

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

WELCHEZ MARROQUIN, OVIDIO

Petitioner,

v.

JAMISON, J.L.,
Warden, Federal Detention Center,
Philadelphia;

ROSE, Michael T.,
Acting Field Office Director,
Immigration and Customs
Enforcement, Enforcement and
Removal Operations, Philadelphia
Field Office;

NOEM, Kristi,
Secretary of the Department of
Homeland Security;

BONDI, Pamela,
U.S. Attorney General

U.S. DEPARTMENT OF
HOMELAND SECURITY;

EXECUTIVE OFFICE OF
IMMIGRATION REVIEW,

Respondents.

Case No.

**PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Ovidio Welchez Marroquin is a 45 year old native of Honduras who is in the custody of the United States Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”). Prior to his detention, Petitioner had lived in Phoenixville, Pennsylvania since 1999. He was previously released from immigration custody on \$5,000 bond.
2. On February 18, 2026, DHS detained Petitioner in front of his home. It currently detains Mr. Welchez Marroquin at the Philadelphia Federal Detention Center. DHS purports to hold Mr. Welchez Marroquin under 8 U.S.C. § 1225(b)(2)(A), a mandatory detention statute. Its detention of Mr. Welchez Marroquin followed a drastic recent shift away from decades of prior precedent and practice.
3. The Executive Office of Immigration Review (“EOIR”), which adjudicates immigration matters, recently adopted the same reinterpretation of the immigration detention laws. EOIR held, in *Matter of Yajure Hurtado*, that noncitizens who have entered the United States without inspection are mandatorily detained under Section 1225(b)(2)(A). *See* 29 I. & N. Dec. 216, 228 (B.I.A. 2025). DHS and EOIR’s new interpretation conflicts with the plain language and structure of the immigration detention statutes. It has been widely rejected by district judges around the country,

including within this Circuit. *See Alekseev v. Warden, Philadelphia Fed. Det. Ctr.*, No. 26-0462, 2026 WL 413439, at *1 (E.D. Pa. Feb. 13, 2026) (stating all 201 decisions in this District have rejected Respondents’ position). Respondents’ application of 8 U.S.C. § 1225(b)(2) to Petitioner is contrary to law, violating both the Immigration and Nationality Act (“INA”) and the Administrative Procedure Act (“APA”).

4. Respondents’ re-detention of Mr. Welchez Marroquin under Section 1225(b)(2)(A) further violates his substantive and procedural due process rights. Respondents’ categorical detention of all noncitizens who are subject to inadmissibility grounds without any individualized hearing lacks a “reasonable relation to the purpose for which the individual was committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Their re-detention of Mr. Welchez Marroquin without any pre-deprivation assessment or showing that Mr. Welchez Marroquin presents a flight or danger risk—the only two valid bases for civil immigration detention, *see id.*—violated his substantive due process right to be free from unwarranted custody.

5. Respondents’ re-detention of Mr. Welchez Marroquin also violates his procedural due process right for meaningful procedures to reduce the risk of an erroneous deprivation of his liberty. Each of the *Mathews v. Eldridge* balancing test favors Mr. Welchez Marroquin, a noncitizen who has resided in this country for over ten years. *See* 424 U.S. 319, 335 (1976). Numerous United States District Courts

have agreed. *See, e.g., Ndiaye v. Jamison*, No. 25-cv-6007, 2025 WL 3229307, at *2 (E.D. Pa. Nov. 19, 2025) (“[D]ue process and proper statutory interpretation of the INA preclude Ndiaye from being mandatorily detained without bond under § 1225(b)(2).”); *Nogueira-Mendes v. McShane*, No. CV 25-5810, 2025 WL 3473364, at *4 (E.D. Pa. Dec. 3, 2025) (“Because Section 1226(a) provides for a bond hearing and Petitioner has not received one, Petitioner has demonstrated that his continued detention violates his rights under that provision.”).

6. Mr. Welchez Marroquin respectfully requests that this Court issue a writ of habeas corpus and order Respondents to release him from their custody. *See, e.g., Ndiaye*, 2025 WL 3229307 at *5 n.5 (ordering immediate release and finding that “[a] bond hearing would certainly result in [Petitioner’s] release and only serve to delay relief when the “Government has offered no rationale to refuse bond”); Order, ECF No. 5, *Benitez Crespo v. Jamison*, No. 26-cv-93 (E.D. Pa. Jan. 16, 2026) (same). In the alternative, Petitioner requests that this Court conduct a bond hearing at which (1) Respondents bear the burden of proving flight or danger risk by clear and convincing evidence, and (2) considers alternatives to detention that could mitigate risk of flight and ability to pay in setting any bond. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-14 (3d Cir. 2020).

PARTIES

7. Petitioner Ovidio Welchez Marroquin is a noncitizen currently detained by Respondents pending removal proceedings. He is detained in ICE custody at the Federal Detention Center in Philadelphia, Pennsylvania.
8. Respondent J.L. Jamison is sued in his official capacity as the Warden of the Philadelphia Federal Detention Center (“FDC”). He has direct custodianship over Petitioner at Philadelphia FDC.
9. Respondent Michael T. Rose is sued in his official capacity as the Acting Field Office Director of U.S. Department of Homeland Security, Immigration and Customs Enforcement’s Philadelphia Field Office. He is responsible for the administration and management of ICE Enforcement Removal Operations in Pennsylvania and exercises administrative control over Petitioner’s custody.
10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. DHS is responsible for administering and enforcing the immigration laws, including the decision to detain noncitizens during the course of their removal proceedings. Secretary Noem has ultimate legal custodianship over Petitioner.
11. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She is responsible for the Department of Justice, including the Executive Office of Immigration Review. EOIR adjudicates individual immigration matters, including in removal and custody proceedings.

12. Respondent the U.S. Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention of noncitizens during removal proceedings.

13. Respondent the Executive Office of Immigration Review is the federal agency responsible for administering removal and custody proceedings. EOIR is a component of the U.S. Department of Justice. EOIR includes the Board of Immigration Appeals (“BIA”) and the immigration courts.

JURISDICTION AND VENUE

14. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

16. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency’s officers are sued in their official capacities. 5 U.S.C. § 702.

17. Venue is proper in this District because the Petitioner is detained in this district. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. There is no statutory requirement of exhaustion of administrative remedies in habeas proceedings under § 2241. *Kashranov v. Jamison*, No. 2:25-CV-05555-JDW, 2025 WL 3188399, at *4 (E.D. Pa. Nov. 14, 2025). Any requirement of administrative exhaustion is therefore purely discretionary. *Ndiaye*, 2025 WL 3229307 at *3 (citing *Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 970 (3d Cir. 1980)).

19. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

20. A petitioner further “does not need to ‘exhaust administrative remedies where the issue presented involves only statutory construction.’” *Ndiaye*, 2025 WL 3229307, at *3 (quoting *Vasquez v. Strada*, 684 F.3d 431, 433–34 (3d Cir. 2012)). Because the “the issue in this case hinges entirely on the statutory construction of 8 U.S.C. §§ 1225 and 1226,” Mr. Welchez Marroquin should not be required to exhaust administrative remedies. *Id.*

21. The exhaustion “doctrine” is moreover “not without exception.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the

exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *Id.* at 666–67.

22. The BIA issued a published decision holding that noncitizens like Mr. Welchez Marroquin, who entered the United States without inspection, are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Yajure Hurtado*, 29 I. & N. Dec. at 220. The BIA and immigration judges are bound by *Yajure Hurtado*. 8 C.F.R. § 1003.1(g)(1). Exhaustion before the EOIR would therefore be futile because it “would almost certainly result in the BIA persisting in its earlier rulings and applying those rulings to [Petitioner], all while he remains in detention.” *Del Cid v. Bondi*, No. 25-cv-304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025); *see also Kashranov*, 2025 WL 3188399, at *4 (finding further administrative review would “serve no practical purpose” considering the BIA’s decision in *Yajure Hurtado* “has already fixed its position,” rendering exhaustion “an empty formality”).

23. The BIA also does not have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Any administrative proceedings would therefore be futile as to Jesus’s constitutional due process claims. *Qatanani*, 144 F.4th at 500.

STATEMENT OF FACTS

24. After entering the United States in 1999, Mr. Welchez Marroquin has resided continuously in Phoenixville, Pennsylvania, where he works and supports his extended family.

25. Mr. Welchez Marroquin was previously detained by DHS and released on \$5,000 bond. Mr. Welchez Marroquin complied with all the conditions of his removal proceedings and immigration release. His removal proceedings were dismissed several years ago as an exercise of prosecutorial discretion and Mr. Welchez Marroquin was under no further obligations to appear in immigration court.

26. On February 18, 2026, Mr. Welchez Marroquin left his house to get into his car when he was stopped by immigration officials. He was taken into custody.

27. DHS currently holds Mr. Welchez Marroquin at the Philadelphia Federal Detention Center under A number 

28. Upon information and belief, Respondents detained Mr. Welchez Marroquin under its revised interpretation of the immigration detention statutes; specifically their new view that all noncitizens who have not been “admitted,” 8 U.S.C. § 1101(a)(13)(A) are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

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

29. The Immigration and Nationality Act contains several provisions authorizing detention of noncitizens. Title 8 U.S.C. § 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an immigration judge (“IJ”) to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Title 8 U.S.C. § 1225(b), meanwhile, mandates the detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for recent arrivals “seeking admission” under (b)(2).

30. The detention provisions at 8 U.S.C. § 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 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “Upon passing IIRIRA, Congress declared that the new Section 1226(a) ‘restates the current provisions in the predecessor statute,’” which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

31. 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 8 U.S.C. § 1225 and that they were instead detained

under 8 U.S.C. § 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) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”).

32. In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an IJ, unless their criminal history rendered them ineligible. *Ndiaye*, 2025 WL 3229307 at *6 (finding that DHS and EOIR DHS “maintained this practice since § 1225(b)(2) first took effect in 1997”). That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

33. Respondents abruptly changed course this past year. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal position and believed that 8 U.S.C. § 1225, not § 1226, governs the detention of

noncitizens who are present in the United States without having been admitted. *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025).

34. And on September 5, 2025, the BIA followed suit and issued a precedential decision in *Yajure Hurtado*, holding that noncitizens “who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I. & N. Dec. at 220.

35. The *Yajure Hurtado* interpretation has been soundly rejected by Article III Courts. Judges from all around the country, including from the Eastern District of Pennsylvania, have held that people who are present without having been admitted are eligible for bond pursuant to § 1226(a). *See Alekseev*, 2026 WL 413439, at *1 (E.D. Pa. Feb. 13, 2026) (stating all 201 decisions in this District have rejected Respondents’ position); *Ndiaye v. J.L. Jamison, et al*, No. CV 25-6007, 2026 WL 373247, at *7 (E.D. Pa. Feb. 10, 2026) (noting “308 judges[, appointed by every president since Ronald Regan,] have ruled against the [Government]’s mass detention policy—ordering release or bond hearings in more than 1,600 cases” and listing cases in this District) (alterations in original) (internal citation omitted); *Demirel v. Fed. Det. Ctr. Philadelphia*, No. 25-cv-5488, 2025 WL 3218243, at *5–13 (E.D. Pa. Nov. 18, 2025) (listing out 288 cases across the nation that have rejected *Yajure Hurtado*).

36. As these decisions explain, the BIA’s position in *Yajure Hurtado* defies the INA. The plain text of the statute shows that 8 U.S.C. § 1226(a), not § 1225(b), applies to immigrants like Mr. Welchez Marroquin. Section 1226(a) applies by default to all persons “pending a decision on whether the[y] . . . [are] to be removed from the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 8 U.S.C. § 1226(a) as the “default rule” for the detention of noncitizens pending removal).

37. The text of 8 U.S.C. § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, 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 persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vasquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vasquez*, 779 F. Supp. 3d at 1256–57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

38. 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). *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 8 U.S.C. § 1226(c) applied to inadmissible noncitizens, including the recently-passed Laken Riley Act, superfluous. *Ndiaye*, 2025 WL 3229307 at *6; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[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 8 U.S.C. § 1226(a) inapplicable to all inadmissible noncitizens, but rather viewed it as the default bond provision for people arrested within the United States, as the Supreme Court confirmed in *Jennings*.

39. By contrast, 8 U.S.C. § 1225(b) applies to people arriving at U.S. ports of entry or who very 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); *see also Vasquez-Rosario v. Noem*, No. 25-CV-7427, 2026 WL 196505, at *9 (E.D. Pa. Jan. 26, 2026) (collecting cases and holding that “seeking admission” means “physically attempting to come into the

United States, typically at a border or port of entry and presenting oneself for inspection and authorization”) (quoting *Kashranov*, 2025 WL 3188399 at *6). 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*, 583 U.S. at 287.

40. “The Government’s interpretation of 8 U.S.C. § 1225(b)(2) [indeed] violates the rule against surplusage” because it reads out the phrase, “seeking admission.” *Ndiaye*, 2025 WL 3229307, at *14; *Demirel*, 2025 WL 3218243, at *9 (“I am not prepared to read this part [“alien[s] seeking admission”] of § 1225(b)(2) out of existence.”). Section 1225(b)(2) only 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); *Demirel*, 2025 WL 3218243, at *9. 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 v. Francis*, 795 F. Supp. 3d 475, 487 (S.D.N.Y. 2025); *Martinez*, 792 F. Supp. 3d at 217.

41. Instead, the phrase “seeking admission” indicates that 8 U.S.C. § 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, 8 U.S.C. § 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.

42. Applying 8 U.S.C. § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the government’s longstanding practice, which “can inform a court’s determination of what the law is.” *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA’s abrupt change in policy. *Ndiaye*, 2025 WL 3229307 at *7-8.

43. Finally, as discussed below, the BIA’s interpretation of 8 U.S.C. § 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. 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). Section 1225(b)(2)(A) does not govern Mr. Welchez Marroquin detention.

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

44. “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*, 533 U.S. at 690. 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).

45. 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); *Luna Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *7 (E.D. Va. Sept. 29, 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. *Zadvydas*, 533 U.S. at 693; *Demore*, 538 U.S. at 528. To withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

46. In *Demore*, the Supreme Court upheld the constitutionality of 8 U.S.C. § 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 convictions who have lived in the community for years. The broad policy set forth in *Yajure Hurtado* is not reasonably related to the purposes of prevent danger to the community or flight risk and violates substantive due process.

47. Respondents' re-detention of Mr. Welchez Marroquin without any pre-deprivation assessment of his flight or danger risks violates his substantive due process rights. Its re-detention of Mr. Welchez Marroquin without showing what, if anything, has changed since he was released on bond in 2023 was improper. *See, e.g., Kourouma v. Jamison*, No. 26-cv-182, 2026 WL 120208, at *5 (E.D. Pa. Jan. 15, 2026) ("This Court will order the release of Petitioner because he was unlawfully detained."); *Tumba Huamani v. Francis*, --- F. Supp. ---, 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025) (ordering release after finding "the complete absence of any reason for Petitioner's arrest" by DHS); *Lopez Benitez*, 795 F. Supp. 3d at 499 (ordering release after rejecting the government's "suggestion that [its] agents may

sweep up any person they wish, for no reason whatsoever . . . so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release”) (cleaned up).¹

48. 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

¹ Mr. Welchez Marroquin’s re-detention further implicates recognized protections from the parole revocation context. The Supreme Court “has made clear that individuals subject to the revocation of their parole are entitled to certain due process rights, including ‘a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.’” *United States v. Patterson*, 957 F.3d 426, 433 (4th Cir. 2020) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972)); *see also* 18 U.S.C. § 3583(e) (requiring courts to consider specific factors prior to modifying or revoking a person’s conditions of supervised release).

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 v. v. Lyons*, 10 F.4th 19, 28 (1st Cir 2021); *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Each factor favors providing Mr. Welchez Marroquin additional process.

49. 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).

50. 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. Because Mr. Welchez Marroquin has the same core interest in his liberty, the first factor weighs in his favor.

51. Second, Respondents’ blanket detention of all inadmissible noncitizens creates a large risk of erroneous deprivation. Particularly, it has led and continues to the lead to the detention of many—like Mr. Welchez Marroquin—who the government cannot prove to be a flight risk or a danger to the community. *See, e.g., Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187–88 (D. Minn. 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. The second factor therefore weighs in Mr. Welchez Marroquin favor.

52. 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. The third factor therefore weighs in affording Mr. Welchez Marroquin additional procedural protections.

53. Given Respondents did not conduct any pre-deprivation assessment of Mr. Welchez Marroquin risks prior to his re-detention, he merits release, as recognized by many courts in this District. *See, e.g., Kourouma*, 2026 WL 120208, at *5 (“The Court will order the release of Petitioner because he was unlawfully detained.”); *Kashranov*, 2025 WL 3188399, at *8 (“Because the Government detained Mr. Kashranov without the bond hearing that Section 1226(a) and the Due Process Clause require, Mr. Kashranov should not now be in custody.”); *Centeno Ibarra v.*

Warden of the Fed. Det. Ctr. Philadelphia, No. CV 25-6312, 2025 WL 3294726, at *8 (E.D. Pa. Nov. 25, 2025) (“Because a bond hearing is unnecessary, this Court will order his immediate release.”); *Patel v. McShane*, No. CV 25-5975, 2025 WL 3241212, at *3 (E.D. Pa. Nov. 20, 2025); *see also Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government’s repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail waiting for a judicial decision,” the court would order immediate release instead of causing additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025)).

54. Mr. Welchez Marroquin also merits release because a bond hearing before an IJ has been shown not to be an adequate remedy. Immigration judges have unreasonably refused to grant bond despite evidence that a noncitizen is not a danger or a flight risk, requiring petitioners to seek further relief from habeas courts. *See A.D. v. Oddo*, Civil Action No. 25-460J, Memorandum Order at 7-8 (W.D. Pa. Feb. 12, 2026) (finding petitioner was unfairly prejudiced at his habeas ordered bond hearing and ordering immediate release); *Soto-Medina v. Lynch*, No. 1:25-CV-1704, 2026 WL 161002, at *2 (W.D. Mich. Jan. 21, 2026) (noting that at a habeas ordered bond hearing petitioner presented evidence that he is not a flight risk or danger, including “evidence of his family connections, that his daughter attended Chicago Public Schools, and that he has a pending asylum application and valid work

authorization,” that the “government did not present any evidence” against granting bond, but “the immigration judge denied Petitioner’s request for bond because Petitioner had ‘not established that he is not a flight risk’”); *Ramirez v. Lynch*, No. 1:25-CV-1800, 2026 WL 212932, at *1 (W.D. Mich. Jan. 27, 2026) (same). A hearing before an immigration judge also does not provide a sufficient assurance of neutrality. Immigration judges, who serve at the pleasure of the U.S. Attorney General—a respondent in this matter—have been removed from service for not following the Executive’s deportation goals. *See, e.g.*, Joshua Goodman, *Military Lawyer Swiftly Fired from Immigration Bench After Defying Trump Deportation Push*, Times Union (updated Dec. 19, 2025), <https://www.timesunion.com/news/politics/article/military-lawyer-swiftly-fired-from-immigration-21252504.php>. And on January 13, 2026, Chief Immigration Judge Teresa L. Riley instructed immigration judges to continue denying bond despite a nationwide declaration against DHS’s detention policies in *Maldonado Bautista v. Santacruz*, No. 25-cv-1873, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025). *See Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, AILA Doc. No. 26011404, Am. Immigr. Laws. Ass’n (Jan. 16, 2026), <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista> (last visited Feb. 8, 2026).

55. If, alternatively, this Court orders for a bond hearing, 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.”). Such a “standard of proof serves to [properly] allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision.” *German Santos*, 965 F.3d at 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). The Third Circuit has long ordered for the government to bear a clear and convincing burden at a constitutionally-mandated bond hearing. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York Cnty. 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 the same for Section 1226(a) detention. *Hernandez-Lara*, 10 F.4th at 39–40; *Velasco Lopez*, 978 F.3d at 855–56; *see also Soto-Medina*, 2026 WL 161002, at *5-11. Any assessment of custody should include consideration of alternatives to detention and ability to pay. *See, e.g., Black*, 103 F.4th at 155.

56. Should this Court order for a bond hearing, it should preside over such a hearing rather than assign it to an EOIR administrative judge, for the reasons discussed above. *See Swann v. Charlotte Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (“[T]he scope of a district court’s equitable powers to remedy past wrongs is

broad, for breadth and flexibility are inherent in equitable remedies.”); *see also Zadvydas*, 533 U.S. at 700 (authorizing federal courts to “condition[]” a noncitizen’s release “on any of the various forms of supervised release that are appropriate in the circumstances.”).

FIRST CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act Unlawful Application of Mandatory Detention Provision

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

58. 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 grounds of inadmissibility. Specifically, it does not apply to Mr. Welchez Marroquin, who has been living in the United States for over a decade.

59. Mr. Welchez Marroquin is not “seeking admission” in 2026. At the time of his detention in Phoenixville, he was no longer engaged in that “present-tense action.” *Martinez*, 792 F. Supp. 3d at 218. He therefore no longer met the requirements of Section 1252(b)(2)(A).

60. Respondents’ unlawful and arbitrary application of 8 U.S.C. § 1225(b)(2) to Jesus violates the INA.

SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act Agency Policy and Practice is Arbitrary, Capricious, and Contrary to Law

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

62. An agency decision that “runs counter to the evidence before the agency” is arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

63. An agency decision that “failed to consider important aspects of the problem” is also arbitrary and capricious. *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020)

64. 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 grounds of inadmissibility. Specifically, it does not apply to Mr. Welchez Marroquin, who has been living in the United States for over a decade.

65. In taking a contrary position, Respondents have reversed decades of prior practice, and “would expand § 1225(b) face beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application.” *Lopez Benitez*, 795 F. Supp. 3d at 490. Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider

important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

66. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Respondents’ application of 8 U.S.C. § 1225(b)(2) to Mr. Welchez Marroquin is arbitrary, capricious, and not in accordance with law.

THIRD CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause Detention Without Any Relation to Limited Goals of Civil Immigration Detention Violates Substantive Due Process

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

68. 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. 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.

69. The BIA’s application of mandatory detention under 8 U.S.C. § 1225(b)(2) is not reasonably related to those goals and thus violates substantive due process. Mr. Welchez Marroquin has a history of full compliance with all conditions of his

removal proceedings. He has attended every court appearance and filed his asylum application. He has never been charged with a violent crime and has never been convicted of any crime at all.

70. Respondents’ re-detention of Mr. Welchez Marroquin without any consideration of his particular flight or danger risks bears no relation to the limited goals of immigration detention.

FOURTH CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause Detention Without Any Procedures to Limit Erroneous Deprivation of a Core Private Right Violates Procedural Due Process

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

72. 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.

73. 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. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (describing the substantial private interest in remaining out of custody, which “enables [one] to do a wide range of things open to persons” who are free from custody).

74. 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. Respondents’ procedures—or lack thereof—create an erroneously high risk of wrongly depriving those, like Mr. Welchez Marroquin, their protected interest in being free from government custody.

75. 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 his 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-cv-9646, 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (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). Affording noncitizens pre-deprivation review of their flight or danger risks presents a minimal burden and serves the government’s interest in ensuring only those individuals that need to be detained are detained. *See Velasco Lopez*, 978 F.3d at 857 (the government “has no interest in the continued

incarceration of an individual who it cannot show to be either a flight risk or a danger to his community” and the public has an “interest in seeing that individuals who need not be jailed are not incarcerated”).

76. Respondents’ detention of Petitioner without any hearing to determine whether that detention is necessary violates procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue an order administratively staying Respondents from transferring Petitioner outside of this Court’s geographic jurisdiction pending the Court’s adjudication of the petition;²

² Petitioner requests a stay of his transfer to ensure that should this Court grant him relief, he may quickly and reasonably access such relief. *See, e.g.*, Order, ECF No. 4, *Zavala Ulloa v. Jamison*, 2:26-cv-00813-KSM (E.D.P.A. Feb. 9, 2026) (enjoining Respondents “from taking any action that would result in the removal of Petitioner from the Eastern District of Pennsylvania”); Order, ECF No. 3, *Lantiguez Alvarado v. Bondi*, No. 26-cv-768 (S.D.N.Y. Jan. 29, 2026) (administratively staying the noncitizen from transfer out of the Southern and Eastern Districts of New York, or the District of New Jersey).

At a recent show cause hearing, Judge Jerry W. Blackwell of the U.S. District Court for the District of Minnesota outlined the collateral difficulties of acquiring adequate government compliance if the government transfers a noncitizen outside of the habeas court’s jurisdiction. He explained that it takes “repeat, after repeat, after follow-up, after follow-up with the Government” to receive information and

3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

4) Issue a Writ of Habeas Corpus and order Petitioner's immediate release from custody;

procure a noncitizen's return. Tr. of Show Cause Hr'g, ECF No. 19, *Segundo A.P.G. et al. v. Bondi*, No. 26-cv-603 (D. Minn. Feb. 3, 2026), at 11. And he traced the difficulty in prescribing adequate remedies, describing:

For example, if we say, release the person immediately, then we learn that, having transported [the noncitizen] to El Paso or New Mexico, [the government] do[esn't] bring him back. We learn that somebody is put out on the street with just the clothes on their backs and have to figure out how to get back here when they should not have been arrested here in the first place, let alone flown halfway across the continent of North America. And have to – so now we have to address that. We have to say, bring them back.

And then we say, all right, so you brought them back. We can't have them released when it's minus 14 outside. And so now we have to address that. Don't release them in the circumstances that might endanger their health or safety.

And so once that's addressed, then we learn they've been released, but now conditions have been imposed. That somebody who should not have been arrested in the first place is now being told, you're going to be released if you wear an ankle monitor, which the Court didn't order because the person was unlawfully detained in the first place. Then we have to go back and address that now.

Id. at 33–34.

5) In the alternative, conduct a custody hearing at which Respondents must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present;

6) Issue an order requiring Respondents to return Petitioner's personal property, including identification and documents;³

7) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law, *see Michelin v. Warden Moshannon Valley Corr. Ctr.*, --- F.4th ---, 2026 WL 263483 (3d Cir. Feb. 2, 2026); and

8) Grant such further relief as the Court deems just and proper.

³ *See, e.g.*, Order, ECF 20, *Abreu v. Baker et al.*, Civil No. 25-3088-BAH (D. Md) (Dec. 18, 2025) (ordering return of petitioner's personal property confiscated at the time of her detention); *Ortiz Martinez v. Wamsley*, No. 2:25-CV-01822-TMC, 2025 WL 2899116, at *5 (W.D. Wash. Oct. 10, 2025) (same).

Dated: 02/18/2026

Respectfully submitted,

/s/Caitlin Barry

PA 205501

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Pro Bono Counsel for Petitioner

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 as a member of Petitioner's legal team. 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: 02/18/2026

Respectfully submitted,

/s/Caitlin Barry

PA 205501

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Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send a courtesy copy via email to the office of the United States Attorney for the Eastern District of Pennsylvania.

DATED: 02/18/2026

/s/Caitlin Barry
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