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-CFK

PETITIONER'S BRIEF IN RESPONSE TO RESPONDENTS' BRIEF LETTER AND IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Wilmin Vasquez-Rosario, by and through undersigned counsel, presents the following response to Respondents' Brief Letter dated January 8, 2026, filed pursuant to this Court's Order dated January 2, 2026. Dkt. No. 2. Specifically, Respondents were ordered to address whether this case contains "materially distinguishable facts" from previous cases wherein Respondents made similar arguments and this Court, or other Courts in the Eastern District, rejected those arguments.

The primary factual "distinction" which Respondents' Letter discusses is that following his arrival at the border, Petitioner was granted discretionary parole into the United States, but

that his parole has ended. Petitioner respectfully avers that Respondents' legal argument is unfounded and contradicts not only the plain language of the INA, but also the established precedent of the Eastern District. In support thereof, Petitioner states the following.

I. INTRODUCTION

Petitioner is a noncitizen and native of the Dominican Republic, who entered the United States on or about November 14, 2022, at which time he voluntarily surrendered at the U.S. border located in Murrieta, California. He was subsequently detained by the Department of Homeland Security ("DHS"), where he remained for eight days until he was released at DHS's discretion. Though this was not a "formal" parole (i.e., there is no DHS documentation of Petitioner's receipt of bond or conditional parole), Petitioner was nevertheless released from custody pursuant to discretionary detention authority outlined in 8 U.S.C. §1226(a).

Petitioner remained released for over three (3) years, during which time he filed a Form I-589, Application for Asylum and Withholding of Removal. On December 31, 2025, DHS issued a Form I-200 "Warrant for Arrest of Alien" and subsequently detained Petitioner in front of his home in Philadelphia, Pennsylvania. He has been detained at the Federal Detention Center in Philadelphia since that date.

II. ARGUMENT

A. TO THE EXTENT RESPONDENTS ARE ASSERTING DETENTION AUTHORITY UNDER 8 U.S.C. § 1225(b), SUCH DETENTION IS UNLAWFUL BECAUSE DHS ALREADY EXERCISED PAROLE AUTHORITY UNDER INA § 212(d)(5).

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). Because DHS previously exercised discretionary parole authority over Petitioner by releasing him from detention in 2022, it cannot lawfully

exercise mandatory detention authority now. Respondents acknowledge that Petitioner's prior release was granted based on discretion, firmly establishing that, in keeping with precedent, he was paroled under U.S.C. § 1226(a).

In their letter, Respondents assert, as they have repeatedly done in materially identical cases throughout this District, that Petitioner's renewed detention is authorized under 8 U.S.C. § 1225(b), despite obvious and repeated rejections of such arguments. Even in Respondents' own letter, they cited case law which definitively contradicts their position on this issue. Page 2 of Respondents' letter includes the quote, "an inadmissible arriving alien, such as Petitioner, is entitled to an asylum interview based on a claim that the alien indicates an intention to apply for asylum or a fear of persecution; the alien's detention is mandatory absent DHS's discretionary decision to parole the alien, and the alien is not entitled to a bond hearing." *Contreras v. Oddo*, 2025 WL 2104428, *4 (W.D. Pa. July 28, 2025). This quotation explicitly states the position that Petitioner maintains — that detention of an arriving alien is mandatory **absent DHS's discretionary decision to parole the alien.** Here, DHS *did* in-fact exercise discretionary parole authority, so by Respondents' own standard, they cannot continue to detain Petitioner pursuant to § 1225(b), having already paroled him under § 1226(a).

This argument ignores recent decisions made by courts in the Eastern District, as well as the recent final order entered in *Maldonado Bautista*, in which the Court held that a grant of discretionary parole under §1226(a) effectively revokes DHS's ability to later exercise §1225(b) mandatory detention authority. As such, Petitioner is entitled to an individualized custody determination because his current detention is governed by the *discretionary* portion of the INA.

B. RESPONDENTS' ASSERTION THAT PETITIONER'S ENTRY AS AN "ARRIVING ALIEN" BARS HIM FROM CUSTODY REDETERMINATION IS UNFOUNDED.

Petitioner was classified as an "arriving alien" at the time of his entry into the United States. 8 U.S.C. § 1226(a) applies by default to all persons "pending a decision on whether the noncitizen is to be removed from the United States." Respondents contend that, because Petitioner entered the United States as an "arriving alien," he is permanently subject to mandatory detention under that statute.

While Petitioner concedes that his initial entry into the United States was as an "arriving alien," he respectfully contends that this classification does not eliminate all opportunities for custody redetermination in Petitioner's case, because DHS has already exercised discretionary parole authority despite Petitioner's entry status.

Though Petitioner's receipt of parole does not change his entry status as an arriving alien, the fact that he was granted parole by DHS previously means that DHS can no longer treat him as "arriving" for the purposes of custody determination. He was detained and subsequently released by DHS, and has a pending application for relief before the Immigration Court with a strong likelihood of being granted. The fact that Mr. Vasquez-Rosario was determined to be "arriving" at the border is inconsequential as it pertains to his ongoing detention and the present petition, because his detention is no longer lawful following DHS exercising discretionary parole authority. Petitioner's status as "arriving" does not act as a bar to custody determination where DHS has previously made a discretionary custody determination to release him.

C. DHS DID NOT "REVOKE" PETITIONER'S PAROLE WITHIN THE MEANING OF §212.5(e)(2), AND SUCH REVOCATION CANNOT PREVENT HIM FROM RECEIVING A CUSTODY REDETERMINATION HEARING.

Respondents also argue that, because Petitioner's discretionary parole was "revoked," his detention reverts to being governed by 8 U.S.C. § 1225(b). This conclusion is untenable in light

of recent caselaw which explicitly provides that release pursuant to 8 U.S.C. § 1226(a) bars the government from any future assertion of 8 U.S.C. § 1225(b) detention authority.

Furthermore, Petitioner in this matter did not receive a formal grant of parole; as such, DHS's argument that it has now "revoked" Petitioner's parole, entitling the government to renew its detention authority under 8 U.S.C. § 1225(b) is flawed. Petitioner did not receive an explicit grant of conditional parole or bond when he was initially released from DHS custody in 2022. Instead, he was granted informal parole and released from custody on the sole basis of DHS's discretion; he was not required to pay a surety in the form of a bond, nor did he receive notice of any terms or conditions on which his release was granted.

If Petitioner's initial release from DHS custody was pursuant to discretion, and discretion alone, it follows that DHS could not properly revoke said parole pursuant to the parole revocation procedures described in INA § 212.5(e). Under § 212.5(e)(1), termination of parole is automatic when the noncitizen (i) departs from the United States or (ii) if not departed, at the time his/her parole expires. In all other cases, revocation of parole is governed by § 212.5(e)(2), under which a noncitizen is entitled to receive notice of the termination of their parole. A charging document which is served on the subject noncitizen is sufficient to constitute written notice of the termination of parole.

Here, Petitioner was served with a Form I-200 Warrant for Arrest of Alien, outside of his home on December 31, 2025, immediately preceding his being taken into custody. Form I-200 itself is *not* considered a "charging" document, as it does not initiate removal proceedings against the Petitioner, as well as the fact that the form itself references the "execution of a charging document." As such, Petitioner was not provided proper written notice of the "revocation" of his parole, either via charging document or formal parole correspondence, before he was detained.

The government failed to follow the appropriate procedures for parole revocation and the Form I-200 served on Petitioner does not rise to the level of a charging document, as required by § 212.5(e). "Because 1225(b) is not a lawful basis for Petitioner's detention, and Petitioner was not detained under the parole revocation procedures described in 212.5(e), the Court concludes he can only be properly detained under 1226(a)." *A-J-R v. Rokosky*, No. 25-17279 (RMB), 2026 WL 25056, at *5 (D.N.J. Jan. 5, 2026).

D. DHS's ARGUMENT LARGELY IGNORES RECENT AND RELEVANT PRECEDENT WHICH FOUND THAT EXERCISE OF 1226(a) DETENTION AUTHORITY EFFECTIVELY BARS THE SUBSEQUENT USE OF 1225(b) AUTHORITY

Respondents do not dispute this Court's jurisdiction under 28 U.S.C. § 224. The sole issues presented are statutory and constitutional: whether DHS may detain Petitioner under 8 U.S.C. § 1225(b), INA § 235(b) after releasing him under 8 U.S.C. § 1226(a), INA § 236(a), and whether this entitled him to custody redetermination.

The Immigration and Nationality Act establishes two distinct and mutually exclusive detention frameworks applicable during removal proceedings: mandatory detention under 8 U.S.C. § 1225(b), and discretionary detention under 8 U.S.C. § 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018). 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. *Id.* These provisions "can be reconciled only if they apply to different classes of noncitizens." *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).

Section 1225(b) governs inspection-related detention at or immediately following attempted entry; section 1226(a), by contrast, governs the arrest and detention of noncitizens already present in the United States pending a decision on removal and expressly authorizes release on bond or conditional supervision following an individualized assessment. 8 U.S.C. § 1226(a)(2); *Jennings v. Rodriguez*, 583 U.S. at 287–89.

A noncitizen may not be detained under both provisions simultaneously, nor may DHS retroactively switch detention statutes based on enforcement preference. *Jennings v. Rodriguez*, 583 U.S. at 289; *Kashranov*, 2025 WL 3188399, at *6. Federal courts uniformly hold that DHS may not retroactively convert INA § 236(a), 8 U.S.C. § 1226 detention into mandatory detention under INA §235(b), 8 U.S.C. § 1225(b). *See Jimenez v. FCI Berlin*, 2025 DNH 107 P, at 10–14; *Romero v. Hyde*, 2025 WL 2403827, at *8–9; *Gomes v. Hyde*, 2025 WL 1869299, at *7–8. The BIA itself agrees. *See Matter of Q-Li*, 29 I. & N. Dec. 66, 69 n.4 (BIA 2025).

Here, DHS affirmatively placed Petitioner within the § 1226(a) framework when it released him on his own recognizance under INA § 236(a) after his initial border encounter. Release on recognizance is available only under 8 U.S.C. § 1226(a); it is unavailable under § 1225(b). *Jennings v. Rodriguez*, 583 U.S. at 289–90. That release was not humanitarian parole under INA § 212(d)(5), and it was not a form of continued § 1225 custody. *See* 8 U.S.C. §§ 1182(d)(5), 1225(b), 1226(a); *Demirel*, 2025 WL 3218243, at *8. It was a discretionary release authorized only by § 1226(a). *Id.*

By exercising § 1226(a) authority and permitting Petitioner to live in the community for over two years, DHS removed Petitioner from the statutory class governed by § 1225(b). *See*

Kashranov, 2025 WL 3188399, at *6–7; *Romero*, 2025 WL 2403827, at *8–9. Any subsequent detention therefore had to proceed, if at all, under § 1226(a), with access to an individualized bond determination. *See* 8 U.S.C. § 1226(a)(2).

Multiple courts within this Circuit have rejected DHS's attempt to disregard the legal consequences of its own release decisions. As courts have explained, DHS cannot release a noncitizen into the United States and later claim that the same individual is subject to mandatory detention under § 1225(b). *Demirel*, 2025 WL 3218243, at *2–4; *Kashranov*, 2025 WL 3188399, at *6; *Rios Porras v. O'Neill*, No. 25-6801, slip op. at 4–5 (E.D. Pa. Dec. 22, 2025) (holding that once DHS paroled petitioner into the United States, § 1225(b) no longer applied); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528, at *4–6 (E.D. Pa. Dec. 9, 2025) (rejecting DHS's attempt to "toggle" between detention statutes after release).

Thus, the operative event for detention purposes is not the initial border apprehension, but DHS's subsequent custody decision. Once DHS elected to release Petitioner under § 1226(a), § 1225(b) ceased to supply detention authority, regardless of where or how Petitioner was first encountered. *Demirel*, 2025 WL 3218243, at *5–6; *Kashranov*, 2025 WL 3188399, at *6–7.

Accepting Respondents' theory that an initial border encounter permanently subjects a noncitizen to mandatory detention even after discretionary release would effectively nullify § 1226(a) for any noncitizen who entered without inspection, contrary to the statutory scheme Congress enacted.

III. CONCLUSION

Accordingly, because DHS released Petitioner under INA § 236(a), 8 U.S.C. § 1226(a), it forfeited reliance on INA § 235(b), 8 U.S.C. § 1225(b) mandatory detention. Petitioner's current confinement is governed by 8 U.S.C. § 1226(a), and DHS's failure to provide a lawful, individualized bond determination violates both the INA and the Fifth Amendment. Thus, the

Court should reject Respondents' attempt to resurrect § 1225(b) after the fact and grant Petitioner appropriate habeas relief.

Respectfully submitted,

Dated: January 13, 2026

VASSOR LAW, LLC.

/s/ Dean Vassor

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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 Reply in Support of Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted,

Dated: January 13, 2026

VASSOR LAW, LLC.

/s/ Dean Vassor

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