

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

WILMIN VASQUEZ-ROSARIO,

Petitioner,

v.

KRISTI NOEM, Secretary
of the U.S. Department of Homeland
Security, in her official capacity;
**U.S. DEPARTMENT OF HOMELAND
SECURITY; PAMELA BONDI**
Attorney General of the United States,
in her official capacity; **TODD M.
LYONS**, Acting Director, U.S. Immigration
and Customs Enforcement, in his official
capacity; **DAVID O'NEILL**, Director of
the Philadelphia Field Office of the U.S.
Immigration and Customs Enforcement, in
His official capacity; and **JAMAL L.
JAMISON**, Warden of the Federal Detention
Center in Philadelphia, in His Official Capacity)

Respondents.

Case No. 2:25-cv-07427

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C.
§ 2241**

ORAL ARGUMENT REQUESTED

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

EMERGENCY FILING TO PRESERVE JURISDICTION

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner Wilmin Vasquez Rosario, A# [REDACTED], respectfully petitions this Honorable Court for a writ of *habeas corpus* to remedy Petitioner's unlawful detention by Respondents, as follows:

I. INTRODUCTION

1. This Petition challenges Petitioner's unlawful civil detention by Immigration and Customs Enforcement ("ICE") following his parole into the United States pursuant to INA § 235(b), 8 U.S.C. § 1182(d)(5). *See Exhibit A.*
2. Petitioner was apprehended by the Department of Homeland Security ("DHS") following his voluntary surrender at the U.S. border located in Murrieta, California, on or about November 14, 2022. Petitioner remained in DHS custody for eight (8) days, and was thereafter paroled into the United States under DHS's discretionary parole authority. *Id.* Regardless of the manner of entry, DHS's discretionary decision to grant parole terminated any detention authority under 8 U.S.C. § 1225(b). *See Rios Porras v. O'Neill*, No. 25-6801, slip op. at 3–4 (E.D. Pa. Dec. 22, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *6–7 (E.D. Pa. Nov. 14, 2025).
3. Following his parole pursuant to 8 CFR § 212.5(b)(5), Petitioner sought additional immigration relief by filing an Application for Asylum and

Withholding of Removal on the bases of political opinion, membership in a particular social group and protection under the Convention Against Torture with U.S. Citizenship and Immigration Services (“USCIS”), underscoring DHS’s recognition that Petitioner was properly present in the United States following his release and eligible to pursue relief through established statutory processes.

4. Petitioner was detained at the border, and received a Notice to Appear for a hearing on October 2, 2024, at the Philadelphia Immigration Court. *Id.* at **Exhibit A**. Before that hearing could occur, on December 22, 2023, DHS filed an updated Notice to Appear including continuation page Form I-862, charging that Petitioner was subject to removal under INA § 212(a)(7)(A)(i)(I) and § 212(a)(6)(A)(i). *Id.*
5. On March 4, 2024, Petitioner received a notice for a hearing on April 8, 2025. **See Exhibit B**. This hearing was later cancelled by the Court. **See Exhibit C**. On April 11, 2025, in lieu of the scheduled hearing, Petitioner received a scheduling notice with filing deadlines included; no date was set for a hearing in his case. **See Exhibit D**.
6. Once DHS paroles a noncitizen into the United States, any subsequent detention authority, if it exists, arises under 8 U.S.C. § 1226(a) and requires an individualized bond hearing. *Rios Porras*, slip op. at 4–5; *Demirel v. Fed.*

Det. Ctr. Phila., No. 25-5488, 2025 WL 3218243, at *2–3 (E.D. Pa. Nov. 18, 2025).

7. Although Petitioner was not granted *formal* parole prior to his release in 2022, DHS nonetheless exercised discretionary parole authority over Petitioner under 8 U.S.C. § 1225(b) by releasing him from detention. DHS did not submit formal parole documentation, but Petitioner was nevertheless released from custody.
8. Because DHS previously exercised its parole authority over Petitioner by releasing him in 2022, its present detention of Petitioner is governed by 8 U.S.C. § 1226(a). The expiration or termination of parole does not revive mandatory detention under § 1225(b). As such, Petitioner is entitled to an individualized review of his ongoing detention.
9. Nonetheless, ICE detained Petitioner in front of his home on the morning of December 31, 2025, without identifying any lawful statutory basis for his detention and without providing a bond hearing, in violation of the Immigration and Nationality Act and the Fifth Amendment’s Due Process Clause.

See Zadvydas v. Davis, 533 U.S. 678, 690 (2001).
10. In addition to Constitutional concerns regarding unlawful detention, Petitioner also risks negative ramifications of failing to appear or meaningfully participate in the criminal proceedings pending against him. If unable to aid in his own

defense due to his detention, Petitioner will likely be subject to a *de facto* conviction which will undoubtedly harm his claims for immigration relief.

11. Because of his unlawful detention, Petitioner was unable to appear before the Philadelphia Municipal Court Trial Commissioner for a hearing in his criminal case, which was scheduled for December 31, 2025 at 9:00 A.M. As such he could not convey and accept the Commonwealth's offer to admit him into the ARD program and may suffer harsher punitive measures as a result.
12. Were Petitioner not unlawfully detained, he could have appeared in his criminal hearing and accepted the offer for ARD, effectively erasing the offense from his record upon completion.

II. PARTIES

13. Petitioner Wilmin Vasquez Rosario is a noncitizen currently detained by Respondents in the Eastern District of Pennsylvania. DHS issued a Form I-200 "Warrant for Arrest of Alien" on December 31, 2025. Agents of Immigration Customs and Enforcement ("ICE") subsequently detained Petitioner in front of his home, despite his prior parole pursuant to INA § 212(d)(5).
14. Respondent Jamal L. Jamison is named in his official capacity as the Warden of the Federal Detention Center–Philadelphia ("FDC Philadelphia"), located in Philadelphia, Pennsylvania. Respondent Jamison has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and

is a proper respondent to this habeas petition. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004).

15. Respondent David O'Neill is named in his official capacity as the Philadelphia Field Office Director for ICE Enforcement and Removal Operations (“ERO”). In this capacity, Respondent O'Neill is responsible for the administration and management of ICE detention and enforcement operations within the Eastern District of Pennsylvania and exercises legal control over Petitioner's custody.
16. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is responsible for the administration and enforcement of federal immigration laws, including detention determinations, and is a legal custodian of Petitioner. Respondent Lyons's office is located at 500 12th Street, S.W., Washington, D.C. 20536.
17. Respondent Department of Homeland Security (“DHS”) is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act (“INA”), including the detention, parole, and removal of noncitizens. DHS exercises ultimate authority over ICE and Petitioner's detention.
18. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws and for

Petitioner's detention. Secretary Noem is the ultimate legal custodian of Petitioner. Her office is located at the U.S. Department of Homeland Security, Washington, D.C. 20528.

19. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States and senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration of Appeals (BIA).

III. JURISDICTION AND VENUE

20. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.
21. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
22. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

23. Venue is proper in this District because the Petitioner is detained in this district.

28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

IV. STATEMENT OF FACTS

24. Petitioner Wilmin Vasquez Rosario, A# [REDACTED], is a noncitizen from the Dominican Republic, who is in ICE custody pursuant to DHS's order, and is currently detained at FDC in Philadelphia, Pennsylvania.

25. Petitioner was affirmatively released into the United States on or about November 14, 2022, pursuant to INA § 212(d)(5), 8 U.S.C. § 1182(d)(5), following his apprehension by Customs and Border Protection ("CBP") near the border. *Id.* at **Exhibit A**.

26. Following his release from ICE custody in November of 2022, Petitioner fully complied with all conditions of release.

27. In early December 2024, Petitioner filed an affirmative application for asylum with U.S. Citizenship and Immigration Services ("USCIS"). *See Exhibit E*.

28. After years of adherence to immigration conditions and establishing a presence in the community, Petitioner was abruptly detained in front of his home without prior notice, without a bond hearing, and without any contemporaneous explanation of the statutory basis for this action.

29. Petitioner currently has one (1) misdemeanor criminal offense pending, for which he has already been offered admission to the county's Accelerated

Rehabilitative Disposition program. Upon completion of the program, the charge will be dismissed and he will not have any criminal convictions.

30. To the extent ICE is asserting detention authority under 8 U.S.C. § 1225(b), as it has repeatedly done in materially identical cases throughout this District, such detention is unlawful because DHS already exercised parole authority under INA § 212(d)(5).

31. Because Petitioner is being detained without clear statutory authorization and in violation of the Fifth Amendment's Due Process Clause, Petitioner requests that this Court issue the writ of *habeas corpus* and order Petitioner's immediate release, or at minimum, an individualized bond hearing under 8 U.S.C. § 1226(a).

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. 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.”).

33. 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).
34. 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 the plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.
35. Exhaustion is not required here because Petitioner entered the United States as an arriving alien and is therefore subject to mandatory detention without opportunity for bond or parole under although Petitioner is in pending removal proceedings, DHS did not file a charging document until the date Petitioner was detained. As such, Petitioner had no opportunity to seek relief through the Immigration Court prior to his detention.

36. Although DHS may have issued a Notice to Appear, it is well-established that removal proceedings do not commence unless and until a formal charging document is filed with the Immigration Court. 8 C.F.R. § 1003.14(a); *Pereira v. Sessions*, 585 U.S. at 215–16. Because DHS did not file the charging document with EOIR until the day it ordered ICE to detain Petitioner, he had no opportunity to seek alternative relief and now bears the risk of a swift transfer to another facility.

37. Additionally, administrative relief would be futile in this matter, as recent decisions by the Board of Immigration Appeals (“BIA”) have rendered bond hearings through the Immigration Courts illusory. The BIA has maintained its position that an Immigration Judge lacks jurisdiction to conduct a bond hearing or provide any relief, rendering administrative exhaustion futile.

38. Finally, the Immigration Court and/or BIA do not have jurisdiction to adjudicate Petitioner’s present claim. The Third Circuit has held that the BIA does not have jurisdiction to adjudicate Constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Here, Petitioner raises a Constitutional due process issue, making his claim ripe for adjudication by this Court, rather than the Immigration Court. Therefore, any administrative proceedings would be futile. *Qatanani*, 144 F.4th at 500.

VI. LEGAL FRAMEWORK

A. PAROLE UNDER INA § 236(A)

Noncitizens Who Entered Without Inspection (EWI) and Were Released Into the Interior

39. The Government frequently asserts that noncitizens who entered without inspection (“EWI”) are categorically subject to mandatory detention under 8 U.S.C. § 1225(b) based solely on the manner of their entry. Courts have repeatedly rejected that position. Entry without inspection, standing alone, does not permanently subject a noncitizen to mandatory detention under § 1225(b).
40. As courts in the Eastern District have emphasized, the legally operative event for determining detention authority is not the manner of initial entry, but DHS’s affirmative decision to release the individual into the United States. See *Rios Porras v. O’Neill*, No. 25-6801, slip op. at 3–4 (E.D. Pa. Dec. 22, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025). Once DHS releases an EWI noncitizen into the interior—whether under supervision, on recognizance, or after service of a Notice to Appear—the individual is no longer “seeking admission” within the meaning of § 1225(b), and detention authority, if any, must arise under 8 U.S.C. § 1226(a).
41. In *Maldonado Bautista v. Santacruz*, the United States District Court for the Central District of California squarely rejected DHS’s position that noncitizens

who entered without inspection remain categorically subject to mandatory detention under § 1225(b) after release into the United States. The court held that noncitizens already present in the United States who entered without inspection and were not apprehended upon arrival are detained—if at all—under 8 U.S.C. § 1226(a) and are therefore entitled to individualized bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, slip op. at 12–16 (C.D. Cal. Nov. 20, 2025), final judgment entered, slip op. at 10–11 (C.D. Cal. Dec. 18, 2025).

42. The court further certified a nationwide Bond-Eligible Class consisting of:

All 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*, No. 5:25-cv-01873-SSS-BFM, slip op. at 2, 15 (C.D. Cal. Nov. 25, 2025), clarified and incorporated into final judgment, slip op. at 2 (C.D. Cal. Dec. 18, 2025).

43. Importantly, in entering final judgment, the court expressly clarified that the Board of Immigration Appeals’ decision in *Matter of Yahure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), “cannot be squared” with its statutory analysis and that *Yahure Hurtado* is “no longer controlling,” as “the legal conclusion underlying the decision is no longer tenable.” *Maldonado Bautista*, No.

5:25-cv-01873-SSS-BFM, slip op. at 6 (C.D. Cal. Dec. 18, 2025). The court emphasized that detention authority must be determined by DHS's custodial decisions—specifically, whether DHS elected to release the noncitizen into the interior—and not by the manner of entry alone. *Id.* at 6–8.

44. Accordingly, even where DHS argues that a noncitizen's EWI status places them outside the scope of § 1226(a), *Maldonado Bautista* confirms that such individuals are bond-eligible once released and that *Yahure Hurtado* cannot be relied upon to deny access to a bond hearing.
45. Accepting the Government's contrary theory—that all EWI noncitizens remain permanently subject to § 1225(b)—would effectively eliminate § 1226(a) for a broad class of individuals Congress plainly intended to place within the discretionary detention regime. Courts have rejected that interpretation as inconsistent with the INA's text, structure, and statutory design. See *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *9 (E.D. Pa. Nov. 18, 2025); *Kashranov*, 2025 WL 3188399, at *10.
46. Accordingly, once an EWI noncitizen has been released into the United States, any subsequent detention authority arises—if at all—under 8 U.S.C. § 1226(a), which requires individualized consideration and access to a bond hearing.

D. The INA Establishes Two Distinct and Mutually Exclusive Detention Regimes

47. The statutory structure of the Immigration and Nationality Act (“INA”) establishes two distinct and mutually exclusive detention regimes governing noncitizens during removal proceedings. Mandatory detention under 8 U.S.C. § 1225(b) applies to noncitizens who are “*seeking admission*” at or near the border and remain in the inspection process. By contrast, 8 U.S.C. § 1226 governs discretionary detention of noncitizens who are *already present in the United States* pending a decision on removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (distinguishing § 1225(b), which applies to noncitizens “seeking admission,” from § 1226, which governs noncitizens “already in the country”).
48. Courts have consistently recognized that these provisions “can be reconciled only if they apply to different classes of aliens.” *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025) (quoting *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019)); see also *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *5 (E.D. Pa. Nov. 18, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025).
49. A noncitizen may not be simultaneously subject to both detention schemes. Once the Department of Homeland Security (“DHS”) affirmatively releases a noncitizen into the United States—whether through humanitarian parole under

INA §212(d) or, release on recognizance under INA §236(a), 8 U.S.C. § 1226(a)—the individual is no longer subject to the mandatory detention framework of INA §235(b), 8 U.S.C. § 1225(b). At that point, any subsequent detention authority arises, if at all, under § 1226, which provides for discretionary detention and access to an individualized bond hearing. *See Rios Porras v. O'Neill*, No. 25-6801, slip op. at 4–5 (E.D. Pa. Dec. 22, 2025).

50. As explained in the Argument section below, DHS’s attempt to reclassify a noncitizen as subject to mandatory detention under § 1225(b) after an affirmative release into the interior finds no support in the INA’s text or structure and has been uniformly rejected by courts.

B. 8 U.S.C. § 1225(B) DOES NOT APPLY AFTER PAROLE

51. Section 1225(b) applies only to individuals who are seeking admission and have not been admitted or paroled. 8 U.S.C. § 1225(b).

52. Once DHS paroles a noncitizen into the United States, § 1225(b) no longer governs detention authority. DHS may not later treat the same individual as an “arriving alien” subject to mandatory detention. *Rios Porras*, slip op. at 4–5.

53. Courts in this District have repeatedly rejected the Government’s attempt to re-invoke § 1225(b) after parole. *See, e.g., Kashranov v. Jamison*, 2025 WL

3188399, at *5–6 (E.D. Pa. Nov. 14, 2025); *Ndiaye v. Jamison*, 2025 WL 3229307, at *3–4 (E.D. Pa. Nov. 19, 2025).

VII. ARGUMENT

A. PETITIONER’S DETENTION VIOLATES THE IMMIGRATION AND NATIONALITY ACT

i. Sections 1225(b) and 1226 Are Mutually Exclusive Detention Provisions.

The Immigration and Nationality Act establishes two distinct and mutually exclusive detention regimes governing noncitizens during removal proceedings: mandatory detention under 8 U.S.C. § 1225(b) and discretionary detention under 8 U.S.C. § 1226. These provisions “can be reconciled only if they apply to different classes of aliens.” *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025) (quoting *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (Att’y Gen. 2019)); see also *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *5 (E.D. Pa. Nov. 18, 2025); *Kasbranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025).

Section 1225 governs inspection and detention at or immediately following attempted entry into the United States. It applies only to noncitizens who are both “applicants for admission” and “seeking admission.” 8 U.S.C. § 1225(b)(2)(A). When applicable, detention is mandatory and release is permitted only “for urgent humanitarian reasons or significant public benefit.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)).

Section 1226, by contrast, governs the arrest and detention of noncitizens already present in the United States pending a decision on removal. *Jennings*, 583 U.S. at 289. Detention under § 1226(a) is discretionary, and Congress expressly authorized release on bond or conditional parole after an individualized assessment. 8 U.S.C. § 1226(a)(2).

Critically, a noncitizen cannot be detained under both statutes at once. *Demirel*, 2025 WL 3218243, at *5; *Kasbranov v. Jamison*, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025). Once DHS places an individual within the § 1226 framework, whether by parole, release on recognizance, or other community-based supervision, it may not later invoke § 1225(b) to impose mandatory detention. *Id.* The question in every case, therefore, is which statutory framework governs the detention.

2. Section 1225(b)(2)(A) Applies Only When All Statutory Elements Are Satisfied

To trigger mandatory detention under § 1225(b)(2)(A), DHS must establish three independent statutory elements: (1) the individual is an “applicant for admission”; (2) the individual is “seeking admission”; and (3) the individual is not clearly and beyond a doubt entitled to be admitted. *Kashranov*, 2025 WL 3188399, at *6–7; see also *Anirudh v. McShane*, 2025 WL 3527528, at *10–11 (E.D. Pa. Dec. 9, 2025).

Courts in this District have repeatedly rejected the Government’s attempt to collapse the first two elements into one, explaining that doing so “disregards the plain meaning of the statute and violates the canon against surplusage.” *Kashranov*, 2025 WL 3188399, at *6–7; see *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–01 (2024) (courts must give effect to every statutory word).

As Judge Wolson explained, “applicant for admission” and “seeking admission” are distinct concepts, each of which must independently be satisfied. *Kashranov*, 2025 WL 3188399, at *7. Treating them as interchangeable would render one of Congress’s chosen phrases meaningless. *Id.*

3. “Seeking Admission” Is an Active, Border-Focused Concept That Does Not Apply to Individuals Already Living in the United States

The INA defines “admission” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). The phrase “seeking admission,” read in context and in accordance with ordinary meaning, refers to the active process of attempting to make such a lawful entry. *Kashranov*, 2025 WL 3188399, at *8–9.

Courts have emphasized that the present participle “seeking” denotes ongoing conduct, not a static legal classification. *Id.*; *Anirudh*, 2025 WL 3527528, at *11–12. Thus, § 1225(b)(2)(A) is directed at individuals who are at the border or immediately arriving, not those who have already entered and been released into the country. *Demirel*, 2025 WL 3218243, at *6–7.

As Judge Diamond explained, “[n]oncitizens who have resided in the country for longer periods do not ‘seek admission’ because they do not seek lawful entry. They have already entered the country.” *Demirel*, 2025 WL 3218243, at *6. Instead, such individuals are seeking a lawful means to remain, not to enter. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025).

Accordingly, even assuming *arguendo* that Petitioner qualifies as an “applicant for admission,” § 1225(b)(2)(A) still does not apply unless he is currently seeking admission, which he is not.

54. DHS’s detention of Petitioner under 8 U.S.C. § 1225(b) is unlawful because

DHS already exercised its parole authority under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5), thereby removing Petitioner from the statutory class governed by § 1225(b).

55. Section 1225(b) authorizes mandatory detention only for noncitizens who are seeking admission and who have not been admitted or paroled into the United States. 8 U.S.C. § 1225(b).

56. As the Eastern District of Pennsylvania recently explained in a materially identical case, DHS “cannot parole an individual into the United States and later claim that the same individual is ‘present without admission or parole.’” *Rios Porras v. O’Neill*, No. 25-6801, slip op. at 4 (E.D. Pa. Dec. 22, 2025). In *Rios Porras*, DHS apprehended the petitioner at the border, released him on parole, and then detained him years later at his home while asserting mandatory detention authority under § 1225(b). The court squarely rejected that theory, holding that parole is the legally operative act for detention purposes. *Id.* at 3–5.

57. Once parole is granted, detention authority—if any—arises under 8 U.S.C. § 1226(a), which governs the discretionary detention of noncitizens pending a

decision on removal and requires an individualized bond hearing. *Id.*; *Demirel v. Fed. Det. Ctr. Phila.*, 2025 WL 3218243, at *2–3 (E.D. Pa. Nov. 18, 2025).

Section 1226(a) does not authorize categorical or mandatory detention; rather, it permits release on bond or conditional parole after individualized consideration. 8 U.S.C. § 1226(a)(2).

58. Though the grant of parole does not change Petitioner’s entry status as an “arriving alien” for the purposes of determining removability, DHS’s exercise of parole authority over an “arriving alien” like Petitioner makes any subsequent detention subject to 8 U.S.C. § 1226(a)(2), rather than 8 U.S.C. § 1225(b).

59. Under U.S.C. § 1226(a), a noncitizen is eligible for custody redetermination unless there is evidence of their involvement with foreign terrorist groups or they present a danger to public safety and/or national security. 8 U.S.C. § 1227(a)(4)(A).

60. Because Petitioner does not fall within one of the categories enumerated in § 1227(a)(4)(A) and his current detention is governed by § 1226(a)(2), he is entitled to an individualized custody determination.

61. Here, DHS has provided Petitioner with no bond hearing at all, despite having paroled him into the United States. Because Petitioner remains categorized as an “arriving alien,” he cannot request bond or conditional parole through the

Immigration Court despite DHS granting him parole in the past. Detention without a bond hearing under these circumstances exceeds DHS's statutory authority and violates the plain language of the INA. See *Rios Porras*, slip op. at 4–5; *Demirel*, 2025 WL 3218243, at *3.

62. Regardless of the manner of entry, DHS's discretionary decision to grant parole terminated any detention authority under 8 U.S.C. § 1225(b). See *Rios Porras v. O'Neill*, No. 25-6801, slip op. at 3–4 (E.D. Pa. Dec. 22, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *6–7 (E.D. Pa. Nov. 14, 2025).

B. INITIAL BORDER APPREHENSION IS LEGALLY IRRELEVANT

63. The Government frequently argues that initial apprehension at or near the border permanently subjects a noncitizen to mandatory detention under § 1225(b), even after DHS has exercised parole authority. Courts have uniformly rejected that argument.

64. As multiple courts in this District have explained, initial apprehension is not the legally operative event for detention purposes. Rather, the operative event is DHS's affirmative decision to parole the individual into the United States. *Rios Porras*, slip op. at 3–4. Once DHS chooses parole, it cannot later erase the legal consequences of that decision by invoking a statute that applies only to individuals who have not been admitted or paroled. *Id.*

65. The Eastern District has repeatedly emphasized that DHS may not “toggle” between detention statutes based on enforcement preference. See *Kashranov v. Jamison*, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025) (“The government’s attempt to resurrect § 1225(b) after parole finds no support in the statutory text.”). In *Kashranov*, as here, DHS argued that the petitioner’s original border encounter justified continued mandatory detention notwithstanding parole. The court rejected that position, holding that once parole is granted, § 1225(b) no longer applies “regardless of where or how the individual was first encountered.” *Id.*
66. Accordingly, the fact that Petitioner was initially apprehended at the border in 2022 is legally irrelevant. DHS’s own discretionary act of parole governs the applicable detention framework, and that framework does not permit mandatory detention without a bond hearing.

C. PETITIONER’S CONTINUED DETENTION VIOLATES THE FIFTH AMENDMENT

i. Procedural Due Process

67. The Fifth Amendment’s Due Process Clause protects all “persons” within the United States—including noncitizens—from deprivation of liberty without due process of law. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Freedom from physical restraint “lies at the heart of the liberty that the Due Process Clause protects.” *Zadvydas*, 533 U.S. at 690.

68. At minimum, procedural due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before liberty is restrained. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In the immigration detention context, that principle is typically satisfied through an individualized bond hearing where the government must justify continued detention.

69. Petitioner received no such process. After being paroled into the United States and complying with all requirements for years, he was detained at his home without notice, without explanation, and without any hearing. DHS provided no individualized determination that detention was necessary and no opportunity for Petitioner to contest his confinement.

70. Courts in this District have found materially identical conduct to be procedurally unconstitutional. See *Rios Porras*, slip op. at 4–5 (finding detention without a bond hearing after parole violated due process). The absence of any hearing or individualized assessment creates a substantial risk of erroneous deprivation of liberty and fails even the most basic procedural requirements of the Fifth Amendment.

71. The due process violation is compounded by the absence of any administrative forum. Because of Petitioner’s status as an “arriving alien,” he is barred from receiving bond from an Immigration Judge. As a result, Petitioner has no means

to challenge his detention on the basis of his prior parole except through the instant petition.

ii. Substantive Due Process

72. Substantive due process imposes an independent constraint on civil detention.

Even where procedures are provided, detention must bear a reasonable relation to a legitimate governmental purpose and may not be arbitrary or punitive. *Zadvydas*, 533 U.S. at 690; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

73. In the immigration context, the Supreme Court has recognized only two legitimate purposes for civil detention: preventing flight and protecting the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003). Detention that does not reasonably further either purpose violates substantive due process.

74. Petitioner's detention serves neither. DHS itself determined that Petitioner was suitable for parole, and permitted him to live in the community for years. Petitioner complied fully by maintaining a stable address, being gainfully employed, regularly attending service at the Feltonville Seventh-day Adventist Church in Philadelphia, and building community ties through his decent character—conducts that demonstrate compliance, not flight risk. *See Exhibits*

F-J. There has been no individualized finding, or even allegation, that Petitioner poses a danger to the community.

75. Detention imposed under these circumstances is arbitrary. As the Supreme Court has cautioned, justification based on flight risk “is weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690.

Moreover, detention imposed without statutory authorization is itself substantively unconstitutional. *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005) (holding that detention beyond statutory limits violates due process).

76. Because DHS lacks statutory authority to detain a paroled individual without a bond hearing, Petitioner’s continued confinement is not merely excessive—it is unlawful and unconstitutional.

D. PETITIONER’S CONTINUED DETENTION VIOLATES THE SIXTH AMENDMENT

77. The Sixth Amendment provides that in criminal prosecutions, the accused “shall enjoy the right to a speedy and public trial... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”

78. Petitioner has one (1) misdemeanor criminal offense pending, for which he has already been offered admission to the county’s Accelerated Rehabilitative

Disposition program. Upon completion of the program, the charge will be dismissed and he will not have any criminal convictions.

79. Petitioner was summoned to appear before the Philadelphia Municipal Court Trial Commissioner on December 31, 2025 at 9:00 A.M.

80. Because DHS suddenly issued a warrant for his arrest the same day as his criminal hearing, Petitioner was detained and unable to appear in criminal court.

81. Petitioner's unlawful detention by DHS has infringed on his Sixth Amendment right to aid in his own defense, as he could not attend the proceeding on December 31, during which the District Attorney for the Commonwealth offered him admission to a non-trial resolution program.

82. If Petitioner accepts the Commonwealth's offer for non-trial resolution via the Accelerated Rehabilitative Disposition program, he will not end up with a conviction on his record, as successful completion of the program would allow Petitioner to have the charge expunged.

83. Now that DHS has detained Petitioner, he is unable to accept the offer for non-trial resolution, which will eventually terminate. As such, when Petitioner is released from detention he will have to address the criminal case without the benefits being offered to him presently.

84. The consequences of Petitioner's detention on his criminal matter are certain, as well as the resulting impact on Petitioner's application for asylum; if he is

unable to defend himself and take appropriate action in his criminal case, he will likely end up with a criminal conviction which will severely hamper his asylum case.

E. IN THE ALTERNATIVE, PETITIONER IS ENTITLED TO A BOND HEARING UNDER *MALDONADO BAUTISTA*

85. Even if this Court were to conclude that Petitioner is detained under 8 U.S.C. § 1225(b), which he is not, his continued detention without a bond hearing is independently unlawful under *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.).

86. On November 20, 2025, the United States District Court for the Central District of California granted partial summary judgment holding that noncitizens detained under circumstances identical to Petitioner's are properly detained under 8 U.S.C. § 1226(a) and therefore may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). On November 25, 2025, the court certified a nationwide Bond Eligible Class and expressly extended that declaratory judgment to all class members. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

87. Critically, on December 18, 2025, the court entered final judgment after finding that immigration courts and the Department of Homeland Security

were continuing to deny bond hearings and disregard the Court's declaratory relief. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, slip op. at 8–11 (C.D. Cal. Dec. 18, 2025) (entering final judgment pursuant to Fed. R. Civ. P. 54(b) based on evidence of agency noncompliance). The court expressly recognized that immigration judges had been instructed to continue following *Matter of Yajure Hurtado* despite the Court's ruling, and that such noncompliance created exigent circumstances and ongoing irreparable harm to detained class members. *Id.* at 8–9.

88. The *Maldonado Bautista* declaratory judgment, now a final judgment, holds that application of mandatory detention under § 1225(b)(2) to Bond Eligible Class members violates the Immigration and Nationality Act, and that such individuals are detained under § 1226(a) as a matter of law. *Maldonado Bautista*, 2025 WL 3289861, at *11. That judgment has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

89. Courts in the Eastern District of Pennsylvania have repeatedly relied on *Maldonado Bautista* in ordering release or bond hearings for similarly situated petitioners. See, e.g., *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *5 (E.D. Pa. Nov. 18, 2025); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528 (E.D. Pa. Dec. 9, 2025); *Ndiaye v. Jamison*, No. 25-6007, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025).

90. Accordingly, even under Respondents' erroneous theory of detention, Petitioner is entitled to immediate release, or at minimum, an individualized bond hearing under 8 U.S.C. § 1226(a) within seven days.
91. Where detention exceeds statutory or constitutional limits, habeas relief is appropriate. *Zadvydas*, 533 U.S. at 699–701.
92. Courts in this District regularly order immediate release or bond hearings in materially similar cases. *Rios Porras*, slip op. at 5; *Ndiaye*, 2025 WL 3229307, at *4.

VIII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act Unlawful Detention and Denial of Bond Hearing 8 U.S.C. §§ 1225(b), 1226(a)

93. Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein.
94. The mandatory detention provision at 8 U.S.C. § 1225(b) applies only to noncitizens who are seeking admission and who have not been admitted or paroled. It does not apply once the Department of Homeland Security ("DHS") has affirmatively exercised its discretionary authority to parole a noncitizen into the United States pursuant to INA § 212(d)(5), 8 U.S.C. § 1182(d)(5).

77. Petitioner was apprehended by the Department of Homeland Security (“DHS”) following his voluntary surrender at the U.S. border located in Murrieta, California, on or about November 14, 2022. Petitioner remained in DHS custody for eight (8) days, and was thereafter paroled into the United States under DHS’s discretionary parole authority. *Id.* Regardless of the manner of entry, DHS’s discretionary decision to grant parole terminated any detention authority under 8 U.S.C. § 1225(b). See *Rios Porras v. O’Neill*, No. 25-6801, slip op. at 3–4 (E.D. Pa. Dec. 22, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *6–7 (E.D. Pa. Nov. 14, 2025).

78. Following his parole pursuant to 8 CFR § 212.5(b)(5), Petitioner sought additional immigration relief by filing an Application for Asylum and Withholding of Removal on the bases of political opinion, membership in a particular social group and protection under the Convention Against Torture with U.S. Citizenship and Immigration Services (“USCIS”), underscoring DHS’s recognition that Petitioner was properly present in the United States following his release and eligible to pursue relief through established statutory processes.

79. Once DHS paroles a noncitizen into the United States, any subsequent detention authority—if it exists at all—arises under 8 U.S.C. § 1226(a) and requires an individualized bond hearing. *Rios Porras*, slip op. at 4–5; *Demirel v.*

Fed. Det. Ctr. Phila., No. 25-5488, 2025 WL 3218243, at *2–3 (E.D. Pa. Nov. 18, 2025).

80. Nonetheless, Respondents have detained Petitioner without providing a bond hearing and without identifying any lawful statutory basis for detention. Respondents' application of § 1225(b) to Petitioner is contrary to the plain language of the INA and violates 8 U.S.C. § 1226(a).

SECOND CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act Alternative Claim Under *Maldonado Bautista* 8 U.S.C. § 1226(a)

81. Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

82. In the alternative, even if this Court were to conclude that Respondents are detaining Petitioner under 8 U.S.C. § 1225(b)—which they may not—Petitioner's continued detention without a bond hearing is unlawful under *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.).

83. In *Maldonado Bautista*, the district court granted partial summary judgment holding that similarly situated noncitizens are detained under § 1226(a) and may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista v. Santacruz*, No.

5:25-cv-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025).

84. The court subsequently certified a nationwide Bond Eligible Class and extended declaratory relief to all class members. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).
85. On December 18, 2025, the court entered final judgment after finding that immigration courts and DHS were continuing to deny bond hearings and disregard the court’s declaratory relief. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, slip op. at 8–11 (C.D. Cal. Dec. 18, 2025). The court expressly recognized that such noncompliance created exigent circumstances and ongoing irreparable harm to detained noncitizens.
86. The declaratory judgment in *Maldonado Bautista*—now reduced to final judgment—has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Respondents’ continued detention of Petitioner without a bond hearing therefore violates the INA.

THIRD CLAIM FOR RELIEF

Violation of the Administrative Procedure Act Arbitrary, Capricious, and Contrary to Law Agency Action 5 U.S.C. § 706(2)

87. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

88. The Administrative Procedure Act (“APA”) requires courts to hold unlawful and set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
89. Respondents’ detention of Petitioner under § 1225(b), despite DHS’s prior grant of parole and binding federal court decisions holding such detention unlawful, is contrary to the INA and reflects an unexplained and unjustified departure from settled law and practice. See *Rios Porras*, slip op. at 3–5; *Demirel*, 2025 WL 3218243, at *5.
90. Respondents have failed to articulate a reasoned explanation for treating Petitioner as subject to mandatory detention, have relied on factors Congress did not intend them to consider, and have disregarded binding judicial authority. Their actions are therefore arbitrary, capricious, and not in accordance with law in violation of the APA.

FOURTH CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause Procedural and Substantive Due Process

91. Petitioner re-alleges and incorporates by reference all preceding paragraphs.
92. The Fifth Amendment’s Due Process Clause protects all “persons” within the United States from deprivation of liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

93. Procedural due process requires, at minimum, notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Petitioner was detained without notice, without a hearing, and without any individualized determination, rendering his detention procedurally unconstitutional.
94. Substantive due process further requires that civil immigration detention bear a reasonable relation to a legitimate governmental purpose and may not be arbitrary or punitive. *Zadvydas*, 533 U.S. at 690; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).
95. Petitioner poses no flight risk and no danger to the community. DHS paroled him into the United States, permitted him to reside in the community for years, and detained him without notice. Detention imposed without statutory authorization and without any individualized justification violates substantive due process. *Clark v. Martinez*, 543 U.S. 371, 386–87 (2005).

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Grants the Petition for Writ of Habeas Corpus;
- 2) Orders Petitioner's immediate release from ICE custody;

- 3) In the alternative, hold a bond hearing at which the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;
- 4) Awards Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 5) Grants such further relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 31, 2025

VASSOR LAW, LLC.

/s/ Dean Vassor
Dean Vassor, Esq.
Attorney for Petitioner
Vassor Law, LLC
6622 Castor Avenue
Philadelphia, PA, 19149
Dean@vassorlawfirm.com
215-437-0546

**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 one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, 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.

Respectfully submitted,

Dated: December 31, 2025

VASSOR LAW, LLC.

/s/ Dean Vassor

Dean Vassor, Esq.
Attorney for Petitioner
Vassor Law, LLC
6622 Castor Avenue
Philadelphia, PA, 19149
Dean@vassorlawfirm.com
215-437-0546