

INTRODUCTION

1. Respondents have unlawfully detained Petitioner in violation of his constitutional rights.

2. Petitioner was born in Tajikistan and entered the United States on or about October 23, 2024 without having been paroled or admitted. He was detained by the Department of Homeland Security (“DHS”) and was served with a Notice to Appear (“NTA”) charging him with removability from the United States pursuant to section 212(a)(6)(A)(i) and designated him as an alien present in the United States who has not been admitted or paroled.

3. On or about October 24, 2024, DHS released petitioner on his own recognizance. Since then, Petitioner has timely filed a Form I-589, Application for Asylum. However, on or about December 16, 2025 Petitioner was detained by Immigration and Customs Enforcement (“ICE”) and transferred to Pike Correctional Facility, where he remains detained as of the date of this filing.

4. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a). Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a change in custody redetermination (i.e. bond hearing) with an Immigration Judge (“IJ”).

5. However, on July 8, 2025, DHS issued an internal Interim Guidance (“Policy”) that took the baseless position that—contrary to statutory principles and governing case law—noncitizens like Petitioner who entered the United States without permission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b) instead of discretionary detention under section 1226(a). On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) that sided with DHS’ position.

6. DHS' contention that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is without merit. DHS' Policy has upended decades of DHS' own interpretation of bond eligibility under sections 1226(a) and 1225(b). The vast majority of district courts across the country that have addressed this issue have rejected DHS' arguments and found that it violates the INA and noncitizens' due process rights.

7. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner.

JURISDICTION

8. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue is proper because Petitioner is detained at Pike Correctional Facility, which is within the jurisdiction of this District. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

PARTIES

12. Respondent Craig Lowe is sued in his official capacity as the Warden of Delaney Hall. Respondent Lowe is also the physical custodian of Petitioner.

13. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

14. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

15. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

STATEMENT OF FACTS

16. Petitioner was born in Tajikistan and entered the United States on or about October 23, 2024, without having been paroled or admitted. He was detained by the Department of Homeland Security ("DHS") and was served with a Notice to Appear ("NTA") charging him with removability from the United States pursuant to section 212(a)(6)(A)(i) and designated him as an alien present in the United States who has not been admitted or paroled.

17. On or about October 24, 2024, DHS released petitioner on his own recognizance. Since then, Petitioner has timely filed a Form I-589, Application for Asylum. However, on or about December 16, 2025 Petitioner was detained by Immigration and Customs Enforcement

(“ICE”) and transferred to Pike Correctional Facility, where he remains detained as of the date of this filing

LEGAL FRAMEWORK

18. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

19. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).

20. Finally, the INA also provides for detention of noncitizens who are subject to final orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

21. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most recently amended earlier this year by the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025).

22. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not

considered detained under section 1225 and that they were instead detained under section 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that section 1226(a) simply “restates” the detention authority previously found at section 1252(a)).

23. On July 8, 2025, DHS issued a memo to all employees of ICE stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” The memo further stated DHS’ new position with regard to custody determinations as follows:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1) [8 U.S.C. § 1225(a)(1)]. **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or**

other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

See <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last accessed August 4, 2025) (emphasis original).

24. As a result, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, to be subject to mandatory detention under section 1225(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

25. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process

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

27. Petitioner is challenging DHS' unlawful custody determination that Petitioner is subject to detention under 8 U.S.C. § 1225(b) and is ineligible for bond, which violates Petitioner's right to substantive due process of law afforded him through the Fifth Amendment to the United States Constitution.

28. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

29. Petitioner is clearly detained pursuant to 8 U.S.C. § 1226(a) and is eligible for release on bond. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b). Respondents have violated Petitioner's due process rights under the Fifth Amendment by detaining him without the possibility of release on bond.

30. As a remedy, the Court should order Petitioner released from detention, or alternatively direct that an IJ hold a constitutionally adequate bond hearing.

COUNT TWO

Violation of Petitioner's Procedural Due Process Rights

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

32. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The *Mathews* factors are as follows: First, the private interest that will be affected by

the official action; [S]econd, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

33. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private interest known to personkind short of life itself: bodily freedom." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at *34 (D. Md. Aug. 24, 2025).

34. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims.

35. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody.

COUNT THREE

Violation of the Immigration and Nationality Act ("INA")

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

37. Application of 8 U.S.C. § 1225(b) to Petitioner is a violation of the INA because he is instead subject to discretionary detention under 8 U.S.C. § 1226(a).

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Petitioner during the pendency of the instant action outside the District;

- (3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;
- (4) Order Petitioner released from detention;
- (5) Grant Equal Access to Justice Act ("EAJA") fees and costs; and
- (6) Grant any other further relief this Court deems just and proper.

Dated: January 16, 2025

Respectfully submitted,

Ellenberg Law Group

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

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. 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 16th day of January, 2026.

/s/Enes Hajdarpasic
Enes Hajdarpasic

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NIKITA MUKHIN,

Petitioner,

v.

MICHAEL ROSE, Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, Immigration and Customs Enforcement; CRAIG LOWE, Warden of Pike County Correctional Facility,

Respondents.

**PETITION FOR WRIT OF
HABEAS CORPUS**

Case No. 3:26-CV-00108

INTRODUCTION

1. Petitioner Nikita Mukhin (“Mr. Mukhin” or “Petitioner”), a 34-year-old citizen of Russia who has lived in the United States since December 28, 2022, and was granted asylum by an immigration judge on September 25, 2025. Petitioner has been detained in Immigration and Customs Enforcement (ICE) custody for over nine months without having ever received a bond hearing. Mr. Mukhin petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents at Pike County Correctional Facility (“Pike”).

2. On December 28, 2022, Petitioner, presented himself to the U.S. Customs and Border Protection (CBP) agency at the San Ysidro, California port of entry and expressed his intent to seek asylum in the United States; at that time CBP was well within their right to place Petitioner in mandatory detention pursuant to 8 U.S.C. § 1225(b). CBP interviewed Petitioner to review his potential asylum claim and determine whether he presented a security risk or a risk of absconding.

3. Based on Petitioner's individualized facts and circumstances, Petitioner was granted permission to lawfully enter the United States on a temporary basis and given humanitarian parole under 8 U.S.C. § 1182(d)(5) while he pursued his application for asylum. Thus, on December 28, 2022, Petitioner was permitted lawfully to enter and remain in the United States while his immigration proceedings progressed. *See* Exhibits A & B. He was issued an I-94, Record of Entry, as well as a Notice to Appear (NTA) in immigration court. *Id.* Additionally, as a condition of his parole he was required to check-in with Immigration and Customs Enforcement (ICE) at regular intervals.

4. Petitioner submitted a timely asylum application, attended his immigration court hearings. He obtained employment authorization and a social security card and was otherwise a law abiding and productive member of society.

5. So far, everything had been done precisely as Congress had directed under federal immigration laws, including 8 U.S.C. §§ 1182(d)(5) and 1225. On April 16, 2025, Petitioner was arrested and detained by Respondents following domestic disputes with his partner in January 2025. Both matters were fully dismissed.

6. Petitioner has remained in Respondents' custody pursuant to 8 U.S.C. § 1225(b) because Respondents allege that Petitioner is an arriving alien, subject to mandatory detention, despite the fact that he was previously paroled into the United States.

7. Nevertheless, since his detention on April 16, 2025, Petitioner pursued his asylum application before the immigration court, asserting that he fears returning to Russia because he is a gay male. On September 25, 2025, the immigration judge granted Petitioner's asylum claim. *See* Exhibit C. On September 30, 2025, the Department of Homeland Security (DHS) filed a

Notice of Appeal (NOA) with the Board of Immigration Appeals (BIA). That appeal remains pending.

8. Petitioner has made several formal requests to be released from custody pending his appeal; however, these requests have been denied by Respondents.

9. Mr. Mukhin's more than nine-month detention without a bond hearing and with no end in sight violates due process under *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020).

10. To remedy his unlawful detention, Mr. Mukhin requests that this Court order the Government to promptly schedule a bond hearing before an IJ at which the Department of Homeland Security ("DHS") bears the burden of proving by clear and convincing evidence that he is a flight risk or danger to the community, and at which the IJ considers Mr. Mukhin's ability to pay and alternatives to detention, such as conditional release.

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Pike County Correctional Facility in Lords Valley, Pennsylvania.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Middle District of Pennsylvania, the judicial district in which Petitioner is currently detained.

15. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Middle District of Pennsylvania.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner Nikita Mukhin is a citizen of Russia who has been in immigration detention since April 16, 2025, having had his parole revoked.

19. Respondent Michael Rose is the Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division. As such, Respondent Rose is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

20. Respondent Craig Lowe, is employed as Warden of the Pike County Correctional Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

21. The Third Circuit has long held that the Fifth Amendment's Due Process Clause limits prolonged immigration detention without bond. *See Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 475–78 (3d Cir. 2015). Following the Supreme Court's decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), which declined to read 8 U.S.C. § 1226(c) as automatically requiring bond hearings for all noncitizens after six months of detention, the Third Circuit in *German Santos* reaffirmed the reasoning in *Diop* and *Chavez-Alvarez* and held that when detention becomes unreasonably prolonged, due process requires a bond hearing where the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary to prevent flight or danger to the community. 965 F.3d at 210, 213–14.

22. In *German Santos*, the Third Circuit articulated a four-factor, non-exhaustive, case-by-case balancing test for determining whether a noncitizen's mandatory detention has become unreasonably prolonged. The four factors, which borrow from *Diop* and *Chavez-Alvarez*, *see Diop*, 656 F.3d at 234; *Chavez-Alvarez*, 783 F.3d at 474, are (1) the "duration of detention" (2) "whether the [noncitizen]'s detention is likely to continue"; (3) the reasons for any delay, particularly

“whether either party made careless or bad-faith errors in the proceedings that cause[d] unnecessary delay”; and (4) “whether the [noncitizen]’s conditions of confinement are meaningfully different from criminal punishment.” *Id.* at 211.

23. The first factor—the length of detention without a bond hearing—is the “most important.” *German Santos*, 965 F.3d at 211. The Third Circuit has held that mandatory detention without bond “becom[es] unreasonable sometime between six months and one year.” *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478); *see also Diop*, 656 F.3d at 234 (holding that mandatory detention “becomes more and more suspect” after five months). Applying Third Circuit law, the Middle District of Pennsylvania has repeatedly found detention periods between 12 and 18 months to be unreasonably prolonged. *See, e.g., Malede v. Lowe*, No. 1:22-CV-01031, 2022 WL 3084304, at *5 (M.D. Pa. Aug. 3, 2022) (18 months); *Davydov*, 2020 WL 969618, at *8 (14 months); *Kleinauskaite v. Doll*, No. 4:17-CV-02176, 2019 WL 3302236, at *6 (M.D. Pa. July 23, 2019) (12 months); *Bah v. Doll*, No. 3:18-CV-1409, 2018 WL 6733959, at *7 (M.D. Pa. Oct. 16, 2018) (14 months); *report and recommendation adopted*, 2018 WL 5829668 (M.D. Pa. Nov. 7, 2018); *Sassmannshausen v. Doll*, No. 3:17-CV-1244, 2017 WL 4324836, at *1,*3 (M.D. Pa. Aug. 10, 2017) (13 months), *report and recommendation adopted*, No. 3:17-CV-1244, 2017 WL 4310177 (M.D. Pa. Sept. 28, 2017).

24. Similarly, other district courts in this Circuit applying *German Santos* have recently found that mandatory immigration detention surpassing one year is unreasonable and warrants a bond hearing consistent with due process. *See, e.g., Rivas v. Oddo*, No. 3:22-cv-223, 2023 WL 4361140 (W.D. Pa. June 27, 2023) (15 months).

25. The second factor focuses on the likelihood of continued detention. If a petitioner’s detention is “unlikely to end soon,” continued detention without a bond hearing grows more

suspect. *German Santos*, 965 F.3d at 211. The Third Circuit and district courts within it have repeatedly held that this factor favors the petitioner where the petitioner’s immigration case remains pending after an extended period, particularly when it is currently on appeal. *See, e.g., id.* at 212 (noting that petitioner would “stay in prison as long as it takes the [appellate court] to issue its decision.”); *Chavez-Alvarez*, 783 F.3d at 477–78 (concluding that the parties “could have reasonably predicted that [the petitioner’s] appeal would take a substantial amount of time, making his already length detention considerably longer.”).

26. The third factor considers whether either party caused unnecessary delay by “carelessness or bad faith” in petitioner’s underlying immigration case. *German Santos*, 965 F.3d at 211. On this factor, courts cannot “hold a[] [noncitizen]’s good-faith challenge to his removal against him, even if his appeals or applications for relief have drawn out the proceedings,” *id.*, nor does seeking reasonable continuances amount to bad faith. *See Rad v. Lowe*, No. 1:21-cv-00171, 2021 WL 1392067, at *4 (M.D. Pa. Apr. 13, 2021); *Davydov*, 2021 WL 1392067, at *4. This factor often favors neither side. Yet detention “can still grow unreasonable even if the Government handles removal proceedings reasonably.” *German Santos*, 965 F.3d at 211. The Middle District of Pennsylvania has repeatedly found detention unreasonable in the absence of governmental bad faith. *See, e.g., Clarke v. Doll*, 481 F. Supp. 3d 394, 397–98 (M.D. Pa. 2020); *Davydov*, 2020 WL 969618, at *5.

27. The fourth and final *German Santos* factor compares the conditions of the petitioner’s ICE detention to conditions of criminal custody. This factor favors the petitioner where the conditions of confinement are not “meaningfully different” from criminal punishment. *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478) (cleaned up). Courts have nearly exclusively found that this factor favors the petitioner because civil immigration detention often

closely resembles criminal custody. *See, e.g., id.* at 213 (finding that ICE detention at Pike County Correctional Facility in Pennsylvania resembles criminal custody where individuals held for ICE alongside individuals with criminal convictions); *Buleishvili v. Hoover*, No. CV 1:20-1694, 2021 WL 674226, at *4 (M.D. Pa. Feb. 22, 2021) (same finding for Clinton County Correctional Facility in Pennsylvania).

28. If a petitioner's mandatory detention is deemed unreasonable under *German Santos*, the petitioner is entitled to a bond hearing where the Government bears the burden of justifying continued detention by clear and convincing evidence. *German Santos*, 965 F.3d at 21.

29. To do so, the Government must provide sufficient evidence that the petitioner *presently* poses a danger to the community or a flight risk. *Id.* at 214; *see also German Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *3 (M.D. Pa. Aug. 6, 2020) (noting that past criminal history does not place petitioner "forever beyond redemption" and that due process does not permit the decision-maker to "presume dangerousness to the community...based solely on [petitioner's] past record").

30. To ensure that the burden of proof is properly applied by the IJ at the court-ordered bond hearing, courts in this circuit have retained jurisdiction to review the IJ's custody determination for consistency with the court's order and, if necessary, conduct their own bond hearings. *See, e.g., Clarke*, 481 F.3d at 399 ("The parties shall report to the court the outcome of the individualized bond hearing within seven days of the date of the immigration judge's hearing...If the immigration judge fails to convene an individualized bond hearing within 30 days of the date of this order, the court will reopen this case and conduct its own individualized bond hearing under the standards governing bail in habeas corpus proceedings."); *Vega v. Doll*, No. 3:17-CV-01440, 2018 WL 3765431, at *13 (M.D. Pa. July 11, 2018) ("[I]t is further recommended

that the District Court retain the authority to conduct its own individual bond consideration, if necessary”), *report and recommendation adopted*, No. 3:17-CV-01440, 2018 WL 3756755 (M.D. Pa. Aug. 8, 2018).

FACTS

31. Petitioner incorporates herein by reference paragraphs 1-8, *supra*.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

32. Petitioner restates and realleges all paragraphs as if fully set forth here.

33. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V.

34. Mr. Mukhin’s detention without a bond hearing violates due process, which demands that Mr. Mukhin receive a bond hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention by clear and convincing evidence and at which the adjudicator considers appropriate alternatives to detention and Mr. Mukhin’s ability to pay.

COUNT II

VIOLATION OF THE INA

35. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.f

36. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who have already been paroled into the United States.

Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

37. Here, as in similar cases, “because § 1225(b)(1)(A)(iii)(II) applies only to individuals “who have not been ... paroled,” the plain language of the statute clearly and unambiguously shows that § 1225(b)(1)(A)(iii) cannot serve as the basis for Petitioner's detention.” *Rivas Rodriguez v. Rokosky*, No. CV 25-17419 (CPO), 2025 WL 3485628, at *2 (D.N.J. Dec. 3, 2025).

38. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Middle District of Pennsylvania while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Declare that Petitioner's prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;
- e. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner;
- f. Alternatively, Order Respondents to, within 14 days, afford Petitioner an individualized bond hearing before an Immigration Judge at which, to continue Petitioner's detention, the Government must prove by clear and convincing

evidence that Petitioner poses a flight risk or danger the community, and at which the IJ must consider Petitioner's ability to pay and whether conditions of release might mitigate any risk of danger or flight.

- g. Retain jurisdiction over this matter to conduct its own bond hearing or order other appropriate remedies should the Government fail to comply with this Court's order;
- h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- i. Grant any other and further relief that this Court deems just and proper.

Respectfully Submitted,

Date: January 19, 2026

s/Christopher M. Casazza
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