

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
PHILADELPHIA DIVISION

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**Ihar Yurkin,**

Petitioner,

v.

**Warden,** Philadelphia Federal Detention Center,  
Philadelphia, PA,

**David O’Neill,** Acting Field Office Director,  
Philadelphia Field Office Immigration and  
Customs Enforcement,

**Kristi Noem,** Secretary U.S. Department of  
Homeland Security

**Pam Bondi,** Attorney General, U.S. Department  
of Justice,

Executive Office for Immigration Review,

Respondents.

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Case No. 2:26-cv-385-NIQA

PETITIONER’S REPLY IN SUPPORT OF  
PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)  
AND MOTION FOR TEMPORARY RESTRAINING ORDER / PRELIMINARY  
INJUNCTION

This Court should grant Petitioner’s Writ of Habeas Corpus, even after consideration of Respondents’ opposition. Respondents’ brief advances two themes: (1) that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9) to decide whether ICE is detaining Mr. Yurkin under the wrong detention statute; and (2) that, because Mr. Yurkin was paroled into the United States and DHS later ended that parole, ICE may re-detain him years later—after an

interior arrest—in mandatory detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), while simultaneously asserting that no Immigration Judge may provide a bond hearing. Neither is correct.

This case is a detention-authority and process challenge. Mr. Yurkin does not ask the Court to adjudicate removability, to review the Government’s decision to commence or conduct removal proceedings, or to reinstate parole. See ECF 1 ¶ 2. Mr. Yurkin asks the Court to enforce the custody framework Congress provided in INA § 236(a), 8 U.S.C. § 1226(a), including the opportunity to seek release on bond or conditions pending a decision in his section 240 case.

On January 23, 2026, the Court granted a TRO in part, finding that the Petition and TRO motion raise substantive issues that may have merit and that, absent relief, Mr. Yurkin is likely to suffer substantial, immediate, and irreparable injury. ECF 3 at 1-2. The Court should deny Respondents’ request for dismissal, confirm that § 1226(a) governs this custody posture, and order release or, at minimum, a prompt individualized custody hearing.

#### **I. RELEVANT BACKGROUND**

Mr. Yurkin presented to immigration authorities at or near the Brownsville, Texas port of entry in December 2022, was inspected, and was paroled into the United States under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5). ECF 1 ¶ 20. DHS issued a Notice to Appear commencing section 240 proceedings. ECF 1 ¶ 22. Mr. Yurkin lived in the community and complied with reporting. ECF 1 ¶ 3. On January 21, 2026, ICE arrested him outside his home in the interior and placed him in custody at the Philadelphia Federal Detention Center. ECF 1 ¶ 25.

ICE now asserts that Mr. Yurkin is subject to mandatory detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), and therefore categorically ineligible for any bond hearing. ECF 1 ¶¶ 4-6, 26. The Petition seeks a declaration that § 1226(a) governs and an order requiring

release or, in the alternative, a prompt bond hearing before a neutral adjudicator. ECF 1 ¶ 7; ECF 1 at 9 (Prayer for Relief).

## **II. THE COURT HAS HABEAS JURISDICTION OVER DETENTION-AUTHORITY AND PROCESS CHALLENGE**

### **A. Section 1252(g) does not bar a challenge to detention authority under the wrong statute.**

Section 1252(g) removes jurisdiction over claims “arising from” three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-87 (1999). However, Mr. Yurkin’s Habeas Petition does not seek to adjudicate those three matters. Mr. Yurkin’s Petition seeks judicial review of his detention—whether ICE may hold him in mandatory detention under § 1225(b)(2) and deny any bond hearing where DHS previously processed him and released him into the community. The *Reno* Court read the scope of 1252(g) narrowly to not encompass all aspects of deportation proceedings *Id.* at 482–83 (1999) (Holding “[arguing that] §1252(g) covers the universe of deportation claims—that it is a sort of “zipper” clause that says no judicial review in deportation cases unless this section provides judicial review. In fact, what §1252(g) says is much narrower... There are of course many other decisions or actions that may be part of the deportation process [that §1252(g) does not apply to]”)

Respondents argue that “the decision to detain” is a “specification” of the decision to commence proceedings and thus barred. ECF 6 at 5 (citing *AADC*). Mr. Yurkin is not challenging whether the government can detain or not. Mr. Yurkin is challenging whether the government is detaining Mr. Yurkin under the correct statute. Labeling this type of detention-statute challenge as unreviewable is an overreach of § 1252(g). Using Respondents’ rationale, no district court would have jurisdiction to review any detention of a foreign national as long as the

foreign national was detained in connection to removal proceedings. That is a broad over reach of § 1252(g). Habeas review of unlawful custody, even when it is in reference to the beginning of the removal process, is precisely why 2241 exists. To find that § 1252(g) strips jurisdiction in this context would foreclose any forum to test whether the Government is applying the correct detention statute. See ECF 1 ¶ 27 (citing 28 U.S.C. § 2241).

**B. Section 1252(b)(9) does not “zipper” away detention-only habeas review that cannot be meaningfully remedied later.**

Respondents next invoke § 1252(b)(9) as a channeling provision. ECF 6 at 6-8. But the Petition is not an indirect challenge to a removal order; it is a detention-only claim seeking the process Congress provided and the Constitution requires. ECF 1 ¶ 2. The injury is ongoing unlawful detention without any meaningful custody review. That injury cannot be “meaningfully review[ed] later on” through a petition for review after a final removal order. See ECF 6 at 6-7 (quoting *Khalil v. President, United States of America*, No. 25-2162, 2026 WL 111933, at \*15 (3d Cir. Jan. 15, 2026)).

Section 1252(b)(9) acts as a “zipper clause” that channels most claims arising from removal proceedings to a petition for review (PFR) in the courts of appeals after a final order of removal. *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018). However, it does not bar district court habeas jurisdiction over pure detention challenges—such as misclassification under § 1225(b)(2) versus § 1226(a)—that are collateral to the removal merits and involve “now-or-never” injuries (e.g., ongoing unlawful detention without a bond hearing) that cannot be meaningfully remedied retroactively via PFR. Courts interpret this provision narrowly to preserve habeas as a check on executive detention authority and avoid Suspension Clause concerns. U.S. Const. art. I, § 9, cl. 2; see also *INS v. St. Cyr*, 533 U.S. 289, 300-01 (2001) (requiring clear congressional intent to repeal habeas jurisdiction).

In *Jennings v. Rodriguez*, the Supreme Court rejected the argument that § 1252(b)(9) bars district court review of statutory challenges to prolonged detention under §§ 1225(b) and 1226(c). 583 U.S. at 294-95. The plurality opinion clarified that while the provision channels claims "arising from" removal actions, it does not encompass detention-specific claims like the need for bond hearings, as these are not tied to the final removal order and would otherwise be effectively unreviewable. *Id.* at 294-95 & n.3. Rebutting Respondents' reliance on *Jennings'* dicta, the Court's binding holding preserves habeas for "decision to detain" challenges that require answering legal questions about detention authority. *Id.* This directly supports jurisdiction over claims like Mr. Yurkin, where the injury (detention without process) is immediate and irremediable post-removal.

In *Khalil v. President, United States of America*, the Third Circuit held that § 1252(b)(9) does not strip district court jurisdiction over habeas petitions for "now-or-never" claims like challenges to detention without bond hearings, as these cannot be "meaningfully review[ed] later on" via PFR. 2026 WL 111933, at \*9-11, \*15. Respondents heavily cite this case to argue § 1252(b)(9) strips jurisdiction over pre-final-order detention challenges "inextricably linked" to removal. ECF 6 at 7. However, the court's narrow holding bars only claims raising legal questions that can be meaningfully reviewed later via PFR (e.g., basis for removal). *Id.* at \*9. The decision explicitly preserves jurisdiction for "now-or-never" claims where later review cannot provide redress, such as ongoing detention harms that accrue daily and cannot be undone. *Id.* at \*9-11, \*15, \*18-20 (partial dissent reinforcing that § 1252(b)(9) applies only post-final-order and does not bar now-or-never habeas claims without one). Petitioner's petition fits the "now-or-never" exception: It challenges only the statutory basis for mandatory detention (not removal merits), and PFR cannot retroactively remedy months or years of unlawful custody.

Post-*Khalil* district courts in the Third Circuit have continued granting habeas relief in similar misclassification cases, reading *Khalil* to allow jurisdiction for detention-only claims. See, e.g., *Kourouma v. Jamison*, No. 26-cv-182 (E.D. Pa. Jan. 15, 2026) (Marston, J.); *Restrepo v. Jamison*, No. 25-cv-6518 (E.D. Pa. Jan. 20, 2026) (Leeson, J.).

Binding Third Circuit precedent further confirms that § 1252(b)(9) does not bar habeas jurisdiction over "now-or-never" claims where relief (e.g., release from unlawful detention) "cannot meaningfully [be] provide[d]" via later PFR. *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 185-86 (3d Cir. 2020). The court emphasized that while the provision is broad, it does not eliminate review for collateral issues like temporary detention decisions that cause irreparable harm before final removal. *Id.* This distinguishes from Respondents' cited cases like *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), as Petitioner's claim is "wholly collateral" to removal and focuses on detention process, not the order's validity.

The seminal Supreme Court case *Zadvydas v. Davis* preserves habeas jurisdiction for challenges to indefinite post-removal detention under § 1231(a)(6). 533 U.S. 678, 688 (2001). This logic extends to pre-removal contexts: § 1252(b)(9) must be read narrowly to avoid Suspension Clause violations, as barring all pre-removal detention claims would leave noncitizens without any forum to contest unlawful custody. *Id.*; see also *Boumediene v. Bush*, 553 U.S. 723, 771 (2008) (habeas as safeguard against arbitrary detention). In *Chehazeh v. Att'y Gen.*, the Third Circuit held that § 1252(b)(9) channels claims when a final order of removal exists. 666 F.3d 118, 134 (3d Cir. 2012). Therefore, absent one, the district court should retain jurisdiction over independent claims like statutory misinterpretation leading to detention. A broad reading of § 1252(b)(9) raises Suspension Clause issues by foreclosing all review of executive detention power.

**C. Section 1252(a)(2)(B)(ii) is inapplicable because Petitioner does not seek review of discretionary parole termination.**

Respondents argue DHS's parole decisions are discretionary and shielded from review. ECF 6 at 8-9. Petitioner does not ask this Court to reinstate parole or to review the merits of any parole determination. Accepting *arguendo* that parole ended, the legal question remains whether ICE may re-detain Mr. Yurkin years later in mandatory § 1225(b)(2) custody with no bond hearing, rather than proceed under § 1226(a) as DHS's prior actions and the INA's structure require.

**III. ON THE MERITS, SECTION 1226(a) GOVERNS THIS CUSTODY POSTURE; RESPONDENTS' SECTION 1225(b)(2) THEORY IS ULTRA VIRES**

**A. The regulatory "arriving alien" label cannot supply statutory authority for mandatory § 1225(b)(2) detention after parole and interior arrest.**

The Government's opposition relies on a legal fiction: that Mr. Yurkin, who has lived in Pennsylvania for over three years, is legally identical to a person standing at the border threshold today. To maintain this fiction, Respondents attempt to distinguish contrary case law—specifically *Cantu-Cortes v. O'Neill*—by the lack of an existing "superseding Notice to Appear." The Petition in *Cantu-Cortes*, like the Mr. Yurkin, was also categorized as an "arriving-alien." The Government tries to differentiate Mr. Yurkin from the Petitioner in *Cantu-Cortes* by stating there is no "superseding Notice to Appear" in the instant matter. This argument should fail as the Court can engage in its own analysis if Mr. Yurkin is an arriving alien for detention purposes.

Respondents rely on the regulatory definition of "arriving alien" and the regulatory restriction on an Immigration Judge's ability to redetermine custody for arriving aliens. ECF 6 at 9-11 (citing 8 C.F.R. § 1.001.1(q) and 8 C.F.R. § 1003.19(h)(2)(i)). Even if Mr. Yurkin is labeled an "arriving alien" for certain regulatory purposes, that label does not expand § 1225(b)(2)

beyond its statutory role in inspection-related detention. As Petitioner explained in the TRO memorandum, accepting Respondents' position as both (i) imposing mandatory § 1225(b)(2) detention and (ii) foreclosing IJ bond review based on "arriving alien" status would leave Mr. Yurkin without any meaningful custody review absent judicial intervention. ECF 2-1 at 6-7.

**B. The INA's structure distinguishes inspection-related detention from interior arrest and detention pending a removal decision.**

Section 1225(b) is keyed to the inspection/admission process. It is implemented for foreign nationals encountered at or near the border. Section 1226(a) authorizes arrest and detention "pending a decision on whether the alien is to be removed from the United States," and expressly permits release on bond or conditional parole. 8 U.S.C. § 1226(a). Mr. Yurkin was inspected and affirmatively paroled into the United States. ECF 1 ¶ 20. Years later, ICE arrested him in the interior. ECF 1 ¶ 25. That posture is the core setting for § 1226(a), not § 1225(b).

**C. Respondents' parole-status authorities do not decide the detention-statute question presented here, and their own cited EDPA authority cuts against them.**

Respondents cite the general proposition that parole is not an admission and that, when parole ends, an alien may revert to "applicant for admission" status. ECF 6 at 10-11 (citing *Chi Thon Ngo v. INS*, 192 F.3d 390, 392 n.1 (3d Cir. 1999)). That proposition does not answer which detention statute governs when DHS has already exercised parole authority released the individual into the community for years, and then ICE re-detains the individual in the interior. The Petition cites multiple decisions holding that re-detention of parolees and similarly situated individuals must proceed under § 1226(a), including *Coalition for Humane Immigrant Rights v. Noem*, 2025 WL 2192986 (D.D.C. Aug. 1, 2025), *Paz Hernandez v. Wofford*, 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025), and *Maldonado Bautista v. Santacruz*, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). ECF 1 ¶ 38.

Notably, Respondents acknowledge that Judge Kenney recently rejected the Government's attempt to impose mandatory § 1225(b) detention on a parolee by relying on the "arriving alien" label. ECF 6 at 2 (citing *Vasquez-Rosario v. Noem*, No. 25-cv-7427 (E.D. Pa. Jan. 26, 2026)). The detention-statute question should not turn on DHS's paperwork choices (such as whether it later issues a superseding NTA). The relevant facts—inspection, parole, § 236 custody processing and release, and interior re-detention—place this case within § 1226(a).

#### **IV. IN ANY EVENT, DUE PROCESS REQUIRES AN INDIVIDUALIZED CUSTODY HEARING BEFORE CONTINUED RE-DETENTION**

Even if the Court were to accept Respondents' statutory theory, the Fifth Amendment requires, at minimum, a prompt hearing before a neutral decisionmaker to assess flight risk and danger when the Government re-detains a person who has been living in the community under DHS supervision. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); ECF 1 ¶¶ 42-45; ECF 2-1 at 10-13. Consistent with *Paz Hernandez*, continued confinement in this posture requires an individualized hearing at which the Government bears the burden to justify detention by clear and convincing evidence and the adjudicator considers conditions of release. ECF 1 ¶¶ 43-46.

#### **V. TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF REMAINS WARRANTED**

Petitioner has demonstrated likelihood of success for the reasons above. The Court has already found likely irreparable harm absent relief. ECF 3 at 1-2. The balance of equities and public interest favor ensuring that civil detention occurs only under the proper statute and with constitutionally adequate process. Petitioner respectfully requests that the Court maintain interim restraints as necessary pending adjudication of the Petition or conversion of relief to a preliminary injunction.

#### **VI. CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents' request for dismissal, declare that INA § 236(a), 8 U.S.C. § 1226(a), governs Mr. Yurkin's detention, and order Respondents to immediately release Mr. Yurkin or, in the alternative, provide a prompt individualized bond hearing before an Immigration Judge within seven (7) days at which the Government bears the burden to justify continued detention. Petitioner further requests that the Court maintain or extend interim injunctive relief as necessary pending final resolution.

Date: February 4, 2026

Respectfully submitted,

/s/ David M. Bercovitch

David M. Bercovitch, Esq.

PA Bar No. 315026

Bercovitch Law Offices, P.C.

100 S. Broad Street,

Land Title Building, Suite 1902

Philadelphia, PA 19110

Tel.: (215) 220-6310

Email: david@berclaw.com

Counsel for Petitioner Ihar Yurkin

**CERTIFICATE OF SERVICE**

I certify that on February 4, 2026, I filed the foregoing Petitioner's Reply in Support of Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order / Preliminary Injunction through the Court's CM/ECF system, which will send notice of such filing to all counsel of record and registered CM/ECF users.

Date: February 4, 2026

Respectfully submitted,

/s/ David M. Bercovitch

David M. Bercovitch, Esq.

PA Bar No. 315026

Bercovitch Law Offices, P.C.

100 S. Broad Street,

Land Title Building, Suite 1902

Philadelphia, PA 19110

Tel.: (215) 220-6310

Email: david@berclaw.com

Counsel for Petitioner Ihar Yurkin