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

YAROSLAV FATENKO, *Petitioner*, v. MICHAEL T. ROSE, Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, Immigration and Customs Enforcement, KRISTI NOEM, Secretary, U.S. Department of Homeland Security, PAMELA BONDI, U.S. Attorney General, JAMAL L. JAMISON, Warden of Philadelphia Detention Center, *Respondents*.	**PETITION FOR WRIT OF HABEAS CORPUS** **Case No. 26-471**

INTRODUCTION

1. Petitioner Yaroslav Fatenko is in the physical custody of the Respondents at the Philadelphia Federal Detention Center after being detained by U.S. Immigration and Customs Enforcement ("ICE" on January 22, 2026. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR") have concluded that the Petitioner is subject to mandatory detention.

2. Petitioner was paroled into the United States on January 19, 2023, at JFK Airport pursuant to the Uniting for Ukraine ("U4U") program created by the Federal government following Russia's invasion of Ukraine. His initial parole status was valid until January 17, 2025. As he was allowed to do, the Petitioner filed for renewal of his U4U parole status on December 6, 2024. Such application remains pending.

3. On February 13, 2024, the Petitioner filed for Temporary Protected Status ("TPS") as a citizen of Ukraine, a country designated by the Federal government for such status. He was granted TPS on December 16, 2024, with an initial validity period until April 19, 2025. On February 10, 2025, the Petitioner timely filed to extend his TPS, Exhibit 5, and while such extension application is pending, he is deemed to remain in valid status. 8 C.F.R. § 244.17.

4. The Petitioner has been lawfully present in the United States since arriving on January 19, 2023. He is married with two young children fleeing the war in Ukraine who were also paroled into the United Status when he was. He has had work authorization and a social security number. Since his entry into the United States, he has led a productive and law-abiding life, as well as actively participating in his Baptist congregation.

5. As noted above, on January 22, 2026, Petitioner was arrested by ICE. Such arrest occurred when he voluntarily appeared at the ICE office in Center City Philadelphia after being requested to do so by an ICE officer who contacted him. No explanation was given for such request, and there was no suggestion that the Petitioner had done anything improper. Upon being arrested, the Respondent was issued a Notice to Appear ("NTA") before an immigration judge, charging him as an alien present in the United States being admitted or paroled, or who arrived in the United States at any time or place other than as designated. *See* INA Section 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)]. An additional charge claims that he is an alien who at the time of his application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document, and a valid unexpired passport. *See* INA Section 212(a)(7)(A)(i)(I) [8 U.S.C. § 1182(a)(7)(A)(i)(I)]. *See also* Exhibit A, the Petitioner's NTA.

6. Based on these charges in Petitioner's removal proceedings, DHS has denied or will deny Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all 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.

7. Similarly, on September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a 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). 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.

8. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like the 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. The statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

9. 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.

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

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Philadelphia Federal Detention Center in Philadelphia, Pennsylvania.

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

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

VENUE

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

15. 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 Eastern District of Pennsylvania.

REQUIREMENTS OF 28 U.S.C. § 2243

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

17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or

confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.NS.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

18. Petitioner Yaroslav Fatenko is a citizen of Ukraine who has been in immigration detention since January 22, 2026. After arresting Petitioner when he appeared at the request of ICE at their offices, ICE did not set bond and Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in Matter of *Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025).

19. Respondent Michael T. Rose is the Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operation division. As such, Respondent Rose is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for the Petitioner's detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

21. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the EOIR, and the immigration court system it operates, is a component agency. She is sued in her official capacity.

22. Respondent Jamal L. Jamison is employed by the Federal Bureau of Prisons as Warden of the Philadelphia Federal Detention Center, where the Petitioner is detained. He has immediate physical custody of the Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

24. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Aliens 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 those who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

25. 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).

26. 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).

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

28. 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).

29. 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).

30. 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 noncitizen 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. I 04-469, pl. I, at 229 (1996) (noting that § l226(a) simply "restates" the detention authority previously found at § 1252(a)).

31. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of Practice.

32. 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 the mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and it affects those who have resided in the United States for months, years, and even decades.

33. On September 5, 2025, the BIA adopted the same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United

[1] Available at bttps://www.aila.org/libra1y/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

34. Since Respondents adopted their new policies, dozens of Federal courts have rejected their new interpretation of 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. These courts have adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *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) (providing full list of cases as of November 18, 2025); *Gomes v. Hyde*, No. l: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); *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. 8:25 CV 494, 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).

35. Indeed, within the Third Circuit, the Western District of Pennsylvania, the Eastern District of Pennsylvania, and the District of New Jersey have all rejected ICE and EOIR's new interpretation. *See Rios Porras v. O'Neill*, 2025 WL 3708900 (E.D, Pa. Dec. 22, 2025) (Beetlestone, C.J.); *Pereira v. O'Neill*, 2025 WL 3516665 (E.D. Pa. Dec. 8, 2025) (Marston, J.); *Conde v. Jamison*, 2025 WL 3499256 (E.D. Pa, Dec. 5, 2025) (Brody, J.); *Suspes v. Rose*, 2025 WL 3492820 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Hidalgo et al. v. O'Neill*, No. 25-cv-6775 (E.D. Pa. Dec. 5, 2025) (Diamond, J.); *Delgado Villegas v. Bondi*, No. 25-cv-6143 (E.D. Pa. Dec. 4, 2025) (Diamond, J.); *Nogueira-Mendes v. McShane*, 2025 WL 3473364 (E.D. Pa. Dec. 3, 2025) (Slomsky, J.); *Juarez v. O'Neill*, 2025 WL 3473363 (E.D. Pa. Dec. 3, 2025) (Henry, J.); *Yilmaz v. Warden of Fed. Det. Ctr. Philadelphia*, 2025 WL 3459484 (E.D, Pa. Dec. 2, 2025) (Rufe, J.); *Soumare v. Jamison*, 2025 WL 3461542 (E.D. Pa. Dec. 2, 2025) (Henry, J.); *Flores Obando v. Bondi*, 2025 WL 3452047 (E.D. Pa. Dec. 1, 2025) (Brody, J.); *Wu v. Jamison*, No. 25-cv-6469 (E.D, Pa. Dec. 1, 2025) (J. Gallagher); *Valdivia Martinez v. FDC*, No. 25-cv-6568 (E.D. Pa. Dec. 1, 2025) (J. Savage); *Moracho v. Jamison*, 2025 WL 3296300 (E.D. Pa. Nov. 26, 2025)

(Gallagher, J.); *Diallo v. O'Neill*, 2025 WL 3298003 (E.D. Pa. Nov. 26, 2025) (Savage, J.); *Centeno Ibarra v. Warden, of the Fed. Det. Ctr. Philadelphia*, 2025 WL 3294726 (E.D. Pa. Nov. 25, 2025) (Rufe, J.); *Espinal Rosa v. O'Neill*, No. 25-cv-6376 {E.D. Pa. Nov. 25, 2025) (Weilheimer, J.); *Patel v. McShane*, 2025 WL 3241212 (E.D. Pa. Nov. 20, 2025) (Brody, J.); *Ndiaye v. Jamison*, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025) (Sanchez, J.); *Demirel v. Fed. Det. Ctr. Philadelphia*, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025) (Diamond, J.); Kashranov v. Jamison, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025) (Wolson, J.); *Cantu-Cortes v. O'Neill*, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025) (Kenney, J.), *Del Cid v. Bondi*, 3:25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Zumba v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496 (WNL. Sept. 26, 2025); *Bethancourt Soto v. Louis Soto*, et al., No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Lomeu v. Soto, et al.*, No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025).

36. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like the Petitioner.

37. 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 an alien."

38. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 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). 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." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393,400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

39. 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.

40. 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).

41. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

FACTS

42. Petitioner incorporates herein by reference paragraphs 1-5 *supra*.

43. Following Petitioner's arrest and transfer to the Philadelphia Federal Detention Center, ICE presumptively issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

44. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider the Petitioner's bond request.

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

IMMEDIATE RELEASE IS WARRANTED

46. 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 of Pennsylvania 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.

47. As noted above, hundreds of district court decisions have addressed 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; the interpretation that is part of the DHS

policy issued on July 8, 2025, instructing all 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 BIA's 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.

48. 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, et al.,* No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025); *Bethancourt Soto v. Soto, et al.*, No. 25-CV-16200, 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).

49. 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."

50. Petitioner is now one of the approximately 71,000 people detained by Respondents.[2] 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 the Petitioner to prevent a further similar transgression. *See, eg., Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019).

CLAIM FOR RELIEF

COUNT I
Violation of the INA

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

52. 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 have been residing in 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.

[2] *See* ICE's publicly available detention data, available at: https://www.ice.gov/detain/detention-management.

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

COUNT II
Violation of the Bond Regulations

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

55. 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.

56. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying§ 1225(b)(2) to individual like the Petitioner.

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

COUNT III
Violation of Due Process

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

59. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment–from government custody, detention, or other forms of physical restraint–lie at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

60. The Petitioner has a fundamental interest in liberty and being free from official restraint.

61. The government's detention of the Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, the 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 Eastern District of Pennsylvania while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondent 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 the Petitioner**;

e. Declare that the 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.

Respectfully submitted,

Date: January 23, 2026

/s/ Francois-Ihor Mazur

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

YAROSLAV FATENKO, *Petitioner*, v. MICHAEL T. ROSE, *et al.*, *Respondents*.	**PETITION FOR WRIT OF HABEAS CORPUS** **Case No. 26-471**

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