UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENITEZ CRESPO, Yohandry Jose,

Petitioner,

v.

JAMISON, J.L.,
Warden, Federal Detention Center, Philadelphia;

ROSE, Michael T.,
Acting Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations, Philadelphia Field Office;

NOEM, Kristi,
Secretary of the Department of Homeland Security;

BONDI, Pamela,
U.S. Attorney General

U.S. DEPARTMENT OF HOMELAND SECURITY;

EXECUTIVE OFFICE OF IMMIGRATION REVIEW,

Respondents.

Case No. 2:26-cv-00093

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Yohandry Jose Benitez Crespo is a native of Venezuela and an asylum applicant in the United States. He has resided in the country since 2022, working to support his family and creating community in Philadelphia.

2. The Department of Homeland Security ("DHS" or "Department") detained Mr. Benitez Crespo and took him into custody on or about January 5, 2026. It currently detains Mr. Benitez Crespo at the Federal Detention Center ("FDC"). The Department purports to hold Mr. Benitez Crespo under 8 U.S.C. § 1225(b)(2)(A), a mandatory detention statute. Its detention of Mr. Benitez Crespo followed a drastic recent shift away from decades of prior precedent and practice.

3. The Executive Office of Immigration Review ("EOIR"), which adjudicates immigration matters, recently adopted the same drastic reinterpretation. In *Matter of Yajure Hurtado*, EOIR held that noncitizens who have entered the United States without inspection are mandatorily detained under Section 1225(b)(2)(A). *See* 29 I. & N. Dec. 216, 228 (BIA 2025). DHS and EOIR's new interpretation conflicts with the plain language and structure of the immigration detention statutes. It has been widely rejected by district judges around the country, including within this Circuit. *See Demirel v. Fed. Det. Ctr.*, No. 25-cv-05488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025). Respondents' application of 8 U.S.C.

§ 1225(b)(2) to Petitioner is contrary to law, violating both the Immigration and Nationality Act ("INA") and the Administrative Procedure Act ("APA").

4. In the alternative, if the statute does subject Petitioner to mandatory detention, it still violates his rights to substantive and procedural due process. Detention of all noncitizens who are subject to inadmissibility grounds, like Petitioner, without any individualized hearing does not "bear a reasonable relation to the purpose for which the individual was committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, application of the *Mathews v. Eldridge* balancing test shows that detaining Mr. Benitez Crespo—a noncitizen who DHS once released because he was not a danger or flight risk—is necessary to protect Petitioner from an unnecessary deprivation of liberty. 424 U.S. 319, 335 (1976). Numerous United States District Courts have agreed. *See, e.g.*, *Ndiaye v. Jamison*, No. 25-cv-6007, 2025 WL 3229307, at *2 (E.D. Pa. Nov. 19, 2025) ("[D]ue process and proper statutory interpretation of the INA preclude Ndiaye from being mandatorily detained without bond under § 1225(b)(2)[.]"); *Nogueira-Mendes v. McShane*, No. 25-cv-5810, 2025 WL 3473364, at *4 (E.D. Pa. Dec. 3, 2025) ("Because Section 1226(a) provides for a bond hearing and Petitioner has not received one, Petitioner has demonstrated that his continued detention violates his rights under that provision.")

5. Mr. Benitez Crespo therefore respectfully requests that this Court issue a writ of habeas corpus and order Petitioner's release from custody. *See Ndiaye*,

2025 WL 3229307, at *5 n.5 (ordering immediate release and finding that "[a] bond hearing would certainly result in [Petitioner's] release and only serve to delay relief when the "Government has offered no rationale to refuse bond").

6. In the alternative, Petitioner requests that this Court conduct or order an Immigration Judge ("IJ") to conduct a bond hearing at which (1) Respondents bear the burden of proving flight risk and/or dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight and ability to pay in setting any bond. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

PARTIES

7. Petitioner Yohandry Jose Benitez Crespo is a native of Venezuela. He last entered the United States in or around 2022. He was released by DHS and placed in an alternatives to detention ("ATD") program. Respondents administratively arrested Mr. Benitez Crespo on January 5, 2026, at Mr. Benitez Crespo's regularly scheduled immigration check-in and took him into custody. They currently detain Mr. Benitez Crespo at the Federal Detention Center in Philadelphia, Pennsylvania.

8. Respondent J.L. Jamison is sued in his official capacity as the Warden of the Federal Detention Center. He has direct detention control over Petitioner at FDC.

9. Respondent Michael T. Rose is sued in his official capacity as the Acting Field Office Director of U.S. Department of Homeland Security, Immigration and Customs Enforcement's Philadelphia Field Office. He is responsible for the administration and management of ICE Enforcement Removal Operations in Pennsylvania and exercises administrative control over Petitioner's custody.

10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. DHS is responsible for administering and enforcing the immigration laws, including the decision to detain noncitizens during the course of their removal proceedings. Secretary Noem is the ultimate legal custodian of Petitioner.

11. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She is responsible for the Department of Justice, including the Executive Office of Immigration Review.

12. Respondent the U.S. Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention of noncitizens during removal proceedings.

13. Respondent the Executive Office of Immigration Review is the federal agency responsible for administering removal and custody proceedings. EOIR is a

component of the U.S. Department of Justice. EOIR includes the Board of Immigration Appeals and the immigration courts.

JURISDICTION AND VENUE

14. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

15. This Court has subject matter jurisdiction pursuant to Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 2241, 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.

16. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and those agencies' officers, who are sued in their in their official capacities. 5 U.S.C. § 702.

17. 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).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. 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 purely discretionary. *Ndiaye*, 2025 WL 3229307, at *5 (citing *Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 970 (3d Cir. 1980)).

19. In deciding whether to impose exhaustion, habeas courts 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).

20. A petitioner further "does not need to 'exhaust administrative remedies where the issue presented involves only statutory construction.'" *Ndiaye*, 2025 WL 3229307, at *3 (citing *Vasquez v. Strada*, 684 F.3d 431, 433–34 (3d Cir. 2012)). Because the "the issue in this case hinges entirely on the statutory construction of 8 U.S.C. §§ 1225 and 1226," Mr. Benitez Crespo should not be required to exhaust his administrative remedies. *Id.*

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

22. The BIA issued a published decision holding that noncitizens like Mr. Benitez Crespo, who entered the United States without inspection, are ineligible for

bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Yajure Hurtado*, 29 I. & N. Dec. at 220. The Board of Immigration Appeals ("BIA") and IJs are bound by BIA decisions such as *Yajure Hurtado*. 8 C.F.R. § 1003.1(g)(1).

23. Exhaustion before the EOIR would be futile because requiring exhaustion "would almost certainly result in the BIA persisting in its earlier rulings and applying those rulings to [Petitioner], all while he remains in detention[.]" *Del Cid v. Bondi*, No. 25-cv-304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025); *see also Kashranov v. Jamison,* No. 25-cv-5555, 2025 WL 3188399, at *4 (E.D. Pa. Nov. 14, 2025) (finding further administrative review would "serve no practical purpose" considering the BIA's decision in *Yajure Hurtado* "has already fixed its position," rendering exhaustion "an empty formality").

24. The BIA also 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). Any administrative proceedings would therefore be futile as to Mr. Benitez Crespo's constitutional due process claims. *Qatanani*, 144 F.4th at 500.

STATEMENT OF FACTS

25. Mr. Benitez Crespo fled his native Venezuela for refuge in the United States. *See* Ex. 1, I-589, Appl. for Asylum & Withholding of Removal at 5. He last entered the United States in or around 2022. *Id.* at 1. He entered the country without

inspection and presented himself to U.S. Customs and Border Protection officers. *Id.* at 1. CBP officers released Mr. Benitez Crespo from custody on or about May 23, 2022, and enrolled him into DHS's ATD program.[1] *See* Ex. 2, ATD Enrollment – Not. to Alien.

26. After hie release, Mr. Benitez Crespo made his way to Philadelphia, where he established community ties. He lived with his girlfriend and worked to support his mom in Venezuela. Mr. Benitez Crespo also continued to progress with his removal proceedings, complying with the requirements set by EOIR for those proceedings and by DHS for his ATD program.

27. On January 5, 2026, Mr. Benitez Crespo appeared for a routine ICE check-in as part of his ATD program. He expected to check in, confirm he continued to reside in Philadelphia, and arrange for his next check-in. DHS officers instead detained Mr. Benitez Crespo. They did so without providing Mr. Benitez Crespo any prior notice that they were cancelling his enrollment in the ATD program. And they did not provide Mr. Benitez Crespo any explanation for his detention.

28. Upon information and belief, Respondents detained Mr. Benitez Crespo under its revised interpretation of the immigration detention statues; specifically

[1] ICE's ATD program ensures noncitizens comply with release conditions and "enable [them] to remain in their communities – contributing to their families and community organizations . . . as they move through immigration proceedings." U.S. Immigr. & Customs Enf't, *Alternatives to Detention*, https://www.ice.gov/features/atd (last accessed Jan. 7, 2026).

their new view that all noncitizens who have not been "admitted," 8 U.S.C. § 1101(a)(13)(A) are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

LEGAL FRAMEWORK

I. Section 1226(a) Governs the Detention of People Like Petitioner Who are Detained in the United States and Have Not Previously Been Admitted

29. The Immigration and Nationality Act contains several provisions authorizing detention of noncitizens. 8 U.S.C. § 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an IJ to determine whether they should be released on bond. *See also* 8 C.F.R. § 1236.1(d). 8 U.S.C. § 1225(b), meanwhile, mandates detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals "seeking admission" under (b)(2).

30. The detention provisions at 8 U.S.C. § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). "Upon passing IIRIRA, Congress declared that the new Section 1226(a) 'restates the current provisions in the predecessor statute,'" which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

31. After IIRIRA's enactment, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under 8 U.S.C. § 1225 and that they were instead detained under 8 U.S.C. § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

32. In the decades that followed, most people who entered without inspection and were thereafter arrested by DHS were considered for release on bond. They also received bond hearings before an IJ, unless their criminal history rendered them ineligible. *Ndiaye*, 2025 WL 3229307, at *6 (finding that DHS and EOIR "maintained this practice since § 1225(b)(2) first took effect in 1997"). That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

33. Respondents abruptly changed course this past year. On May 15, 2025, the BIA issued a decision holding that a noncitizen who entered without inspection and was apprehended and paroled near the border was subject to mandatory

detention under 8 U.S.C. § 1225(b)(2)(A). *Matter of Q. Li*, 29 I. & N. Dec. 66, 70 (BIA 2025).

34. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, "in coordination with the Department of Justice (DOJ)," DHS had "revisited" its legal position and believed that 8 U.S.C. § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez v. Hyde,* No. 25-11613, 2025 WL 2084238, at *4. (D. Mass. July 24, 2025).

35. And on September 5, 2025, the BIA followed suit and issued a precedential decision in *Yajure Hurtado*, 29 I. & N. Dec. 216, holding that noncitizens "who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I. & N. Dec. at 220.

36. The *Yajure Hurtado* decision has fared poorly before Article III Courts. Judges from all around the country, including from the Eastern District of Pennsylvania, have held that people who are present without having been admitted are eligible for bond pursuant to § 1226(a). *See Demirel*, 2025 WL 3218243, at *5–13 (listing out 288 cases that have rejected *Yajure Hurtado*); *see also* Order, ECF No. 5, *Diop v. Jamison*, No. 25-cv-6946 (E.D. Pa. Jan. 5, 2026) (listing fifty cases

in the Eastern District of Pennsylvania that have rejected *Yajure Hurtado*); *Anirudh v. McShane*, No. 25-cv-6458, 2025 WL 3527528, at *5 (E.D. Pa. Dec. 9, 2025); *Ibarra v. Warden of the Fed. Det. Ctr. Phila.*, No. 25-cv-6312, 2025 WL 3294726, at *2-3 (E.D. Pa. Nov. 25, 2025) (Rufe, J.); *Patel v. McShane*, No. 25-cv-5975, 2025 WL 3241212, at *3 (E.D. Pa. Nov. 20, 2025) (Brody, J.); *Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639, at *2 (E.D. Pa. Nov. 13, 2025) (Kenney, J.); *Kashranov*, 2025 WL 3188399, at *7 (Wolson, J.); *Demirel*, 2025 WL 3218243, at *5 (Diamond, J.).

37. As these decisions explain, the BIA's position in *Yajure Hurtado* defies the INA. The plain text of the statute shows that 8 U.S.C. § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 8 U.S.C. § 1226(a) as the "default rule" for detention of noncitizens pending removal). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." *Id.*

38. The text of 8 U.S.C. § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from

§ 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vasquez*, 779 F. Supp. 3d at 1256–57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

39. Under the BIA's interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Yajure Hurtado*, 29 I. & N. Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(14) (defining an admission). Therefore, this interpretation would render all the grounds of mandatory detention in 8 U.S.C. § 1226(c) applied to inadmissible noncitizens, including the recently-passed Laken Riley Act, superfluous. *Gomes*, 2025 WL 1869299, at *7; *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). This statutory structure demonstrates that Congress did not intend to make 8 U.S.C. § 1226(a) inapplicable to all

inadmissible noncitizens, but rather viewed it as the default bond provision for people arrested within the United States, as the Supreme Court confirmed in *Jennings*.

40. By contrast, 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 2025 WL 2084238, at *8 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

41. "The Government's interpretation of 8 U.S.C. § 1225(b)(2) also violates the rule against surplusage . . . ." *Ndiaye*, 2025 WL 3229307, at *14; *Demirel,* 2025 WL 3218243, at *9 ("I am not prepared to read this part ["alien[s] seeking admission"] of § 1225(b)(2) out of existence"). Section 1225(b)(2) only applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A);

Demirel, 2025 WL 3218243, at *9. The BIA's interpretation makes all applicants for admission subject to mandatory detention, leaving the "seeking admission" criterion unnecessary and violating the rule against surplusage. *Lopez Benitez*, 2025 WL 2371588, at *6; *Diaz Martinez*, 2025 WL 2084238, at *6.

42. Instead, the phrase "seeking admission" indicates that 8 U.S.C. § 1225(b)(2)(A) applies to people who are taking "some sort of present-tense action;" in other words, coming or attempting to come into the United States. *Diaz Martinez*, 2025 WL 2084238, at *6; *see also Matter of M-C-D-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) (stating that "the use of the present progressive tense . . . denotes an ongoing process"). Therefore, 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute.

43. Applying 8 U.S.C. § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the government's longstanding practice, which "can inform a court's determination of what the law is." *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA's abrupt change in policy. *Maldonado*, 2025 WL 2374411, at *11.

44. This reasoning undergirded the recent decision in *Maldonado Bautista* declaring unlawful the government's application of *Yajure Hurtado* to all persons

who entered without inspection admission. The *Maldonado Bautista* court granted partial summary judgement to a nationwide class 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 v. Santacruz, No. 25-cv-1873, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025).

45. Finally, as discussed below, the BIA's interpretation of 8 U.S.C. § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the Court should presume that Congress "did not intend the alternative which raises serious constitutional doubts" and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005). Therefore, 8 U.S.C. § 1226(a), which permits bond hearings, not § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

II. The BIA's Application of Mandatory Detention to Noncitizens Like Petitioner Violates Substantive and Procedural Due Process

46. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510,

523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

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

48. In *Demore*, the Supreme Court upheld the constitutionality of 8 U.S.C. § 1226(c) against a facial challenge, specifically citing evidence that had been before Congress about noncitizens with criminal convictions. 538 U.S. at 518-520. This justification does not apply, however, to noncitizens with no criminal convictions who have lived in the community for years. The broad policy set forth in *Yajure Hurtado* is not reasonably related to the purposes of prevent danger to the community or flight risk and violates substantive due process.

49. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v.*

Warden Monmouth Cnty Corr. Facility, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara v. v. Lyons*, 10 F.4th 19 at 28 (1st Cir 2021); *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Here, the BIA's interpretation of the statute to require detention of all people in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

50. First, the "importance and fundamental nature" of an individual's liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F. Supp. at 670 ("[F]reedom from confinement is a liberty interest of the highest constitutional import."). For people "who can face years of detention before resolution of their immigration proceedings, 'the individual interest at stake is without doubt particularly important.'" *Linares Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at *3 (S.D.N.Y. Oct. 17, 2018).

51. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be "on any calculus, substantial," observing that the petitioner "could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone." 978 F.3d at 851–52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in

Hernandez-Lara, noting that the petitioner there was incarcerated "alongside criminal inmates" at a jail where "she was separated from her fiancé and unable to maintain her employment." 10 F.4th at 28.

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

53. Finally, the burden on the government of returning to the longstanding practice of holding bond hearings for people like Petitioner does not outweigh the liberty interest at stake. To the contrary, the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33

(noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"). Additionally, "unnecessary detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings, and weighs in favor of additional procedural protections.

54. At these bond hearings, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 ("[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof."). "A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision." *German Santos*, 965 F.3d at 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing, it placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York C'ty*

Prison, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39–40; *Velasco Lopez*, 978 F.3d at 855–56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

FIRST CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

55. Petitioner re-alleges and incorporates by reference the above paragraphs.

56. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. Specifically, it does not apply to Mr. Benitez Crespo, who has been living in the United States since 2022, for over three years prior to being detained by respondents on January 7, 2026.

57. The fact that Mr. Benitez Crespo was previously detained and released at the border confirms this conclusion. Mr. Benitez Crespo was released into the ATD program, ostensibly upon Respondents' determination that he did not pose a

danger or flight risk. *See* Ex. 2. By the time he was re-arrested in 2026, he was not "seeking admission" under 8 U.S.C. § 1252(b)(2)(A).

58. In any event, that initial arrest "is not what is at issue in this case," rather it is his 2026 re-arrest and re-detention. *See Lopez Benitez*, 2025 WL 2371588. Even if Mr. Benitez Crespo was "seeking admission" within the meaning of § 1252(b)(2)(A) at the time of his entry and initial apprehension, he was no longer engaged in that "present-tense action" when he was arrested in Philadelphia at a routine ICE check-in on January 5, 2026. He therefore no longer met the requirements of § 1252(b)(2)(A) discussed above. *See Diaz Martinez*, 2025 WL 2084238, at *6.

59. Mr. Benitez Crespo is detained under 8 U.S.C. § 1226(a). Respondents' unlawful and arbitrary application of 8 U.S.C. § 1225(b)(2) to Petitioner violates the INA.

SECOND CLAIM FOR RELIEF

Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 Unlawful Denial of Release on Bond

60. Petitioner re-alleges and incorporates by reference the above paragraphs.

61. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and

Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

62. The regulation at 8 C.F.R. § 1003.19 lays out bond procedures, and § 1003.19(h)(2) delineates categories of noncitizens who are subject to mandatory detention and not entitled to a bond hearing. The fact that noncitizens within the United States who are subject to inadmissibility grounds are not included on this list shows that the agencies did not intend them to be subject to mandatory detention. The BIA's interpretation thus violates the regulations and unlawfully denies Petitioner a bond hearing.

THIRD CLAIM FOR RELIEF

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

63. Petitioner re-alleges and incorporates by reference the above paragraphs.

64. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and

capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

65. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. Specifically, it does not apply to Mr. Benitez Crespo, who has been living in the United States since 2022. Mr. Benitez Crespo is detained under 8 U.S.C. § 1226(a) and is eligible for release on bond.

66. In taking a contrary position, the BIA has reversed decades of prior practice, and "would expand § 1225(b) face beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application." *Lopez Benitez*, 2025 2371588, at *8. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

67. The application of 8 U.S.C. § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

FOURTH CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause Substantive Due Process

68. Petitioner re-alleges and incorporates by reference the above paragraphs.

69. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Substantive due process requires that immigration detention without a bond hearing be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

70. The BIA's application of mandatory detention under 8 U.S.C. § 1225(b)(2) is not reasonably related to those goals and thus violates substantive due process. Mr. Benitez Crespo has a history of full compliance with all conditions of his removal proceedings and ATD program. He has attended every ICE check-in required of him and filed his asylum application.

71. The circumstances of Mr. Benitez Crespo's detention and application of *Yajure Hurtado* provide him with no due process and no individualized assessment of flight risk or danger to the community as required by *Zadvydas*. 533 U.S. at 690. Were there to be such a process or individualized assessment, the government could not show that Mr. Benitez Crespo is a public danger, as he has

never been convicted of any crime; on the contrary, he is a valued community member and a victim of persecution in his home country. Likewise, the government could not clearly establish that he is a flight risk given his positive history of compliance with his court dates and ICE check-ins, strong community ties, and years-long commitment to pursuing his meritorious asylum claim.

FIFTH CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause
Procedural Due Process

72. Petitioner re-alleges and incorporates by reference the above paragraphs.

73. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

74. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Petitioner's liberty is a particularly weighty interest. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (describing the substantial private interest in remaining out of custody, which "enables [one] to do a wide range of things open to persons" who are free from custody).

75. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards.

Id. Here, there is a great risk of unnecessary detention because the BIA's interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. At a hearing, Petitioner could show that his detention is not necessary because, as stated above, he has every interest in pursuing his asylum claim. He has complied with all hearings and ICE check-ins. Because Respondents redetained Mr. Benitez Crespo without any showing that circumstances have changed, a hearing at which the government bears the burden of proof by clear and convincing evidence would protect the substantial liberty interest at stake. *See German Santos*, 965 F.3d at 213–14.

76. The final factor is the Government's interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure his appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes. *Hernandez-Lara*, 10 F.4th at 32–33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at *4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241–42 (W.D.N.Y. 2019) (same). Therefore, the government does not have an interest in detaining Petitioner

without a bond hearing that outweighs his substantial liberty interest in such an individualized determination.

77. Respondents' detention of Petitioner without any hearing to determine whether that detention is necessary violates procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

3) Issue a Writ of Habeas Corpus and order Petitioner's immediate release from custody pursuant to his previously granted release on recognizance;

4) In the alternative, order Petitioner's release within ten days unless Respondents schedule a hearing before an IJ 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;

5) Award 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

6) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Lilah Thompson

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Pro Bono Counsel for Petitioner

DATED: Jan. 7, 2026
Philadelphia, PA

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the Eastern District of Pennsylvania.

/s/ Lilah Thompson
Lilah Thompson

DATED: Jan. 7, 2026
Philadelphia, PA