

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

3 LUIGY CRUZCO-REYES,

4 *Petitioner,*

5 v.

6 MICHAEL ROSE, Field Office Director of
7 Enforcement and Removal Operations,
8 Philadelphia Field Office, Immigration and
9 Customs Enforcement; JAMAL L. JAMISON,
10 Warden of Philadelphia Federal Detention
Center.

11 *Respondents.*

**PETITION FOR WRIT OF
HABEAS CORPUS**

Case No. 2:26-cv-586

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1 **INTRODUCTION**

2 1. Petitioner Luigi Cruzco-Reyes is in the physical custody of Respondents at the
3 Philadelphia Federal Detention Center. He now faces unlawful detention because the Department
4 of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have
5 concluded Petitioner is subject to mandatory detention.

6 2. Petitioner entered the United States on or around July 11, 2023, at the U.S./Mexico
7 border without inspection.

8 3. After his entry, he was apprehended by Customs and Border Patrol (CBP) within
9 the United States. He was granted a 212(d)(5) parole and was allowed to enter the United States
10 to pursue an asylum claim. He was required to attend ICE check-ins regularly. He timely filed an
11 I-589, Application for Asylum with USCIS.

12 4. On January 27, 2026, Petitioner was arrested by ICE while attending an ICE
13 check-in.

14 5. Petitioner is presumably charged with, *inter alia*, having entered the United States
15 without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

16 6. Based on this allegation in Petitioner's removal proceedings, DHS presumably
17 denied Petitioner's release from immigration custody, consistent with a new DHS policy issued
18 on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to
19 consider anyone inadmissible under § 1182(a)(6)(A)(i)—*i.e.*, those who entered the United
20 States without admission or inspection—to be subject to detention under 8 U.S.C. §
21 1225(b)(2)(A) and therefore ineligible to be released on bond.

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

5 8. Petitioner's detention on this basis violates the plain language of the Immigration
6 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
7 were detained pursuant to an administrative warrant under § 1226(a) when they were
8 apprehended by ICE. Instead, upon arrest and detention by ICE of someone already residing in
9 the interior of the United States, such individuals are still subject to § 1226(a), that allows for
10 release on conditional parole or bond. That statute expressly applies to people who, like
11 Petitioner, are charged as inadmissible for having entered the United States without inspection
12 and are residing inside the United States.

13 9. Respondents' new legal interpretation is plainly contrary to the statutory
14 framework and contrary to decades of agency practice applying § 1226(a) to people like
15 Petitioner.

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

18 JURISDICTION

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

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

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

3 **VENUE**

4 14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
5 500 (1973), venue lies in the United States District Court for the Eastern District of
6 Pennsylvania, the judicial district in which Petitioner currently is detained.

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

11 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

22 **PARTIES**

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1 18. Petitioner Luigi Cruzco-Reyes is a citizen of Venezuela who has been in
2 immigration detention since January 27, 2026. After arresting Petitioner at the Enforcement and
3 Removal Operations (ERO) office in Philadelphia, when Petitioner was appearing for a regularly
4 scheduled check-in, ICE did not set bond, and Petitioner is unable to obtain review of his custody
5 by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA
6 2025).

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

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

14 FACTS

15 21. Petitioner is a citizen and national of Venezuela.

16 22. Respondent has resided in the United States since July of 2023 and lives in
17 Philadelphia, Pennsylvania.

18 23. Petitioner fled Venezuela to seek asylum and related protections from persecution
19 and torture in the United States.

20 24. On or about July 11, 2023, Petitioner crossed the border into the United States,
21 and shortly thereafter was apprehended by immigration officials. He was paroled into the
22 country by Customs and Border Patrol (CBP) and required to attend routine check-ins with ICE.

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1 At the time, he was not yet in removal proceedings, so he filed his asylum application
2 affirmatively with USCIS.

3 25. On October January 27, 2026, Petitioner was arrested while attending his routine
4 check-in with ICE at the Philadelphia ERO office.

5 26. ICE detained him without explanation on January 27, 2026. Respondent's asylum
6 application remains pending with United States Citizenship and Immigration Services.

7 27. Following Petitioner's arrest and transfer to Federal Detention Center, ICE issued
8 a custody determination to continue Petitioner's detention without an opportunity to post bond or
9 be released on other conditions.

10 28. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
11 Petitioner's bond request because he entered the United States without inspection.

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

15 LEGAL FRAMEWORK

16 I. Section 1226(a) Governs the Detention of People Like Petitioner Who are Detained in 17 the United States and Have Not Previously Been Admitted

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

20 31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
21 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
22 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
23 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
24 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

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

7 35. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
8 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
9 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section
10 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1,
11 139 Stat. 3 (2025).

12 36. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
13 that, in general, people who entered the country without inspection were not considered detained
14 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
15 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
16 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

17 37. Thus, in the decades that followed, most people who entered without inspection
18 and were placed in standard removal proceedings received bond hearings, unless their criminal
19 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
20 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
21 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
22 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
23 “restates” the detention authority previously found at § 1252(a)). Even individuals who were
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1 apprehended at the border and not immediately detained but placed in standard removal
2 proceedings under 8 U.S.C. § 1229a, would historically have been considered detained under
3 § 1226(a) should they alter been detained in the interior of the U.S., and thus eligible for bond
4 before an immigration judge.

5 38. On July 8, 2025, ICE Director Todd M. Lyons, “in coordination with” DOJ,
6 announced a new policy that rejected well-established understanding of the statutory framework
7 and reversed decades of practice. The policy states DHS had “revisited” its legal position and
8 believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the
9 United States without having been admitted. *Diaz Martinez, Hyde*, No. 25-11613, 2025 WL
10 2084238, -- F. Supp. 3d --, at *4 (D. Mass. July 24, 2025).

11 39. The new policy, entitled “Interim Guidance Regarding Detention Authority for
12 Applicants for Admission,” claims that all persons who entered the United States without
13 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
14 policy applies regardless of when a person is apprehended and affects those who have resided in
15 the United States for months, years, and even decades.

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

20 41. This followed a May 15, 2025, decision by the BIA holding an applicant for
21 admission arrested without a warrant while arriving in the United States and subsequently placed
22 into removal proceedings is detained under 8 U.S.C. § 1225(b). *Matter of Q. Li*, 29 I&N Dec. 66
23 (BIA 2025).

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1 42. Since Respondents adopted their new policies, dozens of federal courts have
2 rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected
3 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

4 43. Subsequently, court after court has adopted the same reading of the INA's
5 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Rodriguez*
6 *Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-
7 11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
8 11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*
9 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),
10 *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133
11 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL
12 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025
13 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW
14 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,
15 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025
16 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,
17 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-
18 JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-
19 KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
20 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
21 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
22 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
23 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
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1 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
2 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
3 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
4 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
5 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
6 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
7 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same). This is just a sample of the
8 courts who have ruled on this issue. To date, there are at least 283 judges in courts across the
9 country who have found in favor of the petitioner on this issue.

10 44. Courts have uniformly rejected DHS’s and EOIR’s new interpretation, including
11 the BIA’s position in *Matter of Yajure Hurtado*, because it defies the INA. As the *Rodriguez*
12 *Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates
13 that § 1226(a), not § 1225(b), applies to people like Petitioner. DHS and DOJ’s longstanding
14 practice of providing bond hearing to individuals in this position further counsels against the
15 BIA’s abrupt change in policy. *Maldonado*, 2025 WL 2374411, at *11.

16 45. Section 1226(a) applies by default to all persons “pending a decision on whether
17 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
18 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

19 46. The text of § 1226 also explicitly applies to people charged as being inadmissible,
20 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
21 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
22 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
23 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,
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1 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
2 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025
3 WL 1869299, at *7.

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

7 48. Under the BLA’s interpretation, all noncitizens subject to inadmissibility grounds
8 are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Matter of*
9 *Yajure Hurtado*, 29 I&N Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present
10 without having been admitted inadmissible); 8 U.S.C. § 1101(a)(14) (defining an admission).
11 Therefore, this interpretation would render all the grounds of mandatory detention in § 1226(c)
12 applying to inadmissible noncitizens, including the recently passed Laken Riley Act,
13 superfluous. *Gomes*, 2025 WL 1869299, at *7; *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v.*
14 *Gen. Revenue Corp.*, 568 U.S. 371, 386 (2103) (“[T]he canon against surplusage is strongest
15 when an interpretation would render superfluous another part of the same statutory scheme.”).
16 This statutory structure demonstrates that Congress did not intend to make § 1226(a)
17 inapplicable to all inadmissible noncitizens but rather viewed it as the default bond provision for
18 people arrested within the United States.

19 49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
20 recently entered the United States. The statute’s entire framework is premised on inspections at
21 the border of people who are “seeking admission” to the United States. 8 U.S.C.
22 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
23 applies “at the Nation’s borders and ports of entry, where the Government must determine
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1 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
2 U.S. 281, 287 (2018).

3 50. The BIA’s interpretation “would render the phrase ‘seeking admission’ in 8
4 U.S.C. § 1225(b)(2)(A) mere surplusage.” *Lopez Benitez*, 2025 WL 2371588, at *6. That section
5 applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly
6 and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez*, 2025 WL
7 2371588, at *6; *Diaz Martinez*, 2025 WL 2084238, at *2. The BIA’s interpretation makes all
8 applicants for admission subject to mandatory detention, leaving the “seeking admission”
9 criterion unnecessary and violating the rule against surplusage. *Lopez Benitez*, 2025 WL
10 2371588, at *6; *Diaz Martinez*, 2025 WL 2084238, at *6.

11 51. Instead, the phrase “seeking admission” indicates that § 1225(b)(2)(A) applies to
12 people who are taking “some sort of present-tense action,” in other words, coming or attempting
13 to come into the United States. *Diaz Martinez*, 2025 WL 2084238, at *6; *see also Matter of M-C-*
14 *D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that “the use of the present progressive tense . . .
15 denotes an ongoing process”). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention
16 of people detained within the United States who are not actively seeking admission, as required
17 by the statute.

18 52. Immigration officials and the Department of Justice (DOJ) have long taken the
19 position that immigration officials have broad discretion not to apply the detention and expedited
20 removal procedures § 1225(b), and whether to classify individuals encountered inside the United
21 States shortly after crossing the border as subject to § 1225(b) detention or § 1226(a) detention.
22 *See* Brief for Petitioners at 4-7 (No. 21-954), *Biden v. Texas*, 597 U.S. 785 (2022). The DOJ has
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1 stated, “[t]he INA affords DHS multiple options for processing applications for admission,” and
2 that includes arrest and detention pursuant to § 1226(a). *See id.* at 4-5.

3 53. Finally, as discussed below, the BIA’s interpretation of § 1225(b)(2)(A) to
4 mandate detention without a bond hearing for all noncitizens present in the United States without
5 having been admitted presents serious constitutional concerns. Therefore, to the degree that the
6 statute remains ambiguous, the Court should presume that Congress “did not intend the
7 alternative which raises serious constitutional doubts” and reject that construction. *Clark v.*
8 *Martinez*, 543 U.S. 371, 381-82 (2005). Therefore, § 1226(a), which permits bond hearings, not
9 § 1225(b)(2)(A), which does not, governs the detention of people like Petitioner.

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

12 54. “It is well established that the Fifth Amendment entitles [noncitizens] to due
13 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
14 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
15 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
16 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
17 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
18 unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection
19 applies to all noncitizens within the United States, including both removable and inadmissible
20 noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*,
21 163 U.S. 228, 238 (1896).

22 55. Absent adequate procedural protections, substantive due process requires a
23 “special justification” that “outweighs the individual’s constitutionally protected interest in
24 avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; *accord, e.g., Torralba v. Knight*, No.

1 2:25-cv-1366, 2025 WL 2581792, at *12 (D. Nev. Sept. 5, 2025) (describing the standard for a
2 substantive due process violation); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at
3 *4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has
4 recognized only two valid purposes for civil detention—to mitigate the risks of danger to the
5 community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional
6 scrutiny, the nature and duration of mandatory immigration detention must be reasonably related
7 to these purposes.

8 56. In *Demore*, the Supreme Court upheld the constitutionality of § 1226(c) against a
9 facial challenge, specifically citing evidence that had been before Congress about noncitizens
10 with criminal convictions. 538 U.S. at 518-520. This justification does not apply, however, to
11 noncitizens with no criminal record whatsoever who have lived in the community for years. The
12 broad policy set forth in *Matter of Yajure Hurtado* is not reasonably related to the purposes of
13 prevent danger to the community or flight risk and violates substantive due process.

14 57. Additionally, procedural due process protects noncitizens against deprivation of
15 liberty without adequate procedural protections, including notice and the opportunity to be heard.
16 *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025);
17 *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure
18 to protect a detained noncitizen’s procedural due process rights under the Fifth Amendment,
19 courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976),
20 weighing (1) “the private interest that will be affected by the official action;” (2) “the risk of an
21 erroneous deprivation of such interest through the procedures used, and the probable value, if
22 any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest,
23 including the function involved and the fiscal and administrative burdens that the additional or
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1 substitute procedural requirement would entail.” *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir.
2 2024); *Gayle v. Warden Monmouth C’ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021);
3 *Hernandez-Lara*, 10 F.4th at 28; *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S.
4 at 335). Here, the BIA’s interpretation of the statute to require detention of all people in the
5 United States without having been admitted deprives them of their liberty without any
6 individualized process to determine whether such detention is necessary to prevent flight risk or
7 danger to the community, and therefore violates due process.

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

14 59. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private
15 interest to be “on any calculus, substantial,” observing that the petitioner, “could not maintain
16 employment or see his family or friends or others outside normal visiting hours. The use of a cell
17 phone was prohibited, and he had no access to the internet or email and limited access to the
18 telephone.” 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty
19 interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated
20 “alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to
21 maintain her employment.” 10 F.4th at 28.

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

9 61. Finally, the burden on the government of returning to the longstanding practice of
10 holding bond hearings for people like Petitioner does not outweigh the liberty interest at stake.
11 To the contrary, the government has an interest in “minimizing the enormous impact of
12 incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854; *see also*
13 *Hernandez-Lara*, 10 F.4th at 33 (noting that “limiting the use of detention to only those
14 noncitizens who are dangerous or a flight risk may save the government, and therefore the
15 public, from expending substantial resources on needless detention”). Additionally, “unnecessary
16 detention imposes substantial societal costs. . . . The needless detention of those individuals thus
17 separates families and removes from the community breadwinners, caregivers, parents, siblings
18 and employees. Those ruptures in the fabric of communal life impact society in intangible ways
19 that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and
20 internal quotation marks omitted). The cost to the government and society of detaining people
21 unnecessarily for long periods of time is greater than the cost of providing individualized
22 hearings, and weighs in favor of additional procedural protections.

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1 62. At these bond hearings, due process requires that the Government bear the burden
2 of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 (“[W]hen such a severe
3 deprivation is at issue, the Government must bear the burden of proof.”). “A standard of proof
4 serves to allocate the risk of error between the litigants and reflects the relative importance
5 attached to the ultimate decision.” *German Santos v. Warden Pike C’ty Corr. Facility*, 965 F.3d
6 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third
7 Circuit has ordered a constitutionally-required bond hearing, it is placed the burden on the
8 government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-*
9 *Sanchez v. Warden York C’ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on*
10 *other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have
11 similarly held that due process requires this allocation of the burden in bond hearings for
12 noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th
13 at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without
14 a bond hearing, due process requires a hearing at which the government bears the burden by
15 clear and convincing evidence.

16 63. Once released from immigration custody, due process requires that a person like
17 Petitioner receive a hearing before a neutral decisionmaker to determine whether any re-
18 detention is justified, and whether the person is a flight risk or danger to the community.

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

22 65. Such liberty is protected by the Fifth Amendment because, “although
23 indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to
24

1 be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the
2 [released individual] and often on others.” *Id.*

3 66. To guarantee against arbitrary re-detention and to guarantee the right to liberty,
4 due process requires “adequate procedural protections” that ensure the government’s asserted
5 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally
6 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified).

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

15 68. Several courts have recognized that these principles apply with respect to the re-
16 detention of the many noncitizens that DHS has begun taking back into custody, often after such
17 persons have been released for months and years.

18 69. In *E.A. T.-B.*, the district court in the Western District of Washington applied the
19 test set forth in *Mathews v. Eldridge* to hold that even in a case where the government argued
20 mandatory detention applied, a person’s re-detention required a hearing and that the petitioner
21 had “undoubtedly [been] deprive[d] ... of an established interest in his liberty.” *E.A. T.-B. v.*
22 *Wamsley*, No. 25-cv-1192, 2025 WL 2402130, at *3 (W.D. Washington). The Court further
23 explained that even if detention was mandatory, the risk of erroneous deprivation of liberty
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1 without a hearing was high because a hearing serves to ensure that the purposes of detention—
2 the prevention of danger and flight risk—are properly served. *Id.* at *4–5.

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

9 71. The decision in *E.A. T.-B.* is consistent with many other district court decisions
10 addressing similar situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL
11 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation
12 hearing); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D.
13 Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL
14 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB,
15 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar); *Mata Velasquez v. Kurzdorfer*, ---
16 F.Supp.3d ----, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without
17 a reasoned explanation or changed circumstances and without a meaningful opportunity to be
18 heard violates due process); *Rodriguez Cabrera v. Mattos*, 2025 WL 3072687 (D Nev. Nov. 3,
19 2025); *Fernandez Lopez v. Wofford*, 2025 WL 2959319, *4 (E.D. Ca. Oct. 17, 2025)
20 (unpub) (finding a non-citizen granted parole at the border has a liberty interest in her
21 conditional release and that such a parolee has a implicit right entitlement to remain at liberty if
22 she complies with the conditions of her parole); *Noori v. Larose*, 2025 WL 2800149, *10 (S.D.
23 Ca. Oct. 1, 2025) (unpub) (parolee developed a private interest in remaining free in the one year
24

1 he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826,
2 *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley*, --- F.Supp.3d ----, 2025
3 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not
4 expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, --- F.Supp.3d ----, 2025 WL
5 1898025, *14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his
6 asylum process to be arbitrary and capricious and ordering immediate release).

7 72. The same framework and principles apply here and compel Petitioner's
8 immediate release.

9 **CLAIMS FOR RELIEF**

10 **COUNT I**
11 **Violation of the INA**

12 73. Petitioner incorporates by reference the allegations of fact set forth in the
13 preceding paragraphs.

14 74. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
15 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
16 relevant here, it does not apply to Petitioner, who previously entered the country and was
17 apprehended by ICE, was paroled out of immigration custody at the border, was subsequently
18 placed into removal proceedings, and has been residing inside the United States before their
19 detention. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1),
20 § 1226(c), or § 1231.

21 75. The fact that Petitioner was previously detained and released at the border does
22 not undermine this conclusion.

23 76. In any event, that initial arrest "is not what is at issue in this case," rather it is his
24 2026 arrest and detention. *See Lopez Benitez*, 2025 WL 2371588. Even if Petitioner was

1 “seeking admission” within the meaning of § 1252(b)(2)(A) at the time of his entry and initial
2 apprehension, he was no longer engaged in that “present-tense action” when he was arrested in
3 Philadelphia on January 27, 2026, and therefore no longer meets the requirements of §
4 1252(b)(2)(A) discussed above. *See Diaz Martinez*, 2025 WL 2084238, at *6.

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

7 **COUNT II**

8 **Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19**

9 78. Petitioner incorporates by reference the allegations of fact set forth in preceding
10 paragraphs.

11 79. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
12 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
13 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
14 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
15 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
16 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
17 (emphasis added). The agencies thus made clear that individuals who had entered without
18 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
19 1226 and its implementing regulations.

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

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

24 **COUNT III**

1 **Violation of Substantive Due Process under the Fifth Amendment**

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

4 83. The government may not deprive a person of life, liberty, or property without due
5 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
6 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
7 Clause protects.” *Zadydas v. Davis*, 533 U.S. 678, 690 (2001).

8 84. Petitioner has a fundamental interest in liberty and being free from official restraint.

9 85. The government’s detention of Petitioner without a bond redetermination hearing
10 to determine whether he is a flight risk or danger to others violates his right to due process.

11 **PRAYER FOR RELIEF**

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

- 13 a. Assume jurisdiction over this matter;
- 14 b. **Order that Petitioner shall not be transferred outside the Eastern District of**
15 **Pennsylvania while this habeas petition is pending;**
- 16 c. Issue an Order to Show Cause ordering Respondents to show cause why this
17 Petition should not be granted within three days;
- 18 d. Issue a Writ of Habeas Corpus requiring that Respondents **immediately release**
19 **Petitioner;**
- 20 e. Declare that Petitioner’s detention is unlawful;
- 21 f. Order that upon Petitioner’s release, Respondents return all Petitioner’s personal
22 belongings confiscated upon his detention, including identification documents or
23 his work permit;
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- g. 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
- h. Grant any other and further relief that this Court deems just and proper.

Respectfully Submitted,

Date: January 29, 2026

s/Christopher M. Casazza
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1
2 **UNITED STATES DISTRICT COURT**
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 LUIGY CRUZCO-REYES,

4 *Petitioner,*

Case No. 2:26-cv-586

5 v.

6 MICHAEL ROSE, *et al.*

7 *Respondents.*
8

9 **EXHIBIT INDEX**

10 A. Petitioner's Parole Stamp

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