UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GAGIEV, *Petitioner*, v. ROSE, et al, *Respondents*.	Civil Action No. 2:26-cv-169 DISTRICT JUDGE JOHN F MURPHY

PETITIONER'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

INTRODUCTION 1

I. Petitioner is not subject to mandatory detention under § 1225 because he is not "seeking admission" and the entry fiction doctrine does not reach his circumstances. 3

A. "Seeking Admission" is a separate requirement that Petitioner fails to satisfy. *3*

B. The Entry Fiction Doctrine has constitutional limits. *5*

C. Thuraissigiam confirms a temporal limit "shortly after" entry. *6*

D. Mezei is distinguishable on every material fact. *9*

E. The entry fiction holds only so long as the Government maintains it. *11*

II. Section 1226 governs Petitioner's detention. 13

A. "Return to custody" does not mean return to arriving alien status. *14*

B. Parole was never properly terminated. *15*

C. The Government's remaining statutory arguments independently fail. *16*

III. Due Process requires immediate release. 17

A. Petitioner's liberty interest is at its zenith. *17*

B. The Government made no individualized decision before re-detaining Petitioner. *19*

C. The Mathews v. Eldridge factors require, at minimum, a bond hearing, but the immigration court cannot provide a constitutionally adequate one. *20*

CONCLUSION 22

Table of Authorities

Page(s)

Cases

A-J-R v. Rokosky,
No. 25-17279, 2026 WL 25056 (D.N.J. Jan. 5, 2026) 14
Cabreja Bueno v. O'Neill,
No. 26-cv-304, 2026 WL 413315 (E.D. Pa. Feb. 13, 2026) 12, 14, 16
Castro v. U.S. Dep't of Homeland Sec.,
835 F.3d 422 (3d Cir. 2016) 12
Chi Thon Ngo v. I.N.S.,
192 F.3d 390 (3d Cir. 1999) 6
Coal. for Humane Immigrant Rts. v. Noem,
2025 WL 2192986 (D.D.C. Aug. 1, 2025) 11, 14, 16
DHS v. Thuraissigiam,
591 U.S. 103 (2020) ..... passim
Doe v. Noem,
No. 25-1384, 2025 WL 1505688 (1st Cir. May 5, 2025) 15
Escobar Salgado v. Mattos,
No. 2:25-cv-01872-RFB-EJY, 2025 WL 3205356 (D. Nev. Nov. 17, 2025) 4, 8
Foucha v. Louisiana,
504 U.S. 71 (1992) 18
Gagnon v. Scarpelli,
411 U.S. 778 (1973) 18
Hamdi v. Rumsfeld,
542 U.S. 507 (2004) 2, 17
Hasan v. Crawford,
800 F. Supp. 3d 641 (W.D. Tex. 2025) 21
Hewitt v. United States,
606 U.S. 419 (2025) 16
Jean v. Nelson.
472 U.S. 846 (1985) 10, 15, 19
Jennings v. Rodriguez,
583 U.S. 281 (2018) 13
Jimenez v. FCI Berlin Warden,
799 F. Supp. 3d 61 (D. Mass. 2025) 4
Jose J.O.E. v. Bondi,
797 F. Supp. 3d 957 (D. Minn. Aug. 27, 2025) 16
Jose Rojas-Lara v. United States,
No. 2:25-cv-02544-RFB-EJY, 2026 WL 172676 (D. Nev. Jan. 22, 2026) 8, 18
Kaplan v. Tod,
267 U.S. 228 (1925) 5, 11
Kashranov v. Jamison,
No. 2:25-cv-05555-JDW, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025) 4, 20

Kourouma v. Jamison,
No. 26-0182-KSM, 2026 WL 120208 (E.D. Pa. Jan. 15, 2026) 4
Kumar v. McShane,
No. 25-6238, 2025 WL 3722005 (E.D. Pa. Dec. 23, 2025) 20
Landon v. Plasencia,
459 U.S. 21 (1982) 3
Leal-Hernandez v. Noem,
803 F. Supp. 3d 409 (M.D. Pa. 2025) 16, 18, 21
Leng May Ma v. Barber,
357 U.S. 185 (1958) 5
Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024) 17
Lopez Benitez v. Francis,
795 F. Supp. 3d 475 (S.D.N.Y. Aug. 13, 2025) 4
Martinez-Aguero v. Gonzalez,
459 F.3d 618 (5th Cir. 2006) 13
Martinez v. Hyde,
792 F. Supp. 3d 211 (D. Mass. July 24, 2025) 4
Mata Velasquez v. Kurzdorfer,
794 F. Supp. 3d 128 (W.D.N.Y. 2025) 15
Mathews v. Diaz,
426 U.S. 67 (1976) 5
Mathews v. Eldridge,
424 U.S. 319, 335 (1976) 20
Matter of Q. Li,
29 I. & N. Dec. 66 (B.I.A. 2025) 17
Matter of Yajure Hurtado,
29 I. & N. Dec. 216 (BIA 2025) 17
Morrissey v. Brewer,
408 U.S. 471 (1972) 18
Ndiaye v. Jamison,
No. 25-6007, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025) 4
Pinchi v. Noem,
792 F. Supp. 3d 1025 (N.D. Cal. 2025) 18
Qasemi v. Francis,
No. 25-cv-10029, 2025 WL 3654098 (S.D.N.Y. Dec. 17, 2025) 12, 14
Ramirez Tesara v. Wamsley,
800 F. Supp. 3d 1130 (W.D. Wash. 2025) 18
Rincon v. Hyde,
No. 25-cv-12633-BEM, 2025 WL 3122784 (D. Mass. Nov. 7, 2025) 13
Rodriguez v. Rokosky,
No. 25-17419, 2025 WL 3485628 (D.N.J. Dec. 3, 2025) 14
Rodriguez-Acurio v. Almodovar,
2:25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) 12, 16
Romero v. Hyde,
795 F. Supp. 3d 271 (D. Mass. 2025) 20

Salgado Bustos v. Raycraft,
No. 25-13202, 2025 WL 3022294 (E.D. Mich. Oct. 29, 2025) 13
Serrano-Alberto v. Att'y Gen.,
859 F.3d 208 (3d Cir. 2017) 6
Shaughnessy v. Mezei,
345 U.S. 206 (1953) 5, 9, 10, 11
TRW Inc. v. Andrews,
534 U.S. 19 (2001) 4
Vasquez-Rosario v. Noem,
No. 25-cv-7427, 2026 WL 196505 (E.D. Pa. Jan. 26, 2026) 4, 12, 14, 16, 17
Yskakuulu v. Jamison,
No. 2:26-cv-909-MRP, at 3 n.1 (E.D. Pa. Feb. 17, 2026) 14
Y-Z-L-H v. Bostock,
792 F. Supp. 3d 1123 (D. Or. 2025) 15
Zadvydas v. Davis,
533 U.S. 678 (2001) 2, 5, 17

Statutes

8 U.S.C. § 1182(d)(5)(A) 1, 14, 15
8 U.S.C. § 1225(b)(1)(A)(iii)(II) 17
8 U.S.C. § 1225(b)(2)(A) 3, 4
8 U.S.C. § 1226 2

Regulations

8 C.F.R. § 1003.19(i)(2) 22
8 C.F.R. § 1236.1(d)(1) 2
8 C.F.R. § 212.5(e)(2)(i) 15

Other Authorities

Truth, Strangers, and Fiction: The Illegitimate Uses of Legal Fiction in Immigration Law,
11 Cardozo L. Rev. 51, 53 (1989) 11
Dahlia Wilson, *American Fiction: Overturning the Doctrine of Immigration Entry Fiction as Established in* Shaughnessy v. Mezei,
108 MINN. L. REV. HEADNOTES 253 (2025) 11, 12

INTRODUCTION

For twelve months, the Government authorized Petitioner's presence in the United States. It paroled him and his family into the community, removed his wife's tracking monitor, approved his employment authorization, accepted his asylum application, and scheduled an annual check-in. Petitioner complied with every government-imposed condition. Then, at his scheduled check-in, ICE detained him without reviewing his documents, without any individualized determination, and with no explanation beyond "policy" and "an order of Trump." *See generally* Pet. Decl., Dkt. 13-1. No parole violation occurred. No individualized assessment by the Government was made. The Government simply changed its mind.

U.S. Customs and Border Protection (CBP) had the authority to continuously detain Petitioner at the border and chose not to. Petitioner's family presented themselves to CBP near Calexico, California around December 31, 2024, *see* Dkt. 12-2 at *3 (I-213, incorrectly stating Petitioner lacked fear of persecution), and expressed their intent to seek asylum. CBP interviewed the family and issued I-94s with the category "DT," representing parole into the United States under 8 U.S.C. § 1182(d)(5)(A). Petitioner's wife and three older daughters received I-94s with admit-until dates of December 29, 2026, which is nearly two full years of authorized presence (the youngest received parole until December 29, 2025). Petitioner's I-94 shows parole until April 18, 2025, a date facially inconsistent with his family's authorizations. This Court has ordered the Government to address that discrepancy. *See* Dkt. 9. But even taking the April 18 date at face value, the Government took no action from April through January 2026 (nine months during which Petitioner continued working, attending hearings, and complying with every condition imposed). Petitioner's Form I-862 Notice to Appear was dated December 31, 2024, meaning he was paroled into the United States *after* issuance of his NTA.

This detention implicates the most fundamental constitutional commitment. Liberty from imprisonment is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The Due Process Clause applies to all "persons" within the United States, "including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). And when the government releases someone into the community on conditions, re-detention without violation of those conditions requires, at minimum, the process due before any deprivation of liberty. No sufficient process was provided here.

In response to this habeas petition, this Court requested supplemental briefing on the applicability of the entry fiction doctrine: specifically, the implications of *Thuraissigiam* and *Mezei* for Petitioner's detention. *See* Dkt. 9. This brief addresses that question directly. And the answer is straightforward: the entry fiction doctrine need not be revisited or limited. Even accepting *Mezei* and *Thuraissigiam* as stated, neither case reaches a humanitarian parolee detained twelve months into an authorized period of community presence, at a routine check-in, without any individualized determination. A man who has lived in Philadelphia for a year, worked with government permission, filed for asylum, and raised four children is not standing at the border. He is in the United States.

Because the entry fiction does not apply, 8 U.S.C. § 1226 and not § 1225 governs Petitioner's detention, and he is entitled to immediate release to restore the status quo ante: community presence under the conditions the Government itself authorized. "Habeas has traditionally been a means to secure release from unlawful detention." *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020). If the Court does not order immediate release, Petitioner is entitled at minimum to a bond hearing within seven days under § 1226(a). *See* 8 C.F.R. § 1236.1(d)(1).

ARGUMENT

I. Petitioner is not subject to mandatory detention under § 1225 because he is not "seeking admission" and the entry fiction doctrine does not reach his circumstances.

Two independent grounds establish that 8 U.S.C. § 1225 does not govern Petitioner's detention. First, Petitioner is not "seeking admission" within the meaning of section 1225(b)(2)(A). A man detained at an interior check-in twelve months after authorized entry (even if it is not an "admission") is not "seeking" anything. Second, even if the entry fiction applied at the moment of parole, it cannot extend to a person detained twelve months later, after months of government-authorized community presence. Either ground is independently sufficient to demonstrate that section 1225 does not apply.

A. "Seeking Admission" is a separate requirement that Petitioner fails to satisfy.

Section 1225(b)(2)(A) does not apply to all "applicants for admission." It applies to applicants for admission who are actively "seeking admission" and this language requires present-tense conduct at or near the border, not mere physical presence years after entry. These are separate statutory requirements. To collapse them into one, as the Government urges, would render the phrase "seeking admission" surplusage. And the canons of statutory construction forbid that result.

A man detained at his routine interior check-in in Philadelphia is not "seeking" anything. He is complying with the Government's own conditions. The Supreme Court has long recognized the distinction: historically, the "deportation hearing is the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing is the usual means of proceeding against an alien outside the United States seeking admission." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982) (discussing the former structure of removal proceedings). District courts have applied that distinction to define the phrase

with precision. "Seeking admission" means "physically attempting to come into the United States, typically at a border or port of entry and presenting oneself for inspection and authorization." *Kashranov v. Jamison*, No. 2:25-cv-05555-JDW, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025). Someone who enters a movie theater without a ticket is not "seeking admission" once inside: they are already present. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. Aug. 13, 2025). The surplusage canon confirms this reading: "applicant for admission" and "seeking admission" must be given independent meaning; reading them as synonymous would render one superfluous. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001); *Jimenez v. FCI Berlin Warden*, 799 F. Supp. 3d 61, 70–71 (D. Mass. 2025). The statute's use of the present progressive "arriving," rather than the past tense "arrived," implies a temporal or geographic limit. *Martinez v. Hyde*, 792 F. Supp. 3d 211, 219 (D. Mass. July 24, 2025) (citation omitted).

Courts in this district and across the country have uniformly applied this distinction. "When an applicant for admission is apprehended after being present in the United States for years, . . . they are not actively seeking admission at the time of their arrest, so Section 1225(b)(2) does not govern their detention." *Kourouma v. Jamison*, No. 26-0182-KSM, 2026 WL 120208, at *4 (E.D. Pa. Jan. 15, 2026); *accord Vasquez-Rosario v. Noem*, No. 25-cv-7427, 2026 WL 196505, at *9–10 (E.D. Pa. Jan. 26, 2026). Rather, section 1225(b)(2)(A) applies to noncitizens who are just arriving or have recently arrived. *See Ndiaye v. Jamison*, No. 25-6007, 2025 WL 3229307, at *5 (E.D. Pa. Nov. 19, 2025). *See also Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY, 2025 WL 3205356, at *14 (D. Nev. Nov. 17, 2025) ("[T]he notion that an ICE officer conducting removal operations within the continental United States, far from any port of entry, is engaging in

'Inspection of Applicants for Admission' as contemplated in § 1225(b) contradicts the plain meaning of the text.").

B. The Entry Fiction Doctrine has constitutional limits.

Even if the statutory text were ambiguous, the entry fiction doctrine independently fails to reach Petitioner. The entry fiction is an exception to the general constitutional rule, not the rule itself. The general rule is this: once a person is physically present in the United States, the Due Process Clause protects that person. "[O]nce an alien enters the country, the legal circumstance changes . . . ." *Zadvydas*, 533 U.S. at 693. The Fifth Amendment, in other words, "protects every one of these persons from deprivation of life, liberty, or property without due process of law." *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

The entry fiction carves out a narrow exception at the moment of arrival. "An alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953). Under this fiction, parolees are treated as though they remain at the border. *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Parole is a "legal fiction to keep a noncitizen 'at the boundary line [so that they will have] gained no foothold in the United States.'" *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (keeping the noncitizen at Ellis Island until she could be deported safely). But a legal fiction must be maintained to survive. In *Mezei*, the fiction held because the Government kept Mezei in continuous custody on Ellis Island. It never released him, never authorized his presence in the community, never broke the boundary line it had drawn. *Mezei*, 345 U.S. at 213. The fiction requires the Government to continue to keep the individual in continuous custody.

But that fiction has a further inherent limitation: it presupposes proximity to the threshold. The Supreme Court in *Thuraissigiam* drew a clear line between "aliens who have established connections in this country" (who enjoy full due process protection) and "an alien at the threshold of initial entry" (who may be subject to reduced procedural protections). 591 U.S. at 107. The Third Circuit has recognized the same distinction. An alien "on the threshold of initial entry" stands on different footing from those who have "passed through our gates." *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 396 (3d Cir. 1999). And "[t]he Fifth Amendment protects the liberty of all persons within our borders, including aliens in immigration proceedings." *Serrano-Alberto v. Att'y Gen.*, 859 F.3d 208, 211 (3d Cir. 2017).

Petitioner crossed that threshold twelve months ago, with the Government's authorization, encouragement, and facilitation. He is not "on the threshold of initial entry." He is a person who has "established connections in this country," which is the very category *Thuraissigiam* itself distinguishes from the border cases. 591 U.S. at 107. The question, then, is whether either *Thuraissigiam* or *Mezei* extends the entry fiction to a person in Petitioner's position. Neither does.

C. Thuraissigiam confirms a temporal limit "shortly after" entry.

The Supreme Court in *Thuraissigiam* held that the entry fiction applies to noncitizens "detained shortly after unlawful entry." 591 U.S. at 139–40. Petitioner was detained twelve months after authorized parole that expired and thus time accrued for him as an applicant for admission in the United States. That is not "shortly after" by any measure.

The facts of *Thuraissigiam* bear no resemblance to this case. Consider what it actually involved. Vijayakumar Thuraissigiam crossed the southern border without inspection at approximately 11 p.m. one night in January 2017. *Id.* at 114. A Border Patrol agent stopped him within 25 yards of the border. *Id.* at 114. The entire sequence of crossing, apprehension, and the beginning of expedited removal proceedings occurred within hours. The Court cabined its holding to "an alien in respondent's position," *id.* at 140, and explained that such a person "cannot be said to have 'effected an entry,'" *id.* at 139–40.

Petitioner is not in *Thuraissigiam*'s position by any factual measure. He was not apprehended 25 yards from the border. He was not detained within hours. He was paroled into the United States, released into the community, and allowed to build a life in Philadelphia for twelve months before the Government re-detained him at a routine check-in. *See* Dkt. 12-3 (detained Jan. 9, 2026). The "shortly after" language in *Thuraissigiam* is not dicta but rather is the temporal premise on which the Court's reasoning depends.

An entry fiction that persists indefinitely, regardless of time, conduct, or government authorization, would lack the limiting principle that Justice Sotomayor warned the majority's rule required. *See id.* at 164–65 (Sotomayor, J., dissenting). Justice Breyer's concurrence reinforces this distinction. He identified "two features" that persuaded him the Suspension Clause did not apply to Thuraissigiam: that Thuraissigiam "ha[d] never lived in, or been lawfully admitted to, the United States" and that he sought review of factual questions rather than release. 591 U.S. at 152–53 (Breyer, J., concurring in the judgment). Both features cut the opposite way here. Petitioner has lived in the United States for twelve months after lawful parole, and he seeks release from custody, the traditional core of habeas relief.

District courts across the country have recognized this temporal limit. In *Escobar Salgado v. Mattos*, the court relied on *Thuraissigiam*'s "established connections" language to find that noncitizens who entered without inspection or parole who had lived in the community was no longer "at the threshold." 2025 WL 3205356, at *16 (D. Nev. Nov. 17, 2025). To go further, in *Jose Rojas-Lara v. United States*, a noncitizen paroled for nearly two years who had established "familial, financial, and community ties" was held to be no longer "arriving." No. 2:25-cv-02544-RFB-EJY, 2026 WL 172676, at *6 (D. Nev. Jan. 22, 2026). The reasoning in these decisions applies with full force here.

The contrast between *Thuraissigiam* and this case could not be starker. *Thuraissigiam* involved his capture 25 yards from the border, within hours, no community presence, no government authorization. Petitioner lived for twelve months in Philadelphia, obtained employment authorization from the Government, filed his asylum application with the Government, raised his four children, resided in the United States without an ankle monitor, and attended an annual check-in. *Thuraissigiam*'s cabined holding does not apply here. Indeed, reading Thuraissigiam broadly enough to reach Petitioner's circumstances would confirm Justice Sotomayor's concern that the Government's position "lacks any limiting principle" and "would permit Congress to constitutionally eliminate all procedural protections for any noncitizen." 591 U.S. at 164–65 (Sotomayor, J., dissenting).

D. Mezei is distinguishable on every material fact.

While *Thuraissigiam* does not help the Government, *Mezei* helps it even less. *Mezei* involved national security, initial exclusion at a port of entry, and continuous government custody on Ellis Island. None of those facts are present here.

What *Mezei* actually held is far narrower than the Government's reading suggests. The case involved an alien permanently excluded from the United States on classified security grounds during the Cold War, who was stranded on Ellis Island because no other country would accept him. *Mezei*, 345 U.S. at 207–08. The Court upheld his continued detention, but it drew a clear line: "Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. But an alien on the threshold of initial entry stands on a different footing." *Id.* at 212. And critically, the Court grounded its holding in the fact that "[h]arborage at Ellis Island is not an entry into the United States." *Id.* at 213.

Every distinguishing factor cuts in Petitioner's favor. *Mezei* was detained at a port of entry; Petitioner was detained at a routine interior check-in in Philadelphia. *Mezei* was in continuous government custody on Ellis Island; Petitioner was released into the community for twelve months without an ankle monitor. And while *Mezei* discussed exclusion on national security grounds, Petitioner's ICE officers acknowledged that he had done nothing wrong and apologized for his detention. *See generally* Pet. Decl., Dkt. 13-1. The critical distinction is custodial continuity. *Mezei* never left government custody. The Government maintained the fiction by maintaining the boundary line. Here, the Government dismantled that boundary line when it released Petitioner, authorized his employment, removed his supervision, and told him to return in a year. To treat these two cases as legally equivalent would be to drain the entry fiction of any limiting principle.

Even *Mezei*'s own Justices recognized the doctrine's limits: "Because the respondent has no right of entry, does it follow that he has no rights at all?" 345 U.S. at 226 (Jackson, J., dissenting). And more pointedly: "[I]t overworks legal fiction to say that one is free in law when by the commonest of common sense he is bound." *Id.* at 220–21. If it overworked legal fiction to call *Mezei* (detained on Ellis Island) "free," then it overworks legal fiction beyond all recognition to call Petitioner, who has lived in Philadelphia for a year with the Government's permission, "at the border." Later courts confirmed that *Mezei*'s holding was tethered to its national security context. *Mezei*'s due process holding "had less to do with Mezei's status as an alien than with the Court's willingness to defer to the Executive on national security matters in the midst of the Cold War." *Jean v. Nelson,* 472 U.S. 846, 878 (1985) (Marshall, J., dissenting).

The academic consensus is equally skeptical of *Mezei*'s reach. Professor Henry Hart called *Mezei* "a patently preposterous proposition," and Professor Kenneth Culp Davis called it "one of the most shocking decisions the Court has ever rendered." *Jean*, 472 U.S. at 876 n.9 (1985) (Marshall, J., dissenting) (collecting commentary). Immigration law fictions have been described as "rang[ing] from nebulous abstractions to outright distortions and misrepresentations" that are "often used to achieve ends that would be unthinkable in other areas of American law." Ibrahim J. Wani, *Truth, Strangers, and Fiction: The Illegitimate Uses of Legal Fiction in Immigration Law*, 11 Cardozo L. Rev. 51, 53 (1989). *See also* Dahlia Wilson, *American Fiction: Overturning the Doctrine of Immigration Entry Fiction as Established in* Shaughnessy v. Mezei, 108 MINN. L. REV. HEADNOTES 253 (2025).

Whatever vitality *Mezei* retains, it should not be extended beyond its Cold War national security facts to reach a humanitarian parolee living in Philadelphia with his family. But this Court need not share those views to rule in Petitioner's favor. The *Mezei* majority itself drew the dispositive line: between aliens "on the threshold of initial entry" and those who have "passed through our gates." 345 U.S. at 212. Petitioner passed through those gates twelve months ago, with the Government holding them open as parole expired.

E. The entry fiction holds only so long as the Government maintains it.

Even if the entry fiction placed Petitioner "at the threshold" at the moment of parole, the Government's subsequent conduct pushed him decisively past it. The legal fiction of keeping someone "at the boundary line" with "no foothold" in the United States, *Kaplan*, 267 U.S. at 230, cannot survive twelve months of government-authorized and government-facilitated community integration. "'Arriving' . . . would not naturally be read to refer to someone who previously reached the United States via a port of entry, underwent inspection at that port of entry, and then was paroled into the United States . . . for an indefinite period of time." *Coal. for Humane Immigrant Rts. v. Noem*, 2025 WL 2192986, at *28 (D.D.C. Aug. 1, 2025).[1]

The Government's own actions are irreconcilable with the fiction that Petitioner remained "at the border." It issued I-94s with up to two-year authorizations and released Petitioner to a fixed address in Philadelphia. His wife's monitoring bracelet, the most visible form of government supervision, was removed. The Government scheduled only

[1] "Entry fiction was initially proposed as a humanitarian option to a rapid growth spurt of immigration in the 1800s." Wilson, *American Fiction*, 108 MINN. L. REV. at 258 (citation omitted). Immigrants arriving by boat were so numerous on board "that immigration officials struggled to process everyone timely." *Id.* So, "Congress passed a law" for "'such aliens to be properly housed, fed, and cared for' in facilities on land so that they didn't need to languish onboard the boats. Such a facility would not be considered a 'landing during the pendency' of the immigration proceeding." *Id.*

annual check-ins, reflecting its own assessment that the family required minimal oversight. It approved Petitioner's employment authorization, accepted his asylum application, and allowed him to attend immigration court hearings. Each act is affirmatively inconsistent with treating Petitioner as someone "at the threshold of initial entry." The Government was not maintaining the boundary line. Instead, the Government was erasing it.

Courts have recognized that extended community presence destroys the arriving-alien fiction. "It would try any plain understanding of the term arrival to classify an individual like [the petitioner] who has lived and worked in the United States for over a year prior to his re-detention as an arriving alien." *Qasemi v. Francis*, No. 25-cv-10029, 2025 WL 3654098, at *6 (S.D.N.Y. Dec. 17, 2025). And in this district, judges have reached the same conclusion. *See Vasquez-Rosario v. Noem*, 2026 WL 196505, at *9 (petitioner "gainfully employed" and "building community ties" is not "arriving"); *Cabreja Bueno v. O'Neill*, No. 26-cv-304, 2026 WL 413315, at *10 (E.D. Pa. Feb. 13, 2026) (petitioner living "without criminal incident, openly in the United States" for over three years is not arriving). *See also Rodriguez-Acurio v. Almodovar*, 2:25-cv-6065, 2025 WL 3314420, at *21 (E.D.N.Y. Nov. 28, 2025) ("When ICE affirmatively chooses to release an individual on parole, it has made the determination that it no longer intends to fast-track their removal."). Indeed, even the Third Circuit case most favorable to the Government's position underscores this distinction. In *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422 (3d Cir. 2016), the court denied relief to individuals who had traveled only one mile into the United States. *Id.* at 427–28, 448. But the court's reasoning turned on the absence of substantial community ties — the "slightest entrance into this country" was insufficient. *Id.* at 448. Petitioner's year of government-authorized residency in the Philadelphia region is not a "slightest entrance." It is the deep community integration that *Castro* itself

recognized would change the calculus. *See also Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 625 (5th Cir. 2006) (holding that even a noncitizen who entered outside a port of entry may assert constitutional rights based on substantial connections to the United States).

And the Government cannot authorize someone's presence for a year, remove all supervision, schedule only annual check-ins, allow parole to expire, and then claim he was fictionally "at the border" the entire time. That is not a legal fiction that survives reality. *See also Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *5 (E.D. Mich. Oct. 29, 2025) (petitioner was no longer an arriving alien because he "had been living in the United States, far from the southern border, for almost three years"); *Rincon v. Hyde*, No. 25-cv-12633-BEM, 2025 WL 3122784, at *6 (D. Mass. Nov. 7, 2025) (describing *Thuraissigiam*'s 25-yard apprehension as "a cartographic rounding error" compared to years of community presence).

II. Section 1226 governs Petitioner's detention.

Because Petitioner is neither "seeking admission" nor fictionally "at the border," § 1226 and not § 1225 governs his detention, and he is entitled to a bond hearing under § 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (distinguishing § 1225 for those "seeking admission" from § 1226 for those "already in the country"). The Government's remaining statutory arguments do not change this result.

A. "Return to custody" does not mean return to arriving alien status.

The Government's reliance on 8 U.S.C. § 1182(d)(5)(A) is misplaced. Even assuming Petitioner's parole was terminated, that statute provides only that a parolee shall "return or be returned to the custody from which he was paroled." It says nothing about a parolee returning to the position of an "applicant for admission" at the threshold of entry, as § 1225(b) describes. *Yskakuulu v. Jamison*, No. 2:26-cv-909-MRP, at 3 n.1 (E.D. Pa. Feb. 17, 2026); *A-J-R v. Rokosky*, No. 25-17279, 2026 WL 25056, at *5 (D.N.J. Jan. 5, 2026) (noting failure to re-detain parolee with written notice and explanation and that parolee's are not obligated under the statute to return to a threshold of entry); *Rodriguez v. Rokosky*, No. 25-17419, 2025 WL 3485628, at 2 (D.N.J. Dec. 3, 2025) ("[Section] 1182(d)(5)(A) does not state that a parolee returns to the position of an applicant for admission standing at the threshold of entry, or that he reverts to the status he possessed prior to the grant of parole . . . ." (cleaned up)).[2]

The distinction between "custody" and "detention" is deliberate. Congress uses the word "detention" frequently throughout the INA and chose not to use it in § 1182(d)(5)(A). "Return to custody" means physical return to immigration custody and not reversion to arriving alien status and mandatory detention without a bond hearing. *Qasemi*, 2025 WL 3654098, at *11; *Coal. for Humane Immigrant Rts.*, 2025 WL 2192986, at *24. Courts in this district agree. *See Vasquez-Rosario*, 2026 WL 196505, at *8; *Cabreja Bueno v. O'Neill*, No. 26-cv-304, 2026 WL 413315, at *8–9 (E.D. Pa. Feb. 13, 2026).

[2] The Court in *Yskakuulu* reasoned that even "assuming, arguendo, the expiration of Mr. Yskakuulu's parole on April 20, 2024, returned him to the status of an arriving alien who was also seeking admission, Mr. Yskakuulu has lived in the United States for almost twenty-two months since his parole expired. Therefore, even if he had been 'seeking admission' on April 20, 2024, he is no longer actively 'seeking admission' now." No. 2:26-cv-909-MRP, at 3 n.1.

B. Parole was never properly terminated.

Further, the "return to custody" provision was never triggered because Petitioner's parole was never lawfully terminated. The statute permits termination only "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served." 8 U.S.C. § 1182(d)(5)(A). The implementing regulation requires that an authorized official either find that the purpose of parole has been accomplished or that "neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States." 8 C.F.R. § 212.5(e)(2)(i). Neither finding was made here.

No official made any finding that the purposes of parole had been served because no one asked. Pet. Decl. ¶ 14. Petitioner's asylum application remains pending, meaning the very purpose of his parole has not been accomplished. No written notice of termination was served as required by 8 C.F.R. § 212.5(e)(2)(i). The ICE officer stated only that Petitioner's detention was "policy" and "an order of Trump." Pet. Decl. ¶¶ 11–12, 15.

Courts have consistently held that parole granted on a case-by-case basis must be terminated on a case-by-case basis. *Jean*, 472 U.S. at 857 (immigration officials must "make individualized determinations"); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1145–46 (D. Or. 2025) (parole termination unlawful without individualized determination; mass-distribution email legally insufficient to meet statutory and regulatory requirements); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) ("Both common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis."); *Doe v. Noem*, No. 25-1384, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (statute "cuts against" finding en masse termination immune from review). Because Petitioner's parole was never lawfully terminated but simply allowed to expire without renewal, the predicate for mandatory detention under § 1225(b) does not exist.

C. The Government's remaining statutory arguments independently fail.

Three additional features of the statutory scheme confirm that § 1225 does not govern Petitioner's detention. First, the NTA did not revoke Petitioner's parole. The NTA was issued on December 31, 2024, which was two days before parole was granted on January 2, 2025. It cannot have revoked something that did not yet exist. The NTA and the parole coexisted for twelve months: the NTA placed Petitioner in removal proceedings, while the parole authorized his presence pending those proceedings. The Government never took any action during that period to terminate the parole or alter Petitioner's conditions of release.

Second, the statute itself exempts previously paroled noncitizens from expedited removal. The Designation Provision, 8 U.S.C. § 1225(b)(1)(A)(iii)(II), exempts any noncitizen who "ha[ve] been . . . paroled." Congress's use of the present-perfect tense "has been paroled" rather than "is currently on parole" means that anyone paroled at any point in time is exempt. That "distinction makes a difference." *Hewitt v. United States*, 606 U.S. 419, 427 (2025). *See Coal. for Humane Immigrant Rts.*, 2025 WL 2192986, at *22; *Rodriguez-Acurio*, 2025 WL 3314420, at *15; *Vasquez-Rosario*, 2026 WL 196505, at *7; *Cabreja Bueno*, 2026 WL 413315, at *7–8.

Third, the NTA's "arriving alien" checkbox does not determine detention authority. That box was checked at the port of entry on December 31, 2024, as part of initial processing, two days before parole was granted. It reflects encounter status, not detention authority twelve months later. Courts have looked beyond the NTA to the actual circumstances of detention. *See Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 970 (D. Minn. Aug. 27, 2025) (examining the arrest warrant, not the NTA, to determine detention authority); *Leal-Hernandez v. Noem*, 803 F. Supp. 3d 409, 423 (M.D. Pa. 2025) (the Government "tacitly (if not explicitly) concedes he is not an 'arriving alien' in the very

document that charges him as removable"); *Vasquez-Rosario*, 2026 WL 196505, at *6 (DHS issued Form I-862 for standard § 1229a proceedings, not Form I-860 for expedited removal, so DHS itself treated petitioner as someone in standard removal proceedings).

To the extent the Government relies on the BIA's decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (B.I.A. 2025), or similar agency authority to support mandatory detention under § 1225, no deference to the agency's statutory interpretation is required. Courts "must exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). The BIA itself has acknowledged that its position is novel, conceding "that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection." *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 n.6 (BIA 2025).

III. Due Process requires immediate release.

A. Petitioner's liberty interest is at its zenith.

The Due Process Clause protects Petitioner's physical liberty from arbitrary governmental deprivation. "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*, 533 U.S. at 690. It is "the most elemental of liberty interests." *Hamdi*, 542 U.S. at 529. And it is "at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Petitioner possessed that liberty for twelve months. The Government revoked it without process.

That interest is heightened and not diminished by the Government's decision to release Petitioner on parole. When the government releases someone into the community, the "conditional liberty" that follows "includes many of the core values of unqualified liberty" such as the ability to "be gainfully employed and . . . free to be with family and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). The Government's release creates "an implicit promise" that re-detention will occur only upon violation. *Id.* Due process requires a pre-deprivation hearing before revocation of that conditional release. *See Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (extending *Morrissey*'s pre-deprivation hearing requirement to probation revocation).

District courts have applied these principles to humanitarian parolees in identical circumstances. "When he was released from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to the full protections of the due process clause." *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025). "Even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). That interest is "perhaps the most acute private interest known to personkind short of life itself: bodily freedom." *Leal-Hernandez v. Noem*, 803 F. Supp. 3d 409, 427 (M.D. Pa. 2025).

Petitioner's detention also separates him from his four minor children. Pet. Decl. ¶ 13. Termination of liberty in these circumstances "inflicts a 'grievous loss' both on Petitioner and his loved ones." *Jose Rojas-Lara*, 2026 WL 172676, at *7.

B. The Government made no individualized decision before re-detaining Petitioner.

Petitioner's re-detention was not the product of any individualized assessment. It was categorical policy. This is precisely what the Supreme Court prohibited in *Jean*, 472 U.S. at 857, which held that INS officials must exercise discretion to make "individualized parole determinations."

The unrebutted facts establish that no such determination occurred. The ICE officer told Petitioner that his detention was "policy" and an "order of Trump." Pet. Decl. ¶¶ 11–12, 15. The officer did not look at Petitioner's documents; when Petitioner tried to show them, the officer said "we know." Pet. Decl. ¶ 13. No parole-related questions were asked. Pet. Decl. ¶ 14. The officers apologized, which is a remarkable concession that the decision was not based on Petitioner's individual circumstances. Pet. Decl. ¶¶ 11, 15.

Even under the most restrictive reading of the entry fiction, the Government's coercive power within U.S. territory is subject to constitutional limits. As Justice Marshall observed: "Regardless of the proper treatment of constitutional challenges to entry decisions, unadmitted aliens clearly enjoy constitutional protections with respect to other exercises of the Government's coercive power within our territory." *Jean,* 472 U.S. at 876 (Marshall, J., dissenting).

Detaining a man who has lived in the United States for a year without reviewing his file, without assessing his risk, without any determination beyond "policy" is the arbitrary exercise of coercive government power that due process forbids.

C. The Mathews v. Eldridge factors require, at minimum, a bond hearing, but the immigration court cannot provide a constitutionally adequate one.

All three *Eldridge* factors confirm that due process requires, at minimum, a bond hearing. *See Mathews v. Eldridge,* 424 U.S. 319, 335 (1976). First, the private interest is at its zenith: liberty from physical detention, heightened by twelve months of authorized community presence and separation from four minor children. Second, the risk of erroneous deprivation is extraordinarily high. The Government conducted no individualized assessment, and the ICE officer acknowledged Petitioner had done nothing wrong. Categorical "policy" detention without case-specific analysis is the definition of erroneous deprivation. Third, the Government's interest does not outweigh: a bond hearing "imposes minimal administrative burden," *Kashranov*, 2025 WL 3188399, at *5, and § 1226(a) already provides the mechanism. The Government's own prior conduct of parole, annual check-ins, and bracelet removal reflects its own assessment that Petitioner poses neither flight risk nor danger. *See also Kumar v. McShane*, No. 25-6238, 2025 WL 3722005, at *7 (E.D. Pa. Dec. 23, 2025) (same conclusion under *Mathews*).

Under normal circumstances, the *Mathews* analysis would require a bond hearing and nothing more. But these are not normal circumstances. Immediate release is the appropriate remedy because the current immigration court system cannot provide the neutral adjudication that *Mathews* demands. A former Immigration Judge recently stated publicly that he "was told to rule in a certain way" by his superiors, who "also had pressure from above." *Romero v. Hyde*, 795 F. Supp. 3d 271, 280 (D. Mass. 2025) (citing Oscar Margain, *Fired immigration judges describe threat to judicial independence from Justice Dept.*, NBC Boston (July 25, 2025)). The *Romero* court found that "the prospect of an unaffected decisionmaker seems unrealistically thin" and saw "little to be gained, in terms

of insight into the Executive's point of view, from making Petitioner go through the vain exercise of getting denied once again." *Id.*

Even where an Immigration Judge does grant bond, the Government has weaponized the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), to override release orders as a matter of course. In *Leal-Hernandez v. Noem*, the court found that the Government had "contorted the automatic stay from its many years' long (and intended) use as the exception to the rule such that it is now the rule—to be applied reflexively in every circumstance in which DHS disagrees with an IJ on custody." 803 F. Supp. 3d at 417. The automatic stay mechanism can hold a noncitizen in custody for approximately 140 days after the IJ's initial bond determination. *See Hasan v. Crawford*, 800 F. Supp. 3d 641, 658 (W.D. Tex. 2025). Ordering a bond hearing that the Government can nullify with a one-page form is not a remedy but an illusion. Immediate release to restore the status quo ante is the only relief adequate to vindicate Petitioner's rights.

The status quo ante is well-documented. Before his re-detention, Petitioner resided at a fixed address in Philadelphia with his wife and four children. His wife's tracking monitor had been removed. He held valid employment authorization and was gainfully employed. He had a pending asylum application and was appearing at all scheduled immigration court hearings. The Government itself imposed only annual check-in requirements. This Court can restore those conditions by ordering Petitioner's release to his prior residence, subject to the same check-in and reporting conditions that the Government previously deemed sufficient.

CONCLUSION

For twelve months, the Government authorized Petitioner's presence. It removed his supervision. It told him to come back in a year because Petitioner poses no flight risk. When he did, it detained him. That is not a lawful exercise of detention authority. It is the arbitrary revocation of conditions the Government itself created, maintained, and enforced for twelve months. The ICE officer who detained him acknowledged his compliance. He has four minor children who depend on him. His asylum application remains pending and he has no criminal history.

This Court should order his release. Because any delay in release would perpetuate the constitutional violation identified herein, Petitioner respectfully requests that the Court's order be effective immediately and that any motion to stay be subject to the Government's burden of demonstrating likelihood of success on the merits and irreparable harm.

Date: February 24, 2026

Respectfully Submitted,

/s Adam R. Boyd

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 24, 2026, he served a copy of the attached:

PETITIONER'S SUPPLEMENTAL BRIEF

by electronic service to Respondents' Counsel via ECF.

Date: February 24, 2026

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GAGIEV, *Petitioner*, v. ROSE, et al, *Respondents*.	**PETITIONER'S DECLARATION** Case No. 26-169 DISTRICT JUDGE JOHN F MURPHY

PETITIONER'S DECLARATION

1. I am writing this declaration for the judge who wanted me to write to him.

2. I was never told about parole at my entry into the United States. When I crossed the border in the morning, they called me and gave me the documents and an I-94 with a two-year expiration, but nobody ever explained or talked about parole with me, until my attorney talked about "parole" with me when I wrote my declaration for this court. Nobody ever talked about what would happen after the two years expired.

3. I do not even know how to respond fully to this question about parole, as my attorney is the first one to explain what this parole term is. Now I understand this "parole" a little better.

4. I do know that when they released us at the border, I was told I would have an ICE check in around January 8, 2025. And yes, when I later showed up on January 8, 2025, ICE gave me and my wife papers, and ICE said I had to come and show up again around January 9, 2026.

5. The first time we arrived in the United States, ICE put a bracelet of some sort on my wife's arm. Before the January 8, 2025 check in, ICE took the bracelet off my wife's arm in another location.

6. Again, after I arrived on January 2, 2025, I was told to check in around January 8, 2025. Since then, I knew January 9, 2026, would be my next check in appointment.

7. This is what happened on my date of detention. We arrived together (me with my spouse and two of my four children) to the ICE check-in.

8. When we entered the ICE building we filled out some forms. We were waiting for a response.

9. Then the ICE Officer called me and approached me with a translator.

10. I was told that I am detained. I asked why with my I-94, work authorization, my immigration court hearing notice, and I-589.

11. So the person, the ICE officer speaking, he stated that he himself was the head of the office but that he had to follow policy. He was around 40 years old and looked like the boss of the department, sharp and shaved. He did apologize, but he said he had an order to detain. The officer said he was here to answer my questions.

12. Again, this person was apologizing but stated this was an "order of Trump."

13. I was trying to show my documents to show I had everything. The boss officer did not look at them. He said we know. And then another officer came to the room and put handcuffs on me. The boss officer was standing to the side with the translator. I was taken to another room without my family.

14. I was not asked about my parole into the United States in any manner after I entered the United States, including the day of my detention. I was just given an I-94.

15. Again, the ICE officers were really nice and understanding to me but they told me this was Trump's order to detain me. I was arguing a little bit, I said I had no crime and did nothing, I come for check in, I am in court, why are you doing this? And ICE officers apologized again. They were just following orders.

16. Now I am detained without my wife and four children. And on January 12, 2026, they made my wife come back and put a bracelet on her again.

17. I had this entire statement read back to me sentence by sentence with a Russian/English translator while detained and talking to my law firm over the phone.

18. I understand that I am saying this statement as if I were in court swearing to tell the truth and talking to the judge in person.

I declare under penalty of perjury under the laws of the State of Pennsylvania that the foregoing is true and correct. Executed on February 19, 2026, at Moshannon Valley Detention Center in Pennsylvania.

Alan Gagiev

Petitioner