UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

JOSE AUGUSTO ALVES DA SILVA

Petitioner,

v.

PATRICIA H. HYDE, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General; **CHRISTOPHER BRACKETT**, Superintendent, Strafford County Department of Corrections

Respondents.

Case No.: 1:25-cv-284-LM-TSM

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND REQUEST FOR HABEAS CORPUS RELIEF

INTRODUCTION

This case presents the questions of (i) whether the regulation permitting Respondents to mandatorily detain Petitioner despite the Immigration Judge's (IJ's) order releasing him pursuant to 8 U.S.C. § 1226(a) is unconstitutional under the Due Process Clause as applied to Petitioner, and (ii) whether the IJ is correct that Petitioner is detained under 8 U.S.C. § 1226(a), instead of 8 U.S.C. § 1225(b). The answer is yes for both questions.

Numerous courts have agreed with Petitioner that 8 C.F.R. § 1003.19(i)(2), which permits Respondents to essentially mandatorily detain him without justifying the detention, is unconstitutional. *See Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237, at *27 (D. Minn. May 21, 2025) ("In conclusion, all three *Mathews* factors favor Günaydin's position, and the Court concludes that the automatic stay regulation at § 1003.19(i)(2) violates Günaydin's procedural due process rights under the Fifth Amendment. The Court therefore orders Günaydin's immediate release."); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 U.S. Dist. LEXIS 157236, at *1-2 (D. Neb. Aug. 14, 2025) ("The Court finds the government is unlawfully detaining Petitioner in violation of her Due Process rights by invoking a unliteral automatic stay of the bond a duly appointed Immigration Judge determined was appropriate. Accordingly, it orders Respondents to immediately release Petitioner."); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 U.S. Dist. LEXIS 88471, at *15 (D. Minn. May 5, 2025) ("The automatic stay provision under 8 C.F.R. § 1003.19(i)(2) does not require any showing of dangerousness or flight risk. Nor is it subject to immediate review by an immigration judge. It operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied."); *Maldonado v. Olson*, No.

25-cv-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, at *38 (D. Minn. Aug. 15, 2025) ("In sum, § 1003.19(i)(2) presents a serious risk of erroneous deprivation of Ms. Aguilar Maldonado's private interests, and § 1003.19(i)(1) already provides a simple alternative that would safeguard those rights. The Court therefore finds that the second Mathews factor supports Ms. Aguilar Maldonado's claim of a Fifth Amendment violation."); *Leal-Hernandez v. Noem*, DN 20, No. 1:25-cv-02428-JRR, at *23 (D. Md. Aug. 24, 2025) ("The court likewise concludes the automatic stay as applied to Petitioner violates his Fifth Amendment right to procedural due process" under the *Mathews* factor). *See also Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 U.S. Dist. LEXIS 50670, at *2 (N.D. Cal. June 17, 2005) (collecting cases in which courts "have held the automatic-stay regulation unconstitutional" and noting that "[t]he government has appealed none of these decisions"). The Court should find that 8 C.F.R. § 1003.19(i)(2) is unconstitutional as applied to Petitioner.

Respondents' argument that the IJ erroneously found that Petitioner is detained under 8 U.S.C. § 1226(a) is unpersuasive. As this Court has already found, 8 U.S.C. § 1225(b) does not apply to a person like Petitioner who has already been present in the United States for 13 years. *See Duchi-Naula v. Tatum*, Civil No. 1:25-cv-247-LM-AJ (D.N.H. July 7, 2025) (oral ruling) (citing *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)). *See also Benitez v. Francis*, 2025 U.S. Dist. LEXIS 153952, at *7-8 (S.D.N.Y. Aug. 8, 2025) (holding that 8 U.S.C. § 1226 governs the detention because "(1) DHS has consistently treated Mr. Lopez Benitez as subject to detention on a discretionary basis under § 1226(a), which is fatal to Respondents' claim that he is subject to mandatory detention under § 1225(b); and (2) a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225's provision for mandatory detention of noncitizens

'seeking admission' does not apply to someone like Mr. Lopez Benitez, who has been residing in the United States for more than two years."); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *3 (D. Mass. Aug. 14, 2025) ("The government's argument contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c), which mandates the detention of certain noncitizens and is the sole exception to Section 1226(a)'s discretionary framework. Because dos Santos was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework."); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, at *3 (D. Mass. July 7, 2025) ("Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework. Gomes' petition will accordingly be granted, and the government respondents will be ordered to provide him with a bond hearing before an Immigration Judge."); *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724, at *16-17 (D. Mass. July 24, 2025) (same); *Aguriano Romero v. Hyde*, DN 32, No. 25-11631-BEM (D. Mass. Aug. 19, 2025) (same).

Indeed, the Board of Immigration Appeals (BIA) recently addressed the merits of an IJ's decision granting a bond to a noncitizen who entered without lawful entry, without questioning the IJ's and the BIA's jurisdiction over the bond hearing. *See Matter of Akhmedov*, 29 I. & N. Dec. 166, 167 (B.I.A. 2025) ("The respondent, a native and citizen of Russia, entered the United States unlawfully in January 2022.") (IJ's decision reversed on other grounds).

The Court should order Respondents to immediately accept the bond for Petitioner as ordered by the IJ and effectuate his release in compliance with the IJ's order.

UNDISPUTED MATERIAL FACTS

Petitioner is from Brazil. In or about 2012, Petitioner entered the United States without

inspection.[1] On May 5, 2025, Petitioner was arrested by the Lowell Police Department for operating a vehicle without a license. The case remains pending. On the same day, when Petitioner was released from police custody, Customs and Border Protection (CBP) officers arrested Petitioner and transferred the custody to Respondents. Subsequently, Respondents detained Petitioner at the Strafford County Department of Corrections (SCDOC) in Dover, New Hampshire.

On May 19, 2025, Respondents placed Petitioner in removal proceedings. On July 8, 2025, Petitioner filed a motion for a custody redetermination hearing (bond hearing) before the Chelmsford Immigration Court in Chelmsford, Massachusetts. On July 14, 2025, the IJ disagreed with Respondents' argument that Petitioner was detained under 8 U.S.C. § 1225(b) and ordered Petitioner to be released with the bond amount of $6,500.

However, Petitioner could not post the bond because, on July 15, 2025, Respondents filed a Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination. This filing has triggered a 90-day automatic stay of the IJ's bond order. On July 28, 2025, Respondents filed the notice of appeal with the Board of Immigration Appeals (BIA). In light of the filing, the automatic stay of the IJ's bond order remains in effect upon a decision of the BIA or 90 days, whichever is shorter, under 8 C.F.R. § 1003.6(c)(4). The 90th day is October 26, 2025. No briefing schedule has been issued by the BIA.

ARGUMENT

I. THE COURT SHOULD FIND THAT 8 C.F.R. § 1003.19(i)(2) IS UNCONSTITUTIONAL AS APPLIED TO PETITIONER

The Court should find that 8 C.F.R. § 1003.19(i)(2) is unconstitutional as applied to Petitioner. The *Mathews* standard applies to the constitutionality of 8 C.F.R. § 1003.19(i)(2).

[1] Although Respondents do not confirm the year of Petitioner's entry to the United States, Respondents do not dispute the fact either.

Under this standard, the regulation permitting the automatic stay of Petitioner's release is unconstitutional.

A. The *Mathews* Standard Applies to the Constitutionality of 8 C.F.R. § 1003.19(i)(2)

The Court should hold that the *Mathews* standard applies to the constitutionality of 8 C.F.R.§ 1003.19(i)(2). Respondents contend that this Court cannot apply the *Mathews* standard in analyzing the constitutionality of 8 C.F.R. § 1003.19(i)(2). DN 17-1 at 9 ("the distinctiveness of the government's authority over immigration and how Supreme Court case law 'leaves no room for a multi-factor 'reasonableness' test") (quoting *Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024)). However, the First Circuit already held that the *Mathews* standard applies to the constitutionality of immigration detention, as Respondents acknowledge. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021); DN 17-1 at 7 (citing and quoting *id.*).

Respondents are asking this Court to ignore *Hernandez-Lara*. That is impermissible. *See Menachem Raitport v. Harbour Capital Corp.*, 312 F. Supp. 3d 225, 228 (D.N.H. 2018) ("this court's job is straightforward: unless and until the Court of Appeals for the First Circuit (or the Supreme Court) invalidates the Solicited Fax Rule in a proceeding arising out of a proper administrative challenge to that rule, this court is bound to apply the rule as written."); *Marshall v. U.S. Attorney Gen.*, 2025 DNH 067, 2025 U.S. Dist. LEXIS 104734, at *12 (D.N.H. June 3, 2025) ("I am also mindful of the First Circuit's directive that '[u]ntil a court of appeals revokes a binding precedent, a district court within the circuit is hard put to ignore that precedent unless it has unmistakably been cast into disrepute by supervening authority.'") (quoting *Eulitt v. Maine Dep't of Educ.*, 386 F.3d 344, 349 (1st Cir. 2004)).

Thus, this Court should find that the *Mathews* standard is proper for the constitutionality of immigration detention, including the automatic stay of the IJ's bond order as applied to Petitioner.

B. 8 C.F.R. § 1003.19(i)(2) is Unconstitutional As Applied to Petitioner

The Court should hold that 8 C.F.R. § 1003.19(i)(2) is unconstitutional as applied to Petitioner. Respondents do not dispute that "the private interest here, the deprivation of liberty, is significant." DN 17-1 at 7.[2] Nonetheless, Respondents argue that the regulation is constitutional because the second and third factors of *Mathews* favor Respondents. DN 17-1 at 7 ("But the other *Mathews* factors are less clear cut."). For this argument, Respondents advance two points: (1) immigration detention is permissible; and (2) the *Günaydin* case cited by Petitioner is factually distinguishable and should be rejected. Neither is persuasive.

First, Respondents aver that it is constitutionally permissible to detain Petitioner. *See* DN 17-1 at 11. However, the constitutional issue presented here is not whether Respondents can detain Petitioner. Instead, the question is whether the regulation permitting Respondents to essentially mandatorily detain Petitioner despite the IJ's order to release him is unconstitutional under these circumstances. *Cf. Hernandez-Lara*, 10 F.4th at 32 (finding that the third *Mathews* factor favors the petitioner because "[w]hat is at stake, however, is not the power of the government to detain noncitizens who may cause harm or flee during removal proceedings, but rather who should bear the burden of proving noncitizens pose a danger or a flight risk").

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[2] Respondents complain that the fact that Petitioner is detained at a pre-trial penal institution should not be factored into the consideration on Petitioner's deprivation of liberty. *See* DN 17-1 at 7 n.2. However, another Judge in this District (in addition to the First Circuit) also noted this point for a due process analysis. *See Rocha v. Barr*, 422 F. Supp. 3d 472, 481 (D.N.H. 2019) ("Courts also consider whether the immigration detention facility is meaningfully different from a penal institution for criminal detention."); *Smorodska v. ICE*, DN 31, Civil No. 1:20-cv-446-JL, at *4 (D.N.H. May 14, 2020) (same).

Respondents argue that Petitioner is detained under 8 U.S.C. § 1225(b), not 8 U.S.C. § 1226(a). As explained below, Respondents' interpretation is incorrect. *See infra* Section II. Regardless, the authority Respondents rely on to detain Petitioner is not 8 U.S.C. § 1225(b), which is not what the IJ held. Instead, the detention authority is 8 C.F.R. § 1003.19(i)(2).

Second, Respondents argue that *Günaydin* is factually distinguishable and otherwise unpersuasive. *See* DN 17-1 at 8-9. However, *Günaydin* is not the only authority Petitioner relies on. *See Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237, at *27 (D. Minn. May 21, 2025) ("In conclusion, all three *Mathews* factors favor Günaydin's position, and the Court concludes that the automatic stay regulation at § 1003.19(i)(2) violates Günaydin's procedural due process rights under the Fifth Amendment. The Court therefore orders Günaydin's immediate release."); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 U.S. Dist. LEXIS 157236, at *1-2 (D. Neb. Aug. 14, 2025) ("The Court finds the government is unlawfully detaining Petitioner in violation of her Due Process rights by invoking a unliteral automatic stay of the bond a duly appointed Immigration Judge determined was appropriate. Accordingly, it orders Respondents to immediately release Petitioner."); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 U.S. Dist. LEXIS 88471, at *15 (D. Minn. May 5, 2025) ("The automatic stay provision under 8 C.F.R. § 1003.19(i)(2) does not require any showing of dangerousness or flight risk. Nor is it subject to immediate review by an immigration judge. It operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied."); *Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, at *38 (D. Minn. Aug. 15, 2025) ("In sum, § 1003.19(i)(2) presents a serious risk of erroneous deprivation of Ms. Aguilar Maldonado's private interests, and §

1003.19(i)(1) already provides a simple alternative that would safeguard those rights. The Court therefore finds that the second Mathews factor supports Ms. Aguilar Maldonado's claim of a Fifth Amendment violation."); *Leal-Hernandez v. Noem*, DN 20, No. 1:25-cv-02428-JRR, at *23 (D. Md. Aug. 24, 2025) ("The court likewise concludes the automatic stay as applied to Petitioner violates his Fifth Amendment right to procedural due process" under the *Mathews* factor). *See also Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 U.S. Dist. LEXIS 50670, at *2 (N.D. Cal. June 17, 2005) (collecting cases in which courts "have held the automatic-stay regulation unconstitutional" and noting that "[t]he government has appealed none of these decisions").

All of these decisions raise constitutional concerns regarding the regulation permitting Respondents to mandatorily detain noncitizens without justifying their detention. Because of these concerns, numerous courts have found that the government's interest does not override the significant risk of erroneous deprivation, particularly because Respondents may seek the discretionary stay of IJs' bond orders with the BIA. *See Günaydin*, 2025 U.S. Dist. LEXIS 99237, at *21 ("the Court concludes that § 1003.19(i)(2) creates a substantial risk of erroneous deprivation of a detainee's interest in being from arbitrary confinement"), 26 ("the current regulation also provides for a process through which DHS may request an emergency stay from the BIA pending appeal of an immigration judge's order" under 8 C.F.R. § 1003.19(i)(1)); *Anicasio*, 2025 U.S. Dist. LEXIS 157236, at *8 ("there is a large risk of erroneous deprivation of Petitioner's liberty interest through the procedures used in this case, and there are available alternative procedures which would ameliorate those risks"); *Mohammed H.*, 2025 U.S. Dist. LEXIS 88471, at *15 ("It operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied."); *Maldonado*,

2025 U.S. Dist. LEXIS 158321, at *38 ("In sum, § 1003.19(i)(2) presents a serious risk of erroneous deprivation of Ms. Aguilar Maldonado's private interests, and § 1003.19(i)(1) already provides a simple alternative that would safeguard those rights. The Court therefore finds that the second Mathews factor supports Ms. Aguilar Maldonado's claim of a Fifth Amendment violation."). *See also Zabadi*, 2005 U.S. Dist. LEXIS 50670, at *5 ("the ability of the government to overturn or nullify an IJ's bail determination pending appeal without having to make a showing creates a risk of erroneous deprivation of the liberty interest").

Respondents counter this argument by citing several cases. *See* DN 17-1 at 8-9 (collecting cases). None are persuasive.

Farias v. Garland, No. 24-CV-4366 (MJD/LIB), 2024 U.S. Dist. LEXIS 246147 (D. Minn. Dec. 6, 2024), did not involve the constitutionality of 8 C.F.R. § 1003.19(i)(2). Instead, the challenged regulation was 8 C.F.R. § 1003.19(h)(1)(i)(C), which "requires that Immigration Judges deny release on bond (with exceptions not relevant here) to any detainee subject to removal under 8 U.S.C. § 1227(a)(4), including individuals who, like Barajas are believed to be subject to removal under § 1227(a)(4)(A)." DN 14, *Farias v. Garland*, No. 24-CV-4366 (MJD/LIB) (D. Minn.) (Order to Show Cause Why the Habeas Petition Should Not be Summarily Denied).

Galarza-Solis v. Ashcroft, No. 03 C 9188, 2004 U.S. Dist. LEXIS 5289 (N.D. Ill. Mar. 29, 2004), did "not need to decide if section 1003.19(i)(2) [wa]s constitutional" because the District Court found that "the immigration judge should not have even considered the issue of bond because [the petitioner] was within the scope of section 1226(c)'s mandatory detention provision." *Id.* at *8-10.

Altayar v. Lynch, No. CV-16-02479-PHX-GMS (JZB), 2016 U.S. Dist. LEXIS 175819 (D. Ariz. Nov. 23, 2016), *report and recommendation adopted by Altayar v. Lynch*, No. CV-16-02479-

PHX-GMS, 2016 U.S. Dist. LEXIS 175817 (D. Ariz. Dec. 20, 2016), addressed the constitutionality of 8 C.F.R. § 1003.19(i)(2) as an advisory opinion. As the court acknowledged, in that case, "the BIA granted a discretionary stay of the IJ's bond order." *Id.* at *8. Regardless of the advisory opinion, *Altayar* did not engage with the *Mathews* factors to determine the constitutionality of 8 C.F.R. § 1003.19(i)(2). Instead, the court applied the procedural due process standard of *removal proceedings* to the constitutionality of detention. *Id.* at *13 (citing *Mendez Garcia v. Lynch*, 840 F.3d 655 (9th Cir. 2016)). The First Circuit's approach to this issue is different. *Compare Hernandez-Lara*, 10 F.4th at *27-28 (*Mathews* factors for immigration detention) *with Hernandez Lara v. Barr*, 962 F.3d 45, 24 (1st Cir. 2020) (applying the standard of whether "the procedure at issue 'is likely to have affected the outcome of the proceedings' as a condition of relief" and showing prejudice for procedural due process claims in removal proceedings).

Fisher v. Aviles, Civil Action No. 10-6369 (FSH), 2011 U.S. Dist. LEXIS 18794 (D.N.J. Feb. 23, 2011), did not involve the automatic stay of the IJ's bond order question. Instead, the claim was whether the petitioner's mandatory detention under 8 U.S.C. § 1226(c) without a bond hearing violates the Due Process Clause based on the facts of that case. *Id.* at *21 ("Fisher's application for habeas relief from mandatory detention and his request for a bond hearing are dismissed without prejudice to his bringing a new action should he be able to demonstrate circumstances of indefinite detention and inordinate delays perpetuated by the Government.").

In sum, this Court should adopt the reasoning of *Günaydin*, *Anicasio*, *Mohammed H.*, *Maldonado*, and *Leal-Hernandez* and find that 8 C.F.R. § 1003.19(i)(2) is unconstitutional as applied to Petitioner.

II. THE COURT SHOULD FIND THAT PETITIONER IS DETAINED UNDER 8

U.S.C. § 1226(a)

The Court should find that Petitioner is detained under 8 U.S.C. § 1226(a) because he was already present in the United States for 13 years before Respondents arrested him pursuant to an administrative arrest warrant. *See* DN 16-2 at 5 ("ICE/ERO Boston Secure Communities lodged Form I-247 ICE Detainer and I-200 Warrant of Removal/Deportation"), 9 ("Processing Disposition: Warrant of Arrest/Notice to Appear"), 16-5 (Administrative Arrest Warrant pursuant to 8 U.S.C. § 1226). Respondents argue that Petitioner's detention authority is 8 U.S.C. § 1225(b) *only because* Petitioner has never been admitted to the United States. *See* DN 17-1 at 5-7. This argument is unpersuasive.

As a preliminary matter, Respondents' position has changed since *Duchi-Naula*, which is another immigration case before this Court. At the time of the July 7, 2025 hearing in *Duchi-Naula*, Respondents did not take the position that all noncitizens who are not admitted to the United States can be subject to mandatory detention under 8 U.S.C. § 1225(b). Instead, Respondents explained that "aliens who have not been admitted or paroled but who can establish that they have been physically present in the United States continuously for the 2-year period immediately preceding their encounter with immigration authorities are exempt from expedited removal proceedings and their detention is governed instead by § 1226." DN 14, at 2 n.1, *Duchi-Naula v. Tatum et al*, 1:25-cv-247-LM-AJ; Transcript at 57 (Noting "for the record as well, to the extent that that conclusion is premised on the Court understanding respondents' position to be that 1225(b)(2) applies to all persons in the United States who have not been admitted, that is not respondents' position, and in addressing the Bostock case I tried to highlight that that was not respondents' position."). In contrast, Respondents now argue that even an individual like

Petitioner, who has been present in the United States for 13 years, can be subject to mandatory detention under 8 U.S.C. § 1225(b). In any event, the Court should reject this argument.

Respondents' reading of 8 U.S.C. § 1225(b) to cover all non-admitted noncitizens renders another detention statute, 8 U.S.C. § 1226, superfluous, as Section 1226 also covers noncitizens who have not been admitted to the United States. *See, e.g., Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 2025 U.S. Dist. LEXIS 78395, at *39 (W.D. Wash. Apr. 24, 2025) ("[I]f the immigration court's interpretation of Section 1225 is correct and its mandatory detention provisions apply to 'all noncitizens who have not been admitted . . . then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens."). Thus, Section 1225(b)(2)(A) should be narrowly interpreted. *See id.* at *36-37 (agreeing that "the phrase 'a[] [noncitizen] seeking admission' in Section 1225(b)(2)(A) should be read to narrow mandatory detention under that subsection to noncitizens who are apprehended while seeking to enter the country"). Indeed, this Court has recently agreed with the reasoning of *Bostock* in *Duchi-Naula*. *See Duchi-Naula v. Tatum*, Civ. No. 1:25-cv-247-LM-AJ (D.N.H. July 7, 2025) (McCafferty, C.J.) (oral ruling; transcript at 50) ("I'm persuaded, as I've said, by the Western District of Washington's preliminary injunction order in *Rodriguez versus Bostock* that 1225(b)(2) which applies to an alien seeking admission must be read to apply to 'noncitizens who are apprehended while seeking to enter the country,' whereas 'noncitizens already residing in the United States, including those charged with being inadmissible for having entered the country pursuant to an unlawful entry, fall under the discretionary detention scheme in section 1226' for the same reasons the Court found in *Rodriguez*."). And other courts have agreed with this Court's analysis. *See Benitez v. Francis*, 2025 U.S. Dist. LEXIS 153952, at *7-8 (S.D.N.Y. Aug. 8, 2025) (holding that 8 U.S.C. § 1226 governs the detention because "(1) DHS has consistently treated Mr. Lopez Benitez as subject to

detention on a discretionary basis under § 1226(a), which is fatal to Respondents' claim that he is subject to mandatory detention under § 1225(b); and (2) a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225's provision for mandatory detention of noncitizens 'seeking admission' does not apply to someone like Mr. Lopez Benitez, who has been residing in the United States for more than two years."); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *3 (D. Mass. Aug. 14, 2025) ("The government's argument contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c), which mandates the detention of certain noncitizens and is the sole exception to Section 1226(a)'s discretionary framework. Because dos Santos was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework."); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, at *3 (D. Mass. July 7, 2025) ("Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework. Gomes' petition will accordingly be granted, and the government respondents will be ordered to provide him with a bond hearing before an Immigration Judge."); *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724, at *16-17 (D. Mass. July 24, 2025) (same); *Aguriano Romero v. Hyde*, DN 32, No. 25-11631-BEM (D. Mass. Aug. 19, 2025) (same).

Indeed, the BIA's recent precedent also supports this Court's reasoning. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (B.I.A. 2025). In *Akhmedov*, the BIA did not even question the noncitizen's bond eligibility under 8 U.S.C. § 1226(a) despite recognizing that he "entered the United States unlawfully in January 2022." *Id.* at 167.

Respondents' reliance on the Supreme Court's decision in *Jennings* and another Judge in the District Court for the District of Massachusetts is unpersuasive. Respondents first argue that the Supreme Court endorsed Respondents' position in *Jennings v. Rodriguez*, 583 U.S. 281, 289, 299 (2018). DN 17-1 at 6 ("The Supreme Court has confirmed that a non-citizen present in the country but never admitted is deemed 'an applicant for admission' and that 'detention must continue' 'until removal proceedings have concluded' based on the 'plain meaning' of 8 U.S.C. § 1225."). This reading of *Jennings* is inapposite. In fact, as *Bostock* explained, *Jennings* supports Petitioner's, IJ's, and this Court's reasoning. *See Bostock*, 2025 U.S. Dist. LEXIS 78395, at *39-40 ("the Supreme Court's opinion in *Jennings* also lends some support to Rodriguez's proposal for harmonizing Sections 1225 and 1226."). "[W]hen discussing Section 1226, *Jennings* describes it as governing 'the process of arresting and detaining' noncitizens who are living 'inside the United States' but 'may still be removed,' including noncitizens 'who were inadmissible at the time of entry.'" *Id.* at *40 (quoting *Jennings*, 583 U.S. at 287). Thus, *Jennings* does not help Respondents' position. *See dos Santos*, 2025 U.S. Dist. LEXIS 157488, at *20 (rejecting the government's argument that *Jennings* supports its argument that all non-admitted noncitizens can be detained under 8 U.S.C. § 1225(b)).

Respondents' back-up case, *Pena v. Hyde*, Civil Action No. 25-11983-NMG, 2025 U.S. Dist. LEXIS 144234 (D. Mass. July 28, 2025), does not provide much assistance. Although the court found that "[t]he authority of ICE to detain aliens who are present in the country unlawfully derives from 8 U.S.C. § 1225[,]" the court did not clarify how the petitioner was detained and released at the time of his unlawful entry in 2005 or how the court's reasoning renders 8 U.S.C. § 1226(a) superfluous. *Id.* at *2. This is why another Judge in the same District distinguished *Pena* from its case. *See Aguriano Romero v. Hyde*, DN 32, No. 25-11631-BEM, at *2 n.1 (D. Mass.

Aug. 19, 2025) ("The focus of the [*Pena*] case was on a different issue, the effect of an approved I-130 petition. [] From the limited facts presented, it is unclear whether the *Pena* petitioner was similarly situated to the petitioners in the other cited cases."). Based on the investigation of the *Pena* case, Petitioner discovered that the petitioner in that case did not present any factual or legal arguments as to why he was detained under 8 U.S.C. § 1226(a). *See* Exhibit A (Pleadings of *Pena*). Instead, the only argument the petitioner presented was the fact that the approved Form I-130, Petition for Alien Relatives, from his U.S. citizen should be sufficient for the habeas court to release him under the Due Process Clause. When the government responded to the habeas petition and argued that the petitioner was detained under 8 U.S.C. § 1225(b), the petitioner did not have a chance to respond to this argument. In the absence of the petitioner's response, the court issued the opinion in *Pena*.[3] Thus, at best, the *Pena* Court did not have sufficient opportunities to consider all the arguments presented in this case.

In sum, the basic principles of statutory construction and long-standing agency practice support the conclusion that Petitioner is detained under 8 U.S.C. § 1226(a). This Court should reject Respondents' contrary arguments.

CONCLUSION

For the reasons stated above, this Court should deny Respondents' motion to dismiss and grant Petitioner's habeas corpus petition.

[3] Based on information and belief, Petitioner was going to respond to the government's argument that he was detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), in his reply. However, the habeas order was issued prior to the filing of the reply. On August 4, 2025, 7 days after the habeas denial, an IJ at the Chelmsford Immigration Court found jurisdiction over the bond hearing and granted bond based on the arguments that the petitioner was going to present in his reply in the habeas case. *See* Exhibit A. Respondents waived the BIA appeal of the IJ's bond decision.

Date: August 26, 2025

Jose Alves da Silva,

By and through her attorneys,

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