

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

BEKA BAKURADZE,

Petitioner,

v.

MARY ADAMS, *in her official capacity as the
Interim Superintendent of the Northern
Regional Jail and Correctional Facility;*
MICHAEL T. ROSE, *Acting Field Office
Director of Enforcement and Removal
Operations, Philadelphia Field Office,
Immigration and Customs Enforcement,*

Respondents.

Case No. 5:26-cv-18
Bailey, Mazzone, Prince

**PETITION FOR WRIT OF
HABEAS CORPUS**

ELECTRONICALLY
FILED
1/22/2026
U.S. DISTRICT COURT
Northern District of WV

INTRODUCTION

1. Petitioner Beka Bakuradze is in the physical custody of Respondents at the Northern Regional Jail and Correctional Facility in Moundsville, West Virginia. *See* Exhibit A. ICE Detainee Locator Results. He now faces unlawful detention because the Department of Homeland Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) have concluded Petitioner is subject to mandatory detention, contrary to the law.

2. Petitioner entered the United States on June 19, 2023, and was detained by DHS at the border. He was subsequently released on parole on August 3, 2023. *See* Exhibit B, Notice to Appear. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner’s removal proceedings, DHS denied or will deny Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (“ICE”) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (“BIA” or “Board”) issued a precedent decision, binding on all immigration judges (“IJ”), holding that an IJ has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. On May 15, 2025, the BIA previously issued a precedent decision, binding on all IJs, holding that an IJ has no authority to consider bond requests for any person who

was released from detention pursuant to a grant of parole under section 212(d)(5)(a). *See Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner’s detention on this basis violates the plain language of the Immigration and Nationality Act (“INA”). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents’ new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Northern Regional Jail and Correctional Facility, in Moundsville, West Virginia. Exhibit A.

9. 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).

10. 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

11. 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 Northern District of West Virginia, the judicial district in which Petitioner currently is detained.

12. Venue is also properly 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 Northern District of West Virginia. Petitioner is detained in this judicial district and no real property is involved in this civil action. Exhibit A.

REQUIREMENTS OF 28 U.S.C. § 2243

13. 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.*

14. 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

15. Petitioner Beka Bakuradze is alleged to be a native and citizen of Georgia who has been in immigration detention since December 31, 2025. Exhibit B. After arresting Petitioner in Rochester, Pennsylvania, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decisions in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

16. Respondent Mary Adams is employed by the West Virginia Division of Corrections and Rehabilitation as the interim Superintendent of the Northern Regional Jail and Correctional Facility in Moundsville, West Virginia where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

17. Respondent Michael T. Rose is the Acting Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division, which has jurisdiction over West Virginia. As such, Michael Rose is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

LEGAL FRAMEWORK

18. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

19. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally 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).

20. 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 § 1225(b)(2).

21. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

22. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

23. The detention provisions at § 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(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

24. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 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).

25. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, 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 § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

26. On May 15, 2025, the BIA issued a precedent decision, binding on all IJs, holding that IJ has no authority to consider bond requests for any person who was released from detention pursuant to a grant of parole under section 212(d)(5)(a). *See Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

27. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

28. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

29. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities in over 1,600 decisions. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. In over 1,600 cases² decided by over 300 different judges across the United States, the policy

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

² A January 5, 2026, Politico article notes that “More than 300 federal judges, including appointees of every president since Ronald Reagan, have now rebuffed the administration’s six-month-old

and/or *Matter of Yajure Hurtado* have been completely rejected. *Barco Mercado v. Francis et al.*, No. 25-06582, ECF No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025). *See also, Demirel v. Federal Detention Center Philadelphia, et al.*, No. 25-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (provided full list of cases as of November 18, 2025). Court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);

effort to expand its so-called "mandatory detention" policy, according to a POLITICO analysis of court dockets from across the country. Those judges have ordered immigrants' release or the opportunity for bond hearings in more than 1,600 cases." *See <https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494>* (Last accessed January 6, 2026).

Vasquez Garcia v. Noem, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

30. Indeed, within the Fourth Circuit, many courts have rejected DHS and EOIR’s new interpretation. *See Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 800 F.Supp.3d 641 (E.D. Va. Sept. 19, 2025); *Garcia v. Noem*, No. 1:25-cv-1712, 2025 WL 3111223, (E.D. Va. Nov. 6, 2025); *Duarte Escobar v. Perry*, No. 3:25-cv-758 ----F.Supp.3d----, 2025 WL 3006742 (E.D. Va. Oct. 27, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Said v. Noem*, No. 3:25-cv-00938-MOC, 2025 WL 3657217 (W.D.N.C. Dec. 17, 2025); *Garay v. Perry*, No. 1:25-cv-2215 (LMB/WEF), 2025 WL 3540070 (E.D. Va. Dec. 10, 2025); *Luna Sanchez v. Bondi*, No. 1:25-cv-018888-MSN-IDD, 2025 WL 3191922 (E.D. Va. Nov. 14, 2025); *Yexis Saravia Lopez v. ICE, et al*, 1:25-cv-1847 (LMB/WEF), 2025 WL 4038021 (E.D. Va. Oct. 30, 2025); *Velasquez v. Noem*, --- F.Supp.3d----, 2025 WL 3003684, (D.M.D. Oct. 27, 2025); *Maldonado v. Baker*, No. 25-3084-TDC, 2025 WL 2968042 (D.M.D. Oct. 21, 2025); *Campos-Flores v. Bondi*, No. 3:25cv797, 2025 WL 3461551 (E.D. Va. Dec. 2, 2025); *Contreras Perez v. Noem*, No. 3:25cv882, 2025 WL 3281774 (E.D.Va. Nov. 25, 2025); *Perez-Gomez v.*

Warden, Camp East Montana Detention Facility, No. 3:25cv773, 2025 WL 3141103 (E.D. Va. Nov. 10, 2025); *Aguilar-Cruz v. Noem*, No. 1:25-cv-1740 (RDA/IDD), 2025 WL 3896632 (E.D. Va. Oct. 29, 2025); *Luis Daniel Quintero Flores, et al., v. Noem*, No. 1:25-cv-1614 (RDA/LRV), 2025 WL 4038022 (E.D. Va. Oct. 29, 2025).

31. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA, finding that the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

32. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

33. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). When Congress creates 'specific exceptions' to a statute's applicability, it proves that absent those exceptions, the statute generally applies.

34. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

35. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who 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). 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 v. Rodriguez*, 583 U.S. 281, 287 (2018).

36. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were apprehended by DHS *after* their entry.

37. Furthermore, the statutory basis for initial detention notwithstanding, once released, due process requires that a person like Petitioner receive a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether the person is a flight risk or danger to the community.

38. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As several courts have recently recognized, this is the “most elemental of liberty interest.” *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified); *see also Ramirez Tesara*, 2025 WL 2637663, at *5 (stating that the petitioner had “an exceptionally strong interest in freedom from physical confinement”).

39. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

40. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on others.” *Id.*

41. To guarantee against arbitrary re-detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure the government’s asserted

justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

42. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).

43. Several courts have recognized that these principles apply with respect to the re-detention of the many noncitizens, whom DHS has recently begun taking back into custody, merely to meet its daily arrest quotas. Such arbitrary re-arrests and re-detentions occur often after such persons have been released for months and years.

44. For example, in *E.A. T.-B.*, the court applied the *Mathews v. Eldridge*, 424 U.S. 319 (1976), framework to hold that even in a case where the government argued mandatory detention applied, a person's re-detention nevertheless required a hearing.

45. In applying the three *Mathews* factors, the court held that the petitioner had "undoubtedly [been] deprive[d] . . . of an established interest in his liberty," *E.A. T.-B.*, 2025 WL 2402130, at *3, which, as noted, "is the most elemental of liberty interests," *id.* (citation modified). The court further explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a hearing was high because a hearing serves to ensure that the purposes of detention—the prevention of danger and flight risk—are properly served. *Id.* at *4–5. Finally, the

Court explained that “the Government’s interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.” *Id.* at *5. As a result, the court ordered the petitioner’s immediate release. *Id.* at *6.

46. Another court in the same district applied a similar analysis in *Ramirez Tesara*. There, the court reasoned that the petitioner had a “weighty” interest in his liberty and was entitled to the “full protections of the due process clause.” 2025 WL 2637663, at *3. When examining the value of additional safeguards, the court also noted that despite the government’s allegations of ISAP violations, “the fact that the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.” *Id.* at *4 (quoting *E.A. T.-B.*, 2025 WL 2402130, at *4). Finally, the court reasoned that any government interest in re-detention without a hearing was “minimal.” *Id.* Accordingly, there too, the court ordered the petitioner’s immediate release. *Id.* at *5. 44. The *Kumar* and *Ledesama Gonzalez* courts reached the same decision, again holding that all three factors weighed in favor of affording the petitioner a bond hearing. 2025 WL 2677089, at *3–4; 2025 WL 2841574, at *7-9.

47. These courts’ decisions in *Ledesama Gonzalez*, *E.A. T.-B.*, *Ramirez Tesara* and *Kumar* are consistent with many other district court decisions addressing similar situations. *See, e.g., Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, -- F. Supp. 3d --, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025)

(similar); *Garcia v. Andrews*, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar); *Rodriguez v. Kaiser*, 2025 WL 2855193 (E.D. Cal. Oct. 8, 2025), at *6 (similar); *Orellana v. Francis*, 2025 WL 2402780 (E.D.N.Y. August 19, 2025) (ordering immediate release due to violation of Administrative Procedure Act when petitioner was not provided hearing upon revocation and re-detention of his parole); *Y-Z-L-H v. Bostock*, 792 F.Supp.3d 1123, (D.Or. July 9, 2025) (similar).

48. The same framework and principles apply here and compel Petitioner's immediate release.

FACTS

49. Petitioner entered the United States on July 19, 2023, and was apprehended at the border by DHS. He was detained for several weeks before he was released on parole on August 3, 2023. Exhibit B. Petitioner timely filed his Form I-589 application for asylum based on feared persecution in Georgia.

50. On December 31, 2025, Petitioner's friend called him because his car had slipped off the road, and he asked Petitioner for help. This incident occurred in Rochester, Pennsylvania. Petitioner arrived to help and the police arrived as well. The police asked for Petitioner's identification and told Petitioner and his friend to wait for twenty-five minutes for a tow truck to arrive. Instead of calling a tow truck, police called ICE, and ICE detained Petitioner.

51. Petitioner has a pending asylum claim and timely filed his I-589, Application for Asylum, Withholding of Removal and protection under the Convention Against Torture ("CAT"), on the New York City non-detained docket at the Immigration Court, based on persecution in Georgia.

52. DHS will place Petitioner in detained removal proceedings pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

53. Petitioner has no criminal history, and he resided and worked in New York prior to his detention. As such, Petitioner is neither a flight risk nor a danger to the community.

54. Following Petitioner's arrest and transfer to Northern Regional Jail and Correctional Facility, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

55. As a result, Petitioner remains in detention. Without relief from this Honorable Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

IMMEDIATE RELEASE IS WARRANTED

56. The Supreme Court has recognized that "Habeas has traditionally been a means to secure *release* from unlawful detention." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (emphasis in original). Several decisions from the Eastern District have ordered immediate release in similar cases. *See eg. Bhatia v. O'Neill, et al.*, No. 25-6809, Dkt. 8 (E.D. Pa. Dec. 10, 2025); *Rodrigues Pereira v. O'Neill, et al.*, No. 25-6543, Dkt. 11 (E.D. Pa. Dec. 8, 2025); *Morocho v. Jamison, et al.*, No. 25-05930, 2025 WL 3296300, at *3 (E.D. Pa. Nov. 26, 2025); *Diallo v. O'Neill, et al.*, 25-06358, Dkt. 10 (E.D. Pa. Nov. 26, 2025); *Patel v. McShane, et al.*, 25-05975 (E.D. Pa. Nov. 20, 2025). The Court should not depart from this norm.

57. As noted above, over a thousand district court decisions addressing the legal issues presented in the underlying Petition for Writ of Habeas Corpus and rejected the government's

position. *Barco Mercado v. Francis et al.*, No. 25-06582, ECF No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025). Those Courts have roundly rejected Government's interpretation of the Immigration and Nationality Act (INA); the interpretation that is part of the Department of Homeland Security's (DHS) policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond; and the interpretation is part of the Board of Immigration Appeals' (BIA or Board) September 5, 2025 precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

58. Many of these decisions have found that Respondents' erroneous application of the law violates the respective detainees constitutional right to Due Process. *See eg. Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 WL 317639 (E.D. Pa. Nov. 13, 2025); *Bethancourt Soto v. Soto*, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Rodriguez Serrano v. Noem*, 2025 WL 3122825 (W.D. Mich. Nov. 7, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, (N.D. Ill. Oct. 16, 2025); *Rosales Ponce v. Olson*, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Loza Valencia v. Noem*, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL

2716910 (E.D. Cal. Sept. 23, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

59. Despite this *overwhelming rejection* of Respondents' new policies and *Matter of Yajure Hurtado*, and hundreds of decisions finding that Respondents are violating the constitutional rights, **Respondents refuse to relent and continue act in defiance of the law and the Constitution.** It has been reported that ICE agents inform detainees that they "have to sue us [ICE] to get out."

60. Petitioner is now one of the approximately 68,000 people detained by Respondents.³ Respondents' unlawful behavior is pervasive and defies decision after decision from the Courts. As Petitioner's arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore Petitioner is to immediate release him and enjoin the Government from further similar transgressions. *See e.g., Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019).

CLAIMS FOR RELIEF

COUNT I Violation of the INA

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

62. 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 previously entered the country and were already in

³ *See* ICE's publicly available detention data, available at: <https://www.ice.gov/detain/detention-management> (last visited on January 22, 2026).

the United States, prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II
Violation of the Bond Regulations

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

65. 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 (emphasis added). 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.

66. Nonetheless, pursuant to *Matter of Yajure Hurtado* and *Matter of Q.Li*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

67. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

68. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

69. Petitioner has a fundamental interest in liberty and being free from official restraint. *See Zadvydas*, 533 U.S. at 690.

70. Due process does not permit the government to strip Petitioner of his liberty without written notice and a hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey*, 408 U.S. at 487-88. Such written notice and a hearing must occur *prior* to any re-detention.

71. Respondents revoked Petitioner's release and deprived him of liberty without affording him any written notice or meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention.

72. Accordingly, Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment.

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 Northern District of Virginia 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. Issue a Writ of Habeas Corpus requiring that Respondents **immediately release Petitioner;**
- e. Declare that Petitioner's detention is unlawful;
- f. 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
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 22nd day of January, 2026.

/s/Brian Scott Green

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VERIFICATION

I, Brian Scott Green, counsel for Petitioner hereby verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioner.

Dated: January 22, 2026

Respectfully submitted,

/s/Brian Scott Green

Brian Scott Green