UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

REC'D DEC 15 2025

LEMUS-CALDERON, DANIEL,

Petitioner

v.

LEONARD ODDO, in his official capacity as the Facility Administrator of the Moshannon Valley Processing Center, TODD LYONS, et al.

Respondent
(name of warden or authorized person having custody of petitioner)

Case No. _____
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: DANIEL LEMUS-CALDERON

   (b) Other names you have used: _____

2. Place of confinement:

   (a) Name of institution: Moshannon ValleyProcessing Center

   (b) Address: 555 GEO Drive, Philipsburg, PA 16866

   (c) Your identification number: _____

3. Are you currently being held on orders by:

   ☑ Federal authorities ☐ State authorities ☐ Other - explain:

   DHS

4. Are you currently:

   ☐ A pretrial detainee (waiting for trial on criminal charges)

   ☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

   If you are currently serving a sentence, provide:

   (a) Name and location of court that sentenced you: _____

   (b) Docket number of criminal case: _____

   (c) Date of sentencing: _____

   ☑ Being held on an immigration charge

   ☐ Other *(explain)*: _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:

   ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

❒ Pretrial detention
☑ Immigration detention
❒ Detainer
❒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
❒ Disciplinary proceedings
❒ Other *(explain)*:

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Department of Justice.Executive Office Immigration review 625 Evans Street, Room 148A Elizabeth, New Jersey 07201

(b) Docket number, case number, or opinion number:

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:
Lack of Due Process, Denial of Bond since 12/8/25, I have a claim to US Citzenship, I do not have any felonys, I have an imminent removal hearing I NEED TRO DECEMBER 16, 2025 8:30A where the EOIR court is trying to unilaterally deport me as an asylum seeker AND I have been here for over 8 years in the USA.

(d) Date of the decision or action:

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

❒ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not appeal: It would be futile to appeal because the BIA will not provide me with bond or fair disposition of my case, see brief

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

❒ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☑ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☑ Yes ☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 06/12/2025

(b) Date of the removal or reinstatement order: 12/16/2025

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☑ No

If "Yes," provide:

(a) Kind of petition, motion, or application:

(b) Name of the authority, agency, or court:

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: CONSTITUTIONAL CLAIML DUE PROCESS VIOLATION B

serious criminal history, claim to citizenship no danger or flight risk. they refuse to follow law and keep saying

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

On 12.8.2025 I was denied opportunity for Bond hearing, Hurtado stops me from getting released on bond which is bad law. I have a claim to citizenship I am not a danger or flight risk all applications are paid The government will not provide me a bond with proper burden of proof on government for continued detention

(b) Did you present Ground One in all appeals that were available to you?

☑ Yes ☐ No

GROUND TWO: SUBSTANTIVE DUE PROCESS

violating my rights during these proceedings shifting improper burdens, subjecting me to expensive fees, making me fight my case detained without bond at a disadvtange and prejudice to me, not giving me time to pay my applications and submit evidence, trying to preemptively deport me before my final hearing

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Since the beginning of my case the court refuses to amend my pleadings to confirm and terminate the pprpceedin Judge is trying to ignore my claim for citizenship, my applications with my wife, legally and unjustly to force me to self deport since I have been present as a Unaccompanied minor and will not provide me with bond intentionally 10/28/2025 they ruled to ignore my citizenship claims through my father, 12/3 they refused to give me time to submit evidence to support my relief claims and termination

(b) Did you present Ground Two in all appeals that were available to you?

☑ Yes ☐ No

GROUND THREE: CLAIM TO CITIZNESHIP: INVALID PROCEEDING

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

My father was naturalized in 1996 while he was married to my mom but separated because he came to the USA as un unaccompanied minor, joined my fathers and before I was 18 I was entitled to Derivative citizenship or to allow my green card w my us wife to move forward fairly, but not in detention court.

(b) Did you present Ground Three in all appeals that were available to you?

☑ Yes ☐ No

GROUND FOUR: temporary restraining order injunctive relief

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

The Judge is hastily moving forward with my removal from this country as an "asylum seeker" they are grouping everyone into these categories to deport them. I am in a different category but all motions and requests have beer harshly denied by the judge. please stop this imminent hearing on December 16, 2025 as they try to deport me.

(b) Did you present Ground Four in all appeals that were available to you?

☑ Yes ☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Issue an order directing Respondents to show cause why the writ; Order the Immediate Release of Petitioner, ssue a writ of habeas corpus ordering Respondents to release Issue an order restraining the Immigration Court rom continuing am expedited removal proceedings on 12/16/25 @ 830

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

_____

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 12/10/2025

DANIEL LEMUS CALDERON

Signature of Petitioner

Signature of Attorney or other authorized person, if any

UNITED STATES DISTRICT COURT
DISTRICT OF EASTERN DISTRICT OF PENNSYLVANIA

LEMUS-CALDERON, DANIEL,

Petitioner,

v. **File No.**

JOHN TSOUKARIS, *in his official capacity as Field Office Director of Enforcement and Removal Operations Newark Field Office;* **MARCOS CHARLES,** *in his official capacity Acting Executive Associate Director, Enforcement and Removal Operations;* **TODD LYONS** *in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement;* **BRIAN MCSHANE,** *in his Official capacity as acting Philadelphia Field Office Director for U.S. Immigration and Customs Enforcement,* **KRISTI NOEM** *in her official capacity as Secretary of the Department of Homeland Security;* **PAMELA BONDI** *in her official capacity as United States Attorney General,* **LEONARD ODDO,** *in his official capacity as the Facility Administrator of the Moshannon Valley Processing Center;*

Respondents.
_____/

PETITION FOR WRIT OF HABEAS CORPUS

This is a petition for a writ of habeas corpus filed on behalf of Petitioner and/or detainee, **LEMUS-CALDERON, DANIEL** (A[redacted], who seeks immediate relief, release and a Temporary restraining order (TRO) staying or terminating his upcoming final removal hearing on December 16, 2025 due to his continued unlawful detention without bond. Petitioner, **LEMUS-CALDERON, DANIEL**, entered the United States on May 21, 2007, when he was 16 years old as an Unaccompanied minor and gained status through his father who is a Unite States Citizen. Petitioner is currently being held in custody by Respondent's at an immigration facility located at

Moshannon Valley Processing Center Facility 555 GEO Drive Philipsburg, PA 16866. Nonetheless, this petition should also extend under the Jurisdiction of the Respondent's in New Jersey where the field office directors and immigration judge has asserted jurisdiction over Petitioner's legal proceedings.

Petitioner brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging his detention by the Department of Homeland Security (DHS). He argues his mandatory detention by DHS pursuant to 8 U.S.C. § 1225(b) (2), a provision of the Immigration and Nationality Act (INA), without bond is based on an incorrect interpretation of the statute by decisions including *Matter of YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025).* Petitioner also contends that mandatory detention without bond under § 1225 is a violation of his due process rights. Further, Respondent requests a **Temporary Restraining Order for the DECEMBER 16, 2025 @ 830AM Removal Hearing** to prevent his continued removability proceedings and stay this deportation until his release. Petitioner has a claim to being a US Citizen and Petitioner's current marriage to his US Citizen wife and six US Children which entitles him to relief. On December 8, 2025, Petitioner awaited to have an opportunity to be heard by and once again denied bond under the guise of lack of jurisdiction by Immigration Judge. Respondent's DHS/Immigration Judge completely avoided the entire submissions of bond, letters from his family community, friends, disposition showing probation for the misdemeanor M1 offense from 2023 which is no longer a danger, and other evidence demonstrating lack of flight risk and lack of danger. Petitioner has been in custody unjustly all this time in light of these facts. Further, the TRO is needed to stop Respondent's from removing Petitioner and engage in improper burden shifting.

I, Petitioner, DANIEL LEMUS-CALDERON, has demonstrated my entitlement to my N-600 Derivative Citizenship relief and an alternative I-485 Petition for Adjustment of Status through my US Citizen wife. Defendants like Petitioner's would be better suited

for

a non-detained court where there is an extreme increase in costs and extra filing fees while I am detained which strains me and my family ($1500 filing fees for the court). Petitioner's detention is no longer warranted for a legitimate government purpose at government expense since it is likely Petitioner is to be granted his relief with more time to pay his filing fees submit evidence, submit the medical exam and not facing expedited removal. It is the position of Respondent's that they are not bound to District court decisions the Immigration Courts are intentionally turning a blind eye to the existing case law. Respondents are utilizing the superiority of a DHS and BIA agency interpretation to uphold continued mandatory detention with the wrong burden of proof during bond proceedings . This is a violation of Petitioner's Due Process Rights. Further, ordering another Bond hearing will prove to be futile because the Respondent's refuse to take notice of the Petitioners claims to citizenship, his alternative applications for adjustment of status, they refuse to grant him more time to complete these applications so they are adjudicated with time or with a fair bond. It would be futile to expect the Immigration Judge's to provide Petitioner with a fair bond hearing as they will not put the proper burden of proof on the government to prove why Petitioner's continued detention is necessary when he is not a danger or flight risk.

Petitioner seeks an order from this Court confirming that his continued and prolonged detention without bond is unlawful; also to order Petitioner's release from all Respondents custody, and a TRO enjoining the December 16, 2025 Individual Final removal Hearing (where the Judge unfairly indicated that she plans on entering a removal hearing on the day of the hearing). Respondent's to direct the Immigration Court to cancel or postpone the Individual hearing for December 16, 2025, be stayed until Respondent's comply with this order; and in order to avoid a removal order and for which Respondent's refuses to postpone for good cause according to the BIA and case law. *The Respondent's are willfully refusing to enforce due process.*

I. CUSTODY

1. Petitioner, **DANIEL LEMUS-CALDERON,** is in the physical custody of Respondent's Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement (USICE), the Department of Homeland Security (DHS) aka ("ERO and Field Office Respondents").

2. Respondent, **LEONARD ODDO** is the Warden of the facility Moshannon Valley Detention Center in Phillipsburg, Pennsylvania. At the time of the filing of this petition, Petitioner is still detained there. Petitioner is under the direct control of Respondents and their agents including in Elizabeth New Jersey and Newark Field Office.

3. Respondents, the ERO and Field Office Respondents in Philadelphia, York, Pennsylvania and Elizabeth and Newark, New Jersey DHS Field Offices work in concert and have a **pattern and practice** of unilaterally moving detainees to different locations and outside districts with the sole purpose of creating barriers to detainees appeals, causing detainees motions to be filed with the improper Immigration courts, causing filings to be rejected due to the one-sided DHS transfer by form I-830, and with the purpose of causing a unilateral change of venue without an Immigration Judge's court Order (circumventing the regulations).[1]

4. Further, this improper forum shopping is utilized to cause a lack of notice or opportunity to challenge by detainees situated like Petitioner to be heard, known as the ("Improper Forum Shopping Transfer Practice").

5. One of the major reasons why the District Court should enjoin both the New Jersey and Pennsylvania Field office Respondent's is because the Respondents are acting in concert, it is an

[1] Furthermore, the EOIR court Administrators are also participating in this unilateral forum shopping by rejecting properly filed motions in the court under the guise that ERO and Field Office Respondent's moved the Petitioner's to another causing delays in submissions, communications, varying deportation officers and challenges riddled with due process violations.

established pattern and they have purposely availed themselves to both jurisdictions by expanding their detention operations in between multiple states like New York and Pennsylvania (and also New Mexico and Texas).[2]

6. This unilateral transfer of detainees in between the two districts is why all Respondents are properly included. Further, this court has power because these courts are under the jurisdiction of the Third circuit court of appeals.

II. JURISDICTION

7. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570.

8. This Court has jurisdiction under 28 U.S.C. 2241, art. I, § 9, cl. 2 of the United States Constitution ("Suspension Clause") and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.

9. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

10. Venue lies in the United States District Court for the Eastern District of Pennsylvania the judicial district in which most Respondents reside and where Petitioner is detained. 28 U.S.C. § 1391(e).

[2] Petitioner sheds light on this because this internal practice must be halted for reasons such as the requirement of an Immigration Judge's order for change of venue supported by law and for the Petitioner's inability to respond to an entirely different forum with no connections to that venue, different circuit law, and no access to witnesses or evidence.

11. Venue is also proper in the United States District Court for New Jersey the judicial district in which other Respondents reside and where Petitioner's legal custody is determined. 28 U.S.C. § 1391(e).

IV. PARTIES

12. Petitioner is a national and citizen of Mexico and has been present in the United States since May 21, 2007, at the age of 16 an Unaccompanied Minor (UAC).

13. He is detained by Respondents pursuant to 8 U.S.C. § 1231 and 1225(b), which allegedly permits the DHS to detain aliens, such as Petitioner, pending the execution of the alien's removal order which is set for December 16, 2025 at 8:30 am in front of IJ Tamar Wilson Elizabeth Detention center New Jersey.

14. Respondents, MARCOS CHARLES, the Acting Executive Associate Director of Enforcement and Removal Operations; TODD LYONS the Director of U.S. Immigration and Customs Enforcement; BRIAN MCSHANE the Philadelphia Field Office Director for U.S. Immigration and Customs Enforcement and JOHN TSOUKARIS as Field Office Director for Enforcement and Removal Operations (ERO) Newark Field Office in Newark the Field Office Directors for Detention and Removal, USCIS, DHS ("ERO and Field Office Respondent's)

15. ERO and Field Office Respondents are the custodian officials acting within the boundaries of the judicial district of the United States Court for the state of Pennsylvania.

16. Respondent's KRISTI NOEM by virtue of being the Secretary of the Department of Homeland Security and PAMELA BONDI and as United States Attorney General are agents of all Respondent's department and agency heads, custodians and they provide control, dominion and directives that provide basis to continue to detain Petitioner.

17. Respondent, LEONARD ODDO is the warden of the Moshannon Valley detention facility in Phillipsburg Pennsylvania. He is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the State of Pennsylvania, Eastern District.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. Petitioner has exhausted his administrative remedies to the extent required by law. He has fully cooperated with Respondents and has not delayed or obstructed his detention. Accordingly, Exhaustion "is a matter of sound judicial discretion" when not required by statute. *Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 970 (3d Cir. 1980).

19. Petitioners seeking habeas relief under § 2241 are generally required to exhaust their claims through administrative procedures. *Callwood v. Enos*, 230 F.3d 627, 643 (3d Cir. 2000). But a petitioner does not need to "exhaust administrative remedies where the issue presented involves only statutory construction." *Vasquez v. Strada*, 684 F.3d 431, 433-34 (3d Cir. 2012).

20. Because there are no applicable statutory exhaustion requirements [the issues] in this case hinge[] entirely on the statutory construction of 8 U.S.C. §§ 1225 and 1226, this exception applies. Additionally, "where exhaustion is not clearly mandated by statute, a futility exception exists." *Duvall v. Elwood*, 336 F.3d 228, 234 (3d Cir. 2003).

21. The exception is appropriate when the decisionmakers in the administrative process will almost certainly reject petitioner's requested relief. *See, e.g., Bradshaw v. Carlson*, 682 F.2d 1050, 1052 (3d Cir. 1981). Here, Requiring Petitioner to exhaust in the administrative process through the BIA when removal through a removal order is imminent, prior to litigating his habeas claims before this Court and approved N-600 Citizenship application.

22. Therefore, filing an appeal with the BIA and or asking for a stay or bond with the Judges would be futile. Currently, it is apparent and commonly known that immigration court

proceedings are constrained by the BIA's decision in *Hurtado* and "would almost certainly result in the BIA persisting in its earlier rulings and applying those rulings to [Ndiaye] ...." *See, e.g., Del Cid v. Bondi*, No. 3:25- CV-00304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025). Petitioner is not required to exhaust his claims.

23. Petitioner's only remedy is by way of this judicial action.

VI. STATEMENT OF FACTS

24. Petitioner, Daniel Lemus was born on [redacted] to his parents, Jose Lemus and Maria Rosa Calderon who were married at the time of his birth. ***See Birth certificate.***

25. Jose Lemus is the biological father of Petitioner, and the father is also a naturalized US Citizen since August 1996.

26. Petitioner's father naturalized when he was 6 years old. According to the father's Naturalization Certificate, he was a citizen before Petitioner turned 18 years old in 1996. **See Naturalization Certificate.**

27. It is undisputed through the Marriage Certificate and Naturalization of the US Citizen father that Petitioner's parents meet the conditions for N-600 naturalization process.

28. As a minor, Petitioner, Daniel Lemus fled his country and went to live in his father's custody since he had a fear or being harmed back home at his mom's.[3] **See Affidavit of Mother, Rosa Calderon.**

29. Petitioner, Daniel Lemus subsequently entered the USA on May 21, 2007, as a UAC.

30. Petitioner, Daniel Lemus resided in the interior of the USA for basically his entire adulthood; over 18 years present in the United States.

[3] Petitioner, Daniel Lemus also has another sibling who is a Legal permanent Resident (LPR) Blanca Lemus Calderon and their parents were separated thereafter.

31. On January 11, 2023, Petitioner pled guilty to Pennsylvania DUI charge (75 § 3802 §§ D1ii*). Petitioner received only probation for the offense and has no other criminal convictions that would subject him to mandatory confinement.[4]

32. Respondents issued the Notice to Appear (charging document) on June 12, 2025, eighteen (18) years after Petitioner, Daniel Lemus had been present in the USA.

33. In the NTA DHS it was alleged that it was "unknown" the allegations about the date, time manner and entry of Petitioner's entry.

34. In addition, the charges in the charging documents 212(a)(6)(A)(i) alien not admitted or an alien present and 212(a)(7)(A)(i) and immigrant not in possession of valid document *were not admitted* by Petitioner.

35. Respondents have not properly carried their burdens of proofs throughout the hearings including denying Petitioner any type of ability for Bond and fast tracking his removal proceedings.

36. Petitioner to date has disputed and not conceded to the pleadings because he has a current N-600 and I-485 Adjustment of Status available by his US Citizen wife which was discovered during the course of his immigration attorney's representation and representation.

37. Petitioner, has struggled to obtain a fair, streamlined removal hearing on the merits because the Respondents are violating his rights and denying him bond eligibility.

[4] Matter of Torres-Varela, 23 I. & N. Dec. 78 (BIA 2001); Matter of Lopez-Meza, 22 I&N Dec. 1188, 1194 (BIA 199) (noting that DWI alone is not a CIMT).

38. On August 9, 2025, DHS introduced a I-213 that lists a series of dismissed and unprosecuted license traffic violations which appear prejudicial and misleading regarding Respondent's criminal history.[5]

39. Respondent's though the Immigration courts, have been ignoring the disputed written pleadings and requiring Respondent to submit relief in the form of a I-589 like if he just came into the country to use this same basis to fast track a removal order instead of acknowledging Petitioner's Citizenship status eligibility.

40. To date, Respondent does not have any dangerous convictions, factual circumstances or conduct to warrant his continued detention or make him "dangerous.

41. In addition, he has provided substantial rehabilitation documents. Respondent does not deserve to be detained for this case because all of the factors weigh in favor of his release, the affidavits by witnesses and family members, and including his viable petition.

VII. JURISDICTION AND REVIEW POWER OF DISTRICT COURT

In *Reno v. Am.-Arab Anti Discrimination Comm.,* 525 U.S. 471 (1999) ("AADC"), the Supreme Court rejected the "unexamined assumption that § 1252(g) covers the universe of deportation claims—that it is a sort of 'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review.'" AADC, 525 U.S. at 482. Instead, what § 1252(g) "says is much narrower.[6] Further, the Supreme Court held that it is "implausible that the mention of three discrete events along the road to deportation *was a shorthand way of referring to*

[5] Not being able to challenge the pleadings and the allowance of prejudicial information that cannot be cross examined is also a Practice of Respondent's that currently causes prejudice to Petitioner and his substantive due process rights. *See Baliza* v. INS, 709 F.2d 1231 (9th Cir. 1983) holding that form I- 213s and affidavits, when the accuracy of the document is disputed by the alien, are not admissible when the right to cross-examination is thwarted, unless the declarant is unavailable and reasonable efforts were made to produce the declarant.

[6] That provision only applies to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders." *Id.* (emphasis added).

all claims arising from deportation proceedings." *Id.* Finally, the Supreme Court indicated that § 1252(g) was intended to insulate executive discretion in deciding whether or not to undertake those three discrete actions (commencement of proceedings, adjudication of cases, and execution of removal orders). *Id.* at 483–87 (calling § 1252(g) a "discretion-protecting provision"); *see also Tazu v. Att'y Gen.* U.S., 975 F.3d 292, 297 (3d Cir. 2020) ("As the Supreme Court has noted, § 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.") (quotation marks and citation omitted) (emphasis added). The Executive Branch in interpreting law and burdens of proofs must take note of the appellate court review, controlling authorities and case developments as persuasive arguments in all removal and custody hearings. Therefore, the court

The Court has jurisdiction under 28 U.S.C. § 2241(c)(3) to grant a writ of habeas corpus to a person in custody in violation of the Constitution, laws, or treaties of the United States. *Demore v. Kim*, 538 U.S. 510, 517 (2003). "[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., art. I, § 9, cl. 2). A habeas petitioner has "the burden of sustaining his allegations by a preponderance of evidence." *Walker v. Johnston*, 312 U.S. 275, 286 (1941). District Courts also have jurisdiction in "all civil actions arising under the Constitution, laws, or treaties of the United States" pursuant to 28 U.S.C. § 1331, and the ability to grant equitable relief in the absence of an exclusive statutory review scheme. *Semper v. Gomez*, 747 F.3d 229, 242 (3d Cir. 2014). *Lomeu v. Soto*, No. 25CV16589 (EP), 2025 WL 2981296, at *3 (D.N.J. Oct. 23, 2025).

VIII. CLAIMS FOR RELIEF

COUNT ONE CONSTITUTIONAL CLAIM

42. Petitioner alleges and incorporates by reference paragraphs 1 through 41 above.

43. Petitioners' detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

44. Federal district courts can grant a § 2241 habeas petition when a petitioner's detention in deportation proceedings is "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241; *Demore v. Kim*, 538 U.S. 510, 523 (2003)

45. ("[T]he Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." (citation and quotations omitted)). *Ndiaye v. Jamison*, No. CV 25-6007, 2025 WL 3229307, at *2 (E.D. Pa. Nov. 19, 2025).

46. Respondents have violated Petitioner's constitutional rights through his continued detention for over six months with a claim to Citizenship.

47. Respondents have violated Petitioner's constitutional rights by failing to provide him with a bond or release him due to lack of danger because he has a valid claim to this removal proceedings.

48. Respondents have violated Petitioner's constitutional rights by forcing him to accept allegations in the charging documents.[7]

49. Respondent's Have Engaged In A Pattern Or Practice Of Due Process Violations Utilizing Hurtado To Mandatorily Detain Petitioner Without Bond Per § 1225. The Respondent's are engaging in a pattern or practice of violating Petitioner's rights. Respondents have assumed and enforced this "legal fiction" of *Hurtado* to continue to ignore all the district court petitions being filed.

[7] The Petitioner did not concede to any of the allegations in the Notice to Appear charging document, and DHS also shifted the burden of proof, and the charges were sustained contrary to law.

50. The courts have held that the best statutory interpretation, consistent with The Supreme Court in *Jennings v. Rodriguez* succinctly described the difference between the statutory provisions at issue here, beginning with two situations immigration officials encounter in making admission or removal decisions.[8] *Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496, at *10 (D.N.J. Sept. 26, 2025) (holding, in a factually similar situation to Lomeu's detention, that the "Petitioner's mandatory detention is not authorized by § 1225, serves no legitimate purpose, and amounts to punitive detention, warranting habeas relief"); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (citation modified) ("Whereas § 1225 governs removal proceedings for 'arriving aliens,' § 1226(a) serves as a catchall ... § 1226(a) is the 'default rule' and 'applies to aliens already present in the United States' ... inclusion of both provisions ... is likely ... a way for Congress to capture noncitizens who fall outside of the specified categories"); *Barrera v. Tindall*, No. 25-541, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (holding the text of § 1225 is focused "on inspections for noncitizens when they arrive" and "suggest[s] that Section of 1225 is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States."). *Lomeu v. Soto,* No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025).

51. It is evident that *Hurtado* decision was wrongfully decided, and the Respondent's will not halt their reliance the BIA decision and will re-affirm this pretext to mandatorily detain petitioners in violation of due process.

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[8] ("The Government appears willfully blind to the operation of 8 U.S.C. § 1226(a)" by ignoring the statutory text that an alien may be arrested and detained on a warrant issued by the Attorney General pending a decision on removal); *Kostak*, 2025 WL 2472136, at *3 ("The *Jennings* analysis explains the necessity for both statutes by differentiating between the detention of arriving aliens who are seeking entry into the United States under Section 1225 and the detention of those who are already present in the United States under Section 1226"); *Mosqueda*, 2025 WL 2591530, at *5 ("The Court finds that the conflict is avoided by interpreting sections 1225(b)(2) and 1226(a) to apply to different sets of noncitizens—those "seeking admission" compared to those already in the country who are arrested and detained.") see *Lomeu v. Soto,* No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025).

52. This results in forced self-deportations and relinquishing of rights due to fear of prolonged detention for detainees like Petitioner, who have been in the country present more than 2 years and who have developed substantial ties.[9]

53. Therefore, the issue presented in *Hurtado* is a legal fiction applied to Petitioner who has resided in the interior of the United States for more than 18 years like this are not entitled even bond. As an initial matter, the Court need not defer to the BIA's decision in *Matter of Yajure Hurtado* that mandatory detention under § 1225(b)(2) applies to all applicants for admission, including those who have resided in the United States for years. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400-01 (2024).

54. Notably, the overwhelming majority of district courts around the country that have considered this issue have rejected *Hurtado* and found the detention of noncitizen residing within the United State under § 1225 is unlawful.[3] As of November 19, 2025, at least three courts within the Eastern District of Pennsylvania have ruled against the Government's current interpretation of § 1225(b)(2). *See Cantu-Cortes v. O'Neil*, No. 25-cv-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025) (Kenney, J.); *Kashranov v. Jamison*, No. 2:25-cv-5555, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025) (Wolson, J.); *Demirel v. Fed. Det. Ctr.*, No. 25-cv-5488 (E.D. Pa. Nov. 18, 2025) (Diamond, J.) (Dkt. No. 11). While these court decisions are not binding on the Respondent's court, respondents argue that they do; they are persuasive. **See *Ndiaye v. Jamison*, No. CV 25-6007, 2025 WL 3229307, at *4 (E.D. Pa. Nov. 19, 2025).**

[9] Unlike *Thuraissigiam, Rodriguez-Acurio* was paroled into the interior of the United States, has continuously resided in New York for more than four years, has developed deep community ties, was granted five years of work authorization from 2025 to 2030, and therefore cannot be analogized to a person stopped within 25 yards of the border. *See Make the Rd.*, 2025 WL 2494908, at *12 (reasoning that while the "government's power 'is at its zenith at the international border,'" the Constitution requires the government to "turn square corners" in the country's interior, which "means affording due process").

55. Section 1225(b)(1) is not a lawful basis for Petitioner's detention, for substantially the same reasons set forth in this Court's decision in *Bethancourt*, the Court finds that since Petitioner has resided within the United States for several years prior to his arrest that: (1) his continued detention under § 1225(b)(1) violates his procedural due process rights, and (2) he can only be properly detained under § 1226 where he would be entitled to an individualized bond hearing (which was already denied. *See Bethancourt Soto v. Soto*, No. 25-CV-16200, 2025 WL 2976572, at *8 (D.N.J. Oct. 22, 2025).

56. In any event, Petitioner's continued mandatory detention under § 1225(b)(2)(A) violates his procedural due process rights.

57. As for remedy's it has already been held before in another district nearby that "[a]s Petitioner's arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore [Petitioner] is to immediate release him and enjoin the Government from further similar transgressions," As Judge Sweet recently emphasized, "ours is a government of laws and not of men," *Lopez,* 2018 WL 2932726, at *1 (citing John Adams, Novanglus Papers, No. 7 (1774)) (issuing similar relief). *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019) (*see, e.g.*, *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 366, 371–73 (S.D.N.Y. 2019).[10] *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 486 (S.D.N.Y. 2025) (releasing petitioner and explaining that the court "cannot credit Respondents' new position as to the basis for ... detention, which was adopted *post hoc* and raised

[10] ("[T]he Supreme Court has repeatedly upheld prisoners' rights to challenge the constitutionality of their detentions, and allow[ed] courts to implement corrective remedies, regardless of whether there were other bases for the petitioners to be subsequently detained."); the Court declines to allow Respondents to transform an unlawful detention into a lawful one through alternative, retrospective, *post hoc* justification presented mid-litigation, as doing so would give the Government a free pass to violate a person's statutory and constitutional rights first and search for authority later, *see, e.g.*, *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379, at *7 & n.4 (E.D. Mich. Aug. 29, 2025) (citing cases) ("The Court cannot credit this new position that was adopted *post-hoc*, despite clear indication that Lopez-Campos was not detained under this provision.");

for the first time in this litigation"); *Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 46 n.8 (M.D. Pa. 2025) (releasing petitioner and discussing the impropriety of allowing the government to proceed on "*post hoc* justifications for detention"); *cf. Marshall v. Lansing*, 839 F.2d 933, 943–44 (3d Cir. 1988). ("[W]hen reviewing an administrative agency's decision, a court is generally not seeking some hypothetical rational support for the agency's action.

58. A court must review the agency's actual on-the-record reasoning process ... not a *post hoc* rationalization, or agency counsel's in-court reasoning.") *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019). While these court decisions are not binding on this Court, they are persuasive.

59. Here, at the bond hearing which was denied by Respondent's in the Immigration court on December 8, 2025 for lack of jurisdiction under *Matter of Yajure Hurtado* has been discredited and abrogated in this District. Respondent explicitly informed the Immigration Judges and DHS, "that § 1225(b)(2)(A) applies only when a noncitizen is affirmatively "seeking admission" at or near the border or a port of entry, [this] comports with the ordinary meaning of the statutory text. It gives meaning to the words "seeking admission," and remains faithful to Jennings, where the Supreme Court explained that § 1225(b) "applies primarily to aliens seeking entry into the United States," those who are "seeking admission into the country." *Jennings*, 583 U.S. at 285, 289, 297. *See BETHANCOURT SOTO v. SOTO* et al, No. 1:2025cv16200.

60. This is **as opposed to § 1226, which "generally governs the process of arresting and detaining . . . aliens already in the country pending the outcome of removal proceedings."** *Id.* at 288–89. In addition the language of § 1225(b)(2)(A) supports limiting this section to noncitizens who are just arriving or have recently arrived in the country. The subsection requires mandatory detention in the context of (1) "[i]nspection" by an "examining immigration officer"

of (2) an "applicant for admission" as defined above, who is (3) "seeking admission." 8 U.S.C. § 1225(b)(2)(A).[11] These terms demonstrate this section is meant to apply to noncitizens arriving in the country, not to those who already reside here.[12]

61. There is a lack of substantive due process occurring in the EOIR and as such these courts truly belong subject to the interpretation of the Judicial branch and true courts of Justice where there are no overriding conflicts of interests and lack of impartiality. Petitioner's bond motion and motions various times mentioned to the Immigration Judges Tamar Wilson and Richard Bailey in the Elizabeth detention Center about the district court and change of law and the submissions were ignored, and Petitioner told the district court decisions and orders are NOT controlling or persuasive. It is futile to go to these Judges when they act at Respondent's behest and disregard the law intentionally for the agency purpose.

COUNT TWO CONSTITUTIONAL CLAIM

62. Petitioner alleges and incorporates by reference paragraphs 1 through 61 above.

63. Petitioners' detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

64. Due process requires a bond hearing and burden of proof on the government for continued detention.

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[11] The phrase "seeking admission" connotes some affirmative, present-tense action. This active construction implies affirmative action by a noncitizen is needed and is inconsistent to apply this phrase to all noncitizens already residing in the United States. The title and headings of 8 U.S.C. § 1225 also confirm this interpretation. Courts have "long considered that 'the title of a statute and the heading of a section are tools available for the resolution of a doubt' about the meaning of a statute.'" *Dubin v. United States*, 599 U.S. 110, 121 (2023) (citations and internal quotation marks omitted).

[12] The title of 8 U.S.C. § 1225 is "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." "The titles, headings, and other provisions of § 1225 repeatedly refer to 'inspection,' and 'inadmissible arriving aliens,' and 'examin[ations],' which typically 'occur at ports of entry, their functional equivalent, or near the border.' " Soto, 2025 WL 2976572, at *6 (citing Zumba v. Bondi, No. 25- cv-14626, 2025 WL 2753496, at *8 (D.N.J. Sept. 26, 2025)).

65. Respondents have violated Petitioner's constitutional rights through improperly designating the burden of proof in bond hearing to solely Petitioner's to prove he is a danger instead of the government for continued detention.

66. Respondent's Pattern of Bond Burden Shifting to Detainees.

67. Because a Bond hearing will not be fair or futile, Petitioner's Immediate release is necessary. The federal courts have held that "The Fifth Amendment's Due Process Clause mandates that "[n]o person shall ... be deprived 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). The Supreme Court has held that the Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693, 121 S.Ct. 2491.

68. At least one circuit has already held that, in § 1226(a) custody hearings, **the Constitution mandates that (1) the burden must be placed on the government and (2) the standard is clear and convincing evidence**. *See Singh*, 638 F.3d at 12034; *see also Doe v. Smith*, Civil No. 17-11231-LTS, 2017 WL 6509344, at *6 (D. Mass. Dec. 19, 2017) (noting that "in some circumstances, due process requires noncitizens whose detention has become unreasonably prolonged to be afforded bond hearings at which [the government] bears the burden of proving dangerousness or risk of flight by clear and convincing evidence").[13]

[13] *see generally Mary Holper*, The Beast of Burden in Immigration Bond Hearings, 67 Case W. Res. L. Rev. 75 (2016) (arguing that the current burden allocation does not comport with the Due Process Clause). Pensamiento v. McDonald, 315 F. Supp. 3d 684, 690–91 (D. Mass. 2018).

69. The Burden Of Proof Is On DHS To Prove Continued Detention. Respondent has shown he is rehabilitated, deserves release, was sentenced to probation for his first time offense and complied with conditions from the criminal court. Respondent should be released and removed off the detained docket.

70. Currently, In seeking custody review, it is the respondent's burden to demonstrate that his release "Would not pose a danger to property or persons, and that [he] is likely to appear for any future proceedings." 8 C.F.R. §1236.1I(8). However, the federal courts made it clear already: "[W]e remain unconvinced by the government's contention that we should not view an analysis of the Matthews factors as ultimately controlling. We therefore conclude that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a). *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021).

71. **Therefore, in several contexts, the government must justify detention by clear and convincing evidence.** *See, e.g., Addington,* 441 U.S. at 433, 99 S.Ct. 1804 (involuntary civil commitment to mental hospital); *Foucha*, 504 U.S. at 86, 112 S.Ct. 1780 (confinement of insanity acquittees). Other significant liberty interests are similarly protected: The government must satisfy the clear and convincing standard in order to terminate parental rights, *see Santosky*, 455 U.S. at 748, 102 S.Ct. 1388, **deport a noncitizen**, *see Woodby v. Immigr. & Naturalization Serv.*, 385 U.S. 276, 277, 87 S.Ct. 483, 17 L.Ed.2d 362 (1966), **or denaturalize an individual**, *see Chaunt v. United States*, 364 U.S. 350, 353, 81 S.Ct. 147, 5 L.Ed.2d 120 (1960) See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021).

72. It In order to continue detaining noncitizen seeking § 2241 habeas relief during pendency of [omit] removal proceedings, under INA's discretionary detention provision, procedural due process **required government to either prove by clear and convincing evidence that she posed**

danger to community or prove by preponderance of evidence that she posed flight risk; there was heightened risk of prejudicial error from placing burden on detainee to prove she was danger, and government had ample and better access to evidence of dangerousness, but probable value of heightened standard of proof was less apparent regarding flight risk, as detainee had knowledge of family and community ties, place of residence, length of time in United States, and record of employment, ***abrogating Matter of Adeniji***, 22 I. & N. Dec. 1102 (B.I.A. 1999); *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006); Matter of R-A-V-P-, 27 I. & N. Dec. 803 (B.I.A. 2020). U.S. Const. Amend. 5; Immigration and Nationality Act § 236, 8 U.S.C.A. § 1226(a); 28 U.S.C.A. § 2241. *See Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021).

73. The Courts found that "Currently, the alien must prove "to the satisfaction of the [IJ]" that he is neither dangerous nor a flight risk. *Guerra,* 24 I. & N. Dec. at 40. If that same burden were placed on the government, the Court is not persuaded that that standard would violate the Due Process Clause.

74. Regardless of whether or not Chevron deference applies to the BIA's interpretation of the statute, the issue before the Court is whether the Constitution requires the government to bear the burden of proof in § 1226(a) bond hearings. **A Chevron argument about statutory interpretation does not change the constitutional analysis**. A new bond hearing with the correct burden of proof is therefore required under the Due Process Clause of the Fifth Amendment.

75. It is more favorable that he complete his adjustment of status with USCIS and family members outside of detention if he does not have a criminal record other than traffic violations. At the core of procedural due process is a person's right to notice and the opportunity to be heard. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (*quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Due process does not require Respondent to meet a heightened burden of proof that

he is not dangerous; DHS must prove why to keep wasting taxpayer dollars should continue to justify a detention for a person who has not been convicted of a serious crime conviction and has substantial relief available.

76. Further, there is also support in the regulations that IJs and the Board have authority to **dismiss and terminate proceedings**[14] as a part of their overall role as EOIR adjudicators.[15] Moreover, the Court can use its *sua sponte* authority to rescind [a] Respondent's removal order and reopen his case if it would be manifestly unjust not to do so. See 8 C.F.R. § 1003.23(b)(1); *Matter of Yewondwosen*, 21 I&N Dec. 2015, 1027. *Also see Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997), regarding the responsibilities of the parties and the Immigration Judge with respect to evidence in the record. Generally, the Immigration Judge has the duty to make certain that the record is complete. See *EOIR IJ benchbook*, available at https://www.justice.gov/eoir/page/file/988046/dl?inline=

COUNT THREE STATUTORY CLAIM
CLAIM TO US CITIZENSHIP

77. Petitioner alleges and incorporates by reference paragraphs 1 through 76 above.

78. Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution.

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[14] Under *Mathews v. Eldridge* balancing test for analyzing noncitizen detainee's procedural due process challenge, as § 2241 habeas petitioner, to her prolonged detention pending removal proceedings pursuant to INA's discretionary detention provision, private interest affected was substantial deprivation of detainee's liberty that weighed heavily in her favor, in support of requiring government to bear burden of proving that she was danger to public or flight risk in order to continue her detention, where she was incarcerated alongside criminal inmates in jail for over ten months, she was separated from her fiancé, she was unable to maintain her employment, and she would have been detained for over two years but for habeas relief ordered by district court. U.S. Const. Amend. 5; Immigration and Nationality Act § 236, 8 U.S.C.A. § 1226(a); 28 U.S.C.A. § 2241.

[15] For example, (1) 8 C.F.R. § 1239.2(f), where a respondent is eligible for naturalization, has a pending naturalization application, and has exceptionally appealing or humanitarian factors in their case; (2) under 8 C.F.R. § 214.14(c)(1)(i) where a respondent has a U visa petition pending USCIS's adjudication; and (3) under 8 C.F.R. § 214.11(d)(1)(i) where a respondent has a T visa petition is pending USCIS's adjudication. Termination can be sought for many reasons.

79. Petitioner has a claim that he is a US Citizen and entitle to Termination of these deportation proceedings as a matter of law. Pursuant to *Matter of Baires*, 24 I&N Dec. 467 (BIA 2008), Respondent has acquired automatic citizenship and is Prima Facie eligible for his relief. "As to the construction of former section 321(a)(3) in *Matter of Baires*, [the court] continued to consider our original analysis to be sound.

80. In *Baires* [the court] relied on a decision of the Commissioner of the former Immigration and Naturalization Service, a policy statement in a Department of State Passport Bulletin, and an interpretation of the statute in the Adjudicator's Field Manual of the U.S. Citizenship and Immigration Services. *See Matter of Baires,* 24 I&N Dec. at 469–70. Each of those sources supported the conclusion that a child may derive citizenship if the parent is awarded legal custody of the child after that parent's naturalization, as long as both actions occur before the child reaches the age of 18 years.

81. The **BIA and third Circuit in** reviewing this issue, also examined the ***legislative history of the statutory provision. As originally enacted, the statute [they] stated the following***:

> That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: Provided, That such naturalization or presumption takes place during the minority of such child: And provided further, that the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.[16] *Act of Mar. 2, 1907, Pub. L. No. 59-193, § 5, 34 Stat. 1228, 1229.*

[16] In Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the Supreme Court held that where a statute is silent or ambiguous, an agency's interpretation should be given deference if it is based on a permissible construction of the statute. The Court has also emphasized that the Chevron principle of deference must be applied to an agency's interpretation of ambiguous statutory provisions, even where a court has previously issued a contrary decision and believes that its construction is the better one, provided that the agency's interpretation is reasonable. National Cable Telecomms. Ass'n v. Brand X Internet Servs.,
545 U.S. 967, 982 (2005) ("A court's prior judicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.").

Thus, the statute had no legal custody requirement and only provided that the naturalization must have occurred while the child was a minor. 26 I&N Dec. 197 (BIA 2013). They were also not aware of case law that is contrary to the holding in *Matter of Baires. The BIA held that* it continues to believe **that Congress' intent was to accord a child United States citizenship, regardless of whether the naturalized parent acquired legal custody of the child before or after the naturalization, so long as the statutory conditions were satisfied before the child reached the age of *18.* This is a question of fact that has already been established at the primary stage and prima facie eligibility is supported** by Affidavits of the parties in Respondent's case, in the following undisputed facts:

1. The Affidavit of Petitioner demonstrates that he entered the USA as a 16 year old minor to go live with his father and facing persecution in his home country;
2. The Affidavit of Respondent's Mother, Marriage Certificate and Father's Naturalization Certificate prove that Respondent's father was legally married to Respondent's mother and born in wedlock, and naturalized before Petitioner's 18 birthday.
3. Respondent's mother was physically separated from her husband when Respondent left to the United States.
4. Respondent was under the age of 18 and present in the USA when his father naturalized on August 14, 1996.

82. The Third Circuit, in concluding that "legal separation must occur prior to naturalization" for a child to derive citizenship in *Jordon v. Attorney General* of U.S., 424 F.3d at 330, simply reiterated the language it had used in *Bagot*. However, the court in *Bagot* did not address the question before us now because the sequence of the legal separation of the parents and the naturalization of one parent was not at issue. In fact, the court stated that the case turned only on whether the father had "legal custody" of the child. *Bagot v. Ashcroft*, 398 F.3d at 257. Before addressing that key issue of legal custody, the court summarized the requirements of former section 321(a)(3) of the Act, noting that the child must first establish that "his father was naturalized after

a legal separation from his mother," a fact that had been conceded. *Id.* (emphasis added). Thus, the court was apparently paraphrasing the statute by using the word "after" as a synonym for the word "when." However, it engaged in no analysis of the statute's use of that term in deciding the case.

83. The Third Circuit's judicial construction of former section 321(a)(3) in Bagot was not concerned with the temporal occurrence of the legal custody of the child, and there is no indication that it interpreted the statute to be unambiguous. *See In re Price*, 370 F.3d 362, 369 (3d Cir. 2004). This physical and legal custody is not the entire analysis, and the important language is that this occurred before Respondent turned 18 which he did. Counsel requests briefing on this issue. years." Generally, a child must be lawfully admitted for permanent residence to derive U.S. citizenship under former INA 321.

84. However, former INA 321 also states that the child may derive citizenship if the child "begins to reside permanently in the United States" after the parent or parents' naturalization while under the age of 18 years. Former INA 320 also states that the child may derive citizenship if the child "begins to reside permanently in the United States while under the age of eighteen.

85. Petitioner is a US Citizen and the Proceedings against him should be terminated with granting of his application because he has shown the requisite prima facie relief before the Respondents.

COUNT FOUR INJUNCTIVE RELIEF
TEMPORARY RESTRAINING ORDER

86. Petitioner alleges and incorporates by reference paragraphs 1 through 85 above.

87. Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution.

88. A party "seeking a preliminary injunction must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary injunctive relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted).

89. "[T]he moving party must establish the first two factors and only if these gateway factors are established does the district court consider the remaining two factors." *Greater Phila. Chamber of Com. v. City of Phila.*, 949 F.3d 116, 133 (3d Cir. 2020) (internal quotation marks omitted). If the gateway factors are met, "[t]he court then determines ... if all four factors, taken together, balance in favor of granting the requested preliminary relief." *Id.* (internal quotation marks omitted).

90. Respondents will continue to blatantly ignore and keep Petitioner detained when the federal Courts have already overwhelmingly found that INA § 1226 applies to noncitizens [omit] who have been residing in the country, while § 1225 is reserved for newly arriving noncitizens. This is the first reason this Petitioner succeeds on the merits of his motion because he came in over (18) years in the USA. He has went to school here, he has a US Citizen wife and children and second, Petitioner has a claim to citizenship the first two factors irreparable harm (deportation, removal order and denial of release) and his many claims to status in the USA that defeat the charging documents factor #2 met.

91. On the irreparable harm, balance of the equities, and public interest factors, the parties agree these factors favor granting relief if [a Petitioner] prevails on the merits of his motion. *See also Del Cid*, 2025 WL 2985150, at *18 (finding irreparable harm is proven when a petitioner is detained unlawfully under § 1225(b)(2)); *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir. 1994) ("As a practical matter, if a [petitioner] demonstrates both

a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the [petitioner].").

92. Because Petitioner prevails on all four factors, he is entitled to injunctive relief.

93. "[T]he most elemental of liberty interests [is] the interest in being free from physical detention by [the] government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

94. Petitioner has been unlawfully detained under § 1225(b)(2) and his continued mandatory detention violates due process. Because a bond hearing is unnecessary, this Court should order his immediate release." *Ndiaye v. Jamison*, No. CV 25-6007, 2025 WL 3229307, at *8 (E.D. Pa. Nov. 19, 2025).

95. The final hearing on December 16, 2025 in Elizabeth New Jersey Immigration Court will prevent irreparable harm to this appeal, my status and my claims.

COUNT FIVE
ATTORNEY FEES

95. Petitioner alleges and incorporates by reference paragraphs 1 through 94 above.

96. Petitioner's continued detention and the condition of his confinement violates the Immigration and Nationality Act and the U.S. Constitution.

97. Petitioner has been subjected to poor housing conditions, dietary issues with the food in the facility, unjust and racial discrimination by Respondent's guard and officers.

98. The Petitioner who has claims to not being subjected to this cruel treatment of being detained in deplorable conditions and categorized as a person just entering the country is unjust.

99. If Petitioner prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue an order directing Respondents to show cause why the writ should not be granted;
3. Order the Immediate Release of Petitioner, DANIEL LEMUS-CALDERON;
4. Issue a writ of habeas corpus ordering Respondents to release Petitioner, DANIEL LEMUS-CALDERON on his own recognizance or under parole, a low bond or reasonable conditions of supervision not including an ATD device;
5. Issue an Order finding that Petitioner is entitled to adjudication of his N-600 Application for Citizenship as A matter of law;
6. Issue an order restraining the Immigration Court and DHS from continuing am expedited removal proceedings on December 16, 2025 and Stay or Terminate proceedings until Petitioner's release;
7. Award Petitioner reasonable costs and attorney's fees; and,
8. Grant ~~any~~ other relief which this Court deems just and proper.

Respectfully submitted,

By: _____

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VERIFICATION OF COMPLAINT

I, DANIEL LEMUS CALDERON. hereby certify that I am familiar with the case of the named petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

DANIEL LEMUS CALDERON

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

REC'D DEC 15 2025

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

LEMUS-CALDERON, DANIEL

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DANIEL LEMUS CALDERON 101 E. Evergreen St. Apt 210 West Grove, PA 19390 Tel: 484-757-7962

DEFENDANTS

LEONARD ODDO, in his official capacity as the Facility Administrator of the Moshannon Valley

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

555 GEO Drive, Philipsburg, PA 16866 814 768 1200

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		INTELLECTUAL PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 196 Franchise				☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
				☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:			☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☒ 463 Alien Detainee		FEDERAL TAX SUITS	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 871 IRS—Third Party 26 USC 7609	☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty	IMMIGRATION		☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:	☐ 462 Naturalization Application		
	☐ 448 Education	☐ 540 Mandamus & Other	☐ 465 Other Immigration Actions		
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 2241

Brief description of cause:
habeas corpus release from immigration detention, stay of December 16, 2025 removal hearing, Bond request and denial

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
12/15/2025

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.