

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

PONCE HERNANDEZ, Jose Arnan,

Petitioner,

v.

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

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

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

BONDI, Pamela,  
U.S. Attorney General

U.S. DEPARTMENT OF HOMELAND  
SECURITY;

EXECUTIVE OFFICE OF  
IMMIGRATION REVIEW,

Respondents.

Case No. 2:26-cv-306

**PETITION FOR  
WRIT OF HABEAS CORPUS**

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

## INTRODUCTION

1. Petitioner Jose Arnan Ponce Hernandez has resided in the United States since 2007, working to support his family and creating community in Norristown, Pennsylvania.

2. The Department of Homeland Security (“DHS” or “Department”) detained Mr. Ponce Hernandez and took him into custody on or about January 15, 2026. It currently detains Mr. Ponce Hernandez at the Philadelphia Federal Detention Center (“FDC”). The Department purports to hold Mr. Ponce Hernandez under 8 U.S.C. § 1225(b)(2)(A), a mandatory detention statute. Its detention of Mr. Ponce Hernandez followed a drastic recent shift away from decades of prior precedent and practice.

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

application of 8 U.S.C. § 1225(b)(2) to Petitioner is contrary to law, violating both the Immigration and Nationality Act (“INA”) and the Administrative Procedure Act (“APA”).

4. In the alternative, if the statute does subject Petitioner to mandatory detention, it still violates his rights to substantive and procedural due process. Categorical detention of all noncitizens who are subject to inadmissibility grounds without any individualized hearing does not “bear a reasonable relation to the purpose for which the individual was committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Application of the *Mathews v. Eldridge* balancing test shows that detaining Mr. Ponce Hernandez—a noncitizen who has resided in this country for nearly twenty years without any incident—is necessary to protect Petitioner from an unnecessary deprivation of liberty. 424 U.S. 319, 335 (1976). Numerous United States District Courts have agreed. *See, e.g., Ndiaye v. Jamison*, No. 25-cv-6007, 2025 WL 3229307, at \*2 (E.D. Pa. Nov. 19, 2025) (“[D]ue process and proper statutory interpretation of the INA preclude Ndiaye from being mandatorily detained without bond under § 1225(b)(2).”).

5. Mr. Ponce Hernandez respectfully requests that this Court issue a writ of habeas corpus and order Petitioner’s release from custody. *See, e.g., id.* at \*5 n.5 (ordering immediate release and finding that “[a] bond hearing would certainly result in [Petitioner’s] release and only serve to delay relief when the “Government has

offered no rationale to refuse bond”); Order, ECF No. 5, *Benitez Crespo v. Jamison*, No. 26-cv-93 (E.D. Pa. Jan. 16, 2026).

6. In the alternative, Petitioner requests that this Court conduct or order an Immigration Judge (“IJ”) to conduct a bond hearing at which (1) Respondents bear the burden of proving flight risk and/or dangerousness by clear and convincing evidence, and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight and ability to pay in setting any bond. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-14 (3d Cir. 2020).

### **PARTIES**

7. Petitioner Jose Arnan Ponce Hernandez entered the United States in or around 2007. He did not encounter any immigration officials upon his initial entry. Mr. Ponce Hernandez eventually moved to Norristown, Pennsylvania, establishing community. He is married and has two U.S.-citizen daughters, aged nine and five. U.S. Department of Homeland Security officials encountered Mr. Ponce Hernandez on his way to work on or about January 15, 2026. They took him into custody and currently detain him at the Philadelphia Federal Detention Center.

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

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

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

11. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She is responsible for the Department of Justice, including the Executive Office of Immigration Review. EOIR adjudicates individual immigration matters, including for removal and custody proceedings.

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

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

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

### **JURISDICTION AND VENUE**

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

15. This Court has subject matter jurisdiction pursuant to Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 2241, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

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

17. Venue is proper in this District because the Petitioner is detained in this district. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of

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

19. In deciding whether to impose exhaustion, habeas courts consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

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

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

22. The Board of Immigration Appeals (“BIA”) issued a published decision holding that noncitizens like Mr. Ponce Hernandez, who entered the United States

without inspection, are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Yajure Hurtado*, 29 I.&N. Dec. at 220. The BIA and IJs are bound by *Yajure Hurtado*. 8 C.F.R. § 1003.1(g)(1). Exhaustion before the EOIR would therefore be futile because it “would almost certainly result in the BIA persisting in its earlier rulings and applying those rulings to [Petitioner], all while he remains in detention[.]” *Del Cid v. Bondi*, No. 25-cv-304, 2025 WL 2985150, at \*13 (W.D. Pa. Oct. 23, 2025); *see also Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, at \*4 (E.D. Pa. Nov. 14, 2025) (finding further administrative review would “serve no practical purpose” considering the BIA’s decision in *Yajure Hurtado* “has already fixed its position,” rendering exhaustion “an empty formality”).

23. The BIA also does not have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Any administrative proceedings would therefore be futile as to Mr. Ponce Hernandez’s constitutional due process claims. *Qatanani*, 144 F.4th at 500.

### **STATEMENT OF FACTS**

24. Mr. Ponce Hernandez came to the United States in or around 2007. From his entry in 2007 to his immigration arrest on or about January 15, 2026, Mr. Ponce Hernandez did not encounter or interact with immigration officials.

25. For the last nearly twenty years, Mr. Ponce Hernandez has built a stable and rewarding life in Norristown, Pennsylvania. He is married and has two U.S.-citizen daughters: aged nine and five. Mr. Ponce Hernandez works for an asphalt company to help support his family. He has never been arrested or convicted of a crime.

26. On or about January 15, 2026, DHS officials stopped the work truck in which Mr. Ponce Hernandez was a passenger. They eventually questioned the passengers in the vehicle regarding their immigration status. They then took Mr. Ponce Hernandez into custody. DHS currently holds Mr. Ponce Hernandez at the Philadelphia Federal Detention Center. *See* Ex. 1, U.S. Immigr. & Customs Enf't, *Online Detainee Locator System*, <https://locator.ice.gov/odls/#/search> (last accessed Jan. 17, 2026) (search conducted for A-Number, "██████████").

27. Upon information and belief, Respondents detained Mr. Ponce Hernandez under its revised interpretation of the immigration detention statutes; specifically their new view that all noncitizens who have not been "admitted," 8 U.S.C. § 1101(a)(13)(A) are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

## LEGAL FRAMEWORK

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

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

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

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

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

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

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

33. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal position and believed that 8 U.S.C. § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025).

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

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

*Hurtado*); Order, ECF No. 5, *Benitez Crespo*, No. 26-cv-93 (E.D. Pa. Jan. 16, 2026) (Schmehl, J.); *Anirudh v. McShane*, No. 25-cv-6458, 2025 WL 3527528, at \*5 (E.D. Pa. Dec. 9, 2025); *Ibarra v. Warden of the Fed. Det. Ctr. Phila.*, No. 25-cv-6312, 2025 WL 3294726, at \*2-3 (E.D. Pa. Nov. 25, 2025) (Rufe, J.); *Patel v. McShane*, No. 25-cv-5975, 2025 WL 3241212, at \*3 (E.D. Pa. Nov. 20, 2025) (Brody, J.); *Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639, at \*2 (E.D. Pa. Nov. 13, 2025) (Kenney, J.); *Kashranov*, 2025 WL 3188399, at \*7 (Wolson, J.); *Demirel*, 2025 WL 3218243, at \*5 (Diamond, J.).

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

37. The text of 8 U.S.C. § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from Section 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under Section 1182(6)(A), *i.e.*, persons inadmissible for entering

without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* Court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” 779 F. Supp. 3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

38. Under the BIA’s interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Yajure Hurtado*, 29 I.&N. Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(13)(A) (defining an admission). Therefore, this interpretation would render all the grounds of mandatory detention in 8 U.S.C. § 1226(c) applied to inadmissible noncitizens, including the recently passed Laken Riley Act, superfluous. *Gomes*, 2025 WL 1869299, at \*7; *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”). This statutory structure demonstrates that Congress did not intend to make 8 U.S.C. § 1226(a) inapplicable to all inadmissible noncitizens, but rather viewed it as the default bond provision for

people arrested within the United States, as the Supreme Court confirmed in *Jennings*.

39. By contrast, 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 792 F. Supp. 3d at 222 ("[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

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

BIA's interpretation makes all applicants for admission subject to mandatory detention, leaving the "seeking admission" criterion unnecessary and violating the rule against surplusage. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 487-88 (S.D.N.Y. 2025); *Diaz Martinez*, 792 F. Supp. 3d at 217.

41. Instead, the phrase "seeking admission" indicates that 8 U.S.C. § 1225(b)(2)(A) applies to people who are taking "some sort of present-tense action;" in other words, coming or attempting to come into the United States. *Diaz Martinez*, 795 F. Supp. 3d at 218; *see also Matter of M-C-D-V-*, 28 I.&N. Dec. 18, 23 (B.I.A. 2020) (stating that "the use of the present progressive tense . . . denotes an ongoing process"). Therefore, 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), governs the detention of people, like Mr. Ponce Hernandez, detained within the United States who are not actively seeking admission, as required by the statute.

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

hearings, not § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

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

43. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

44. Absent adequate procedural protections, substantive due process requires a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; *accord*, e.g., *Herrera Torralba v. Knight*, 798 F. Supp. 3d 1184, 1199 (D. Nev. 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 25-cv-506, 2025 WL 2531539, at \*4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent

flight. *Zadvydas*, 533 U.S. at 693; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

45. In *Demore*, the Supreme Court upheld the constitutionality of 8 U.S.C. § 1226(c) against a facial challenge, specifically citing evidence that had been before Congress about noncitizens with criminal convictions. 538 U.S. at 518-20. This justification does not apply, however, to noncitizens with no criminal convictions who have lived in the community for years. The broad policy set forth in *Yajure Hurtado* is not reasonably related to the purposes of prevent danger to the community or flight risk and violates substantive due process.

46. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A. A. R. P. v. Trump*, 605 U.S. 91, 94 (2025); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews*, 424 U.S. at 335, weighing (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest,

including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth Cnty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara v. v. Lyons*, 10 F.4th 19 at 28 (1st Cir 2021); *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Here, the BIA’s interpretation of the statute to require detention of all people in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

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

48. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the petitioner “could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the

internet or email and limited access to the telephone.” 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated “alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to maintain her employment.” 10 F.4th at 28.

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

50. Finally, the burden on the government of returning to the longstanding practice of holding bond hearings for people like Petitioner does not outweigh the liberty interest at stake. To the contrary, the government has an interest in

“minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings, and weighs in favor of additional procedural protections.

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

bond hearing, it placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York C'ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39–40; *Velasco Lopez*, 978 F.3d at 855–56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

### **FIRST CLAIM FOR RELIEF**

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

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

53. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. Specifically, it does not apply to Mr. Ponce Hernandez, who has been living in the United States since 2007, for nearly twenty years prior to being detained by respondents on or about January 15, 2026.

54. Because Mr. Ponce Hernandez was not “seeking admission” at the time of his recent immigration arrest, he is detained under 8 U.S.C. § 1226(a).

Respondents' unlawful and arbitrary application of 8 U.S.C. § 1225(b)(2) to Petitioner violates the INA.

## **SECOND CLAIM FOR RELIEF**

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

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

56. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

57. The regulation at 8 C.F.R. § 1003.19 lays out bond procedures, and § 1003.19(h)(2) delineates categories of noncitizens who are subject to mandatory detention and not entitled to a bond hearing. The fact that noncitizens within the United States who are subject to inadmissibility grounds are not included on this list

shows that the agencies did not intend them to be subject to mandatory detention. The BIA's interpretation thus violates the regulations and unlawfully denies Petitioner a bond hearing.

### **THIRD CLAIM FOR RELIEF**

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

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

59. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. Specifically, it does not apply to Mr. Ponce Hernandez, who has been living in the United States since 2007. Mr. Ponce Hernandez is detained under 8 U.S.C. § 1226(a) and is eligible for release on bond.

61. In taking a contrary position, the BIA has reversed decades of prior practice, and "would expand § 1225(b) face beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would

have extremely limited (if any) application.” *Lopez Benitez*, 795 F. Supp. 3d at 490. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

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

#### **FOURTH CLAIM FOR RELIEF**

##### **Violation of the Fifth Amendment Due Process Clause Substantive Due Process**

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

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

65. The BIA's application of mandatory detention under 8 U.S.C. § 1225(b)(2) is not reasonably related to those goals and thus violates substantive due process.

66. The circumstances of Mr. Ponce Hernandez's detention and application of *Yajure Hurtado* provide him with no due process and no individualized assessment of flight risk or danger to the community as required by *Zadvydas*. 533 U.S. at 690. Were there to be such a process or individualized assessment, the government could not show that Mr. Ponce Hernandez is a public danger, as he has never been convicted of any crime; on the contrary, he is a valued community member. Likewise, the government could not clearly establish that he is a flight risk given his longstanding family and community ties in Norristown, Pennsylvania.

### **FIFTH CLAIM FOR RELIEF**

#### **Violation of the Fifth Amendment Due Process Clause Procedural Due Process**

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

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

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

70. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Here, there is a great risk of unnecessary detention because the BIA’s interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. Because Respondents detained Mr. Ponce Hernandez without any showing that he poses a danger or flight risk, they have not afforded him sufficient process to ensure no erroneous deprivation of his strong liberty interest.

71. The final factor is the Government’s interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure his appearance at future hearings or protect the community. Because Respondents have detained Petitioner based on an erroneous reinterpretation of the immigration detention statutes, it cannot establish a substantive interest in Petitioner’s detention.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 3) Issue a Writ of Habeas Corpus and order Petitioner's immediate release from custody;
- 4) In the alternative, order Petitioner's release within ten days unless Respondents schedule a hearing before an IJ at which the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;
- 5) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 6) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

*/s/ Mike Geoffino*

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\* Pro Hac Vice Application Forthcoming

*Pro Bono Counsel for Petitioner*

DATED: Jan. 17, 2026  
Philadelphia, PA

**CERTIFICATE OF SERVICE**

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

*/s/ Mike Geoffino*

\_\_\_\_\_  
Mike Geoffino

DATED: Jan. 17, 2026  
Philadelphia, PA