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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

Juan Angel LARA CORDON,

A# 

Petitioner,

v.

Jamal Lawrence JAMISON, in his official capacity as Warden, Federal Detention Center, Philadelphia; Michael T. ROSE, in his official capacity as Acting Field Office Director, Enforcement and Removal Operations, Philadelphia Field Office, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; and Pamela BONDI, U.S. Attorney General,

Respondents.

Case No.

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. Petitioner Juan Angel Lara Cordon is in the physical custody of Respondents at the Federal Detention Center (“FDC”) Philadelphia, Pennsylvania. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner has a pending Application for Asylum and for Withholding of Removal. *See* Petitioner’s I-589, attached hereto as Exhibit “A,” and Asylum Fee Receipt, Exhibit “E.”

3. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on this allegation in Petitioner’s removal proceedings, DHS will deny Petitioner’s release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—*i.e.*, those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Pursuant to *Matter of Yajure Hurtado*, an immigration judge will be unable to consider Petitioner's bond request.

7. Petitioner's detention on this basis, and the *de facto* denial of a bond hearing, violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

8. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

9. The United States District Court for the Central District of California in *Maldonado Bautista et al. v. Santacruz Jr. et al.*, Case No. 5:25-cv-01873-SSS-BFM, issued binding, nationwide class certification and declaratory judgment rulings which conclusively establish that Petitioner's detention under 8 U.S.C. § 1225(b)(2) is unlawful.

10. Petitioner is entitled to relief as a member of the Bond Eligible class, certified by the *Maldonado Bautista* court as someone who entered without inspection, was not apprehended at time of entry, and is not subject to mandatory detention under the criminal grounds of § 1226(c), the expedited removal provisions of § 1225(b)(1), or a final order of removal under § 1231

11. Accordingly, Petitioner seeks a writ of habeas corpus ordering Petitioner's release from custody.

12. Petitioner concurrently files a motion for an Emergency Temporary Restraining Order declaring his membership in the Bond Eligible Class, granting this Petition for Writ of Habeas Corpus, releasing Petitioner on his own recognizance pursuant to 8 U.S.C. § 1226(a), and restraining and enjoining the Respondents from detaining Petitioner under 8 U.S.C. § 1225(b)(2) or from imposing any conditions of release not authorized under 8 U.S.C. § 1226(a).

### **JURISDICTION**

13. Petitioner is believed to be in the physical custody of Respondents. At the time of filing, Petitioner is believed to be detained at FDC Philadelphia.

14. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

### **VENUE**

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of Pennsylvania, the judicial district in which Petitioner is currently believed to be detained.

17. Petitioner may be detained in an undisclosed location by an unknown custodian, in which case it would be “impossible to apply the immediate custodian and district of confinement rules.” *Rumsfeld v. Padilla*, 542 U.S. 426, 450 n.18, S. Ct. 2711, 159 L. Ed. 2d 513 (2004); *Ozturk v. Hyde*, 136 F.4th 382, 392 (2d Cir. 2025); *Demjanjuk v. Meese*, 784 F.2d 1114, 1115-16, 251 U.S. App. D.C. 310 (D.C. Cir. 1986). In such circumstances, “the naming of a more remote custodian—[such as] the Secretary of Homeland Security—satisfies the statutory

requirements." *Ozturk*, 136 F.4th at 392 (citing *Demjanjuk*, 784 F.2d at 1116); *Khalil v. Joyce*, No. 25-01963, 2025 U.S. Dist. LEXIS 63573, 2025 WL 972959, at \*29-30 (D.N.J. Apr. 1, 2025).

18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Pennsylvania.

#### **REQUIREMENTS OF 28 U.S.C. § 2243**

19. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

20. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

#### **PARTIES**

21. Petitioner Juan Lara Cordon is a citizen of Honduras who has been in immigration detention since December 9, 2025. Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

22. Respondent Jamal Lawrence Jamison is the Warden of the Federal Detention Center, Philadelphia. As such, Warden Jamison is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal.

23. Respondent Acting Field Office Director ("AFOD") Michael T. Rose is the Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division. As such, AFOD Rose is Petitioner's is responsible for Petitioner's detention and removal. He is named in his official capacity.

24. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

25. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

26. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

### **LEGAL FRAMEWORK**

27. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally

entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

29. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

30. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

31. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

32. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

33. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining 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). *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).

34. Thus, in the decades that followed, 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)).

35. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

36. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

37. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

38. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

39. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

40. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.

Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

41. Time and time again, Courts within this Third Circuit in particular have adopted the same reading of the INA’s detention authorities and rejected ICE and EOIR’s new interpretation. *See, e.g., Amaya v. Bondi*, No. 25-cv-16428-ESK, 2025 U.S. Dist. LEXIS 214031 (D.N.J. Oct. 30, 2025) (finding petitioner’s mandatory detention under § 1225(b)(2) in violation of the laws of the United States and petitioner’s due process rights and ordering Respondents to treat petitioner as detained under § 1226(a) and provide him with an individual bond hearing); *C.B. v. Oddo*, Civil Action No. 3:25-cv-00263, 2025 U.S. Dist. LEXIS 208250 (W.D. Pa. Oct. 22, 2025) (same); *Smit Patel v. Almodovar*, Civil Action No. 25-15345 (SDW), 2025 U.S. Dist. LEXIS 212112 (D.N.J. Oct. 28, 2025) (same); *Buestan v. Cory Chu*, Civil Action No. 25-16034 (MEF), 2025 U.S. Dist. LEXIS 211879 (D.N.J. Oct. 21, 2025) (same); *Lomeu v. Soto*, No. 25cv16589 (EP), 2025 U.S. Dist. LEXIS 209240 (D.N.J. Oct. 23, 2025) (finding Petitioner’s mandatory detention under § 1225(b)(2) in violation of the laws of the United States and ordering Respondents to immediately release Petitioner); *Maldonado v. Cabezas*, Civil Action No. 25-13004, 2025 U.S. Dist. LEXIS 208752 (D.N.J. Oct. 23, 2025) (same); *Soto v. Soto*, No. 25-cv-16200, 2025 U.S. Dist. LEXIS 207818 (D.N.J. Oct. 22, 2025) (same); and *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 U.S. Dist. LEXIS 190052 (D.N.J. Sep. 26, 2025).

42. And specifically, this Court has emphatically rejected the new interpretation. *See Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025); *Demirel v. Federal Detention Center Philadelphia*, et al., No. 25-5488, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025).

43. Finally, a co-equal District Court in the Central District of California has certified a bond eligible class of “[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.” *Maldonado Bautista et al. v. Santacruz Jr. et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dkt. 82 at 15).

44. *Maldonado Bautista* held that, for the bond-eligible class, 8 U.S.C. § 1226(a) is the appropriate governing authority, not § 1225(b)(2) (*Maldonado Bautista*, Dkt. 81 at 14-16) and expressly extended that relief to the entire bond-eligible class (*Maldonado Bautista*, Dkt. 82 at 14).

45. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As this court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

46. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

47. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph

(E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at \*7.

48. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

50. The BIA’s interpretation “would render the phrase ‘seeking admission’ in 8 U.S.C. § 1225(b)(2)(A) mere surplusage.” *Lopez Benitez*, 2025 WL 2371588, at \*6. That section applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez*, 2025 WL 2371588, at \*6; *Diaz Martinez*, 2025 WL 2084238, at \*2. The BIA’s interpretation makes all applicants for admission subject to mandatory detention, leaving the “seeking admission”

criterion unnecessary and violating the rule against surplusage. *Lopez Benitez*, 2025 WL 2371588, at \*6; *Diaz Martinez*, 2025 WL 2084238, at \*6.

51. Instead, the phrase “seeking admission” indicates that § 1225(b)(2)(A) applies to people who are taking “some sort of present-tense action,” in other words, coming or attempting to come into the United States. *Diaz Martinez*, 2025 WL 2084238, at \*6; see also *Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that “the use of the present progressive tense . . . denotes an ongoing process”). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute.

52. Applying § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the government’s longstanding practice, which “can inform a court’s determination of what the law is.” *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA’s abrupt change in policy. *Maldonado*, 2025 WL 2374411, at \*11.

53. Finally, as discussed below, the BIA’s interpretation of § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the Court should presume that Congress “did not intend the alternative which raises serious constitutional doubts” and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005). Therefore, § 1226(a), which permits bond hearings, not § 1226(b)(2)(A), which does not, governs the detention of people like Petitioner.

54. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting

*Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001); see also *id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. See *id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

55. Absent adequate procedural protections, substantive due process requires a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; accord, e.g., *Torralba v. Knight*, No. 2:25-cv-1366, 2025 WL 2581792, at \*12 (D. Nev. Sept. 5, 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at \*4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

56. In *Demore*, the Supreme Court upheld the constitutionality of § 1226(c) against a facial challenge, specifically citing evidence that had been before Congress about noncitizens with criminal convictions. 538 U.S. at 518-520. This justification does not apply, however, to noncitizens with no criminal record whatsoever who have lived in the community for years. The

broad policy set forth in *Matter of Yajure Hurtado* is not reasonably related to the purposes of prevent danger to the community or flight risk and violates substantive due process.

57. Additionally, 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). In determining the proper procedure to protect a detained noncitizen’s procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (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.” *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth C’ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara*, 10 F.4th at 28; *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Here, the BIA’s interpretation of the statute to require detention of all people in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

58. First, the “importance and fundamental nature” of an individual’s liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); see also *Ashley*, 288 F. Supp. at 670 (“[F]reedom from confinement is a liberty interest of the highest constitutional import.”). 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).

59. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the petitioner, “could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone.” 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated “alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to maintain her employment.” 10 F.4th at 28.

60. Second, absent any individualized bond hearing, people will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether their detention is necessary. See, e.g., *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at \*8 (D. Minn. May 21, 2025) (noting that lack of consideration of “individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals’ private rights”); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because “the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention”). A bond hearing would have significant value because it is designed to assess the individualized facts of each case and determine whether less restrictive measures can fulfill the same goals.

61. Finally, the burden on the government of returning to the longstanding practice of holding bond hearings for people like Petitioner does not outweigh the liberty interest at stake. To the contrary, the government has an interest in “minimizing the enormous impact of

incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854; see also *Hernandez-Lara*, 10 F.4th at 33 (noting that “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings, and weighs in favor of additional procedural protections.

62. At these bond hearings, due process requires that the Government bear the burden of proof by clear and convincing evidence. See *Gayle*, 12 F.4th at 332 (“[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof.”). “A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision.” *German Santos v. Warden Pike C’ty Corr. Facility*, 965 F.3d 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing, it is placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York C’ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), abrogated on other grounds by *Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th

at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

### EXHAUSTION OF ADMINISTRATIVE REMEDIES

63. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. See *Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at \*2 (M.D. Pa. Aug. 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by immigration detainees is a prudential benchmark which is not compelled by statute.”).

64. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

65. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.

66. The Board of Immigration Appeals has issued a published decision holding that people like Petitioner who entered the United States without inspection and therefore have not been admitted are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). Immigration judges

and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1). Exhaustion before the BIA would therefore be futile.

67. Further, the BIA does not have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4 th 485, 500 (3d Cir. 2025); see also *Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be futile because Petitioner raises a constitutional due process claim. *Qatanani*, 144 F.4 th at 500.

### FACTS

68. Petitioner has resided in the United States since May 2019 and lives in Philadelphia, Pennsylvania. See Exhibit “A”.

69. Petitioner maintained continuous physical presence in the United States for a period of two years after his May 2019 entry into the United States and as such is not subject to Expedited Removal provisions under INA § 235.3(b)(1).

70. Petitioner has no aggravated felony convictions and is not subject to Expedited Removal provisions under INA § 238(b).

71. Petitioner entered without inspection with his father, Pablo Hernan Lara Enamorado (A# , fleeing persecution by gang violence in their native country. Petitioner was a minor child at the time he entered the United States with his father. Petitioner and father were briefly detained after entry but released after two days. *See Id.*

72. Petitioner and father were placed into immigration court proceedings after arriving in the United States.

73. An Immigration Judge dismissed Petitioner’s immigration on January 4, 2024, due to a defective Notice to Appear. *See* Dismissal Order of the Immigration Judge, attached hereto as Exhibit “B”.

74. After dismissal from Immigration Court, Petitioner timely filed an I-589, Application for Asylum and for Withholding of Removal, with U.S. Citizenship and Immigration Services (“USCIS”). *See* Exhibits A, E.

75. Petitioner’s asylum application has not yet been adjudicated. Upon information and belief, Petitioner has complied with all directions and requirements of asylum and immigration officers to the best of his ability since submitting his application.

76. On December 9, 2025, Petitioner was driving from a hardware store in South Philadelphia where he had been picking supplies for work, when he was apprehended and detained by ICE. Petitioner is now believed to be detained at FDC Philadelphia.

77. Petitioner is lawfully and gainfully employed. *See* Employment Documents, attached hereto as Exhibit “C”.

78. Petitioner is a husband and a father to a U.S. citizen child, a three-year-old boy. *See* Child’s Birth Certificate, attached hereto as Exhibit “D”.

79. Petitioner has no criminal record. Petitioner is neither a flight risk nor a danger to the community.

80. Petitioner has significant motivation to remain in the community in order to have his asylum case properly adjudicated. Petitioner has strong community ties, being married, gainfully employed and a father to a young child with U.S. citizenship. Petitioner has previously appeared at all appearances where he was required; and has dutifully been pursuing his application for asylum. *See, e.g.*, Petitioner’s Notice of and Receipt for Petitioner’s Annual Asylum Fee, attached hereto as Exhibit “E”. Petitioner is pursuing his lawful application for asylum and has no reasonable motive to interfere with immigration proceedings by eloping before his application is adjudicated.

81. Following Petitioner's arrest and detention at FDC Philadelphia, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

82. Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*.

83. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

84. Petitioner meets every element of the definition of the bond-eligible class certified in *Maldonado Bautista et al. v. Santacruz Jr. et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dkt. 81 & 82). Petitioner entered the United States without inspection, was not apprehended at the time of his entry but was later encountered on December 9, 2025 by ICE agents, and is not subject to mandatory detention under the criminal grounds of § 1226(c), the expedited removal provisions of § 1225(b)(1), or a final order of removal under § 1231.

85. Even if Petitioner was previously apprehended at the border but later released, the language of Element Two, which uses the future tense ("were not or will not be apprehended upon arrival"), must be construed in the context of the detention underlying the class litigation: the current arrest and detention being challenged. The declaratory relief granted in *Maldonado Bautista* is focused on the status of the noncitizen at the time of the "initial custody determination." When Petitioner was later apprehended in the interior and placed into the custody that is the subject of this habeas petition, he was not "apprehended upon arrival." Therefore, Petitioner satisfies Element Two and is entitled to the relief extended to the Bond Eligible Class under 8 U.S.C. § 1226(a).

**CLAIMS FOR RELIEF**

**COUNT I**

**Violation of the INA**

86. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

87. 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), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

88. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

**COUNT II**

**Violation of Due Process**

89. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

90. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

91. Petitioner has a fundamental interest in liberty and being free from official restraint.

92. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Eastern District of Pennsylvania while this habeas petition is pending;
- c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner;
- d. Declare that Petitioner's detention is unlawful;
- e. Restrain and enjoin the Respondents from detaining Petitioner under under 8 U.S.C. § 1225(b)(2) or from imposing any conditions of release not authorized under 8 U.S.C. § 1226(a);
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 10th of December, 2025.

/s/ Karen L. Hoffmann  
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Attorney for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S  
BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney and because Petitioner is detained at the Federal Detention Center, Philadelphia and is unable to himself verify the contents of this petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 10, 2025

/s/ Karen L. Hoffmann  
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Attorney for Petitioner

EXHIBIT	DOCUMENT DESCRIPTION
A	Petitioner's I-589
B	Dismissal Order of the Immigration Judge
C	Petitioner's Employment Documents
D	Petitioner's U.S. Citizen Child's Birth Certificate
E	Petitioner's Notice of and Receipt for Petitioner's Annual Asylum Fee