UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JUAN DAVID MARTINEZ TORRES

Petitioner,

v.

WARDEN, in his official capacity as Warden, Delaney Hall Detention Facility; **RUBEN PEREZ**, in his official capacity as Acting Director of the Newark Field Office, U.S. Immigration and Customs Enforcement; Immigration and Customs Enforcement; **TODD LYONS**, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, in her official capacity as Secretary of the U.S. Department of Homeland Security; **PAM BONDI**, in her official capacity as Attorney General of the United States,

Respondents.

Case No. 26-349

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Juan David Martinez Torres ("Mr. Martinez Torres") is a 27-year-old father of two who was forced to flee his native country, Colombia, in 2024 to avoid targeted violence against his family. When he came to the United States, seeking asylum, he was apprehended after crossing the border and he and his family were paroled as a family unit and later placed in removal proceedings. They then settled in Plainfield, New Jersey, where Mr. Martinez Torres attended his court hearings and regular check-ins with Immigration and Customs Enforcement ("ICE") and filed a timely claim for asylum in immigration court.

2. On December 5, 2025, Mr. Martinez Torres was attending a regular ICE check-in when he was arrested by ICE on a warrant. He has been detained ever since, and he is currently in the custody of Respondents at Delaney Hall Detention Facility ("Delaney Hall").
3. Due to internal policy memoranda and Board of Immigration Appeals decisions that overturn decades of settled immigration law, the Department of Homeland Security views all individuals who entered the United States without inspection, like Mr. Martinez Torres, as statutorily ineligible for bond. Under this policy, Mr. Martinez Torres will be detained pending the completion of his removal and asylum proceedings and an immigration judge ("IJ") has no jurisdiction to hear his request for custody redetermination (colloquially, a bond motion).
4. The Board of Immigration Appeals ("BIA")'s recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) held—in a significant departure from agency precedent—that certain noncitizens apprehended near the border without a warrant while entering the country without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b) and are thus not eligible for bond. 29 I. & N. at 66.
5. The BIA has since issued another new decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision held—in an even more significant departure from agency precedent—that *all* noncitizens who entered the country without inspection and have not subsequently obtained lawful status are also subject to mandatory detention under 8 U.S.C. § 1225(b).
6. But federal courts across the country have overwhelmingly rejected the BIA's new and flawed interpretation of 8 U.S.C. § 1225(b) in *Yajure Hurtado*. Many courts have also confirmed that *Q. Li* does not apply to individuals like Mr. Martinez, who were arrested on

a warrant in the U.S. interior. And many others have found that regardless of the statute of detention, noncitizens like Mr. Martinez Torres, who was previously granted parole and who have established their lives in this country, are at the very least entitled to fundamental due process and individualized review of their detention.

7. This Court should join these well-reasoned determinations and find that Mr. Martinez Torres is in fact detained under 8 U.S.C. § 1226(a) and is thus eligible for bond, and that, regardless, he is entitled to a constitutionally adequate custody determination hearing as a matter of procedural due process.

PARTIES

8. Petitioner Mr. Martinez Torres is a 27-year-old from Colombia who was detained by ICE on a warrant on December 5, 2025, and who is currently being held at Delaney Hall, in the custody and under the direct control of Respondents and their agents, within this judicial district.
9. Respondent Warden is sued in his official capacity as Warden of Delaney Hall, where Mr. Martinez Torres is currently detained. Respondent Warden is responsible for the operation of Delaney Hall and is the immediate physical custodian of Mr. Martinez Torres
10. Respondent Ruben Perez is sued in his official capacity as the ICE Acting Field Office Director for the ICE Newark Field Office. In this capacity, he oversees ICE's enforcement and removal operations in the area including Delaney Hall, where Mr. Martinez Torres is being held. As such, he is a legal custodian of Mr. Martinez Torres.
11. Respondent Todd Lyons is sued in his official capacity as the Acting Director of ICE. In this capacity, he is responsible for the enforcement of U.S. immigration laws, including

detention decisions, and oversees Respondent McShane. As such, he is a legal custodian of Mr. Martinez Torres.

12. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, she is responsible for the enforcement of U.S. immigration laws and oversees ICE, the component agency responsible for Mr. Martinez Torres' detention, including Respondents Lyons and Perez. As such, Respondent Noem is a legal custodian of Mr. Martinez Torres.

13. Respondent Pam Bondi is sued in her official capacity as Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office of Immigration Review, pursuant to 8 U.S.C. 1103(g). She is legally responsible for administering Mr. Martinez Torres' removal and custody proceedings and for the standards used in those proceedings. As such, she is a legal custodian of Mr. Martinez Torres.

JURISDICTION AND VENUE

14. This action arises under the U.S. Constitution and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). The Court may grant relief pursuant to the U.S. Constitution, art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act).

15. Venue is proper under 28 U.S.C. § 1391(b) and (e)(1) because Mr. Martinez Torres is detained within the District of New Jersey, his immediate physical custodian is located within this District, a substantial part of the events giving rise to this petition occurred and continue to occur within this District, and no real property is involved in this matter.

STATEMENT OF FACTS

16. Mr. Martinez Torres is a 27-year-old citizen of Colombia who fled to the United States with his wife and young daughter in 2024 after years of threats and targeted violence by [redacted].

17. According to DHS, he entered the United States "without inspection or admission by an immigration official" on or about February 28, 2024. *See* Ex. 1.1 (Form I-860); Ex. 1.2 (Form I-862) at 1. Mr. Martinez Torres and his family were placed in Expedited Removal proceedings, but after a positive credible fear interview they were issued Notices to Appear requiring them to appear at the Newark Immigration Court on April 15, 2024. *See* Exs. 1.1, 1.2.

18. Upon his release, Mr. Martinez Torres was released with an ankle monitor and was instructed to report to the ICE check-in office every month. Mr. Martinez Torres diligently complied with his ICE reporting obligations.

19. Mr. Martinez Torres and his family then timely filed their applications for asylum, withholding of removal, and protection under the Convention Against Torture ("Form I-589") and attended their master calendar hearings on April 15, 2024, and September 29, 2025. *See* Ex. 1.3 (Form I-589). After complying with all the court's requirements, Mr. Martinez Torres and his family were scheduled for their final individual hearing on October 14, 2026.

20. Mr. Martinez Torres has never been arrested in the United States. In Colombia, Martinez Torres was involved in a lawsuit because of a traffic accident on December 12, 2018. Mr. Martinez Torres was ultimately found not guilty, and the Judge determined that the incident was a result of an accident.

21. Mr. Martinez Torres was called for an in-person check-in at the ICE Newark Office. On December 5, 2025, he reported to ICE and he was "taken into custody pursuant a Warrant of Arrest, Form I-200." *See* Ex. 1.4 (Notice and Order of Expedited Removal).

22. Mr. Martinez Torres was eventually able to obtain legal representation from the Seton Hall Law School Center for Social Justice's Detention & Deportation Defense Initiative. Mr. Martinez Torres has a master calendar hearing scheduled for January 15, 2026, before the Elizabeth Immigration Court. *See* Ex. 1.5 (Notice of Internet-Based Hearing).

23. Based on internal policy guidance and the new BIA decisions, Mr. Martinez Torres is mistakenly subject to mandatory detention and has not been afforded a bond hearing.

LEGAL FRAMEWORK

8 U.S.C. §§ 1225(b) and 1226(a)

24. As the Supreme Court explained in *Jennings v. Rodriguez*, 8 U.S.C. §§ 1225 and 1226 govern the detention of two distinct and mutually exclusive groups of noncitizens. Section 1225 applies to those were "apprehended trying to enter the country, while section 1226 applies to those "who are already present inside the country." 583 U.S. 281, 285 (2018); *see also id.* at 289 (section 1225 applies to noncitizens "seeking admission into the country" while section 1226 applies to noncitizens "already in the country").

25. Under § 1226(a), "[o]n a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." Except as provided in 8 U.S.C. § 1226(c), which mandates detention for noncitizens arrested or convicted of certain crimes, these noncitizens are eligible to be released on bond or conditional parole. 8 U.S.C. § 1226(a)(2); *see also* 8 C.F.R. §§ 236.(d)(1), 1236.1(d)(1).

26. Section 1225, on the other hand, applies to "applicants for admission" into the United States, 8 U.S.C. § 1225(a)(1), who must "be inspected by immigration officers to ensure that they may be admitted into the country consistent with U.S. immigration law," 8 U.S.C. § 1225(a)(3). These applicants for admission fall into two categories. Those covered by § 1225(b)(1)—which is not implicated in the instant case—are "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation," or can be "designated by the Attorney General in his discretion." *Jennings*, 583 U.S. at 287 (citing § 1225(b)(1)(A)(i), (iii)). They are subject to expedited removal with limited procedural safeguards. *Id.*

27. Section 1225(b)(2), on the other hand, "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," with exceptions. *Id.* (citing § 1225(b)(2)(A), (B)). These individuals are placed in regular removal proceedings under 8 U.S.C. § 1229a. And "if the examining immigration officer determines that a [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained" for those proceedings. 8 U.S.C. § 1225(b)(2)(A).

Matter of Q. Li and Matter of Yajure Hurtado

28. It has been the BIA's position for decades that 8 U.S.C. § 1226(a) governs the custody status of all noncitizens who entered the country without inspection and were apprehended in the interior of the United States (except those subject to § 1226(c)). *See, e.g.*, Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled … will be eligible for bond and bond redetermination."); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020) (noncitizen detained by DHS "soon []after"

entering without inspection was detained under § 1226(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747 (BIA 2023) (noncitizens detained by DHS less than an hour after they had entered without inspection were detained under § 1226(a)).

29. Notwithstanding this precedent, on May 15, 2025, the BIA issued *Matter of Q. Li*, which interpreted § 1225(b) to extend to individuals "arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings." 29 I. & N. Dec. at 69 (emphasis added). In that case, a DHS officer encountered Ms. Q. Li "approximately 5.4 miles away from a designated port of entry and 100 yards north of the border," where she was arrested and held in detention overnight before being released on parole the next day under 8 U.S.C. § 1182(d)(5)(A). *Id.* at 67. The BIA then found that when Ms. Q. Li's parole was terminated—which occurred upon issuance of an NTA, *see* 8 C.F.R. § 212.5(e)(1)—this triggered her to be immediately "returned to custody" under 8 U.S.C. § 1225(b), and thus subject to mandatory detention. 29 I. & N. at 67, 69-70.

30. On September 5, 2025, the BIA decided to adopt an even more expansive and novel interpretation of 8 U.S.C. § 1225(b). In *Matter of Yajure Hurtado*, the agency ruled that *all* noncitizens who enter the country without being "admitted" by an immigration officer are "applicants for admission" who are "seeking admission" into the United States and are therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). 29 I. & N. at 166-67. For the reasons explained below, dozens of federal courts have since rejected this nonsensical interpretation.

CLAIMS FOR RELIEF

CLAIM ONE
Mr. Martinez Torres Is Detained Under 8 U.S.C. § 1226(a), Not 8 U.S.C. § 1225(b), And Is Statutorily Entitled to a Bond Hearing

31. The allegations in the above paragraphs are realleged and incorporated herein.

32. In assessing whether Mr. Martinez Torres is detained under 8 U.S.C. § 1226(a) and thus statutorily entitled to a bond hearing, this Court need not defer to the BIA's decisions in either *Q. Li* or *Yajure Hurtado*. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400-01 (2024) (noting that "agencies have no special competence in resolving statutory ambiguities," while "[c]ourts do"). The Court is free to reject the "plain language" reading adopted by the BIA in both cases. Moreover, as the BIA's "current position is inconsistent with its earlier pronouncements, which took the opposite position," under *Loper Bright*, "the Court has no obligation to defer to the BIA's view, particularly when that view has not remained consistent over time." *Rivera Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 WL 2753496, at *9 (D. N.J. Sept. 26, 2025) (internal quotation marks omitted) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *accord Rodriguez v. Bostock*, No. 25-cv-05240-TMC, 2025 WL 2782499, at **24-25 (W.D. Wash. Sept. 30, 2025).

33. Starting with the fundamental issue of whether, as in *Yajure Hurtado*, Mr. Martinez Torres' entry without inspection alone renders him subject to mandatory detention under 8 U.S.C. § 1225(b)(2)—almost two years later, in New Jersey, on a warrant—the answer is a resounding no.

34. Looking first to the plain language of the statute itself, 8 U.S.C. § 1225 is titled "*Inspection* by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing," and the subheading for § 1225(b)(2)(A) reads "*Inspection* of Other Aliens."

(emphasis added). This language, and the statutory provisions themselves, plainly establishes an inspection scheme for letting noncitizens *into* the country, rather than dealing with those already present in the interior.[1]

35. Consistent with this focus, § 1225(b)(2) is limited to noncitizens "seeking admission." This use of the present progressive tense clearly contemplates individuals who are currently in the process of asking for admission into the country, not those—like Mr. Martinez Torres—apprehended in the interior. *Rivera Zumba*, 2025 WL 2753496, at *8; *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No 25-cv-5937, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025).

36. By contrast, 8 U.S.C. § 1226(a) applies to noncitizens who—like Mr. Martinez Torres—are arrested "[o]n a warrant," and the statute makes clear that it can cover individuals who entered the country without inspection or admission. Indeed, § 1226(c) carves out certain categories of noncitizens from § 1226(a)'s default bond eligibility—including noncitizens subject to certain grounds of inadmissibility (and notably *not* anyone who has not been admitted). And Congress recently amended § 1226(c) to exempt an additional category of noncitizens from § 1226(a)—those who are inadmissible under 8 U.S.C. 1182(a)(6)(A), (6)(C), or (7) and have been charged with, arrested for, convicted of, or admitted to committing certain crimes. 8 U.S.C. § 1226(c)(1)(E), *as amended by* Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025). If § 1225(b) and not § 1226(a) governed the detention of all noncitizens who have not been admitted, then these provisions of § 1226(c) would be surplusage. This cannot be. *Gomes v. Hyde*, No. 25-cv-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *see also Marx v. Gen. Revenue Corp*, 568 U.S. 371, 386 (2013)

[1] Other statutory provisions and regulations discuss "inspection" in the context of admission processes at ports of entry, further confirming this interpretation. *See* 8 U.S.C. 1752(a); 8 C.F.R. 235.1.

("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

37. Statutory history also supports this reading of the statutory scheme. When Congress amended the predecessor statute of § 1225(b) to include certain individuals who had not been admitted (those "seeking admission"), there was no suggestion that it intended to subject all people present in the United States after an unlawful entry to mandatory detention. *See* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.); s*ee also Rodriguez*, 2025 WL 2782499, at **23-24 ("If Congress had wished to enact the transformation of the immigration detention that [the government] contend[s] it did—requiring the detention of millions of people currently living and working in the United States—then it would have said so more clearly.").

38. Given the plain language of these statutes, their statutory context, and their longstanding interpretation, any argument that a noncitizen like Mr. Martinez Torres—who was arrested on warrant in the interior of the United States—could be subject to mandatory detention under § 1225(b) simply because he entered the country without inspection is, as one federal court stated, "willfully blind." *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025, at *25 (D. Md. Aug. 24, 2025); *see also Doe v. Moniz*, No. 25-12094, 2025 WL 1576819, at *10 (D. Mass Sep. 5, 2025 (deeming the argument a "nonstarter"). Unsurprisingly, dozens of other federal courts across the country have rejected this argument with equal force.[2]

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[2] In addition to all of the cases already cited herein, *see, e.g.*, *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Singh v. Lewis*, No. 25-96,

39. The mere fact that Mr. Martinez Torres was apprehended and released on parole after crossing the border in 2024 also does not make him subject to mandatory detention under 8 U.S.C. § 1225(b)(2), as the immigration judge in his case wrongly determined based on *Q. Li*. Whether or not *Q. Li* was correctly decided (which this Court need not assess), the decision simply does not apply to Mr. Martinez Torres. As noted, *supra*, *Q. Li* involved a noncitizen who was arrested and detained 100 yards inside the border, "while arriving in the United States;" who was then allowed to enter on parole under 8 U.S.C. § 1182(d)(5); who later had her parole terminated when she was issued an NTA; and who was then immediately taken back into custody without a warrant. 29 I. & N. at 67, 69-70.

40. Mr. Martinez Torres' situation differs in at least three ways. First, there is no indication that his first apprehension by DHS was "while arriving" in the United States—rather, his Notice and Order of Expedited Removal makes clear that he had *already* entered and was encountered in the interior of the United States, in San Luis, Arizona Ex. 1.1 at 1. Second, Mr. Martinez Torres was not immediately "returned to custody" when he was issued an NTA. In fact, despite attending court hearings and numerous appointments with immigration officials over the course of almost two years, he was never taken into custody until being issued a warrant on December 5, 2025. Ex. 1.4 at 1.

2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Chafla v. Scott*, No. 25-437, 2025 WL 2688541 (D. Maine Sept. 21, 2025); *Hasan v. Crawford*, No. 25-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Barrera v. Tindall*, No. 25-451, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025); *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Diaz Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025) (granting habeas petition). This only includes some of the cases in which courts have granted habeas petitions—many others have granted temporarily relief based on likelihood of success on the merits.

41. Third, and most critically, Mr. Martinez Torres was detained "[o]n a warrant issued by the Attorney General," 8 U.S.C. § 1226(a), after he had already been in the country for almost two years, pending the outcome of his removal proceedings. So "to mandate [Mr. Martinez Torres'] detention in these circumstances would contravene Congress's intent that 8 U.S.C. § 1226(a)'s discretionary framework apply to all noncitizens arrested on a warrant except those subject to 8 U.S.C. § 1226(c)." *Gomes*, 2025 WL 1869299, at *6; *see also J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025) (noncitizen apprehended shortly after entering United States but later arrested on a warrant was detained under 8 U.S.C. § 1226(a)); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390, at *5 (D.N.H. Sept. 8, 2025) (same).[3]

42. For all these reasons, the Court should conclude that Mr. Martinez Torres' current detention is governed by 8 U.S.C. § 1226(a) and thus that he is statutorily entitled to a bond hearing.

CLAIM TWO
Mr. Martinez Torres' Detention Without an Individualized Custody Hearing Violates His Procedural Due Process Rights

43. The allegations in the above paragraphs are realleged and incorporated herein.

44. As the Supreme Court has made clear, the Fifth Amendment's Due Process Clause "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Procedural due process constrains government decisions that deprive individuals

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[3] The immigration judge's reliance on footnote 4 of *Q. Li* to suggest otherwise, Ex. 3 at 2, was misguided. In that footnote, the BIA stated that "[o]nce [a noncitizen] is detained under [8 U.S.C. § 1225(b)], DHS cannot covert the statutory authority governing her detention from [8 U.S.C. § 1225(b)] to [8 U.S.C. § 1226(a)] through the post-hoc issuance of a warrant." 29 I. & N. Dec. at 69 n.4. But on its face, this dicta clearly only means that, when a noncitizen is detained without a warrant while arriving in the United States, DHS cannot subsequently issue a warrant that somehow converts the noncitizen's *ongoing* detention into discretionary detention under 8 U.S.C. § 1226(a). *Accord Gomes*, 2025WL1869299, at *8 n.9. This is not what happened in Mr. Martinez Torres' case, as a warrant was not issued *after* his December 2025 detention—rather, he was arrested as the result of an existing warrant, just as envisioned by INA § 236(a). *See* Ex. 4 at 1; 29 I. & N. Dec. at 69 n.4.

of property or liberty interests within the meaning of the Due Process Clause. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

45. Even noncitizens detained under 8 U.S.C. § 1225(a) are entitled to basic due process protections, particularly where they—like Mr. Martinez Torres—have significant presence in this country. *See Lopez-Arevelo v. Ripa*, No. 25-cv-337-KC, 2025 WL 2691828, at *8-10 (W.D. Tex. Sept. 22, 2025); *Rodriguez De Oliveira v. Joyce*, 2025 WL 1826118 (D. Me. July 2, 2025) ("[P]reoccupation with technical concerns over 1225 versus 1226 processing for detention only exalts form over substance insofar as the Due Process Clause, writ large, is concerned, at least in this case involving a prolonged period of parole."); *Perez v. Kramer*, No. 25-cv-3179, 2025 WL 2624387, at *3 (D. Neb. Sept. 11, 2025) (similar).

46. When assessing the constitutional adequacy of the procedures provided to civil detainees like Mr. Martinez Torres, courts look to the three-part balancing test set out in *Mathews*, weighing (1) the noncitizen's private interest; (2) the risk of "erroneous deprivation" of that interest under the current procedures and the probable value of additional procedures; and (3) the Government's interest, including the burden of implementing additional procedures. 424 U.S. at 335.

47. Here, the first two factors weigh heavily in Mr. Martinez Torres' favor, as he has been deprived of his liberty and erroneously denied the right to seek a bond hearing for over a month. *See Rivera Zumba*, 2025 WL 2753496, at *10. Indeed, Mr. Martinez Torres' liberty interest is particularly strong, given that he was previously apprehended, passed a credible fear determination, and was thereafter released with his family for almost two years to pursue their claims for asylum, and therefore had a reasonable expectation in his

"continued liberty." *Lopez-Arevelo*, 2025 WL 2691828, at *11; *see also Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (same). A bond hearing would provide a "meaningful assessment" of whether there is any justification for Mr. Martinez Torres' detention, and thus "greatly reduce the risk of erroneous deprivation of his liberty." *Lopez-Arevelo*, 2025 WL 2691828, at *11.

48. The third *Mathews* factor also weighs in Mr. Martinez Torres' favor. The Government can have little interest in detaining a noncitizen with no criminal convictions who was previously granted parole, who has lived in the country for almost two years, has a U.S. citizen child, and who is actively pursuing a meritorious asylum claim. In any event, if valid concerns of flight risk or danger exist, "they would be squarely addressed if the Court were to grant the petition and order a bond hearing." *Id.* And before a few months ago, the Government would have given Mr. Martinez Torres a bond hearing as a matter of course, undermining any argument that this remedy would pose a meaningful added burden.

49. For these reasons, the Court should conclude that Mr. Martinez Torres is entitled to an individualized assessment of his ongoing detention as a matter of due process, regardless of his statute of detention.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Temporarily stay Mr. Martinez Torres' transfer outside the District of New Jersey pending the Court's adjudication of this Petition;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, as required by 28 U.S.C. § 2243, and expedite consideration of this action in accordance with 28 U.S.C. § 1657;

(4) Declare that Mr. Martinez Torres is detained under 8 U.S.C. § 1226(a) and thus statutorily entitled to a bond hearing before an immigration judge;

(5) Declare that Mr. Martinez Torres' detention without an individualized review of his custody violates his procedural due process rights under the Fifth Amendment;

(6) Order Mr. Martinez Torres' immediate release pursuant to a writ of habeas corpus;

(7) Alternatively, order Respondents to provide Mr. Martinez Torres a bond hearing under 8 U.S.C. § 1226(a) before an immigration judge within one week or release him if one cannot be promptly scheduled;

(8) Alternatively, order an immediate, constitutionally adequate individualized custody determination at which the government bears the burden of proof to justify Mr. Martinez Torres' continued detention and the Court considers less restrictive alternatives to detention;

(9) Alternatively, grant Mr. Martinez Torres bail pending the conclusion of the Court's review of the instant Petition. *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001);

(10) Award Mr. Martinez Torres attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(11) Grant any further relief this Court deems just and proper.

Dated: January 12, 2025

Respectfully submitted,

/s/Susan G. Roy
Susan G. Roy, Esq.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Juan David Martinez Torres and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 12th day of January

/s/ Susan G. Roy
Susan G. Roy, Esq.
Pro Bono Attorney for Petitioner

PETITIONER'S EXHIBIT INDEX IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

EXHIBIT	DESCRIPTION
1.1	Notice and Order of Expedited Removal, dated 02/29/2024
1.2	Notice to Appear, dated 03/14/24
1.3	Application for Asylum and for Withholding of Removal, dated 02/21/2025
1.4	Notice to EOIR: Alien Address, dated 12/31/2025
1.5	Notice of Internet-Based Hearing, dated 01/07/2026