UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRISTIAN ANDRES CHICA *Petitioner,* v. **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security, in her official capacity; **U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI** Attorney General of the United States, in her official capacity; **TODD M. LYONS**, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity; **DAVID O'NEILL,** Director of the Philadelphia Field Office of the U.S. Immigration and Customs Enforcement, in His official capacity; and **JAMAL L. JAMISON**, Warden of the Federal Detention Center in Philadelphia, in His Official Capacity) *Respondents.*	Case No.2:26-cv-00247-GAW **ORAL ARGUMENT REQUESTED**

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Respondents concede that numerous courts in this District have rejected their position that individuals released into the United States interior without admission remain subject to mandatory detention under 8 U.S.C. § 1225(b)(2). However, Respondents nevertheless ask this Court to adopt the same interpretation that those courts have declined to follow.

2. Their position fails for three independent reasons. First, this Court has jurisdiction to review the statutory authority under which Petitioner is detained. Second, DHS cannot lawfully rely on § 1225(b) mandatory detention after affirmatively releasing Petitioner on recognizance under § 1226(a). Third, Petitioner's detention without any individualized custody determination violates the Due Process Clause.

II. THIS COURT HAS JURISDICTION TO REVIEW PETITIONER'S CUSTODY

3. Respondents' jurisdictional arguments mischaracterize the nature of this habeas petition. Petitioner does not challenge the commencement of removal proceedings, the charges of removability, or the adjudication of his immigration case. He challenges only the statutory authority under which he is detained.

4. Habeas review of detention authority falls squarely within this Court's jurisdiction under 28 U.S.C. § 2241. The Third Circuit has repeatedly recognized that challenges to custody are analytically distinct from challenges to removal proceedings themselves. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 208–09 (3d Cir. 2020).

5. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips jurisdiction over claims that detention exceeds statutory or constitutional limits. As numerous courts in this District have held, § 1252 does not bar habeas review of whether DHS is detaining a noncitizen under the correct

statutory provision. *See, e.g., Demirel v. Fed. Det. Ctr. Phila.*, 2025 WL 3218243, at *3–4 (E.D. Pa. Nov. 18, 2025).

A. Habeas Jurisdiction Under 28 U.S.C. § 2241

6. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to review the legality of executive detention, including immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The writ of habeas corpus is a "core remedy for unlawful executive detention" and has historically served as a principal means of reviewing the legality of detention imposed by the Executive Branch. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

7. The Constitution guarantees the availability of the writ of habeas corpus "to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). A habeas petition properly challenges "the fact or duration of confinement" and seeks release from custody that violates federal law or the Constitution. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

8. Challenges to the statutory basis for immigration detention—including whether detention is governed by 8 U.S.C. § 1225 or § 1226—fall squarely within the scope of habeas review. *Zadvydas*, 533 U.S. at 688; *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *2–4 (E.D. Pa. Nov. 18, 2025).

B. Habeas Jurisdiction Is Not Barred by the INA's Jurisdiction-Stripping Provisions

9. Respondents frequently invoke 8 U.S.C. §§ 1252(b)(9), 1252(g), and 1252(a)(2)(B)(ii) to argue that district courts lack jurisdiction over detention challenges. Courts in this District have repeatedly rejected those arguments.

i. Section 1252(g)

10. Section 1252(g) strips jurisdiction only over claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). This provision is "narrow" and "does not sweep broadly." *Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

11. A challenge to the lawfulness of detention does not arise from any of the three enumerated actions. *Demirel*, 2025 WL 3218243, at *3; Ndiaye v. Jamison*, 2025 WL 3229307, at *3 (E.D. Pa. Nov. 19, 2025). Section 1252(g) therefore does not bar jurisdiction.

ii. Section 1252(b)(9)

12. Section 1252(b)(9) channels judicial review of claims "arising from" removal proceedings into petitions for review of final removal orders. 8 U.S.C. § 1252(b)(9). However, it does not apply to claims that are "independent of, or wholly collateral to, the removal process." *E.O.H.C. v. Sec'y DHS*, 950 F.3d 177, 186 (3d Cir. 2020).

13. A challenge to detention authority—specifically, whether DHS may detain a noncitizen without a bond hearing—is collateral to removal proceedings and cannot be meaningfully reviewed on a petition for review after removal. *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018); *Cantu-Cortes v. O'Neill*, 2025 WL 3171639, at *1 (E.D. Pa. Nov. 13, 2025). Section 1252(b)(9) does not apply.

iii. Section 1252(a)(2)(B)(ii)

14. Section 1252(a)(2)(B)(ii) bars review of discretionary decisions specified by statute to be within the discretion of DHS or the Attorney General. It does not bar review of pure

questions of law, including the scope of DHS's statutory detention authority. *Zadvydas*, 533 U.S. at 688; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

15. Whether detention is governed by § 1225 or § 1226 is not a discretionary determination; it is a question of statutory interpretation. *Demirel*, 2025 WL 3218243, at *4; Cantu-Cortes*, 2025 WL 3171639, at *1.

III. DHS'S RELIANCE ON 8 U.S.C. § 1225(b) FAILS BECAUSE PETITIONER WAS RELEASED UNDER 8 U.S.C. § 1226(a), TRIGGERING THE 8 U.S.C. § 1226(a) DETENTION FRAMEWORK

16. Respondents' argument rests on the premise that Petitioner's initial border apprehension permanently subjects him to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b), regardless of DHS's subsequent custody decisions. That premise is incompatible with the statutory structure of the INA and with DHS's own conduct in this case.

17. The Immigration and Nationality Act establishes two distinct and mutually exclusive detention frameworks applicable during removal proceedings: mandatory detention under 8 U.S.C. § 1225(b), and discretionary detention under 8 U.S.C. § 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018). Mandatory detention under 8 U.S.C. § 1225(b) applies to noncitizens who are "*seeking admission*" at or near the border and remain in the inspection process; by contrast, 8 U.S.C. § 1226 governs discretionary detention of noncitizens who are already present in the United States pending a decision on removal. *Id.* These provisions "can be reconciled only if they apply to different classes of noncitizens." *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025) (quoting *Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019)); *see also Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL

3218243, at *5 (E.D. Pa. Nov. 18, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025).

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

19. A noncitizen may not be detained under both provisions simultaneously, nor may DHS retroactively switch detention statutes based on enforcement preference. *Jennings v. Rodriguez*, 583 U.S. at 289; *Kashranov*, 2025 WL 3188399, at *6.

20. Federal courts uniformly hold that DHS may not retroactively convert INA § 236(a), 8 U.S.C. § 1226 detention into mandatory detention under INA §235(b), 8 U.S.C. § 1225(b). *See Jimenez v. FCI Berlin*, 2025 DNH 107 P, at 10–14; *Romero v. Hyde*, 2025 WL 2403827, at *8–9; *Gomes v. Hyde*, 2025 WL 1869299, at *7–8. The BIA itself agrees. *See Matter of Q-Li*, 29 I&N Dec. 66, 69 n.4 (BIA 2025).

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

22. By exercising § 1226(a) authority and permitting Petitioner to live in the community for over two years subject to supervision, DHS removed Petitioner from the statutory class governed by § 1225(b). *See Kashranov*, 2025 WL 3188399, at *6–7; *Romero*, 2025 WL 2403827, at *8–9. Any subsequent detention therefore had to proceed, if at all, under § 1226(a), with access to an individualized bond determination. *See* 8 U.S.C. § 1226(a)(2).

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

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

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

IV. PETITIONER IS NOT "SEEKING ADMISSION" WITHIN THE MEANING OF § 1225(b)(2)

26. Even if Petitioner could still be classified as an "applicant for admission" under § 1225(a)(1), mandatory detention under § 1225(b)(2) requires more. The statute applies only where an individual is both an applicant for admission *and* "seeking admission." 8 U.S.C. § 1225(b)(2)(A).

27. The phrase "seeking admission" denotes ongoing, active conduct, not a static legal label. *Jennings v. Rodriguez*, 583 U.S. at 287. Read in context, it refers to the process of attempting lawful entry at or near the border, not to individuals who have already entered, been released into the interior, and are seeking relief from removal.

28. Petitioner is not attempting to enter the United States. He has already entered, lived in the community pursuant to DHS supervision, and is now pursuing asylum and related protection. He is seeking permission to remain, not permission to enter. Courts within this Circuit have recognized that individuals in this posture are no longer "seeking admission" within the meaning of § 1225(b)(2). *Demirel*, 2025 WL 3218243, at *6–7; *Kashranov*, 2025 WL 3188399, at 8–9 (explaining that "seeking admission" denotes active, ongoing conduct at the border); *Anirudh*, 2025 WL 3527528, at 10–12 (same).

29. Respondents' interpretation collapses "applicant for admission" and "seeking admission" into a single concept, rendering one of Congress's chosen terms superfluous. That reading violates basic principles of statutory construction. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–01 (2024).

V. DHS'S POSITION IS INCONSISTENT WITH ITS OWN CONDUCT AND RENDERS 8 U.S.C. § 1226(a) MEANINGLESS

30. Respondents argue that once DHS revoked Petitioner's supervision and returned him to custody, he automatically reverted to § 1225(b) mandatory detention. But § 1225(b) does not authorize release on recognizance at all. The fact that DHS released Petitioner under § 1226(a) confirms that § 1225(b) was not the governing statute at the time of release.

31. DHS cannot both invoke 8 U.S.C. § 1226(a), INA § 236(a) to release Petitioner into the community and later claim that 8 U.S.C. § 1225(b), INA § 235(b) required continuous mandatory detention all along. *Demirel*, 2025 WL 3218243, at *8; *Rios Porras*, slip op. at 4–5. Statutes do not operate retroactively based on enforcement convenience, nor may DHS erase the legal consequences of its own discretionary release decisions. *Kashranov*, 2025 WL 3188399, at *10.

32. Once DHS placed Petitioner in the § 1226(a) framework, that framework governed any later custody decisions. Section 1226(a) requires individualized consideration of flight risk and danger and provides access to a bond hearing before a neutral adjudicator. DHS provided neither.

VI. THE GOVERNMENT'S INTERPRETATION IS AN EXTREME OUTLIER REJECTED BY THE OVERWHELMING NATIONAL CONSENSUS

33. Federal courts across the country have repeatedly addressed the precise legal question presented here: whether DHS may categorically treat all individuals who entered the United States without inspection as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), thereby denying them access to bond hearings.

34. As Judge Diamond recently summarized:

> "As of November 2025, at least 289 district court decisions have addressed this issue. In all but six, the Government's interpretation of the INA—the same interpretation it urges here—was rejected." *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025).

35. Courts have concluded that DHS has misread the INA, that detention in these circumstances is governed by 8 U.S.C. § 1226(a)—which provides access to a bond hearing—not § 1225(b), and that the Government's categorical application of § 1225(b) in this context violates the Fifth Amendment's Due Process Clause. *See, e.g.*, *Demirel*, 2025 WL 3218243, at *6–9; *Kashranov*, 2025 WL 3188399, at *12–13; *Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025); *Bethancourt Soto v. Soto*, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Sanchez Ballesteros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Rodriguez Serrano v. Noem*, 2025 WL 3122825 (W.D. Mich. Nov. 7, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Rosales Ponce v. Olson*, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Loza Valencia v. Noem*, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

36. Petitioner's case falls within this overwhelming national consensus. Like the petitioners in these cases, Mr. Chica was initially encountered at the border, released into the United States under INA § 236(a), 8 U.S.C. § 1226, lived in the community pursuant to DHS

supervision, and was later re-detained without a meaningful bond determination. Courts have uniformly rejected the Government's attempt to resurrect INA § 235(b), 8 U.S.C. § 1225(b), mandatory detention after such release.

VII. IIRIRA CONFIRMS THAT § 1226(a), NOT § 1225(b), GOVERNS THE DETENTION OF INDIVIDUALS LIKE PETITIONER WHO WERE RELEASED INTO THE UNITED STATES AND LATER DETAINED IN THE INTERIOR

37. The Immigration and Nationality Act contains multiple detention provisions that apply at different stages of the removal process. Section 1226(a) governs discretionary detention of noncitizens arrested within the United States pending a decision on removal and entitles many of such individuals to an individualized bond hearing. 8 U.S.C. § 1226(a); INA § 236(a); 8 C.F.R. § 1236.1(d). Section 1226(c) creates a narrow exception for certain noncitizens with specified criminal convictions, requiring mandatory detention without bond. Section 1225(b), by contrast, governs mandatory detention of noncitizens subject to expedited removal under § 1225(b)(1) and other recent arrivals who are "seeking admission" under § 1225(b)(2). Finally, § 1231 governs post-final-order detention.

38. Both § 1226(a) and § 1225(b)(2) were enacted as part of IIRIRA. Pub. L. No. 104-208, Div. C §§ 302–03, 110 Stat. 3009-546. In enacting § 1226(a), Congress expressly stated that the provision "restates the current provisions in the predecessor statute," which had long permitted noncitizens who entered without inspection to seek release on bond. *See Rodriguez 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).

39. Consistent with that understanding, shortly after IIRIRA's enactment, EOIR promulgated regulations clarifying that noncitizens who entered without inspection and were

later present in the United States were generally detained under § 1226(a), not § 1225(b), and were eligible for bond hearings. *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled … will be eligible for bond and bond redetermination.").

40. For decades thereafter, the government uniformly treated noncitizens who had entered the United States, even without inspection, and were placed in standard removal proceedings as subject to § 1226(a), with access to bond hearings unless barred by criminal history. *See, e.g., Diaz Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025). That practice was consistent not only with IIRIRA, but with longstanding pre-IIRIRA practice under which noncitizens physically present in the United States were entitled to custody determinations before an immigration judge. *See* 8 U.S.C. § 1252(a) (1994).

41. Only recently did DHS reverse course. In July 2025, ICE issued an internal memorandum asserting—contrary to decades of practice—that § 1225, rather than § 1226, governs the detention of noncitizens present in the United States without admission. *Diaz Martinez*, 2025 WL 2084238, at *4. Shortly thereafter, the Board of Immigration Appeals adopted that position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all noncitizens present without admission are subject to mandatory detention under § 1225(b)(2)(A).

42. Federal courts have overwhelmingly rejected that interpretation as inconsistent with the INA's text, structure, and history. *Demirel*, 2025 WL 3218243, at *6–9; *Kashranov*, 2025 WL 3188399, at *6–10; *Diaz Martinez*, 2025 WL 2084238, at *6–8; *Lopez Benitez v. Francis*, 2025 WL 2371588, at *6–9 (S.D.N.Y. Aug. 13, 2025).

43. The statutory text confirms why. Section 1226(a) applies by default to noncitizens detained "pending a decision on whether the alien is to be removed." *Jennings v. Rodriguez*, 583 U.S. at 288. It expressly applies to individuals charged as inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Indeed, Congress's recent enactment of the Laken Riley Act—which carved out specific categories of inadmissible noncitizens from § 1226(a)'s bond provision—confirms that, absent those narrow exceptions, inadmissible noncitizens are ordinarily governed by § 1226(a). *See Rodriguez Vazquez*, 2025 WL 1193850, at *12.

44. By contrast, § 1225(b)(2) applies only to individuals who are both applicants for admission and actively "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Courts have correctly recognized that the phrase "seeking admission" denotes present-tense, border-focused conduct, not individuals who entered the United States, were released into the interior, and are pursuing relief from removal. *Diaz Martinez*, 2025 WL 2084238, at *6; *Lopez Benitez*, 2025 WL 2371588, at *6. Reading § 1225(b)(2) to apply to all inadmissible noncitizens would render the "seeking admission" language meaningless and violate the canon against surplusage. *See Gomes v. Hyde*, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025).

45. Applying § 1226(a) to individuals like Petitioner is also consistent with the government's longstanding practice, which "can inform a court's determination of what the law is." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). DHS's abrupt reversal of that practice underscores, rather than undermines, the conclusion that § 1226(a) is the correct statutory framework.

46. Finally, construing § 1225(b)(2) to mandate detention without bond for all noncitizens present without admission would raise serious constitutional concerns. Detention without

any individualized determination of flight risk or danger implicates both substantive and procedural due process. Where a statute is susceptible to two interpretations, courts must adopt the construction that avoids serious constitutional doubts. *Clark v. Martinez*, 543 U.S. 371, 381–82 (2005).

47. Because Petitioner was initially detained at the border but then released under INA § 236(a) and permitted to live in the community for an extended period, his detention falls within § 1226(a). DHS's attempt to resurrect § 1225(b) after that release is inconsistent with IIRIRA's text, history, and structure and cannot sustain Petitioner's continued detention without a lawful, individualized bond determination.

VIII. DETENTION WITHOUT A MEANINGFUL BOND HEARING VIOLATES DUE PROCESS

48. Even if the Court were to accept Respondents' statutory theory, Petitioner's continued detention without a meaningful, individualized custody determination violates the Fifth Amendment.

49. Freedom from physical restraint is "of the highest order." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). At a minimum, due process requires notice and an opportunity to be heard "at a meaningful time and in a meaningful manner" before the Government restrains an individual's liberty. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

50. Here, Petitioner was re-detained after years of compliance, without advance notice, without explanation, and without any bond hearing at all. DHS made no individualized finding that Petitioner posed a danger or risk of flight, and no neutral adjudicator ever evaluated his custody.

51. Importantly, the record contains no individualized evidence that Petitioner poses a risk of flight. Petitioner complied with DHS supervision for more than three years following his release under INA § 236(a), appeared for all required check-ins, maintained a fixed residence, obtained lawful employment authorization, and actively pursued relief in the immigration courts. There is no evidence of absconding, missed appearances, violations of supervision, or noncompliance of any kind.

52. Courts have repeatedly recognized that detention imposed categorically, or without a genuine opportunity to contest custody, creates a substantial risk of erroneous deprivation of liberty. *See, e.g., Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *6–7 (E.D. Pa. Nov. 18, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399, at *12–13 (E.D. Pa. Nov. 14, 2025); *Rios Porras v. O'Neill*, No. 25-6801, slip op. at 4–5 (E.D. Pa. Dec. 22, 2025).

53. Applying the *Mathews* balancing test confirms the due process violation:

a. **Private interest**: Prolonged civil immigration detention constitutes a severe deprivation of liberty, often involving incarceration-like conditions, separation from family, and loss of employment. *Zadvydas*, 533 U.S. at 690; *Demirel*, 2025 WL 3218243, at *7.

b. **Risk of erroneous deprivation**: The risk of error is especially high where detention is imposed through categorical assumptions rather than individualized findings. *Kashranov*, 2025 WL 3188399, at 13 (noting that detention without individualized assessment "creates a substantial risk that individuals who pose no danger and no flight risk will nonetheless be incarcerated").

c. **Government interest**: The Government's interests in ensuring appearance and protecting the community are fully served by an individualized bond hearing,

which is the ordinary mechanism Congress provided in § 1226(a). *Zadvydas*, 533 U.S. at 690; *Demirel*, 2025 WL 3218243, at 7.

54. Moreover, when due process requires a bond hearing, the Government bears the burden of proof by clear and convincing evidence to justify continued detention. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020); *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018).

56. Detention that neither complies with statutory authority nor meaningfully advances legitimate governmental purposes is constitutionally infirm. *Zadvydas*, 533 U.S. at 690.

IX. CLARIFICATION REGARDING THE BURDEN OF PROOF IN INA § 236(a) BOND PROCEEDINGS

55. Petitioner briefly clarifies an issue concerning the allocation of the burden of proof in custody determinations under INA § 236(a), 8 U.S.C. § 1226(a).

58. As a statutory matter, it is correct that INA § 236(a) places the burden of persuasion on the noncitizen in ordinary bond proceedings before the Immigration Court. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

56. However, that statutory allocation does not displace or diminish the independent requirements of the Fifth Amendment's Due Process Clause. Where detention implicates constitutional concerns—particularly prolonged detention, categorical detention, or detention imposed without a meaningful individualized determination—due process requires that the Government bear the burden of justifying continued detention by clear and convincing evidence. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020).

57. The Third Circuit has made clear that "[w]hen such a severe deprivation of liberty is at stake, the Government must bear the burden of proof." *Id.*; *see also Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018). That constitutional rule applies notwithstanding any contrary allocation under the statute. The purpose of the heightened burden is to ensure that detention is not imposed absent reliable, individualized proof that the noncitizen poses a danger to the community or a risk of flight.

58. Accordingly, even where INA § 236(a) governs detention as a statutory matter, as it does here, due process independently requires that DHS establish, by clear and convincing evidence, that continued detention is necessary.

X. CONCLUSION

59. Because DHS released Petitioner under INA § 236(a), 8 U.S.C. § 1226(a), it forfeited reliance on INA § 235(b), 8 U.S.C. § 1225(b) mandatory detention. Petitioner's current confinement is governed by 8 U.S.C. § 1226(a). The Court should reject Respondents' attempt to resurrect § 1225(b) after the fact and grant appropriate habeas relief.

Respectfully submitted,

Dated: January 28, 2026

VASSOR LAW, LLC.

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

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Reply in Support of Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted,

Dated: January 28, 2026

VASSOR LAW, LLC.

/s/ Dean Vassor

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