226(a) detention. *See* Brief for Petitioners at 4-7 (No. 21-954), *Biden v. Texas*, 597 U.S. 785 (2022). The DOJ has stated, "[t]he INA affords DHS multiple options for processing applications for admission," and that includes arrest and detention pursuant to § 1226(a). *See id.* at 4-5.

Here, Respondents exercised that discretion by releasing Petitioner on his own recognizance under § 1226 after his arrest at the border. Respondents now seek to *ex post facto* alter the detention statute under which they deem petitioner to be held, despite Petitioner's border documents indicating he is detained under § 1226(a).

C. The majority of courts across the country have rejected Respondents' interpretation of this issue.

Respondents' point to a handful of district court cases post-*Hurtado* that have found Section 1225(b) permits the mandatory detention of noncitizens apprehended within the United States who had not previously been admitted. *See* Resp. Opp. Br. at 14; ECF No. 3, p. 14. Petitioner points to, at last tally, 283 district court cases who have found in favor of the petitioner on this issue and finding § 1226(a) is the controlling detention statute, although the number now is certainly higher. *See* Petition, ECF 1, Exh. E. This includes at least eight decisions from the Eastern District of Pennsylvania, all finding in favor of the petitioner. *See Demirel*, No. 25-cv-05488 at *6; *Kashranov*, No. 25-cv-5555, 2025 WL 3188399 at *4; *Cantu-Cortes v. O'Neill, et al.*, No. 25-cv-6338, 2025 WL 3171639, at *1; *Patel*, No. 25-cv-5975; *Ndiaye*, No. 25-cv-6007; *Anirudh*, 2:25-cv-06458-HB (E.D. Pa. Dec. 9, 2025) (Bartle III, J.).

Judge Bartle's decision out of the Eastern District of Pennsylvania ordered immediate release in lieu of a bond hearing because the detention was unlawful, and that if the Respondents

seek to re-detain the Petitioner, he must be afforded a bond hearing before he is re-detained. *See Anirudh*, 2:25-cv-06458-HB (E.D. Pa. Dec. 9, 2025) (Bartle III, J.). Judge Bartle found that since the petitioner's detention violated the INA, it was unlawful and warranted immediate release. Petitioner's case here is akin to the case in *Anirudh*. Petitioner was apprehended at the border, released on his own recognizance, and had been living and working in the United States for the past three years. There are no circumstances that indicate he has become a danger to the community or a flight risk, thus there was no cogent reason for Respondents to re-detain him on December 3, 2025.

Respondents cite to the BIA's decision in *Matter of Lemus* to support their position that an applicant for admission is always "seeking admission," and thus Petitioner is properly detained under § 1225(b)(2). *See* 25 I&N Dec.734, 743 (BIA 2012). *Lemus* discusses what is referred to as the "permanent bar" in § 212(a)(9)(B)(i)(II) of the INA, which prohibits adjustment of status for individuals who have accrued over a year of unlawful presence, depart the United States, and reenter or seek to reenter without authorization within 10 years of the initial departure. While the court recognized that many people seeking admission are not always requesting permission to enter the United States, it does so in reference to the fact that filing an application for adjustment of status can be considered "seeking admission" if the person has never before been admitted to the country. *See Lemus*, 25 I&N Dec. at 744.

This is not the case here. The interplay of detention statutes clearly imposes a temporal requirement on the phrase "seeking admission," as any other interpretation would cause illogical consequences. The Respondents' interpretation would render the "seeking admission" language entirely superfluous if all applicants for admission are considered "seeking admission" even if they are not seeking entry across the border and have not filed any application with the

government that would result in a lawful admission, which is a legal term of art. *See Matter of Rosas*, 22 I&N Dec. 616 (BIA 1999) (determining that a person who adjusts status in United States is considered to have been admitted notwithstanding INA § 101(a)(13)(A); *see also Matter of Espinosa Guillot*, 25 I&N Dec. 653 (BIA 2011) (holding person granted Cuban Adjustment is considered admitted because any other result would be "absurd and contrary to the plain language of the statute.").

Respondents' interpretation and argument completely ignore the "seeking admission" requirement and instead focuses solely on the fact that Petitioner is an applicant for admission and therefore subject to mandatory detention. This runs afoul of the plain meaning of the statute and conflates the definition of applicant for admission with the language in § 1225(b). If all "applicants for admission" are necessarily continuously "seeking admission," as Respondents argue, it would render the statutory language "seeking admission" superfluous and unnecessary. *See* Resp. Opp. Br. at 15; ECF No. 3, p. 15.

The Petitioner urges this court to adopt the reasoning of hundreds of decisions across the country and of the Court's fellow judges in the Eastern District of Pennsylvania.

III. Petitioner's detention without an opportunity for a bond hearing violates due process.

Petitioner's continued detention absent the opportunity for a bond hearing similarly violates his right to due process under the Fifth Amendment. Petitioner has a fundamental liberty interest in being free from restraint and confinement. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects."). Respondents argue that his detention does not violate due process, in part, because he has only been detained for roughly 20 days, citing the *Zadvydas* decision to argue that detention less than six months is presumed

constitutional. *See* Resp. Opp. Br. at 16-17; ECF No. 3, p. 16-17.

The constitutional discussion in *Zadvydas* revolved around a post-removal order detention and when the detention becomes prolonged, unreasonable, and unconstitutional. 533 U.S. 678. Individuals with orders of removal are held pursuant to a completely different statute than those in removal proceedings (pre-order of removal). Petitioner is not arguing that his detention has become so prolonged that it is now unconstitutional. Rather, he argues that continued detention during the pendency of his removal proceedings without being afforded the opportunity for a bond hearing violates his fundamental right to due process. The length of detention is not at issue here. The constitutional violation comes with the refusal to provide a bond hearing as proscribed by the statute.

Additionally, and importantly, Petitioner argues that his re-detention absent a pre-deprivation bond hearing violates his procedural due process rights under the Fifth Amendment. Procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). The liberty interest of a noncitizen is well established, especially for people "who can face years of detention before resolution of their immigration proceedings, 'the individual interest at stake is without doubt particularly important.'" *Linares Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018). Once released from immigration custody, due process requires that a person like Petitioner receive a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether the person is a flight risk or danger to the community.

In *E.A. T.-B.*, the district court in the Western District of Washington applied the test set

forth in *Mathews v. Eldridge* to hold that even in a case where the government argued mandatory detention applied, a person's re-detention required a hearing and that the petitioner had "undoubtedly [been] deprive[d] … of an established interest in his liberty." *E.A. T.-B. v. Wamsley*, No. 25-cv-1192, 2025 WL 2402130, at *3 (W.D. Washington). The Court further explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a hearing was high because a hearing serves to ensure that the purposes of detention—the prevention of danger and flight risk—are properly served. *Id.* at *4–5.

Many other district court decisions addressing similar situations. *See, e.g.*, *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar); *Mata Velasquez v. Kurzdorfer*, --- F.Supp.3d ----, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed circumstances and without a meaningful opportunity to be heard violates due process); *Rodriguez Cabrera v. Mattos*, 2025 WL 3072687 (D Nev. Nov. 3, 2025); *Fernandez Lopez v. Wofford*, 2025 WL 2959319, *4 (E.D. Ca. Oct. 17, 2025) (unpub) (finding a non-citizen granted parole at the border has a liberty interest in her conditional release and that such a parolee has an implicit right entitlement to remain at liberty if she complies with the conditions of her parole); *Noori v. Larose*, 2025 WL 2800149, *10 (S.D. Ca. Oct. 1, 2025) (unpub) (parolee developed a private interest in remaining free in the one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara*

v. Wamsley, --- F.Supp.3d ----, 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, --- F.Supp.3d ----, 2025 WL 1898025, *14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his asylum process to be arbitrary and capricious and ordering immediate release).

Petitioner's procedural and substantive due process rights were violated when he was re-detained without a bond hearing before a neutral arbiter before his December 2025 detention. Like the decisions in *Noori* and *Ramirez Tesara*, Petitioner developed a liberty interest upon his initial release from ICE custody in December 2022, and that interest "did not expire with his parole agreement." *Noori*, 2025 WL 2800149 at *10; *Ramirez Tesara*, --- F.Supp.3d ----, 2025 WL 2637663 at *3. Petitioner was not provided any explanation as to why he was being detained in December 2025, and to date has not received an adequate explanation from Respondents. If Respondents now believe he is a danger to the community or a risk of flight, he should have been provided a pre-deprivation bond hearing before he was re-detained in December 2025.

As that did not occur, Petitioners continued detention violates his constitutional right to procedural and substantive due process and for that reason he should be released from detention or, in the alternative, afforded a bond hearing before an immigration judge.

CONCLUSION

The Court should grant Petitioner's petition for habeas corpus and find that he is detained under § 1226(a) of the statute and that his detention violates due process, and therefore must be immediately released or, in the alternative, afforded an opportunity for a bond hearing.

Respectfully Submitted,

Dated: December 23, 2025

/s/ Taylor S. Adams

Taylor S. Adams, Esq. (PA 324161)
Global Immigration Legal Team
150 Strafford Ave, Suite 115
Wayne, PA 10987
610-975-4599
taylor@giltlaw.com

CERTIFICATION OF SERVICE

I certify that on December 23, 2025, I electronically filed the foregoing paper with the Clerk of Court using the ECF system, which will send notification of filing to all counsel of records.

Respectfully Submitted,

Dated: December 23, 2025

/s/ Taylor S. Adams

Taylor S. Adams, Esq. (PA 324161)
Global Immigration Legal Team
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Wayne, PA 10987
610-975-4599
taylor@giltlaw.com