United States District Court

EASTERN DISTRICT OF PENNSYLVANIA

DENIS TKACHEV,

Petitioner,

v.

BRIAN MCSHANE, Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCE, Acting U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; J.L. JAMISON, Warden of PHILADELPHIA FEDERAL DETENTION CENTER.

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Denis Tkachev, is in the physical custody of Respondents at the PHILADELPHIA FEDERA DETENTION CENTER. 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 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.

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 previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

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

7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

8. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Moshannon Valley Correctional Facility in Phillipsburg, Pennsylvania.

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

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

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in

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

PARTIES

15. Petitioner, Denis Tkachev, is an alleged citizen of Russia who has been in immigration detention since January 22, 2026. After arresting Petitioner in Beaver County, Pennsylvania, 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).

16. Respondent BRIAN MCSHANE is the Director of the Philadelphia Field Office of ICE's Enforcement and Removal Operations division. As such, BRIAN MCSHANE is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

17. Respondent MARKWAYNE MULLIN is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. MARKWAYNE MULLIN has ultimate custodial authority over Petitioner and is sued in his official capacity.

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

19. Respondent TODD BLANCHE is the Attorney General of the United States. He 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. He is sued in his official capacity.

20. 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.

21. Respondent Warden J.L. JAMISON is employed by PHILADELPHIA FEDERAL DETENTION CENTER as Warden of the facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

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

23. 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).

24. 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).

25. 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).

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

27. 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).

28. 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).

29. 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)).

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

31. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

32. 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.

33. 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.

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

34. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

35. 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.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *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).

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

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

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

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

40. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this

mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

42. Further, pretrial detention is not to be used as punishment. Pre-trial detention that is effectively punishment is a constitutional violation of due process rights of the detainee.

FACTS

43. Petitioner has resided in the United States since 2024 and lives in Philadelphia County, Pennsylvania.

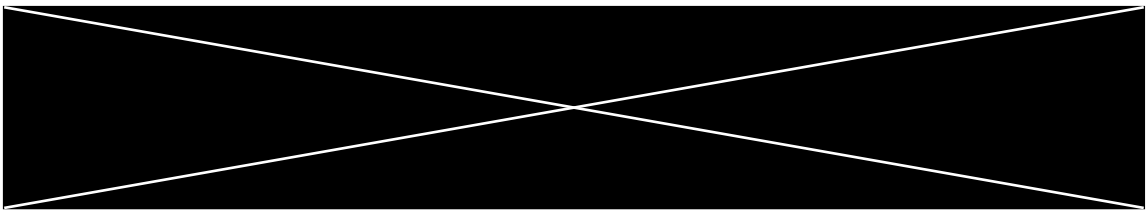
44. Petitioner was born in Khabarovsk, Russia, on [redacted] He resided in Russia until 2022.

45. Upon his arrival in February of 2024, Petitioner was released on his own recognizance.

46. On April 9, 2026, Petitioner was arrested by ICE agents while Petitioner was outside his home at [redacted] Petitioner has no criminal charges or convictions in the United States. Petitioner's mother and other family reside in the United States. Petitioner is 21 years of age.

47. Petitioner originally arrived to the United States with his family in 2022. He subsequently returned to Russia for a period of time, but was [redacted] He has not attempted to return to Russia since this occurrence.

48. [redacted]



49. Petitioner has an active I-589 Application for Asylum and for Withholding of Removal.

50. The Department of Homeland Security issued a Notice to Appear for Petitioner, with a scheduled hearing date of January 15, 2026.

51. Respondent alleges that because Petitioner has an active criminal case in Russia, he is a danger to the community and thus should continue to be detained under 8 U.S.C. § 1226. However, Petitioner's *alleged* criminal activity is the basis for his asylum claim. Petitioner strongly avers that he committed no crime at all, but rather a victim of authoritarianism, which is consistent with the state of Russia today. Respondents use the victimization of Petitioner as grounds for removal.

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

53. Petitioner immigrated to the United States as a victim of political persecution and currently has a pending asylum request.

54. Following Petitioner's arrest and transfer to Philadelphia 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.

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

56. 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 friends, community, and family.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

57. Petitioner incorporates by reference the allegations of fact set forth in the preceding 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 the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT II

Violation of the Bond Regulations

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

61. 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.

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

63. 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 Due Process

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

65. 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).

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

67. 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.

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

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

DATED this 11th of April, 2026.

s/ Lynne A. Jaworski

Lynne Ainsley Jaworski, Esquire

Attorney for Petitioner

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Denis Tkachev

(b) County of Residence of First Listed Plaintiff Philadelphia, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)* Lynne A. Jaworski, Esq. Ronald Pollack, Esq. 318 5th Avenue, Coraopolis, PA 15108 7248011071

DEFENDANTS

Brian McShane Wayne Mulen Todd Blanche J.L. Jamison

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
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- ☐ 376 Qui Tam (31 USC 3729(a))
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- ☐ 410 Antitrust
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- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☒ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. Sec. 2243

Brief description of cause:
Unlawful detention of alien petitioner with valid residency status

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD
s/ Lynne Jaworski

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

CIVIL DIVISION

DENIS TKACHEV, Petitioner, v. BRIAN MCSHANE, Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCE, Acting U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; J.L. JAMISON, Warden of PHILADELPHIA FEDERAL DETENTION CENTER. Respondents.	Case No. _____

MOTION FOR TEMPORARY RESTRAINING ORDER

AND PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner is a 21-year-old asylum seeker and resident of Philadelphia County who has lived in the United States since 2024 and has no criminal history in this country. He fled the Russian Federation after [redacted] basis of his pending application for asylum and withholding of removal. Despite this, Respondents have elected to detain Petitioner under 8 U.S.C. § 1226 and deny him any meaningful opportunity for release, asserting that the same unproven and politically motivated accusations render him a danger to the community. Following his arrest by ICE outside his home in Philadelphia, Petitioner—who was previously released on his own recognizance and has complied with all immigration requirements—has been held in immigration detention without bond, based solely on allegations that are inextricably intertwined with the merits of his asylum claim. Absent intervention from this Court, Petitioner faces prolonged and unjustified civil detention, separated from his family and community, in violation of the fundamental due process principles that govern immigration custody.

Petitioner is entitled to immediate relief because his continued detention serves no lawful purpose and imposes substantial and irreparable harm. As set forth below, Petitioner is highly likely to succeed on the merits of his habeas corpus claim. The government detains him under 8 U.S.C. § 1226(a) yet denies him any meaningful opportunity for release, relying exclusively on unproven foreign allegations that are themselves the basis of his pending asylum claim. Nothing in the Immigration and Nationality Act permits detention on such grounds, and longstanding principles governing § 1226(a) make clear that civil immigration detention must be supported by an individualized determination of danger or flight risk—neither of which is present here. Petitioner has no criminal history in the United States, was previously released on his own recognizance, and has fully complied with immigration proceedings, all while actively pursuing asylum before the Philadelphia Immigration Court.

At the same time, Petitioner suffers ongoing and irreparable harm as a result of his detention. He is a young asylum seeker who fled political persecution, and he now remains confined based [redacted] His continued detention separates him from his family and community and subjects him to prolonged civil confinement without justification. This harm is not speculative—it is immediate and ongoing, and it cannot be remedied after the fact. Because Respondents have failed to provide any lawful

basis for detention, and because Petitioner has demonstrated a strong likelihood of success on both his statutory and constitutional claims, the extraordinary relief requested is fully warranted.

For these reasons, Petitioner asks this Court to provide immediate relief, enjoining Respondents from detaining Mr. Tkachev and ordering Respondents to immediately release Mr. Tkachev from custody.

II. LEGAL BACKGROUND

The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins governmental action, the party must demonstrate that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of the preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest." Winter v. Natural Resources Def. Council, Inc., 555 U.S. 7, 20 (2008); see also Jones v. Wolf, 467 F. Supp. 3d 74, 881 (W.D.N.Y. 2020) (stating same).11 Here, because Mr. Tkachev meets both the irreparable harm and likelihood of success prongs and because the requested relief is not overly burdensome on Respondents-Defendants, he merits such relief.

To the extent that the government argues there is a question regarding the Court's jurisdiction, it does not preclude this Court from exercising its inherent authority to

issue emergent relief pending further briefing. "[A] federal court always has jurisdiction to determine its own jurisdiction." United States v. Ruiz, 536 U.S. 622, 628 (2002).

I. DENIS TKACHEV WILL SUFFER IRREPARABLE HARM IF HE REMAINS DETAINED AT DELANEY HALL DETENTION FACILITY.

In order to demonstrate irreparable harm the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the only way of protecting the plaintiff from harm. See e.g., Weinberger v. Romero–Barcelo, 456 U.S. 305, 312, 102 S.Ct. 1798, 1803, 72 L.Ed.2d 91 (1982); Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 356 and n. 9 (3d Cir.1980).

Moreover, the alleged irreparable harm cannot be not merely a "possibility," but rather, "is likely in the absence of an injunction." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008); ECRI, 809 F.2d at 226 ("Establishing a risk of irreparable harm is not enough." (emphasis added)). See e.g., Elliott v. Kiesewetter, 98 F.3d 47, 58 (3d Cir. 1996)

Lang v. Sujitech, LLC, No. 2:25-CV-12175 (WJM), 2025 WL 2701758, at *3 (D.N.J. Sept. 23, 2025)

Here, Petitioner faces a substantial risk of serious illness or death due to Type 1 diabetes, a chronic condition that requires regular monitoring, insulin management, and laboratory testing. He has already been unable to obtain medically necessary bloodwork while in detention, and continued confinement at Delaney Hall Detention Facility poses a significant risk of irreversible harm. This is not a mere possibility; rather, the risk is likely and imminent in the absence of immediate injunctive relief, satisfying the Third Circuit standard. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008); ECRI, 809 F.2d at 226; Elliott v. Kiesewetter, 98 F.3d 47, 58 (3d Cir. 1996).

Lang v. Sujitech, LLC, No. 2:25-CV-12175 (WJM), 2025 WL 2701758, at *3 (D.N.J. Sept. 23, 2025). Petitioner here faces the same risk: continued detention will expose him to a substantial threat to his life and bodily integrity, harm that cannot be redressed through any remedy after the fact.

II. STATEMENT OF FACTS

Petitioner is a 21-year-old native and citizen of Russia who currently resides in Philadelphia County, Pennsylvania, where he has lived since 2024. Petitioner was

born in Khabarovsk, Russia, o [redacted] and resided in Russia until 2022. He initially entered the United States with his family in 2022, later returned to Russia for a period of time, and subsequently fled back to the United States after experiencing [redacted]. Petitioner did not initially appreciate the danger associated with returning to Russia and has not attempted to return since fleeing.

Petitioner avers that he was [redacted] Fearing for his safety and liberty, Petitioner fled the country using a false identification document, which he believed was his only means of escape.

Petitioner reentered the United States in February 2024 and was released on his own recognizance. He has no criminal charges or convictions in the United States. Petitioner's mother and other family members reside in the United States, and he has established ties to the Philadelphia community. He currently has a pending Form I-589 Application for Asylum and for Withholding of Removal based on the persecution he experienced in Russia.

On April 9, 2026, Immigration and Customs Enforcement ("ICE") agents arrested Petitioner outside his home in Philadelphia, Pennsylvania. That same day, the Department of Homeland Security initiated removal proceedings against him pursuant to 8 U.S.C. § 1229a, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entering the United States without inspection. Petitioner had previously been issued a Notice to Appear with a scheduled hearing date of January 15, 2026, and has been actively pursuing relief before the Philadelphia Immigration Court.

Following his arrest, Petitioner was transferred to the Philadelphia Federal Detention Center, where ICE issued a custody determination continuing his detention without bond or other conditions of release. Petitioner anticipates Respondents to justify Petitioner's continued detention under 8 U.S.C. § 1226 by asserting that he poses a danger to the community due to the alleged criminal case in Russia. However, those allegations are the very basis of Petitioner's asylum claim, and he strongly contests them as fabricated and politically motivated. Because of the agency's reliance on Matter of Yajure-Hurtado, Petitioner has been denied any meaningful opportunity to seek bond before an Immigration Judge.

As a result, Petitioner remains in immigration detention without an individualized determination of danger or flight risk. Absent relief from this Court, he faces prolonged confinement—potentially lasting months or years—despite his

lack of any criminal history in the United States, his compliance with immigration proceedings, and his pending claim for protection from persecution.

IV. ARGUMENT

To prevail on a motion for preliminary injunctive relief, the moving party must show as a prerequisite:

> (1) a reasonable probability of eventual success in the litigation, and (2) that it will be irreparably injured ... if relief is not granted .... [In addition,] the district court, in considering whether to grant a preliminary injunction, should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.

Reilly v. City of Harrisburg, 858 F.3d 173, 176 (3d Cir. 2017) (quoting Del. River Port Auth. v. Transamerican Trailer Transport, Inc., 501 F.2d 917, 919–20 (3d Cir. 1974); GJJM Enters., LLC v. City of Atl. City, 293 F. Supp. 3d 509, 517 (D.N.J. 2017). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

A. Petitioner Is Likely to Succeed on the Merits of His Two Claims

a. Immigration and Nationality Act § 1226(a) and *Yajure Hurtado*

Petitioner is likely to succeed on the merits of his habeas corpus claim. First, the plain text of the Immigration and Nationality Act demonstrates that § 1226(a),

not § 1225(b)(2)(A), governs his detention. Section 1226(a) authorizes detention of noncitizens "pending a decision on whether [they] are to be removed from the United States," including individuals charged as inadmissible. 8 U.S.C. § 1226(a); see also § 1226(c)(1)(E) (explicitly referencing individuals charged with being inadmissible). By contrast, § 1225(b)(2)(A) applies only to noncitizens arriving at a port of entry or who have been apprehended shortly after entry, and whose admissibility must be immediately determined. Jennings v. Rodriguez, 583 U.S. 281, 287 (2018). Petitioner entered without inspection and was residing in the United States at the time of apprehension; he therefore falls squarely within § 1226(a) and outside § 1225(b)(2)(A)'s mandatory detention scheme.

This interpretation is supported by a growing consensus of federal courts. In Rodriguez Vazquez v. Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025), the court held that § 1226(a), not § 1225(b), governs the detention of noncitizens who entered without inspection and were later apprehended. Multiple other courts have reached the same conclusion. See, e.g., Gomes v. Hyde, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); Lopez Benitez v. Francis, 2025 WL 2371588, at *2 (S.D.N.Y. Aug. 13, 2025); Palma Perez v. Berg, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025). These cases consistently reject the novel ICE and BIA interpretation announced in the Yajure Hurtado decision, underscoring that Petitioner's detention under § 1225(b)(2) is contrary to law.

Petitioner is highly likely to succeed on the merits of his habeas claim. Although Respondents will claim to invoke 8 U.S.C. § 1226(a), they have failed to comply with its core requirement: that civil immigration detention be justified by an individualized determination of danger to the community or risk of flight. The Third Circuit has repeatedly emphasized that immigration detention must bear a reasonable relation to its purposes and cannot be imposed arbitrarily. Here, Respondents rely exclusively on [redacted] Detention premised on such contested and inherently unreliable claims is legally deficient, particularly where it would require this Court or an Immigration Judge to effectively adjudicate the merits of the asylum claim in the custody context. Moreover, Petitioner has no criminal history in the United States, was previously released on his own recognizance, and has complied with all immigration requirements. There is thus no lawful basis to conclude that he poses either a danger or a flight risk.

B. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Emergency Injunctive Relief.

Petitioner faces immediate and irreparable harm absent injunctive relief. Civil immigration detention constitutes a severe deprivation of liberty, and where, as

here, it is imposed without lawful justification, that harm is irreparable as a matter of law. In the immigration context, unlawful detention is a sufficient irreparable injury. *See Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (finding that immigration detention can constitute irreparable harm "by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time") Arias Gudino v. Lowe, 785 F. Supp. 3d 27, 46 (M.D. Pa. 2025). Petitioner is a 21-year-old asylum seeker who fled political persecution and is now confined based solely on [redacted] His continued detention separates him from his family and community in Philadelphia and subjects him to prolonged confinement without cause. These harms are ongoing, concrete, and incapable of remedy after the fact.

Further, threatened removal satisfies the irreparable injury requirement, including injuries such as separation from family and homes, uncertainty about legal status, and difficulties with building a new life, such as healthcare and employment. See Nat'l TPS All., 773 F.Supp.3d at 836 ("Removal presents significant hardship for several reasons [... including ...] separation from family, friends, and communities.") (citing Washington v. Trump, 847 F.3d 1151, 1168-69 (9th Cir. 2017)); see also Matacua v. Frank, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (holding that loss of liberty due to detention is "perhaps the best example of irreparable harm"); Carmona v. Bondi, No. CV-25-00110-TUC-JGZ, 2025 WL

786514, at *3 (D. Ariz. Mar. 12, 2025) (holding that a detainee who is facing potential removal has shown irreparable injury). Further, separation from family members while potentially being wrongly detained constitutes irreparable injury. E.O.H.C. v. Barr, 434 F. Supp. 3d 321, 340 (E.D. Pa. 2020), order vacated, appeal dismissed sub nom. *47 E.O.H.C. v. Att'y Gen. United States, No. 20-1163, 2020 WL 2111302 (3d Cir. Apr. 20, 2020)9 ("Courts have recognized that separation from family members constitutes an irreparable injury.") (citing Ragbir v. U.S., No. 17-cv-1256, 2018 WL 1446407, at *18 (D.N.J. March 23, 2018)) (citing U.S. v. Diana, Crim No. 83-cv-301, 1988 WL 17011, at *2 (E.D. Pa. Feb. 25, 1988)).

C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.

The final two factors for a injunctive relief—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of hardships tips decisively in Petitioner's favor, and the public interest strongly supports granting immediate relief.

On Petitioner's side of the scale is the ongoing loss of liberty. As previously noted, deprivation of liberty, one of our core constitutional values, constitutes irreparable harm. Petitioner is the only party in this case that is at risk of being harmed, either

by remaining in detention or being removed. The harm Petitioner faces is not abstract—it is immediate, ongoing, and irreparable.

By contrast, the burden on Respondents is minimal. Petitioner does not seek to avoid immigration proceedings; he seeks only release from detention while his habeas petition is adjudicated. The Government's legitimate interests in ensuring Petitioner's appearance and protecting the community can be fully addressed through less restrictive alternatives to detention, including orders of supervision, reporting requirements, or other appropriate conditions. There is no indication that such measures would be insufficient to secure the Government's interests in this case.

Where, as here, the Government can achieve its objectives through means short of detention, continued confinement that places an individual at risk of lengthy loss of liberty is not justified. The balance of the equities does not permit the Government to subject Petitioner to indefinite detention pending removal proceedings for the sake of administrative convenience.

The public interest likewise favors relief. It is always in the public interest to prevent violations of constitutional rights. . "The public interest favors compliance with the Constitution and laws," and courts routinely recognize that halting

ongoing constitutional violations serves the public interest. See, e.g., *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013)

Conversely, the public interest is not harmed by releasing a young man with no United State criminal history or marks against his record otherwise under appropriate supervision while his claims are being adjudicated. Such relief preserves both Petitioner's constitutional rights and the Government's legitimate enforcement interests.

Accordingly, both the balance of hardships and the public interest weigh strongly in favor of granting Petitioner's request for immediate release. Moreover, Respondents cannot show that they would suffer cognizable harm from an injunction that prohibits the continuation of unconstitutional conduct.

Here, the public interest is served by ensuring that immigration detention is carried out in a manner consistent with constitutional protections. Where Petitioner's request seeks only to halt conduct that risks serious, irreparable injury by ensuring that his detention does not deprive him of his personal liberty, the balance of public interests strongly supports granting injunctive relief.

V. CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant preliminary injunctive relief, enjoining Respondents from further detention of

Petitioner, and ordering Respondents to immediately release Petitioner from detention.

Respectfully submitted,

s/ Lynne A. Jaworski, Esq.
Lynne A. Jaworski, Esq., PA Bar. No. 336677

Astrum Legal 1, PLLC

210 East Street Road, Suite 3E

724-801-1071

l.a.jaworski1@gmail.com

Attorney for Petitioner

* *Application for admission pro hac vice forthcoming/pending*

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Respondents.

Case No. _____

CERTIFICATION OF SERVICE

I, Lynne Jaworski, hereby certify that on April 11, 2026, a true and correct copy of the forgoing Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order and Preliminary Injunction were served upon Respondents via email through ECF Filing.

s/ Lynne A. Jaworski

Attorney for Petitioner

PA Bar ID. 336677