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

GURDEEP SINGH

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; U.S. DEPARTMENT OF HOMELAND SECURITY;

Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

Jamal LAWRENCE, Warden of FEDERAL DETENTION CENTER PHILADEPHIA

Respondents.

Case No. 26-cv-593

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Gurdeep Singh is in the physical custody of Respondents at the Federal Detention Center - Philadelphia[1]. 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.

2. 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 Petitioner's 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, 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.

[1] Undersigned counsel represents that Petitioner is currently being detained at the Federal Detention Center – Philadelphia at the time of filing this complaint. Undersigned counsel spoke with Petitioner via telephone at about 12:15PM on 01/29/2026, at which time Petitioner was being processed at the ICE ERO Philadelphia Field Office. Petitioner told counsel that Petitioner had been informed he would be transferred to the Federal Detention Center Philadelphia. Petitioner also stated that ICE officers told him he would be transferred to the Moshannon Valley Processing Center within 5 days. The Department of Homeland Security uploaded a Form I-830, Notice of Alien Address to the Executive Office of Immigration Review on 01/29/2026 stating Petitioner would be transferred on 01/30/2026.

5. 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 Petitioner who entered without inspection, were never detained or apprehended following their initial arrival in the United States and remained therein. Instead, upon re-arrest and detention by ICE of someone already residing in the interior of the United States, such individuals are subject to § 1226(a), which 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 and are residing inside the United States.

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. Furthermore, Respondents' unlawful detention of Petitioner violates his rights to substantive and procedural due process. Detention of noncitizens who are subject to § 1226(a), like Petitioner, without any individualized hearing does not "bear a reasonable relation to the purpose for which the individual was committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, application of the *Mathews v. Eldridge* balancing test shows that a bond hearing is necessary to protect Petitioner from an unnecessary deprivation of liberty. 424 U.S. 319, 335 (1976). Respondents' detention of Petitioner raises a substantive, constitutional question of law regarding his deprived liberty interest while detained and without access to an individualized hearing, in direct contradiction to § 1226(a), which will otherwise lack meaningful review and remedy if not addressed by this Court in the instant proceeding.

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

9. In the alternative, Petitioner seeks a writ of habeas corpus requiring the Respondents to provide him with a bond hearing under § 1226(a) within seven days.

JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Federal Detention Center in Philadelphia, PA. *See* Exh. B.

11. 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).

12. 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

13. 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 Western District of Pennsylvania, the judicial district in which Petitioner currently is detained.

14. 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.

REQUIREMENTS OF 28 U.S.C. § 2243

15. 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.*

16. 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

17. Petitioner Singh is a citizen of India who has been in immigration detention since January 29, 2026. After arresting Petitioner at a regularly scheduled check-in with Immigration and Customs Enforcement in King of Prussia, PA, ICE did not set bond, and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

18. Respondent Michael T. Rose is the Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division. The Philadelphia Field Office oversees the Moshannon Valley sub-office, which does not have a separate Field Office Director. Additionally, despite Petitioner's current location in Philipsburg, PA, the Philadelphia Field Office has jurisdiction over the entirety of Pennsylvania, where Petitioner was detained. As such, Michael T. Rose is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

20. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

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

22. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

23. Respondent Jamison Lawrence, the Warden of the Federal Detention Center Philadelphia, a private prison, is employed by the Bureau of Prisons and is the Warden of the facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

FACTS

24. Petitioner is a 40-year-old citizen and national of India.

25. Petitioner has resided in the United States since April 16, 2022, and lives in Lansdale, Pennsylvania, with his wife and U.S. citizen daughter.

26. On April 16, 2022, Petitioner entered the United States without inspection or admission. Petitioner was apprehended by ICE at the border, pursuant to 8 U.S.C. § 1226(a), and released on his own recognizance. Petitioner was apprehended at his regularly scheduled check-in on January 29, 2026. Petitioner is now detained at the Federal Detention Center in Philadelphia, PA.

27. DHS placed Petitioner in removal proceedings before the Philadelphia Immigration Court pursuant to 8 U.S.C. § 1229a on or about April 19, 2022, shortly after Petitioner was initially apprehended by immigration officials. 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. Petitioner was awaiting the scheduling of a hearing date with the Philadelphia Immigration Court at the time he was most recently apprehended.

28. The documents provided to Petitioner when he was first apprehended by ICE in April 2022 clearly indicate he was arrested, detained, and released on his own recognizance pursuant to 8 U.S.C. § 1226(a).

29. ICE detained him without explanation on January 29, 2026. Petitioner's removal proceedings and asylum application remain pending with the immigration court.

30. Petitioner has lived with his wife and U.S. Citizen daughter, at his Uncle's house in Lansdale, PA since his arrival in the United States. He has never been criminally arrested or apprehended by law enforcement, apart from his immigration arrest, and has become a valued member of his community. Petitioner filed a timely application for asylum on or about November 22, 2022, evincing his eligibility for relief before the immigration court. Petitioner is neither a flight risk nor a danger to the community.

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

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

33. As a result, 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.

LEGAL FRAMEWORK

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

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

35. 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).

36. 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).

37. 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).

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

39. 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).

40. 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).

41. 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)). Even individuals who were apprehended at the border and not immediately detained but placed in standard removal proceedings under 8 U.S.C. § 1229a, would historically have been considered detained under § 1226(a) should they alter been detained in the interior of the U.S., and thus eligible for bond before an immigration judge.

42. On July 8, 2025, ICE, "in coordination with" DOJ, abruptly changed course and announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice, stating that DHS had "revisited" its legal position and believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez*, 2025 WL 2084238, at *4.

43. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] 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.

44. 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.

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

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

47. Subsequently, 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.*, *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528 (E.D. Penn. Dec. 9, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *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-

[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited Jan. 21, 2026).

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. 8:25CV494, 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). This is just a sample of the

courts who have ruled on this issue. To date, there are at least 294 decisions in courts across the country that have found in favor of petitioners on this very issue. *See* Exh. A.

48. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As these decisions explain, the BIA's decision in *Matter of Yajure Hurtado* defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

49. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 1226(a) as the "default rule" for detention of noncitizens pending removal). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." *See* 8 U.S.C. § 1229a(a)(1).

50. Section 1226(a) does not govern the underlying decision or motivation to detain an individual; rather, it "governs the *process* of arresting and detaining" individuals that have entered the United States and have pending removal proceedings. *See Jennings*, 583 U.S. at 288. (emphasis added). Section 1226(a), however, is collateral to removal proceedings because it merely provides the process or means by which DHS executes an underlying decision to detain an individual, in addition to its inclusion of bond or conditional parole eligibility for those detained individuals subject to it. *See* 8 C.F.R. 1003.19(d) ("custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding"). *See also E.O.H.C. v. Sec'y, U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020) (noting no jurisdictional bar to matters "wholly collateral" to removal proceedings); *Khalil v. President, United States of America*, Nos. 25-2162 & 25-2357, 2026 WL 111933, at *12 (3d Cir. Jan. 15, 2026) (distinguishing *Miranda v. Garland*, 34 F.4th 338, 347, 353 n.6 (4th

Cir. 2022) as concerning challenges of bond procedures only, to dismiss petitioner's contention that habeas petition may challenge decision to detain).

51. 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). In 2025, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. 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.

52. 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.

53. Under the BIA's interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I&N Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(14) (defining an admission). Therefore, this interpretation would render all the grounds of mandatory detention in § 1226(c) applying to inadmissible noncitizens, including the recently passed Laken Riley Act, superfluous. *Gomes*, 2025 WL 1869299, at *7; *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2103) ("[T]he canon against surplusage is strongest

when an interpretation would render superfluous another part of the same statutory scheme."). This statutory structure demonstrates that Congress did not intend to make § 1226(a) inapplicable to all inadmissible noncitizens but rather viewed it as the default bond provision for people arrested within the United States.

54. 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).

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

56. Instead, the phrase "seeking admission" indicates that § 1225(b)(2)(A) applies to people who are taking "some sort of present-tense action," in other words, coming or attempting to come into the United States. *Diaz Martinez*, 2025 WL 2084238, at *6; *see also Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that "the use of the present progressive tense . . .

denotes an ongoing process"). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute.

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

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

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

59. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718

(Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

60. Absent adequate procedural protections, substantive due process requires a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690; *accord, e.g.*, *Torralba v. Knight*, No. 2:25-cv-1366, 2025 WL 2581792, at *12 (D. Nev. Sept. 5, 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at *4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

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

62. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard.

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

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

64. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be "on any calculus, substantial," observing that the petitioner, "could not maintain

employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone." 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated "alongside criminal inmates" at a jail where "she was separated from her fiancé and unable to maintain her employment." 10 F.4th at 28.

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

66. Finally, the burden on the government of returning to the longstanding practice of holding bond hearings for people like Petitioner does not outweigh the liberty interest at stake. To the contrary, the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"). Additionally, "unnecessary

detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings, and weighs in favor of additional procedural protections.

67. At these bond hearings, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 ("[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof."). "A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision." *German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the Third Circuit has ordered a constitutionally-required bond hearing, it is placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York C'ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, although § 1226(a) requires the government to afford the opportunity for an individualized custody or bond hearing to detained individuals subject to it, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

68. Once present in the United States, due process requires that a person like Petitioner receive a hearing before a neutral decisionmaker to determine whether detention is justified, and whether the person is a flight risk or danger to the community. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); *Zadvydas*, 533 U.S. at 690.

69. Consistent with this principle, detained individuals have a liberty interest in being free from unlawful detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

70. Such liberty is protected by the Fifth Amendment because, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

71. To guarantee against unlawful 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." *Id.*

72. Due process thus guarantees notice and an individualized hearing before a neutral arbitrator 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)).

73. Several courts have recognized that these principles apply with respect to the unlawful application of mandatory detention to the many noncitizens that DHS has begun taking into custody, often after such persons have resided in the United States for years, if not decades, forming community ties through family, work, friends, all the while being law-abiding citizens.

74. In *Crespo Tacuri*, the U.S. District Court for the Eastern District of New York applied the test set forth in *Mathews v. Eldridge*, decided that the petitioner's unlawful detention under misplaced mandatory detention authority violated procedural due process, and ordered immediate release. *Crespo Tacuri v. Genalo*, No. 25-CV-06896 (NCM), 2026 WL 35569 (E.D. N.Y. Jan. 6, 2026). In ordering immediate release, the Court reasoned that petitioner's due process rights were violated because of his summary detention without "a deliberative process prior to, or contemporaneous with, the initial decision to strip [him] of the freedom that lies at the heart of the Due Process Clause." *See id.* at *7 (quoting *Rocano Buestan v. McShane*, No. 25-cv-08544, 2025 WL 3496361, at *6 (S.D.N.Y. Dec. 5, 2025) (internal citation omitted)).

75. Finally, the Court reasoned that "government's interest in continued detention is slight insofar as petitioner was detained without an individualized custody determination that evaluated dangerousness and flight risk or any articulated change in circumstances." *Id.* at *7. As a result, *inter alia*, the Court ordered the petitioner's immediate release. *Id.* at *7-*8.

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

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

78. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who entered the United States without inspection, were not apprehended following their arrival, and remained in the United States thereinafter. As relevant here, it does not apply to Petitioner, who previously entered the United States without

inspection, was never apprehended, and has resided inside the United States before their detention. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231, none of which apply to Petitioner.

79. Petitioner is detained under § 1226(a) and is eligible for release on bond.

80. Respondents' unlawful application of § 1225(b)(2) to Petitioner violates the INA.

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

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

82. 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.

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

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

them to be subject to mandatory detention. The BIA's interpretation thus violates the regulations and unlawfully denies Petitioner a bond hearing.

85. 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 Substantive Due Process under the Fifth Amendment

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

87. 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—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Substantive due process requires that immigration detention without a bond hearing be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

88. The BIA's application of mandatory detention under § 1225(b)(2) is not reasonably related to those goals and thus violates substantive due process. Petitioner has a fundamental interest in liberty and being free from official restraint. Likewise, Petitioner has resided in the United States for almost 4 years. In that time, he has developed considerable ties to his community by way of family, friends, and gainful employment. His U.S. Citizen daughter relies on him for emotional and financial support. He has also never been criminally arrested anywhere in the world, and there is no evidence his release would pose a danger to the community.

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

COUNT IV
Violation of Procedural Due Process under the Fifth Amendment

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

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

92. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Petitioner's liberty is a particularly weighty interest. It is well established that individuals have a liberty interest against unlawful detention and freedom from restraint. *Salerno*, 481 U.S. at 750; *see also Ashley*, 288 F. Supp. at 670. This is especially true given the fact that Petitioner has resided in the United States for over 15 years without any immigration contact or criminal encounters. He relied on this interest in his liberty by finding gainful employment, renting a house to live in, becoming a parent, and becoming a value member of his community. This freedom from unlawful restraint is the heart of the liberty interest protected by the Fifth Amendment.

93. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Here, there is a great risk of unnecessary detention because the BIA's interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. At a hearing, Petitioner could show that his detention is not necessary because he is not a danger to the community and is not a flight risk,

which will be demonstrated by the lack of any criminal record or record of additional immigration violations, in addition to positive equities such as the value he brings to his community through family, friends, and gainful employment demonstrate. Similarly, these positive relationships will further demonstrate that he has no reason to be a flight risk; instead, he has every reason to seek a legal pathway to remaining in the United States. A hearing at which the government bears the burden of proof by clear and convincing evidence would protect the substantial liberty interest at stake. *German Santos*, 965 F.3d at 213-14.

94. The final factor is the Government's interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes. *Hernandez-Lara*, 10 F.4th at 32-33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at *4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). Therefore, the government does not have an interest in detaining Petitioner without a bond hearing that outweighs his substantial liberty interest in such an individualized determination.

95. 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 detention is warranted based on danger or flight risk.

96. Respondents deprived Petitioner of liberty without providing him any written notice or meaningful opportunity to be heard by neutral decisionmaker prior to his detention.

97. Accordingly, Petitioner's detention, without any hearing to determine whether that detention is necessary, 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 Eastern District of Pennsylvania while this habeas petition is pending;

c. Order that the Petitioner not be ordered removed from United States during the pendency of these proceedings;

d. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

e. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner from custody immediately and permanently enjoining his detention absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that he is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks, or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

f. Declare that Petitioner is detained pursuant to 8 U.S.C. § 1226(a);

g. Declare that Petitioner's detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

h. 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

i. Grant any other and further relief that this Court deems just and proper.

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 29th of January 2026.

/s/ Brendan M. Ryan

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

GURDEEP SINGH v. ROSE, ET AL.	Case No. 26-cv-539 **PETITION FOR WRIT OF HABEAS CORPUS**

EXHIBIT LIST