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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JORGE WILLY VALERA CHUQUILLANQUI, Petitioner, v. SERGIO ALBARRAN[1], Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities, Respondents.	CASE No. 3:25-cv-06320-TLT **PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

[1] Sergio Albarran is Automatically Substituted as a Defendant in This Matter Pursuant to Rule 25(D) of the Federal Rules of Civil Procedure.

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INTRODUCTION

Respondents do not dispute that Petitioner Jorge Willy Valera Chuquillanqui ("Petitioner"), an asylum seeker from Peru, poses no flight risk or danger to the community. Nor could they; he has complied with every requirement the immigration system has asked of him. Indeed, he was arrested at an immigration court hearing that he dutifully attended. Respondents also do not meaningfully respond to Petitioner's claim that his re-detention would violate the Due Process Clause. Instead, Respondents insist that Petitioner's detention is mandated by statute, relying on arguments this Court—along with hundreds of judges across the country—has rejected.

Although the parties dispute whether Petitioner is subject to 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)(2)(A), that distinction does not bear on outcome of Mr. Valera Chuquillanqui's constitutional claims. Respondents violated Petitioner's due process rights, regardless of which statue applies. *See R.A.N.O. v. Wofford*, No. 1:25-cv-01535-KES-EPG, 2026 U.S. Dist. LEXIS 1963, at *n.2 (E.D. Cal. Jan. 6, 2026) (denying request to hold case in abeyance in part because the petitioner raised a constitutional claim and *Rodriguez Vazquez* concerns the scope of § 1225(b)(2)(A).) Should the Court reach the detention statute question, however, it should join the overwhelming consensus of district courts nationwide and reject Respondents' dramatic and implausible interpretation of 8 U.S.C. § 1225(b)(2). *See Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 U.S. Dist. LEXIS 232876, at * 9–10 (S.D.N.Y. Nov. 26, 2025) (documenting over 300 cases in which courts have rejected the government's new interpretation of 8 U.S.C. § 1225). Another court in this district has separately held that the policy authorizing Petitioner's re-detention is likely unlawful and cannot be justified by their meritless re-interpretation of § 1225(b)(2). *See Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 U.S. Dist. LEXIS 265062, at *95 (N.D. Cal. Dec. 19, 2025). Because Petitioner has established that his re-detention would violate the Due Process Clause, this Court should grant his petition.

ARGUMENT

Petitioner's due process claims are at the heart of this case, but Respondents barely acknowledge them. This Court has already decided that Petitioner's re-detention likely violates procedural due process. Respondents offer no basis for the Court to depart from its reasoned

analysis. And Respondents do not address, and thus concede, Petitioner's substantive due process claim. This Court should thus grant Petitioner's due process claims.

I. Re-detention without a pre-deprivation hearing before a neutral decisionmaker violates Petitioner's procedural due process rights.

Over 50 years ago, in *Morrissey v. Brewer*, the Supreme Court recognized that individuals released from government custody have a protected liberty interest in their continued freedom. 408 U.S. 471, 482 (1972). The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482. Since then, the Supreme Court has repeatedly affirmed that *Morrissey*'s holding applies to every form of conditional release it has considered. *See, e.g, Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

These principles apply with at least equal force to people like Petitioner, who was conditionally released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2017) And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). After Petitioner entered the country in 2022, immigration officials classified him as subject to 8 U.S.C. § 1226(a) and him on an Order of Recognizance, which is a type of conditional parole. *See* Dkt. No. 20–1 (Order of Release on Recognizance); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) finding "release on recognizance" synonymous with conditional parole); 8 C.F.R. § 236.1(c)(8) (setting standard for conditional parole). That release created a liberty interest that "can be taken away only if the government's procedure for doing so accord[s] with due process." *See Tellez v. Bondi*, No. 25-cv-08982-PCP, 2025 U.S. Dist. LEXIS 262261, at *12 (N.D. Cal. Dec. 18, 2025).

Respondents argue that the liberty interested identified in *Morrissey*—and repeatedly extended to other groups—does not apply to noncitizens. That is wrong. "[D]ecisions defining the constitutional rights of prisoners establish a floor for [noncitizens'] constitutional rights." *Doe v.*

Kelly, 878 F.3d 710, 714 (9th Cir. 2017) (holding that civil immigration detention conditions violated due process); *see also Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (acknowledging that "criminal detention cases provide useful guidance in determining what process is due non-citizens in immigration detention."). Moreover, because Petitioner faces civil detention, "his liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Respondents do not acknowledge these well-established principles and offer no reason for this Court to depart from them. *See R.A.N.O.*, 2026 U.S. Dist. LEXIS 1963, at *n.5 ("To the extent respondents argue that reliance on *Morrissey* is misplaced simply because it arose in the criminal context rather than the immigration context, that argument is unpersuasive."). Instead, Respondents argue in a footnote that the "goal of integration" into society for parolees is irrelevant to noncitizens in removal proceedings. Return at 21, n.6. Respondents' argument ignores that the immigration laws offer numerous avenues for noncitizens to receive lawful status and join the diverse population of this country. *See, e.g.*, 8 U.S.C. § 1154 (family-based immigration); *Id.* 8 U.S.C. § 1158 (asylum); *Id.* 8 U.S.C. § 1231(b)(3)(B) (withholding of removal); *Id.* 8 U.S.C. §§ 1255(a), (h) (adjustment of status for special immigrant juveniles and certain victims of crimes). Moreover, the liberty interest in *Morrissey* does not stem from the policy goals of parole; it derives from the parolee's ability to "form the other enduring attachments of normal life." 408 U.S. 471 at 482.

Respondents also argue that Petitioner "lacks a liberty interest in *additional* procedures including a custody redetermination or pre-detention bond hearing" beyond what is provided by statute. Return at 21 (emphasis in original). However, "the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *Hernandez*, 872 F.3d at 981. *DHS v. Thuraissigiam* does not hold differently. *See* 591 U.S. 103 (2020). That case concerned due process rights related to determinations of eligibility for *admission* into the United States, not detention. *See also Jaraba Oliveros v. Kaiser*, No. 25-cv-07117-BLF, at *7–8 (N.D. Cal. Sept. 18, 2025) (accepting Respondents' request at the preliminary injunction hearing to consider the applicability of *Thuraissigiam* and finding it does not apply). Respondents' other authority is similarly unavailing. *Ma v. Barber* concerns the denial of an application for a stay of

deportation and did not make a due process claim. *See* 357 U.S. 185, 187 (1958). *Dave v. Ashcroft* concerned a noncitizen's interest in "obtaining purely discretionary [immigration] relief"; like *Thuraissigiam*, the case did not involve a challenge to physical custody. 363 F.3d 649, 653 (7th Cir. 2004). In addition, *Pena v. Hyde* did not consider *Morrissey* at all and appears to not involve re-detention at all. No. 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025); *see also Pico v. Noem*, No. 25-cv-08002-JST, 2025 U.S. Dist. LEXIS 232901, at *7 (N.D. Cal. Nov. 26, 2025) (holding that it was unclear from *Pena* whether that petitioner was similarly-situated to a re-detained petitioner). This Court should reject Respondents' unsupported assertion that Petitioner lacks a liberty interest.

A. The *Mathews* Test Applies

Because Petitioner has established a protected liberty interest, the *Mathews* test determines what process is due. *See Johnson v. Ryan*, 55 F.4th 1167, 1179–80 (9th Cir. 2022) (holding that *Mathews* applies to procedural due process claims). Under that test, the court weighs: (1) the private interest affected; (2) the risk of erroneous deprivation and probable value of procedural safeguards; and (3) the government's interest. *Id.*

Respondents' claim that *Mathews* does not apply ignores the law in this circuit. As Respondents acknowledge, the Ninth Circuit has "assume[d] without deciding" that *Mathews* applies in the immigration detention context. *See* Return at n.5; *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–8 (9th Cir. 2022) (applying *Mathews* to § 1226(a) and explaining "it remains a flexible test"); *accord Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, n.2 (N.D. Cal. July 24, 2025) (discussing *Rodriguez Diaz*); *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due process challenge to immigration hearing procedures). And in *Johnson v. Ryan*, which post-dates *Rodriguez Diaz*, the Ninth Circuit held that *Mathews* applies to procedural due process claims, which this case plainly is. 55 F.4th 1167, 1179–80 (9th Cir. 2022). Respondents "do not propose an alternative test" and offer no basis to depart from this precedent. *See R.A.N.O.*, 2026 U.S. Dist. LEXIS 1963, at *n.7.

B. Petitioner is entitled to a pre-deprivation hearing in which the government bears the burden of proof.

Here, *Mathews* factors weigh heavily in favor of prohibiting Petitioner's re-detention

without a pre-deprivation hearing at which the government bears the burden of proof. *First*, the private interest affected in this case is profound. When considering this factor, courts look to "the degree of potential deprivation." *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation here is high. Petitioner has resided in the United States for over three years. *See* Pet. ¶ 1. While waiting for the adjudication of his asylum application, he has become active in his church. *See Valera Chuquillanqui v. Kaiser*, 3:25-cv-06320-TLT, slip op. at 2 (N.D. Cal. October 2, 2025). He cares for his sibling's children. *Id.* He supported his sister through a successful bid for asylum. *Id.* He works as a janitor and dishwasher for a catering service. *Id.* As this Court has already found in granting the preliminary injunction, "[h]is liberty interest has crystalized into a substantial private interest over time." *Id.* at 11.

Second, "the risk of an erroneous deprivation [of liberty] is high" where "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No. 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)).

Third, the government has no cognizable interest in detaining the Petitioner without a hearing. As explained below, the only two constitutionally permissible reasons to detain a non-citizen in civil immigration proceedings is if they are a flight risk or danger to the community. And immigration courts routinely conduct custody hearings, which impose a "minimal" cost to the government. *See A.E.*, 2025 WL 1424382, at *5. The harm to the government is therefore negligible. *See Florez v. Robbins*, No. 1:25-cv-1897, 2025 U.S. Dist. LEXIS 265346 at *22 (E.D. Cal. Dec. 23, 2025).

Normally, an individual subject to U.S.C. § 1226(a), like Petitioner, would be entitled to a post-deprivation bond hearing, which is provided for by the statute. As courts have recognized, the key distinction between detention under § 1225(b)(2) and § 1226(a) is that § 1226(a) allows for post-deprivation bond hearing, whereas § 1225(b)(2) provides no right to review *at all*. *Pablo Sequen v. Kaiser*, 800 F. Supp. 3d 998, 1013 (N.D. Cal. 2025). If Respondents are correct that Petitioner is detained under § 1225(b)(2)—for the reasons explained below, they are not—he would

have *no* opportunity for review of his custody even after being deprived of his liberty, which would "*strengthen* h[is] due process claim"—not weaken it. *Id.*

Respondents argue that *Rodriguez Diaz v. Garland* supports their position, but as they acknowledge, "*Rodriguez Diaz* did not arise in the pre-detention context." Return at 23, n.7. The petitioner in *Rodriguez Diaz* was already denied bond and seeking an additional bond hearing. *See Rodriguez Diaz*, 53 F.4th at 1204. Here, on the other hand, "the pre-deprivation hearing is not for the government to justify *continuing* the status quo of detention; rather, Petitioner-Plaintiff asks the government to justify a sudden *departure* from the status quo." *See Diaz v. Kaiser*, No. 25-cv-05071-TLT 2025 U.S. Dist. LEXIS 212851, at *31–32 (Sept. 16, 2025) (emphasis in original). The court in *Rodriguez Diaz* explicitly stated it "did not foreclose all as-applied challenges to § 1226(a)'s procedures." *See Rodriguez Diaz*, 53 F.4th at 1210–12. Its reasoning does not apply here.

In this case, a post-deprivation hearing also does not provide sufficient process, because by the time that the Petitioner is arrested, the constitutional violation re-detention without changed circumstances—will have already occurred. *See E.A. T.B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *16 (W.D. Wash. Aug. 19, 2025) (holding that a "post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) (same); *Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB, 2025 WL 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (same, collecting cases); *R.A.N.O.*, No. 1:25-cv-01535-KES-EPG, 2026 U.S. Dist. LEXIS 1963, at *14 –15 (same). Petitioner thus prevails on his *Mathews* claim regardless of the underlying detention statute.

Finally, the government bears a clear-and-convincing burden of proof to remedy a due process violation. The Ninth Circuit so held many years ago. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011). Contrary to Respondents' arguments, the Ninth Circuit has made clear that "*Singh*'s constitutional holding . . . remains binding law of our court." *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1179 (9th Cir. 2023) (Paez, J., respecting the denial of rehearing en banc); *see Martinez v. Clark*, 124 F.4th 775, 784-86 (9th Cir. 2024) (confirming the government bears the "clear-and-convincing burden of proof" at an immigration bond hearing ordered pursuant to the Due

Process Clause). The government bears the burden of proof here. For these reasons, this Court should join the numerous district courts in this circuit and hold that Petitioner prevails on his procedural due process claim. *See, e.g.*, *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 U.S. Dist. LEXIS 171892, at *9–10 (N.D. Cal. Sept. 3, 2025). *Cardenas Castellanos, et al. v. Kaiser*, 5:25-cv-07962-NW, 2025 U.S. Dist. LEXIS 183957, at *8–9 (N.D. Cal. Oct. 14, 2025).

C. Reclassifying Petitioner from § 1226(a) to § 1225(b)(2) violates procedural due Process.

Even if Respondents' interpretation of § 1225(b)(2) were correct—and it is not—due process would still prevent the government unilaterally reclassifying Petitioner as subject to § 1225(b)(2). *See Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 U.S. Dist. LEXIS 163056, *11 (N.D. Cal. Aug. 21, 2025). Respondents assert that an individual can be reclassified as § 1225(b)(2) "even where the government previously released a[] [noncitizen] under 8 U.S.C. § 1226(a). Return at 22. However, Respondents "fail to contend with the liberty interests created by the fact that the Petitioner[] in this case w[a]s released on recognizance *prior to the manifestation*" of the new § 1225(b)(2) interpretation. *See Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025) (emphasis in original). They thus cannot now "switch[] tracks" mid-stream. *See Salcedo Aceros*, 2025 U.S. Dist. LEXIS 179594, at *21. To do so would amount to an impermissible post hoc rationalization. *See Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *13–14 (S.D.N.Y. Aug. 13, 2025).

II. Petitioner's re-detention would violate substantive due process.

As to substantive due process, though this Court previously did not decide this claim, it can readily do so now. Whereas procedural due process "promotes fairness" in government decisions to deprive persons of their liberty by "require[ing] the government to follow proper procedures," substantive due process "prevent[s] governmental power from being used for purposes of oppression" by "barring certain actions regardless of the fairness of the procedures used to implement them." *Daniel v. Williams*, 474 U.S. 327, 331 (1986). As an initial matter, Respondents do not attempt to argue that Petitioner is a flight risk or danger to society, the only two constitutionally permissible reasons to detain a noncitizen. *See Zadvydas*, 533 U.S. at 690. They thus waive any opposition to Petitioner's argument that his re-detention violates his substantive due

process rights. *See Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

Freedom from detention "lies at the heart of liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. When, as here, a noncitizen poses no flight risk or danger to the community, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Valencia Zapata v. Kaiser*, 2025 WL 2741654, at *11-12 (N.D. Cal. Sep. 26, 2025) (holding that a similarly situated petitioner demonstrated serious questions going to the merits of their substantive due process claim); *Leiva Flores v. Albarran*, 2025 WL 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (same); *Bautista Pico v. Noem*, 2025 WL 3295382, at *3 (N.D. Cal. Nov. 26, 2025) (same); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may succeed on claim that the government lacks any legitimate reason to detain him").

As the Ninth Circuit has held, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Hernandez,* 872 F.3d at 994. When immigration officials released Petitioner on an Order of Recognizance in 2022, they made a determination that he was not a danger to the community or a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); 8 C.F.R. § 236.1(c)(8) (allowing release only after making such findings).

Respondents have presented no evidence that Petitioner has since become a flight risk or danger to the community. It is undisputed that he has complied with all conditions of release, including attending all check-ins and immigration court hearings, and has no criminal history at all. Because the government cannot show that Petitioner's re-detention would advance the only accepted rationales for civil detention—flight risk or danger—Petitioner has demonstrated his re-detention would violate his substantive due process rights. *Zadvydas*, 533 U.S. at 690. Where, as here, the government does not even make bare allegations of flight risk or danger to justify

detention, detention violates the Constitution regardless of the procedural protections involved.

Here, too, Respondents' statutory argument cannot insulate them from Petitioner's constitutional claim. Respondents assert that § 1225(b)(2)'s mandatory detention framework controls Petitioner's constitutional claim.[2] Return at 20. However, mandatory detention is subject to constitutional limitations. *See Zadvvdas*, 533 U.S. at 701. Courts regularly order the government to release noncitizens subject to mandatory detention on substantive due process claims. *See e.g., Doe v. Chestnut*, No. 1:24-cv-00943-EPG, 2025 U.S. Dist. LEXIS 232754, at *72 (E.D. Cal. Nov. 26, 2025); *Doe v. Becerra*, 732 F. Supp. 3d 1071 (N.D. Cal. 2024). Although the Supreme Court has upheld facial challenges to mandatory detention, such as 8 U.S.C. § 1226(c), it has not "foreclose[d] as-applied challenges—that is, constitutional challenges to applications of the statute." *See Nielsen v. Preap*, 586 U.S. 392, 420 (2019). An as-applied challenge, like Petitioner's substantive due process claim, require a petitioner to show only that "the application of the statute to a specific factual circumstance" is unconstitutional. *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 WL 2420390, at * 4 (E.D. Cal. Aug. 21, 2025). Therefore, even if Petitioner were subject to mandatory detention under § 1225(b)(2)—and for the reasons explained below, he is not—he has still established that re-detention in *his* case, where he inarguably poses no risk of flight or danger to the community, violates substantive due process. *See id.*

A. Petitioner is not subject to mandatory detention 8 U.S.C. § 1225(b)(2).

Petitioner is subject to § 1226(a) and not § 1225(b)(2). Courts throughout this district—including this one—have overwhelmingly rejected Respondents' arguments to the contrary, which they recycle here. Respondents argue that noncitizens like Petitioner, who entered the U.S. without inspection, are "applicants for admission" who are still "seeking admission" years after DHS released them into the interior on their own recognizance, and, as a result, are subject to indefinite mandatory detention under § 1225(b)(2)(A). *See* Return at 10. District courts across the nation have

[2] In their brief, Respondents cite to *Demore v. Kim*, in which the Supreme Court upheld 8 U.S.C. § 1226(c) because that statute covered people with criminal histories that were related to flight risk and danger to the community. 538 U.S. 510, 527-28 (2003). Nothing in *Demore*, or any other precedent, endorses Respondents' breathtaking new argument that the INA requires the detention without bond of *every inadmissible noncitizen present in the U.S.*, regardless of their criminal history or attendance at court proceedings.

already overwhelmingly rejected this argument, however, because it does not accord with the basic tenants of statutory construction. *See Barco Mercado v. Francis*, No. 25-cv-6582 (LAK) at * 9–10 (documenting over 300 cases in which courts have rejected the government's new interpretation of § 1225); *Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *21–33.

First, the plain text of § 1225(b)(2)(A) limits its application to noncitizens "seeking admission" at the border. Respondents argue that an "applicant for admission" is forever "seeking admission" regardless of their distance from the border or how long they have been in the United States. Return at 10. However, the natural reading of the phrase "seeking admission" implies a "present action, not a continuous state applicable to every noncitizen who already resides in the United States and seeks to obtain legal immigration status." *See Cordero Pelico*, 2025 U.S. Dist. LEXIS 197865, at *26–27. To not give it meaning independent of the term "applicant for admission" would violate the rule against surplusage. *See Salcedo Aceros*, 2025 U.S. Dist. LEXIS 179594, at *16; *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *9. If Congress had meant "applicant for admission" and "seeking admission" to be coextensive," it would have been more natural to refer to *the* alien seeking admission rather than *an* alien in the text. *See Bernal v. Albarran*, No. 25-cv-09772-RS, at *10.

Respondents' contention that an applicant for admission is "inherently seeking admission" is wrong. Return at 12. Respondents look to 8 U.S.C. § 1225(a)(3), which refers to noncitizens who "are applicants for admission or otherwise seeking admission," for support for their argument, but as this Court has already held, "§ 1225 (a)(3) governs the 'inspection'—not detention—protocol." *See* 8 U.S.C. § 1225(a)(3). Dkt. 26 at 14. "All this language indicates is that there may be noncitizens seeking admission who fall outside the statutory definition of 'applicants for admission.'" *See Cordero Pelico*, 2025 U.S. Dist. LEXIS 197865, at *38. As another court in this district explained:

> "Otherwise" generally means, 'in a different way or manner" or "in different circumstances.' *Otherwise*, Webster's Ninth New Collegiate Dictionary 835 (1984). So § 1225(a)(3)'s use of 'or otherwise' simply means that immigration officers must inspect any noncitizen who is 'seeking admission or readmission to or transit through the United States,' whether the noncitizen is an applicant for admission *or* differently situated. To be sure, § 1225(a)(3) acknowledges some

> overlap between the categories of 'applicants for admission' and noncitizens 'seeking admission,' with the latter serving as 'a 'catch-all' to describe non-citizens who *must be inspected.*' 2025 WL 2822876, at 14 (N.D. Cal. Oct. 3, 2025) (*quoting Al Otro Lado*, 138 F.4th at 1119).

Garro Pinchi v. Noem, No. 25-CV-05632-PCP, 2025 U.S. Dist. LEXIS 265062, at *82 (N.D. Cal. Dec. 19, 2025).

Indeed, it is possible to seek admission without being an applicant for admission; "[f]or example, those applying for a visa at a consulate abroad would be seeking admission but not be applicants for admission, since they are neither present in the country nor arriving in it. *Id.* at *84 (N.D. Cal. Dec. 19, 2025) (quoting *Cordero Pelico*, 2025 U.S. Dist. LEXIS 197865 *38) (internal quotations omitted).

Respondents' proffered interpretation, in which all "applicants for admission" are by default "seeking admission," also cannot be squared with the definition of "admission" in the INA. "[A]dmission" refers only to a "lawful entry … after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). People like Petitioner, who are in removal proceedings in the U.S., are not seeking a "lawful entry," and thus cannot be "seeking admission" as that term is defined by statute. *See Sanchez v. Mayorkas*, 593 U.S. 409, 413-15 (2021) (recognizing that "admission and status are separate concepts in immigration law" such that a grant of asylum does not confer "admission").

Respondents argue that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." Return at 12–13 (quoting *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012)). However, Mr. Lemus was in fact seeking admission—he was applying for a family visa from within the U.S. and had to demonstrate he was admissible. *See Lemus-Losa*, 25 I. & N. Dec. at 735. This separate statutory reference to "seeks admission" does not demonstrate that § 1225(b)(2)(A), which addresses the inspection of persons seeking admission into the country, encompasses other persons already residing in the U.S. Instead, it further demonstrates that "seeking admission" is not synonymous with the broader definition of "applicant for admission."

Further, Respondents argue that § 1225(b)(2)(A) is not limited to arriving [noncitizens]. However, an applicant seeking admission is "roughly interchangeable" with an arriving

[noncitizen]." *See Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *14 (D. Mass. July 24, 2025). The emphasis on arriving [noncitizens] is to underscore that 8 U.S.C. § 1225(b) applies to various classes of people arriving at the border or who have just entered the country, rather than people in the interior. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("'arriving' applies to [noncitizens]…who [are] apprehended' just inside 'the southern border, and not at a point of entry, on the same day [they] crossed into the United States.'" 29 I&N Dec. 66, 68 (BIA 2025). The statute's implementing regulations also limit it to arriving [noncitizens]. *See Bernal*, 2025 U.S. Dist. LEXIS 232122, at *13 (citing 8 C.F.R. § 235.3(c)(1)). Indeed, the entire statutory scheme is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. §§ 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," *id.* 8 U.S.C. §§ 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning"). There is also nothing in the chapter title to suggest it applies in the interior: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." *See* 8 U.S.C. § 1225.

It is Respondents, not Petitioner, who ignore the detention statutes' plain meaning. In arguing that § 1225(b)(2) covers all non-admitted noncitizens, Respondents disregard § 1226, which provides that DHS "may" arrest and detain a noncitizen "pending a decision on whether the alien is to be *removed* from the United States"—*i.e.*, pending removal proceedings—while also permitting the noncitizen's release "on bond" or other conditions. 8 U.S.C. § 1226(a) (emphasis added). The word "removed" is significant because, unlike the prior version of the statute, which applied only to individuals "[p]ending a determination of *deportability*," *see* 8 U.S.C. § 1252(a)(1) (1994) (emphasis added), "removed" applies both to individuals facing charges of deportability *or*, like Petitioner, inadmissibility. *See* 8 U.S.C. § 1229a(a)(1) (providing that removal proceedings may decide "the inadmissibility ... of [a noncitizen]"). Thus, Congress clearly intended § 1226(a) to apply to people, like Petitioner, who are in removal proceedings based on charges of inadmissibility.

This is reenforced by the plain language of 1226(c), which *expressly* carves out from § 1226(a)'s authorization of discretionary detention broad categories of inadmissible noncitizens. *See* 8 U.S.C. §§ 1226(c)(1)(A), (D), (E)(i) (mandating detention of noncitizens inadmissible on certain criminal or national security grounds). *See Jennings*, 583 U.S. at 288 (describing § 1226(a) as the "default rule" providing for discretionary detention of noncitizens inside the country, and § 1226(c) as a limited exception). Section 1226(c) is thus the exception that proves the rule: that is, unless they have the required criminal history, Section 1226(a) sets forth a discretionary detention framework for people in the United States, including individuals like Petitioner who are "inadmissible" for having entered without inspection. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (the fact that Congress has created specific exceptions to the statute "proves" that the statute applies generally). Respondents concede, as they must, that § 1226(c)—which sets forth the limited mandatory detention exception to § 1226(a)'s discretionary detention rule—applies to noncitizens who have not been admitted and are thus inadmissible.[3] Yet Respondents do not and cannot explain how § 1226(a)'s general rule could apply only to people who have been admitted when § 1226(c)'s exception to that rule plainly applies to people who have not.

Nor does Respondents' explanation of the Laken Riley Act help their case. Respondents acknowledge the overlap between the Laken Riley Act and §1225(b)(2)(A) but argue Congress's intent in passing the Laken Riley Act was to reduce the Executive's authority in releasing inadmissible individuals who committed crimes. Return at 17–18. Respondents also argue the Laken Riley Act is broader than §1225(b)(2)(A) because §1225(b)(2)(A) does not account for small subsections of individuals, such as noncitizens who are inadmissible but were erroneously admitted and crewman. Tr. at 16. Respondents ignore, however, that their proposed interpretation renders *all* of § 1226(c)—not just the Laken Riley Act—effectively meaningless. Here, the canon that the specific governs the general supports Petitioner, not Respondents. Section 1225(b)(2) is

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[3] A person who has been "admitted" is subject to grounds of "deportability," *see* 8 U.S.C. § 1227(a), whereas a person who has not been admitted is subject to grounds of "inadmissibility," *see* 8 U.S.C. § 1182(a). Accordingly, a person can be inadmissible as described in § 1226(c) only if they have not been admitted.

clear that it covers only noncitizens who meet three specific criteria: (1) applicants for admission, who (2) are not covered by 8 U.S.C. § 1225(b)(1), and (3) who are "seeking admission," as "admission" is defined in the INA. *See Pablo Sequen*, 2025 U.S. Dist. LEXIS 181837, at *4 (N.D. Cal. Sept. 16, 2025). Section 1226, which has no language limiting its scope to people who have been admitted, covers *everyone else*. Respondents cite nothing from *Jennings*, Return at 19–20, or any authority, that supports reading into 8 U.S.C. § 1226 an enormous carveout that Congress did not write.

Resisting this conclusion, Respondents seek support in the changes Congress sought to make in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Return at 18–19. But they fail here as well. Before IIRIRA, noncitizens in the interior of the United States were subject to discretionary detention under prior 8 U.S.C. § 1252(a)(1), regardless of whether they had been formally admitted. In enacting IIRIRA, Congress expressly stated that the new § 1226(a) merely "restates" that prior discretionary framework. H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996). Had Congress intended a dramatic expansion of mandatory detention for millions of inadmissible noncitizens residing inside the country, it would have said so. The executive branch has also treated noncitizens like Petitioner as subject to discretionary detention under § 1226(a) since then. In 1997, just months after IIRIRA's passage, the Executive explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled ... will be eligible for bond. and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). That contemporaneous interpretation, mirroring U.S.C. § 1226(a)(2), "is powerful evidence that interpreting the Act in [this] way is natural and reasonable[.]" *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (similar).

The "preferential treatment" IIRIRA sought to resolve, *see* Return at 18, was the disparity between the procedural rights of those who entered without inspection and those who sought entry lawfully. Congress resolved it by amending the statutes governing those *procedural* rights. Congress eliminated "exclusion proceedings" that previously applied to non-citizens at ports of

entry who had not yet entered the country and put all non-admitted noncitizens "on equal footing … in immigration proceedings" that extended more procedural protections to admitted noncitizens than noncitizens without admission. *Torres v. Barr*, 976 F.3d 918, 927–28 (9th Cir. 2020) (describing changes). The cases Respondents cite also do not address detention and thus are inapplicable here. Return at 18–19. Respondents' cases largely address due process rights relevant to *admission*, not detention. *See* Return at 19; 591 U.S. at 139. *Kaplan v. Tod*, concerned a detention challenge, but turned on whether the question of whether the petitioner was properly subject to deportation. 267 U.S. 228 (1925). And *Yamataya v. Fisher* cuts *against* Respondents' arguments, holding that regardless of a person's manner of entry into the country, "no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends." *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903).

B. Any potential post-final removal order detention cannot be excessive.

Petitioner acknowledges that by statute, Respondents may detain him for the 90-day period following a final removal of order. *See* Return at 24–25. However, a final removal order is not grounds for Respondents to detain Petitioner excessively. *See Zadvvdas*, 533 U.S. at 701. Petitioner has already suffered significant physical and psychological harm as a result of being unlawfully detained. *See* Pet. ¶¶ 56–63. Petitioner thus asks the Court to closely scrutinize any post-90 day detention in the unlikely event that Petitioner receives a final order of removal, should Petitioner bring it to the Court's attention.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant his Petition for Writ of Habeas Corpus and order the relief requested in the Petition.

Date: January 16, 2025

Respectfully Submitted,

/s/ Jordan Weiner
Jordan Weiner