**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**ALEXANDRIA DIVISION**

**WILIAN ALEXANDER MEJIA ROMERO,** [redacted]

*Petitioner*,

**v.**

**PAMELA BONDI,**
**Attorney General of the United States,**

**KRISTI NOEM,**
**Secretary of Homeland Security,**

**TODD M. LYONS,**
**Acting Director, Immigration and Customs Enforcement;**

**JAMES A. MULLAN,**
**Assistant Field Officer in charge of ICE Washington Field Office,**

**JEFFREY CRAWFORD,**
**Warden of the Farmville Detention Center.**

***Respondents.***

**Case No: 1:25-CV-993**

**REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Wilian Alexander Mejia Romero ("Mr. Mejia"), files this reply to Respondents' opposition to his amended petition for habeas corpus. The Department of Homeland Security ("DHS") has detained Mr. Mejia and has not responded to his request for release. And while an immigration judge should have jurisdiction to grant bond, the immigration judge has ruled

otherwise. Mr. Mejia, who has been living in the United States with his U.S. citizen wife and children for over five years, is left with no avenue to challenge his continued detention.

Respondents assert that this Court lacks jurisdiction to consider Mr. Mejia's claims and, in any event, he has received all the process he is due. However, Respondents' own evidence both indicates that Mr. Mejia is eligible for bond and undermines Respondents' jurisdictional argument. Respondents also misconstrue Mr. Mejia's claims, which this Court has jurisdiction to review. On that review, the Court should determine that Mr. Mejia's continued detention without the opportunity to seek release on bond violates his due process rights.

## LEGAL FRAMEWORK

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. at 678, 690 (2001); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). And critical to this case, all individuals within the United States, including noncitizens, are entitled to due process. *Zadvydas*, 533 U.S. at 693. This Court has authority to grant a petition for habeas corpus if a petitioner demonstrates that he "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

This case presents an increasingly common question relating to the due process rights of individuals who have been living and making meaningful connections and contributions in the United States but who are, for purposes of some immigration laws, treated as if they are not physically within the country. *See DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (recognizing that noncitizens "who have established connections in this country have due process rights in

deportation proceedings" but noting that noncitizens "at the threshold of initial entry cannot claim any greater rights under the Due Process Clause"). This issue stems from a statutory distinction that noncitizens are considered "applicants for admission" into the United States unless and until they are admitted or paroled into the country. 8 U.S.C. § 1225(a)(1); *see Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Certain applicants for admission who do not have valid entry documents are subject to what is called "expedited removal," which allows for their removed without any further hearing unless they indicate an intent to apply for asylum or a fear of persecution. 8 U.S.C. § 1225(b)(1)(A)(i). Should the noncitizen articulate such a fear or desire to apply for asylum, a DHS asylum officer will provide a credible fear interview to determine whether there is a significant possibility that the noncitizen could establish eligibility for asylum.[1] 8 U.S.C. § 1225(b)(1)(B)(ii), (v). If the noncitizen meets that standard, DHS either places the noncitizen in "full" removal proceedings where the noncitizen can seek relief or protection from removal or consider the asylum application in an asylum merits interview. 8 U.S.C. § 1229; 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B) (2021). If the noncitizen does not establish a credible fear of persecution, the individual is entitled to review by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii); 8 C.F.R. § 208.30(f). If an immigration judge upholds the negative-credible-fear determination on review, DHS can execute the expedited removal order. 8 U.S.C. § 1225(b)(1)(B)(iii).

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[1] For noncitizens who have aggravated felony convictions or prior removal orders, DHS will provide a reasonable fear interview to screen whether the individual should be placed in withholding-only proceedings. 8 C.F.R. § 1208.31.

Noncitizens subject to the expedited removal provisions "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). And individuals who DHS determines are not "clearly and beyond a doubt entitled to be admitted" shall be detained pending full removal proceedings under 8 U.S.C. § 1229a; 8 U.S.C. § 1225(b)(2)(A). DHS may release a noncitizen subject to expedited removal on parole, but "when the purpose of the parole has been served," the noncitizen "'shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'" *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

Beyond § 1225 is 8 U.S.C. § 1226, which governs the arrest and detention of noncitizens who are pending a removal determination, outside of the expedited removal process. Relevant here, § 1226(a) permits—but does not require—detention of noncitizens pending a removal determination and authorizes release on bond. 8 U.S.C. § 1226(a).

In *Jennings*, the Supreme Court considered the interplay between § 1225 and § 1226(a), and held that for individuals who were found to have a credible fear and were placed in full removal proceedings, § 1225(b) "mandate[s] detention of [noncitizens] through the completion of applicable proceedings and not just until the moment those proceedings begin." 583 U.S. at 302. The next year, the Attorney General issued *Matter of M-S-*, concluding that individuals who are placed in full removal proceedings after a positive credible fear determination are ineligible for bond, regardless of "whether they are arriving at the border or are apprehended in the United States." 27 I. & N. Dec. 509, 515 (A.G. 2019). The Attorney General reasoned that § 1225(b), not § 1226(a), applied throughout the transferred proceedings because otherwise DHS would need to

issue an arrest warrant to the noncitizen to continue detention once the proceedings are transferred. *Id.* at 515-16. Thus, the Attorney General concluded that § 1225(b)(1)(B)(ii) "requires detention until removal proceedings conclude." *Id.* at 516; *see id.* (recognizing that noncitizens could be released from custody by securing humanitarian parole under § 1182(d)(5)(A)). Most recently, the Board of Immigration Appeals issued *Matter of Q. Li*, which held that individuals who were initially detained without a warrant at the border, were paroled into the United States, and later re-detained upon the expiration or termination of parole are returned to the status they were in prior to the parole, i.e., custody under § 1225(b). 29 I. & N. Dec. 66, 69-70 (BIA 2025). Thus, individuals in such circumstances are ineligible for bond. *Id.* at 70.

## STATEMENT OF RELEVANT FACTS

Mr. Mejia, a native and citizen of El Salvador, first entered the United States in 2000, when he was 19 years old. *See* Petition, ECF No. 1, at ¶ 18. He received Temporary Protected Status and married his wife, a United States citizen. *Id.* at ¶¶ 19-20; *see* DHS Decl. of Michael Coles ("Coles Decl."), ECF No. 4-1, at ¶ 8. Mr. Mejia's wife filed a Form I-130, Petition for Alien Relative on his behalf, which was approved by USCIS. Mr. Mejia returned to El Salvador After Mr. Mejia returned to El Salvador with his approved petition to apply for a visa through the consulate and to return as a lawful permanent resident[2] Mr. Mejia's visa application was denied, forcing him to remain in El Salvador—far removed from his U.S. citizen wife—where he was extorted, beaten, and threatened. *See* Petition at ¶¶ 20-21; Coles Decl. at ¶¶ 12-13. He returned to the United States

[2] The consular officer found Mr. Mejia ineligible for admission because of 2004 criminal charges relating to controlled substances that were nolle prosequi. *See* Coles Decl. ¶¶ 9, 13. DHS does not allege that any of Mr. Mejia's criminal history renders him subject to mandatory detention or ineligible for bond under 8 U.S.C. § 1226(c).

in August 2019 to reunite with his family but was apprehended by DHS officers shortly after entering the country. *See* Coles Decl. at ¶ 14.

DHS found that he had a credible fear of torture in El Salvador and, in October 2019, issued a Notice to Appear vacating the expedited removal order and placing him in removal proceedings. Coles Decl. at ¶ 17; ECF No. 4-2 p. 2-3 (Notice to Appear). In November 2019, an immigration judge granted Mr. Mejia bond in the amount of $15,000 and he was released from custody on November 25, 2019. Ex. B, 2019 Bond Order; Coles Decl. at ¶¶ 19-20. Mr. Mejia lived in Virginia with his family and two children between 2019 and 2025. Petition at ¶ 23. After he was arrested in March 2025, the charge for which was nolle prosequi, DHS made a custody determination that he would be detained by DHS "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act," which is found at 8 U.S.C. § 1226. ECF No. 4-2 at 2. Mr. Mejia requested immigration judge review of that determination. *Id.*; *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1). On May 20, 2025, the immigration judge issued an order concluding that he did not have jurisdiction to consider bond under *Matter of M-S-*. Ex. A, May 2025 Bond Order. On May 22, 2025, Mr. Mejia filed a request with DHS for his release on bond or parole. Petition at ¶ 29. DHS has not taken action on this request. *Id.* On June 11, 2025, Mr. Mejia filed this petition for a writ of habeas corpus. Mr. Mejia's next hearing in immigration court is scheduled for August 1, 2025. Coles Decl. at ¶ 26.

## ARGUMENT

This Court should grant the habeas petition and declare that Mr. Mejia is eligible for a bond hearing, or, in the alternative, that he should be released from custody. Critically, the Court should reject Respondents' jurisdictional arguments that misconstrue the petition because Mr. Mejia is

not challenging DHS's decision to place him in expedited removal proceedings when he last entered the United States in 2019, nor is he challenging his removability as those arguments would be proper in his upcoming removal proceedings. The government is also wrong that only the District Court for the District of Columbia can hear his claims. Indeed, this Court does have jurisdiction to consider Mr. Mejia's due process challenges and, in doing so, should determine that he is not ineligible for bond.

## I. The Court does not lack jurisdiction over this petition.

Respondents argue that there are four statutes that deprive this Court of jurisdiction. Resp't Opp. at 8-13. However, none of these statutes deprive the Court from hearing Mr. Mejia's arguments in this case.

Judicial review over expedited removal orders is limited. 8 U.S.C. § 1252(e). Notably, a noncitizen can bring a habeas petition to determine (A) alienage, (B) whether the noncitizen was ordered removed under the expedited removal statute, and (C) whether the noncitizen can establish a preponderance of the evidence that he or she has been admitted with specific lawful status not relevant here. 8 U.S.C. § 1252(e)(2). Noncitizens may also bring claims challenging the "validity of the [expedited removal] system," but such claims must be brought in the United States District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Similarly, courts lack jurisdiction to review "an individual determination . . . relating to the implementation or operation" of an expedited removal order, the government's decision "to invoke" expedited removal provisions, the application of the expedited removal statute to individual noncitizens, and the policies and procedures to implement the expedited removal statute. 8 U.S.C. § 1252(a)(2)(A)(i)-(iv). The Supreme Court has explained that these jurisdiction-limiting provisions do not violate due process

for individuals who are seeking entry into the United States. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020)

Mr. Mejia does not raise a barred claim. He conceded removability and does not currently have a removal order (expedited or otherwise); instead, he is in full removal proceedings, under 8 U.S.C. § 1229a, before an immigration judge where he will present his claim for protection from removal. *See* ECF No. 4-2 p. 2-3, (Notice to Appear); Coles Decl. at ¶¶ 21, 26. He also does not challenge either the government's initial invocation of the expedited removal provisions[3] or the credible fear interview process that he received. *See* Petition; *cf. Make the Road New York v. Wolf*, 962 F.3d 612, 621, 627-28 (D.C. Cir. 2020) (concluding that the district court had jurisdiction to consider challenges to the agency's designation expanding the scope of who can be placed in expedited removal proceedings). Rather, Mr. Mejia argues that he has been deprived of his due process rights to which he is entitled as someone who has been living free from restraint in the United States for years. *See* Petition; *Thuraissigiam*, 591 U.S. at 117 (recognizing that habeas corpus was not historically understood to permit claims seeking entry or precluding removal from the United States but instead "[t]he writ simply provided a means of contesting the lawfulness of restraint and securing release."). Mr. Mejia does not challenge the implementation or operation of

[3] To be clear, Mr. Mejia does not challenge ICE's authority to place him in detention. Resp't Opp. at 11. Mr. Mejia challenges his continued detention without an opportunity to challenge that detention before a neutral arbiter, as required by the Due Process Clause, as well as 8 U.S.C. § 1226 in this case. In any event, Mr. Mejia's reliance on *Tejeda Reyes v. Saldana*, 2017 WL 102697 (E.D. Va. Jan. 10, 2017) is misplaced. Critically, that case is factually and materially distinguishable; Mr. Tejeda was not in the custody of the federal government and seeking relief from that detention, and Mr. Mejia does not ask this Court to strike portions of the expedited removal regulations that do not allow noncitizens with prior removal orders to apply for asylum. *Cf. id.* at *6-7.

an expedited removal order and is thus not precluded by 8 U.S.C. § 1252(e). In fact, neither party contests that Mr. Mejia is in removal proceedings, not expedited removal proceedings, and that there is currently no removal order that could be challenged in any jurisdiction. *See* Coles Decl. at ¶¶ 17, 26.

Similarly, Respondents incorrectly assert that Mr. Mejia's claims are similar to those discussed in *Reno v. American-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471 (1999), and are therefore barred under § 1252(g). *see* Resp't Opp. at 12. Yet the Supreme Court in *AADC* adopted a "narrow reading" of § 1252(g), emphasizing that the statue applies exclusively "to three discrete actions that the Attorney General may take: her 'decision or action' to *'commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482, 486 (emphasis in original) (quoting 8 U.S.C. § 1252(g)). Mr. Mejia's claims seeking the bond hearing he is entitled to by law does not implicate the government's authority to commence proceedings. Those proceedings have commenced. Nor does this petition prevent the government from adjudicating its case against Mr. Mejia in immigration court. Finally, Mr. Mejia does not have a removal order to be executed. Thus, § 1252(g) presents no bar to Mr. Mejia's claims here. The government's position that he is ineligible for bond, in light of agency precedent, is also not related to a challenge to agency "procedures and policies" regarding expedited removal such that the claim would be barred under 8 U.S.C. § 1252(a)(2)(A)(iv). Unlike the case Respondents rely on, *Mebla v. DHS*, 424 F. Supp. 3d 997, 1003 (S.D. Cal. 2019), Mr. Mejia does not challenge an identified agency policy or guidance document or the credible fear determination made in his case, but instead claims that the application of agency precedent—that was issued based on (faulty) legal analysis and not as a matter of articulated policy—is erroneous and violates his constitutional rights. *See* 8 C.F.R.

§§ 1003.10(b) (describing the "[p]owers and duties" of immigration judges to include "deciding the individual case before them"), 1003.10(d) (immigration judges are governed by regulation, "the decisions of the Board, and by the Attorney General"). *Cf., e.g., Make the Road NY*, 962 F.3d at 627 (challenging the agency's declaration that expedited removal was expanded to apply to certain individuals). Critically, bond proceedings are separate from removal proceedings. 8 C.F.R. § 1003.19(d) (bond proceedings are "separate and apart from" removal proceedings). And individuals in expedited removal proceedings are not eligible for bond. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (requiring detention for individuals subject to an expedited removal order or those "pending a final determination of credible fear of persecution"). While the meaning of § 1225(b)(1)(B)(iii)(IV) is at issue in this case, such legal analysis does not equate to a challenge of an agency policy or procedure sufficient to invoke 8 U.S.C. § 1252(a)(2)(A)(iv).

Respondents' argument that 8 U.S.C. § 1252(b)(9) bars jurisdiction must also fail. *See* Resp't Opp. at 10. That section requires any question "arising from any action taken or proceeding brought to remove an alien from the United States" to be raised "only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9). "But that provision doesn't help the government here because it 'applies *only* with respect to review of an *order of removal*.'" *Casa de Maryland v. U.S. Dep't of Homeland Sec.*, 924 F.3d 684, 697 (4th Cir. 2019) (quoting *INS v. St. Cyr*, 553 U.S. 289, 313 (2001)). Indeed, as the Supreme Court recognized in *Jennings*, challenges to continued detention without a bond hearing are not "asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined." *Jennings*, 593 U.S. at 294. For the same reasons, § 1252(b)(9) is not a bar to review in this case.

## II. Mr. Mejia is not subject to mandatory detention without an opportunity to seek release through bond.

Based on the evidence presented by Respondents in their opposition to Mr. Mejia's petition, the Court should conclude that Mr. Mejia is detained under 8 U.S.C. §1226(a) and is eligible for a bond hearing.[4] But even if Mr. Mejia is found to be detained under § 1225, this Court should still grant habeas relief and order his release or a bond hearing before a neutral arbiter.

### A. DHS has considered Mr. Mejia detained pursuant to 8 U.S.C. § 1226, and he is thus entitled to a bond hearing before an immigration judge.

As a threshold matter, the Court should determine that Mr. Mejia is not detained under 8 U.S.C. § 1225 and instead is detained under 8 U.S.C. § 1226(a). Under *Jennings*, a noncitizen who was initially placed in expedited removal proceedings and who is transferred to full removal proceedings after receiving a positive credible fear interview remains detained pursuant to § 1225 after the transfer. *Jennings*, 583 U.S. at 302. But *Jennings* only evaluated individuals who remained in detention during that transfer. Indeed, part of the reasoning in *Jennings* was that it would "make[] little sense" to require the government to issue an arrest warrant (which would be required for § 1226 detention) to someone already in custody. *Id.* That reasoning does not extend

[4] Undersigned counsel had not seen ECF No. 4-3 prior to filing the habeas petition, as Mr. Mejia does not have a copy of it with his files in detention and it was not part of the bond proceedings before the immigration court. Upon review of the document, counsel for Mr. Mejia contacted counsel for Respondents to discuss this potentially dispositive piece of evidence that supplements the arguments made in the initial habeas petition. Although Respondents provided this document and are thus not prejudiced by the discussion about its import in this responsive pleading, Mr. Mejia would not oppose a sur-reply by June 30, 2025 if Respondents elect to respond to this newly presented argument. Alternatively, Mr. Mejia asks the Court for leave to amend the habeas petition.

here, where Mr. Mejia was free on bond for four and a half years after he was placed in full removal proceedings. *See* Coles Decl. ¶¶ 15, 17, 20, 24.

Moreover, the regulations do not support a finding that Mr. Mejia is detained pursuant to § 1225(b). Recently, the Board of Immigration Appeals extended the reasoning in *Jennings* to apply to individuals who were paroled from immigration detention while pending full removal proceedings but then re-detained prior to the completion of those proceedings. *Matter of Q. Li*, 29 I. & N. Dec. at 70-71. But this reasoning is based on the premise that the termination or revocation of a grant of parole returns the noncitizen "to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A). Here, Mr. Mejia was not paroled from immigration custody by DHS after his credible fear interview—he was granted bond by an immigration judge. See Ex. B, 2019 Bond Decision; Coles Decl. ¶ 19; Resp't Opp. at 6 n.4; *Padilla v. U.S. ICE*, 379 F. Supp. 3d 1170, 1173 (W.D. Wash. 2019). Accordingly, when he was placed back in immigration custody in April 2025, there was no parole to revoke or terminate, rather Mr. Mejia could only have been re-detained upon issuance of an arrest warrant. 8 U.S.C. § 1357(a)(2). Thus, the parole statute, § 1182(d)(5)(A), does not apply to this case and Mr. Mejia's re-detention did not place him back into the same custody as when he initially entered the United States. *Cf. Matter of Q. Li*, 29 I. & N. Dec. at 70-71. *Compare* 8 C.F.R. § 212.5 ("Parole of aliens into the United States"), *with* 8 C.F.R. § 1003.19 (Custody/bond before the immigration courts).

In fact, DHS acknowledged that Mr. Mejia is detained under § 1226 when it completed a custody determination in April 2025 when he was transferred from criminal to immigration custody. *See* ECF No. 4-3 ("Pursuant to the authority contained in section 236 of the Immigration

and Nationality Act," which is found at 8 U.S.C. § 1226). Because Mr. Mejia is detained under § 1226(a) and not § 1225, he is entitled to a bond hearing. *See Bah v. Barr*, 409 F. Supp. 3d 464, 472 (E.D. Va. 2019) (asserting that the distinction between § 1225(b) and § 1226 detention is consequential because detention under § 1226 includes a "path to a bond hearing").[5] Accordingly, this Court should grant the petition and order Mr. Mejia be granted a bond hearing before an immigration judge as required under § 1226(a). *Bah*, 409 F. Supp. 3d at 467 ("if petitioner is correct that § 1226 applies, the path to a bond hearing is quite clear.").

### B. Even under 8 U.S.C. § 1225(b), Mr. Mejia's detention without a bond hearing is unlawful.

Even if the Court were to conclude that Mr. Mejia's detention is governed by 8 U.S.C. § 1225(b), it should conclude that his continued detention without a bond hearing warrants habeas relief. Critically, the government defends Mr. Mejia's continued detention on the theory that he is merely an arriving alien seeking admission to the United States who has no constitutional rights outside those provided for by statute. *See generally* Rep't Opp. But this premise fails because Mr. Mejia is not equivalent to someone stopped at the border seeking to enter. Instead, he has been

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[5] Mr. Mejia recognizes that this argument could be presented to an immigration judge who would have jurisdiction over a § 1226 bond hearing. However, the immigration judge in this case had the notice of custody determination (*see* ECF No. 4-3, noting that an immigration judge's review was requested) and nevertheless applied *Matter of M-S-*. *See* Ex. A, 2025 Bond Decision. Although Mr. Mejia could appeal such decision to the Board of Immigration Appeals, requiring such administrative exhaustion is neither jurisdictional nor required. *See Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022); *Dragenice v. Ridge*, 389 F.3d 92, 98 (4th Cir. 2004). An appeal to the Board of Immigration Appeals takes months to years, leaving Mr. Mejia without any venue in which he could raise his claims that his due process rights are violated without an opportunity to challenge his detention. Moreover, the Board of Immigration Appeals has no jurisdiction to decide constitutional claims and will not depart from its recent precedent, *Matter of Q. Li*.

present in the United States for nearly five years, during which time he was placed in removal proceedings and provided with work authorization.

This distinction is material. The majority of the cases Respondents rely upon include the same fact pattern—a noncitizen arriving at the doorsteps of the United States and being detained at that point. Resp't Opp. at 14-17. Those individuals had circumscribed due process rights because they had not "acquired any domicile or residence" within the United States. *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1891); *see also Thuraissigiam*, 591 U.S. at 106 (concluding that a noncitizen who attempted to enter the U.S. unlawfully and was apprehended 25 yards from the border was not entitled to due process rights outside those provided for by statute); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 545-48 (1950) (upholding an exclusion from entering the United States due to identified "security reasons"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215-16 (1953) (concluding there was no constitutional due process violation in requiring a noncitizen to remain detained at Ellis Island for national security reasons and not admitted into the United States). And these cases all base their reasoning on the government's ability to restrict and control entry into the United States. *See, e.g.*, *Mezei*, 345 U.S. at 215-16; *Knauff*, 338 U.S. at 546-47; *Hong v. United States*, 244 F. Supp. 2d 627, 635 (E.D. Va. Feb. 13, 2003) (concluding that the noncitizen's "liberty interest, as an inadmissible alien seeking admission into the country, is more attenuated than the liberty interest of a deportable alien already present in the country."). But this distinction applies only to those who are seeking to enter into the United States, and not those with established connections in the country. As the Supreme Court recognized in *Thuraissigiam*:

> While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien *at the threshold of initial entry* cannot claim any greater rights under the Due Process Clause.

591 U.S. at 107 (emphasis added); *accord Hong*, 244 F. Supp. 2d at 636 (recognizing that the noncitizen had fewer due process rights and was not entitled to an individual bond hearing because he was "an inadmissible resident alien who left the country for an extended period of time"); *see also Aguilera-Montero v. Mukasey*, 548 F.3d 1248, 1253 (9th Cir. 2008) (recognizing that immigration law distinguishes between noncitizens who are "within the territorial jurisdiction of the United States" and those who are "on the threshold of entry" and asserting that "[f]or this reason, immigration laws can constitutionally treat aliens who are already on our soil . . . more favorably than aliens who are merely seeking admittance.") (internal marks and citations omitted); *Bukhari v. Piedmont Reg'l Jail Auth.*, 2010 WL 3385179, *4-5 (E.D. Va. Aug 20. 2010) (quoting *Aguilera-Montero*).

While Mr. Mejia is figuratively seeking legal entry under the INA, he was physically an immigration judge granted him bond in 2019, and he has resided in the United States with his U.S. citizen wife ever since. He also is participating in ongoing removal proceedings before an immigration judge to adjudicate his removability and potential eligibility for relief—during which time he has due process rights. *Mezei*, 345 U.S. at 212 ("It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."). Notwithstanding these distinctions, Respondents assert that Mr. Mejia's residence, connections, and life in the United States are irrelevant because he has the same immigration status as someone who is applying for admission

at a port of entry from outside the United States. Resp't Opp. at 18-23. However, it is illogical to provide due process rights in his removal proceedings in light of his presence and connections within the United States but conclude that he has no constitutional rights with respect to even an opportunity to challenge his continued detention while in removal proceedings.

Respondents also rely on *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 694 (E.D. Va. 2020), which recognized that § 1225(b) "does not 'contain implicit limitations on the length of detention.'" (quoting *Jennings*, 583 U.S. at 297). While, as *Jennings* recognized, the statute does not contain limitations regarding the length of detention, that statement alone does not preclude Mr. Mejia's claims. Critically, the arguments presented here—distinguishing those at the border seeking physical entry from those who have been in the United States for years—were not addressed in *Aslanturk*. In fact, as Respondents admit, this Court has granted bond hearings to individuals detained under § 1225(b). Resp't Opp. at 19-20 (collecting cases). While Respondents focus on factual distinctions between this case and those cases, the fact remains that this Court has recognized that a bond hearing may be warranted for individuals detained under § 1225(b) should their detention raise constitutional concerns. *See Abreu v. Crawford*, 2025 U.S. Dist. LEXIS 4328, *18 (E.D. Va. Jan. 18, 2025); *Leke v. Hott*, 521 F. Supp. 3d 597, 603-04 (E.D. Va. Feb. 23, 2021). *Cf.* Resp't Opp. at 20-23 (challenging these cases on the premise that individuals deemed to be arriving aliens are not entitled to due process).[6] Accordingly, this Court should determine that Mr. Mejia has the right to challenge his continued detention.

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[6] Contrary to Respondents' insinuation, Mr. Mejia is not challenging the government's authority to detain (or re-detain) individuals under § 1225 as a threshold matter. Resp't Opp. at 21. Rather, Mr. Mejia requests he be provided an opportunity to challenge that detention, which occurred years

Not only does that constitutional right support the Court granting habeas relief here but the Court's intervention is warranted in light of agency precedent precluding the constitutionally correct result. Critically, Mr. Mejia has already sought a bond hearing before an immigration judge, who denied the request under *Matter of M-S-*, 27 I. & N. Dec. 509; *see also Matter of Q. Li*, 29 I. & N. Dec. 66. But *Matter of Q. Li* is wrong, *Matter of M-S-* should not apply to individuals who are re-detained after being released, and the Board and Attorney General are entitled to no deference in how the INA is interpreted in these cases. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Critically, both *Jennings* and *Matter of M-S-* relied on the illogical nature of DHS having to issue an arrest warrant for someone who was in immigration custody but who went from being in expedited removal proceedings to full removal proceedings after a positive credible fear interview. *Jennings*, 583 U.S. at 302; *Matter of M-S-*, 27 I. & N. Dec. at 517. But in *Q. Li*—as the case is here—the noncitizen was *re*-detained and returned to custody. *Matter of Q. Li*, 29 I. & N. Dec. at 67. It would make little sense to allow that re-detention—of a noncitizen who had been living and abiding by laws within the United States—without a warrant for arrest. In fact, an individual, like Mr. Mejia, is in a far different position than the noncitizens in *Jennings* and *M-S-*, who had never been released from DHS's custody and had not obtained the constitutional due process protections of individuals who have entered and resided in the United States. Indeed, Mr. Mejia has been forced to return to immigration custody without any ability to argue that his continued detention is not a danger to the community or that he does not present a flight risk. He must now litigate his claim for asylum from a detention facility, and can no longer support his

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after he was released on bond and provided work authorization to live and make connections within the United States.

family in the meantime. His inability to challenge that continued detention in any way is a due process violation of his liberty rights.

To be sure, Mr. Mejia has no other avenue to raise a challenge to his detention. *See. e.g.*. *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) ("[A]n administrative remedy may be inadequate [because] . . . an agency, as a preliminary matter, may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute" or "where the administrative body . . . has otherwise predetermined the issue before it."). DHS has not responded to his request for release from custody, there are no procedural rules for the manner or timing of DHS's custody review, DHS's custody determination are generally discretionary and not subject to review, and ICE is not a neutral arbiter of his detention. *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 848 (E.D. Va. 2020) ("Petitioner's statutory opportunity for parole, which he twice requested and was twice denied, has highly restrictive criteria and limited transparency, is subject to the unreviewable discretion of the Attorney General, and has no opportunity for an actual hearing before a neutral decisionmaker."). And when he did request bond, the immigration judge—who was a neutral arbiter—lacked jurisdiction to consider the issue under Department of Justice precedent. Habeas relief is the only remaining vehicle for Mr. Mejia to contest his detention. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'").

### C. The constitution requires that a person living in the United States for nearly five years is entitled to an opportunity to challenge the lawfulness and reasonableness of his custody.

Procedural due process claims are ordinarily adjudicated through the balancing of factors identified in *Mathews*, 424 U.S. 319.[7] Specifically, *Mathews* requires review of three factors: (1) the private interest affected by government action; (2) the risk of "erroneous deprivation" of the private interest "through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) the government's interest and its "fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail." *Id.* at 335. Each of the *Mathews* factors weighs heavily in favor of requiring a bond hearing for Mr. Mejia.

*First*, the "importance and fundamental nature" of an individual's liberty interest is well established. *See United States v. Salerno*, 481 U.S. 739, 750 (1987); *compare Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment . . . lies at the heart of [] liberty"), *with Hechavarria v. Sessions*, 2018 U.S. Dist. LEXIS 188499 5776421, *20 (W.D.N.Y. Nov. 2, 2018) ("this Court finds little difference between Hechavarria's detention and other instances where the government seeks the civil detention of an individual to effectuate a regulatory purpose."). In Mr. Mejia's case, the fundamental nature of freedom weighs in his favor, as he has lived for nearly five years in the

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[7] Mr. Mejia agrees with Respondents that the factors outlined in *Portillo v. Hott* are not directly applicable and that the Court should consider the *Mathews* factors instead. See Resp't Opp. at 28 (noting that *Portillo* factors apply to claims brought by noncitizens detained under the criminal mandatory detention provisions of 8 U.S.C. § 1226(c)); *see Miranda v. Garland*, 34 F.4th 338, 358-59 (4th Cir. 2022). Notably, Mr. Mejia is and would not be subject to mandatory detention under § 1226(c) and so the factors are not relevant to address the purportedly mandatory detention in his case.

United States, has a U.S. citizen wife and two U.S. citizen children, and has never been convicted of any crime that would subject him to detention. Respondents' argument that Mr. Mejia's liberty interest is less compelling because he is an arriving alien fails to recognize the plain distinction between Mr. Mejia and the line of cases which limit custody protections for arriving aliens. On paper, Mr. Mejia may be an "arriving alien" but, in reality, he "arrived" nearly five years ago, was granted bond and has lived and worked with his family in the United States since that time. He has also been lawfully pursuing the removal process established for him. For such persons, jurisprudence on due process in civil detention generally remains instructive, that as a person who has lived within the borders of the U.S. and who was going through the ordinary process of seeking asylum, "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Salerno*, 481 U.S. at 755. The Court should distinguish the facts here—Mr. Mejia's years-long residence with his family in the United States without criminal convictions—and conclude that the private interest heavily favors affording him more due process than one who has only just arrived at the border or a port of entry.

*Second*, the risk that a noncitizen's freedom will be erroneously deprived is significant, as any internal process to demonstrate to ICE that release is warranted is not subject to review or challenge, and indeed has no published procedural rules providing guidance or instruction on a noncitizen's ability to seek release from continued detention.[8] All § 1225 detainees who seek release from custody must provide evidence to their individual ICE detention officer who reviews

[8] Respondents argue that "[w]hat may happen in the future is . . . immaterial to this proceeding" and that Mr. Mejia may only challenge his present detention. Resp't Opp. at 27. This takes Mr. Mejia's arguments out of context; Mr. Mejia *is* attempting to challenge his current detention.

the evidence and makes a decision on custody. Whether that decision is subject to supervisor review is unknown, and possibly not universally enforced. And even if it were, ICE is not a neutral arbiter of whether a noncitizens' detention is necessary—indeed, one cannot be both judge and jailer and still be called neutral. Moreover, requiring detained noncitizens to obtain and submit evidence within a detention facility is extremely onerous. Barriers such as indigence, language and cultural separation, limited education, and mental health issues often associated with past persecution or abuse further complicate detainees' ability to successfully obtain such records and present them in support of release. The mere fact of detention—in what are often county jails or for-profit prisons located miles from individuals' community—presents a significant obstacle to accessing the outside world and makes communication with family and counsel difficult and at times, prohibitively expensive. *See, e.g.*, *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noting that immigrant detainees "have little ability to collect evidence"). Thus, there is a significant risk of erroneous, unwarranted detention.

*Third*, and finally with respect to the *Mathews* analysis, the proposed procedures—namely requiring that DHS prove detention is necessary to serve a legitimate government interest—does not meaningfully prejudice the government's interest in detaining dangerous noncitizens during removal proceedings. Mr. Mejia has complied with all ICE orders and participated in his removal proceedings. While Mr. Mejia has been arrested in the past, the charges have all resulted in nolle prosequi. What's more, he should be able to present these facts to a neutral arbiter who is evaluating his flight risk and any potential danger to the community. And Respondents have not alleged any reason to believe that the government could not promptly execute a removal order should one be issued at the conclusion of the removal proceedings. Mr. Mejia should not be

detained only because he could not present enough evidence to prove a negative—that he is not a danger or a flight risk—while requiring the government to present nothing. That would be to presume detention is necessary—backwards of the due process contemplated for those living in the United States who have then been detained by immigration authorities.

Thus, all three Mathews factors favor requiring the Government to bear the burden of proof during immigration custody hearings, as it does during other civil detention contexts. *See e.g. Portillo*, 322 F. Supp. 3d at 709 (noting "the strong tradition that the burden of justifying civil detention falls on the government" and ordering "the burden of justifying petitioner's continued detention falls upon the government . . . to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate[.]"); *Mbalivoto*, 527 F. Supp. 3d at 852 ("The Court concludes that at Petitioner's bond hearing under § 1225(b), due process requires that the Government bear the ultimate burden of persuasion that Petitioner is a flight risk or a danger to the community to justify denial of bond in light of the full range of bond conditions available under the circumstances.").

### D. Petitioner Is Entitled to a Hearing Before a Neutral Arbiter Before Being Re-detained.

Finally, the Court should grant habeas relief because Mr. Mejia did not receive due process prior to his re-detention. Mr. Mejia was released on bond in 2019. Despite the fact that he has no criminal convictions and absent any allegations that he had violated the terms of his release, ICE decided to detain him. Due process requires notice and a hearing before a neutral arbiter before it may do so.

"[I]ndividuals released from immigration custody on bond have a protectable liberty interest in remaining out of custody on bond." *Garcia v. Bondi*, 2025 U.S. Dist. LEXIS 113570,

*6 (N.D. Cal. June 14, 2025) (collecting cases); *see also Miranda v. Garland*, 34 F.4th 338, 362 (4th Cir. 2022) (recognizing–that a bond hearing challenging detention provides notice and opportunity to be heard). In *Morrissey v. Brewer*, the Supreme Court set forth a minimum requirement for due process relating to re-detention upon revocation of parole. 408 U.S. 471, 488-89 (1972). In its~~this~~ discussion, the Court recognized that such due process includes written notice of the claimed violations, disclosure of evidence, and an opportunity to challenge the detention. *Id.* The Fourth Circuit has also recognized an immigration detainee's right to "make their case that they should be released." *Miranda*, 34 F.4th at 364.

Consistent with *Morrissey,* district courts have increasingly recognized the constitutional right of a noncitizen released on bond or parole to additional process prior to being re-detained. In *Ortega v. Bonnar*, after applying the *Mathews* factors, the district court held that due process required a hearing before an immigration judge to determine whether a "material change of circumstances" warranted re-detention of a noncitizen previously released on bond. 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). The district court recognized the "substantial private interest in remaining on bond"—a private interest that "ha[d] only grown in the 18 months since [it] granted a preliminary injunction." *Id.* Mr. Mejia's private interest is even greater given the community and family ties he has built up over five years living with his wife and family in Virginia. The district court also rejected the government's contention that various avenues available to the petitioner to challenge his eventual detention rendered the risk of erroneous deprivation low. *Id.* The district court's holding applies *a fortiori* here where Mr. Mejia has *no* avenues through which he may challenge his detention. Finally, the district court noted the Government's minimal interest in re-detention without a hearing before an immigration judge given the petitioner's "strict compliance

with all the requirements of his release." *Id.* So too here where the Government does not even suggest that Mr. Mejia failed to comply with the terms of his release.

*Ortega* is not an outlier as other district courts have reached the same conclusion. *Jorge M.F. v. Wilkinson*, 2021 U.S. Dist. LEXIS 40823, at *10 (N.D. Cal. Mar. 1, 2021) (preliminarily enjoining the government from re-detaining noncitizen released on bond without notice and a hearing). Indeed, courts have applied the same reasoning to situations, like Mr. Mejia's, where the noncitizen has been released on bond but later re-detained based on the government's contention that the *noncitizen* was subject to mandatory detention and ineligible for bond. *See Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 U.S. Dis. LEXIS 153579, at *14 (N.D. Cal. Aug. 23, 2020) (preliminarily enjoining the government from re-detaining a noncitizen released on bond on the ground that he was subject to mandatory detention under 8 U.S.C. § 1226(c) without a hearing). And courts have even held the same with noncitizens who are subject to expedited removal. *See Lopez v. Sessions*, No. 18-cv-4189, 2018 U.S. Dist. LEXIS 98712, at *10-15 (S.D.N.Y. June 12, 2018) (requiring notice and a hearing before ICE could re-detain a noncitizen released under 8 U.S.C. § 1232(a)(2)(B) who it determined was subject to expedited removal). Accordingly, prior to re-detention, or at the very least at the time of re-detention, Mr. Mejia should have been provided an opportunity to contest his custody.

## CONCLUSION

For these reasons, this Court should grant Mr. Mejia's petition and issue a writ of habeas corpus ordering Respondents to immediately hold a custody hearing before a neutral arbiter at which DHS shall bear the burden of proof to establish that his continued detention is necessary.

Alternatively, the Court should order Mr. Mejia immediately released from immigration detention so he may continue preparing for his upcoming removal hearing.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on June 25, 2025, I filed Petitioner's Reply to Respondents' Opposition to the Petition for a Writ of Habeas Corpus via the CM/ECF system. All parties are registered CM/ECF users and will be served electronically.

*/s/ Eileen P. Blessinger*
Eileen P. Blessinger, Esq.