IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LORENZO C.P., **Petitioner,**	§	
vs.	§	
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; *et al.* **Respondents.**	§	**Civil Action No. 1:25-cv-181**

REPLY TO RESPONSE TO PETITIONER'S SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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1. Petitioner Lorenzo C.P. challenges the extent of Respondents' authority to detain him without bond under the Immigration and Nationality Act ("INA") and the Fifth Amendment. ECF Dkt. 18, at ¶¶18-53. He seeks release from unlawful detention. *Id.*, at 14 ¶C.

2. Petitioner's detention is governed by 8 U.S.C. § 1226(a), which provides for bond proceedings. Weeks ago, Respondents abruptly broke with long-standing agency practice and now claim that Petitioner, who has resided in the United States for decades without being legally admitted, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Id.*, at ¶¶26-28. Nearly two dozen district courts have rejected Respondents' novel interpretation.[1]

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[1] *See, e.g.*, *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Salcedo Aceros v. Kaiser, et al.*, No. 25-cv-06924, 2025 WL 2637503, at *9 (Sept. 12, 2025) ("The Government has not pointed to a single district court that has agreed with its construction of 1225(b)(2)."); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Col. Sept. 16, 2025).

3. Respondents do not identify a single district court that agrees with their new construction of 8 U.S.C. § 1225(b)(2). *See generally* ECF Dkt. 20. Instead, they argue that the INA strips this Court of jurisdiction to consider Petitioner's claims, ECF Dkt. 20, at 6-8, and highlight recent support for their position from the Board of Immigration Appeals ("BIA"). *Id.*, at 4-6.

4. Below, Petitioner replies demonstrating: (1) that the INA does not bar judicial review because Petitioner challenges the extent of Respondents' authority to detain him without bond, not a discretionary act, a final order of removal, or the discrete prosecutorial decisions protected by the INA; (2) that the BIA's recent decision in *Matter of Yajure Hurtado* is not binding on this Court or entitled to deference; (3) that Respondent's continued detention of Petitioner is *ultra vires* of 8 U.S.C. § 1226(a); and (4) Respondent's continued detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates Due Process.

5. Petitioner respectfully requests that the Court deny Respondent's motion to dismiss, ECF Dkt. 20, grant Mr. Cardenas's petition for writ of habeas corpus, ECF Dkt. 18, and order Respondents to release Petitioner from detention.

BACKGROUND AND PROCEDURAL HISTORY

6. Petitioner entered the United States without inspection and has resided in the Rio Grande Valley area of Texas since approximately 1998. ECF Dkt. 18, at ¶¶11, 35.

7. On July 8, 2025, the U.S. Department of Homeland Security ("DHS"), "in coordination with [the U.S. Department of Justice ("DOJ")]," which governs immigration courts, abruptly departed from the Government's long-standing practice of detaining non-citizens like Petitioner under 8 U.S.C. § 1226(a), which provides for bond hearings, and instead construe 8 U.S.C. § 1225(b)(2), to require detention for Petitioner. ECF Dkt. 18, at ¶27.[2]

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[2] *See* Immigration and Customs Enforcement, "Interim Guidance Regarding Detention Authority for Applicants for Admission," July 8, 2025, *available at*: https://www.aila.org/ice-memo-

8. August 2, 2025, Mr. Cardenas was arrested at his worksite by immigration officials. ECF Dkt. 18, at ¶36. A Notice to Appear ("NTA") initiating formal removal proceedings under 8 U.S.C. § 1229a was filed with the Immigration Court. *Id.*, at ¶37; Exh. 1 (NTA).[3] The NTA originally set out one charge of inadmissibility, that Petitioner entered the United States without inspection under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*[4]

9. Consistent with 8 U.S.C. § 1226(a), Petitioner requested that the Immigration Judge ("IJ") make an individualized determination of whether he may be released on bond during the pendency of his removal proceedings. ECF Dkt. 18, at ¶38.

10. On August 14, 2025, the IJ found jurisdiction for a bond determination and ordered Petitioner to be released from custody upon posting of a bond in the amount of $4,000.00. *See Id.*, at ¶39; Exh. 2 (Bond Order). DHS filed a "Notice of Intent to Appeal Redetermination" in Petitioner's case, invoking an automatic stay of the IJ's bond decision. ECF Dkt. 18, at ¶40; Exh. 3 (Notice of Intent to Appeal).

11. On August 19, 2025, Petitioner filed his Original Petition for Writ of Habeas Corpus. ECF Dkt. 1. On August 20, 2025, Petitioner filed his first amended petition. ECF Dkt. 5.

12. On August 23, 2025, Petitioner filed an Application for Temporary Restraining Order and Preliminary Injunction seeking to enjoin Respondents' enforcement of federal regulations that

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interim-guidance-regarding-detention-authority-for-applications-for-admission (accessed Sept. 16, 2025).

[3] The Court can consider documents referenced in pleadings. FED. R. CIV. P. 10(c). Petitioner's Second Amended Petition for Writ of Habeas Corpus referenced earlier docket entries. *See, e.g.*, ECF Dkt. 18, at ¶37 (referring to ECF Dkt. 8-5). Petitioner provides these documents as exhibits for the Court's and parties' convenience.

[4] DHS has since added a charge of inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I) alleging that Petitioner lacks valid entry documents, but this does not affect the analysis of Petitioner's claims.

automatically stayed the IJ's bond determination. ECF Dkt. 8.

13. On or about August 24, 2025, Respondents transferred Petitioner from the Port Isabel Processing Center in Los Fresnos, Texas to the Rio Grande Processing Center ("RGPC") in Laredo, Texas. ECF Dkt. 9; ECF Dkt. 18, at ¶¶6, 11. Petitioner sought and was granted leave to file a Second Amended Petition for Writ of Habeas Corpus to add Norbal Vasquez, Warden of RGPC, as a Respondent. ECF Dkt. 9; ECF Dkt. 17.

14. On August 26, 2025, the Court granted, in part, and denied, in part, Petitioner's application for a temporary restraining order, enjoining enforcement of the challenged regulations. ECF Dkt. 11.

15. On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which interprets 8 U.S.C. § 1225(b)(2) to provide that IJ's lack authority to grant bonds to non-citizens who are present in the United States without admission. *See* ECF Dkt. 20-2. On September 9, 2025, the IJ who originally set Petitioner's $4,000 bond found, according to this new BIA precedent, that he lacked jurisdiction and denied Petitioner's request for a bond decision. ECF Dkt. 20-1.

16. The Court determined that the IJ's September 9, 2025, order mooted Petitioner's request for temporary injunctive relief against the challenged automatic stay regulations. ECF Dkt. 16. The Court ordered Respondents to respond to Petitioner's habeas petition thereby mooting the pending Motion for Order to Show Cause. *Id.*; ECF Dkt. 2.

17. Respondents filed their response on September 15, 2025. ECF Dkt. 20. Petitioner replies.

ARGUMENT AND AUTHORITIES

I. Standard of Review

18. Respondents' response raises both jurisdictional issues, ECF Dkt. 20, at 6-8 (arguing that the INA bars review), and merits issues. ECF Dkt. 20, at 4-6 (arguing that "Petitioner is subject

to mandatory detention under 8 U.S.C. § 1225(b)(2)"). The Court should consider this Respondents' complete return under 28 U.S.C. § 2243 despite its label as a Rule 12(b)(1) motion.

19. When a Rule 12(b)(1) motion is filed with merits arguments, courts should consider the "jurisdictional attack before addressing any attack on the merits." *Ramming v. U.S.*, 281 F.3d 158, 161 (5th Cir. 2001). Petitioner must demonstrate subject matter jurisdiction. *Id.* All factual allegations are taken as true. *Saraw Partnership v. United States*, 67 F.3d 357, 569 (5th Cir. 1995). Courts can consider "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Enable Mississippi River Transmission, L.L.C. v. Nadel & Gussman, L.L.C.*, 844 F.3d 495, 497 (5th Cir. 2016).

II. No provision of the INA bars judicial review and exhaustion is not required.

a. Section 1226(e) does not bar judicial review.

20. Respondents argue that 8 U.S.C. § 1226(e) bars judicial review. ECF Dkt. 20, at 6-7. They mischaracterize Petitioner's claims as challenging a discretionary decision by one agency, DHS, to "refus[e] to accept the bond." ECF Dkt. 20, at 6. Petitioner's claims challenge the extent of all Respondents' authority under the INA to detain him without bond under 8 U.S.C. § 1225(b)(2). *See* ECF Dkt. 18, at ¶¶18-27 (arguing that § 1225(b)(2) is inapplicable to Petitioner, and that he is detained under § 1226(a)); ¶28 (describing DHS's "coordination with DOJ" and the BIA's recent adoption of the erroneous interpretation of 8 U.S.C. §1225(b)(2)); ¶47 ("The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention, is *ultra vires* and violates the INA."); ¶52 ("prolonging [Petitioner's] detention pursuant to an inapplicable statute, 8 U.S.C. 1225(b)(2), violates procedural and substantive due process").

21. 8 U.S.C. § 1226(e) does not deprive the Court of jurisdiction over Petitioner's claims. Preclusion of review of constitutional claims requires "clear" intent. *Webster v. Doe*, 486 U.S.

592, 603 (1988). Congress must be "particularly clear" when barring review of habeas petitions. *Demore v. Kim*, 538 U.S. 510, 517 (2003); *see also Panetti v. Quarterman*, 551 U.S. 930, 946 (2007) (cautioning against "clos[ing] our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent.").

22. Habeas challenges to "the extent of the Government's detention authority under the 'statutory framework' as a whole" and "constitutionality of the entire statutory scheme under the Fifth Amendment" are not subject to jurisdiction stripping under 8 U.S.C. § 1226(e). *Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018); *Demore v. Kim*, 538 U.S. at 517; *see also Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1226(e) deals with "operational decisions, rather than to the legislation establishing the framework for those decisions"). Petitioner's challenges fall outside the scope of § 1226(e). *Najera v. United States*, 926 F.3d 140, 144 (5th Cir. 2019) ("Because the extent of the Government's detention authority is not a matter of 'discretionary judgment,' 'action,' or 'decision,' respondents' challenge to the 'statutory framework that permits [their] detention without bail,' falls outside the scope of 1226(e)."); *Oyelude v. Chertoff*, 125 F.App'x 543, 546 (5th Cir. 2005) (1226(e) "does not deprive us of all authority to review statutory and constitutional challenges.")

23. Respondents did not merely "delay [their] compliance" with a bond determination as a matter of discretion. ECF Dkt. 20, at 6 ¶11.[5] They have reversed long-standing agency practice,

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[5] Respondents also have not "revoke[d] a bond or parole" within the meaning of 8 U.S.C. § 1226(b). This applies to non-citizens who have been released from custody upon a determination by specific officials, not including IJs, that there is a change in circumstances relevant to the original bond decision, or that the individual "is now a danger to the community, or a flight risk." *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1196 (N.D. Cal. 2017); *see also* 8 C.F.R. §§ 236.1(c)(9); 1236(c)(9) (1226(b) applies when an individual "has been released" and stating that "release may be revoked" by specific officials). Respondents claim Petitioner was never eligible for a bond in the first place, never released Petitioner, and the recent IJ order finds a lack of jurisdiction for any bond determination, not that bond should be revoked. ECF Dkt. 20-1.

ECF Dkt. 18, at ¶¶26-27, and claim that Petitioner is legally ineligible for bond and subject to mandatory detention under §1225(b)(2). ECF Dkt. 20, at 4-6; Exh. 2 (IJ Bond order); Exh. 3 (Notice of Intent to Appeal). Unlike in the case cited by Respondents, Petitioner challenges the legislation that Respondents purport to use to detain him. *Cf. Al-Siddiqi v. Nehls*, 521 F.Supp.2d 870, 875 (E.D. Wis. 2007) ("Here, Al-Sidiqqi is not challenging the legislation that authorized his detention without bail.").

24. Furthermore, Respondents recognize that 8 U.SC. § 1226(e) "does not strip courts of jurisdiction over constitutional questions." ECF Dkt. 20, at 6 (citing *Demore v. Kim*, 538 U.S. at 517)). This Court rightfully permits constitutional challenges to Respondents' authority to detain without bond. *See, e.g., Diallo v. Pitts*, No. 1:19-cv-216, 2020 WL 714274, at *6 (S.D. Tex. Jan. 15, 2020); *da Silva v. Nielsen*, No. 5:18-MC-00932, 2019 WL 13218461, at *4-*5 (S.D. Tex. Mar 29, 2019). The Court should find that Petitioner's claims are unaffected by § 1226(e).

b. No provision of 8 U.S.C. § 1252 deprives the Court of jurisdiction.

25. Next, Respondents appear to argue that 8 U.S.C. § 1252 strips the Court of jurisdiction. ECF Dkt. 20, at 7-8. It is unclear which specific provisions of 8 U.S.C. § 1252 Respondents claim apply. *See, e.g.* ECF Dkt. 20, at 7 ¶14 (citing §1252(B)(ii)),[6] at 8 ¶16 (discussing "decision[s] or action[s] to commence proceedings, adjudicate cases or execute removal orders," but not citing §1252(g)). Respondents would expressly identify a provision setting out the required "particularly clear" congressional intent, if it existed. *Demore*, 538 U.S. at 517 (2003). But no such provision exists.

26. To the extent Respondents argue that § 1252(a)(2)(B)(ii) applies, *see* ECF Dkt. 20, at 7 ¶14, this provision only applies to actions expressly made discretionary by statute. *Kucana v.*

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[6] Petitioner assumes the cite in Respondents' brief and in *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917 (W.D. Tex. 2018) to 8 U.S.C. § 1252(B)(ii) refers to 8 U.S.C. § 1252(a)(2)(B)(ii).

Holder, 558 U.S. 233, 242-43 (2010); *Aviles-Tavera v. Garland*, 22 F.4th 478, 485 (5th Cir. 2022) (statute must "expressly and specifically vest discretion in the Attorney General"). Even if it were true (it is not) that Petitioner challenges DHS's "refusal to accept the bond," ECF Dkt. 20, at 6, Respondents cite no statute that expressly gives DHS discretion to do this. *Id.* Petitioner challenges the extent of Respondent's authority to detain him without bond which is not a matter made discretionary by a statute.[7] Section 1252(a)(2)(B)(ii) does not bar review.

27. Next, Respondents argue that Petitioner is "challenging the mandatory detention charge of removability as part of the substantive portion of his removal proceedings" and therefore that the instant habeas petition is "not independent of challenges to Petitioner's ongoing removal proceeding." ECF Dkt. 20, at 7-8 ¶15. Again, it is unclear what provision of 8 U.S.C. § 1252 Respondents claim apply, if any. As alleged, DHS charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). ECF Dkt. 18, at 11 ¶37.[8] Petitioner does not challenge DHS's charges in this lawsuit. To the extent Respondents argue Petitioner's claims are subject to 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9) without citing these provisions, the Supreme Court rejected this expansive reading because it would render habeas claims "effectively unreviewable." *Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018); *see also Nielsen v. Preap*, 586 U.S. 392, 402 (2019). By its title, 8 U.S.C. § 1252 concerns "[j]udicial review of orders of removal." No final order of removal has been entered and Petitioner is not challenging any aspect of such an order, so 8

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[7] Respondents also do not identify an applicable statute that expressly provides that the decision to detain Petitioner without bond is *discretionary*. They argue that Petitioner's detention is *mandatory* under 8 U.S.C. § 1225(b)(2). ECF Dkt. 20, at 4 ¶8. This provision does not speak to Respondents' discretionary authority at all and, in any event, is the basis for Petitioner's challenge to the extent of Respondents' detention authority, highlighting the need for judicial review of the merits.

[8] *But see supra*, at n.4.

U.S.C. §§ 1252(a)(5) and 1252(b)(9) do not apply.[9] *See Duron v. Johnson*, 898 F.3d 644, 647 (5th Cir. 2018) (§1252(b)(9) "does not…sweep within its scope claims with only a remote or attenuated connection to the removal of an alien" or preclude review of "claims that cannot be raised efficaciously" in removal proceedings); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (1252(b)(9) does not "foreclose all review of agency actions.").

28. Finally, Respondents refer to "decision[s] or action[s] to commence proceedings, adjudicate cases, or execute removal orders," without citing 8 U.S.C. § 1252(g). ECF Dkt. 20, at 8 ¶16. That provision is "much narrower" than Respondents suggest because it "applies only to three discrete actions" set out in the statute. *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any of these actions. Proceedings commence when DHS "files the appropriate charging document with the immigration court." *DeLeon-Holguin v. Ashcroft*, 253 F.3d 811, 815 (5th Cir. 2001). Petitioner does not challenge the filing of an NTA. Nor does Petitioner challenge the maintenance of removal proceedings against him. *Maria S v. Garza*, No. 1:13-CV-108, 2015 WL 4394745, at *3 (S.D. Tex. Jul. 15, 2015) ("Adjudicating cases refers to the actions taken to maintain removal proceedings against an alien…."). There is no final removal order and Petitioner does not challenge execution of such an order.

29. "Habeas challenges to immigrant detention are among the claims that lie outside of Section 1252(g)'s scope." *Alam v. Nielsen*, 312 F.Supp.3d 574, 580 (S.D. Tex. 2018). No provision in the INA strips the Court of jurisdiction to consider Petitioner's claims. *See, e.g.,*

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[9] Respondents cite *Carlson v. Landon*, 342 U.S. 524, 533 (1952) for the proposition that "detention is necessarily part of" deportation procedures. ECF Dkt. 20, at 4. This case is inapposite because it concerns the Attorney General's discretion to deny bail under outdated immigration statutes. 342 U.S. at 533-34. It does not support an argument that claims challenging detention should be funneled through 8 U.S.C. § 1252(b)(9).

Leal-Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *5-*8 (D. Md. Aug. 24, 2025).

c. Prudential exhaustion should be excused.

30. Respondents imply that Petitioner has not exhausted administrative remedies. ECF Dkt. 20, at 8 ¶16 ("*provided that administrative remedies have been exhausted*"). There are two forms of exhaustion: statutory and prudential. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required. But where Congress has not clearly required exhaustion, sound judicial discretion governs."). Respondents cite no statute that requires exhaustion, so the "prudential doctrine of exhaustion controls, which is not jurisdictional in nature." *MCR Oil Tools, L.L.C. v. United States Department of Transportation*, 110 F.4th 677, 690 (5th Cir. 2024).

31. Exhaustion is not required where: (1) the administrative remedy is inadequate; (2) a constitutional challenge would remain after exhaustion; (3) the adequacy of the administrative remedy is coextensive with the merits of the claim; (4) exhaustion would be futile because the agency will clearly reject the claim; and (5) irreparable injury will result absent immediate judicial review. *See, e.g., Kovac v. Wray*, 363 F.Supp.3d 721, 746 (N.D. Tex. 2019) (citing *Dawson Farms, LLC v. Farm Serv. Agency*, 504 F.3d 592, 606 (5th Cir. 2007)).

32. Several reasons to excuse exhaustion exist here. Petitioner sought a bond redetermination, succeeded, and yet remains detained in part because of Respondents' invocation of unlawful automatic stay provisions. No further factual record would develop with additional appeals, especially considering the pure legal question Petitioner seeks to resolve. *See, e.g. Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1251 (W.D. Wash. 2025). Respondents do not claim that the Court would benefit from additional record development. ECF Dkt. 20, at 5-6. Moreover, appeal of the IJ's September 9, 2025, bond decision would be futile considering DHS's new

interpretation 8 U.S.C. §§ 1225(b)(2) and 1226(a) was developed "in collaboration with DOJ". ECF Dkt. 18, at ¶¶26-27. The BIA has upheld this abrupt departure from long-standing agency practice in recent weeks. *See* ECF Dkt. 18, at ¶28; *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner's claims challenge Respondents' authority to detain him without bond as *ultra vires* and violative of Due Process. ECF Dkt. 18, at ¶¶45-53. At the very least, Petitioner's constitutional claim would remain and require judicial intervention even after exhaustion. *Kovac*, 363 F.Supp.3d at 746. Moreover, Petitioner would suffer irreparable harm if habeas relief is unavailable until after exhaustion. *See Gomez v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. Jul. 7, 2025) (noting more than 200-day average processing time for BIA consideration of bond appeals). For these reasons, prudential exhaustion should not be required.

III. *Matter of Yajure Hurtado* is not binding and is not entitled to deference.

33. Respondents argue that *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is "binding precedent on immigration judges." ECF Dkt. 20, at 6 ¶10. They do not argue that it is binding on this Court or even entitled to deference. *See generally* ECF Dkt. 20. It is not. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) ("agencies have no special competence in resolving statutory ambiguities. Courts do.").

34. As set out in detail below, *see infra* at Sec.IV., the plain language, statutory structure, and legislative history of 8 U.S.C. §§ 1225 and 1226 make clear that Petitioner's detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2).

35. Petitioner clearly alleges Respondents' recent departure from decades of agency practice interpreting 8 U.S.C. § 1226(a). ECF Dkt. 18, at 7-8 ¶¶26-28. Respondents' sudden change from earlier pronouncements and long-standing agency practice bears on whether the Court should defer to the BIA. *Loper Bright Enters.*, 603 U.S. at 386 (weight of agency interpretation is

greater "when an Executive Branch interpretation was issued roughly contemporaneously and remained consistent over time"); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (weight of agency judgment depends upon "its consistency with earlier and later pronouncements"). Earlier this year, the BIA determined that an individual "present in the United States without inspection," ECF Dkt. 20-2, at 11, who was arrested and placed in removal proceedings under 8 U.S.C. § 1229a was detained pursuant to 8 U.S.C. § 1226(a). *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025). This is consistent with DHS's "long-standing interpretation" that people who enter the United States without inspection are detained under 8 U.S.C. § 1226(a), even when they are "shortly thereafter apprehended." Tr. of Oral Argument at 44:23–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)).[10] *Matter of Yajure Hurtado* contradicts long-standing agency practice.

36. *Matter of Yajure Hurtado* also contradicts agency regulations issued contemporaneously with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). "[A]ny *arriving alien* who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]." 8 C.F.R. § 235.3(c)(1). Arriving aliens are "applicant[s] for admission coming or attempting to come into the United States at a port-of-entry…." 8 C.F.R. § 1.2. These regulations support the application of 8 U.S.C. § 1225(b)(2) to non-citizens "seeking admission" and entry into the United States, but not to Petitioner who has resided in the United States for

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[10] Full transcript *available at:* https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/21-954_m6hn.pdf (accessed Sept. 17, 2025.

more than two decades.[11] Agency guidance contemporaneous with IIRIRA clarifies that "[d]espite being applicants for admission [within the meaning of 8 U.S.C. § 1225(a)] aliens who are present without having been admitted or paroled…will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312-01, 10323 (Mar. 6, 1997).[12] Because *Matter of Yajure Hurtado* conflicts with agency guidance issued contemporaneous with IIRIRA, it is not entitled to deference. *Loper Bright Enters.*, 603 U.S. at 370.

37. The "validity of [the agency's] reasoning" also can lend persuasive authority, but *Matter of Yajure Hurtado* directly conflicts with nearly two dozen recent district court decisions[13] and recent decisions from the U.S. Supreme Court. For example, in *Jennings v. Rodriguez* the Court described 8 U.S.C. § 1226(a) as applying to non-citizens who are "already in the country," 583 U.S. at 281, and 8 U.S.C. § 1225(b) as applying "primarily to aliens seeking entry into the United States." *Id.*, at 297. Even Respondents acknowledge recent caselaw confirming § 1226(a)'s application to people who reside in the United States without being legally admitted. ECF Dkt. 20, at 5 ¶8 (citing *Fla. v. United States*, 660 F.Supp.3d 1239, 1275 (N.D. Fla. 2023) ("§ 1226(a) applies to certain aliens *already in the country*") (emphasis in original)). The BIA's recent decision lacks persuasive authority and is not entitled to deference.

IV. Petitioner is detained under 8 U.S.C. § 1226(a). Continuing his detention without

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[11] Respondents' NTA does not designate Petitioner as an "arriving alien" and instead alleges he is "an alien present in the United States who has not been admitted or paroled." Exh. 1.

[12] *Available at*: https://www.govinfo.gov/content/pkg/FR-1997-03-06/pdf/97-5250.pdf (accessed Sept. 16, 2025).

[13] *See supra* n.1.

access to bond proceedings is *ultra vires.*

38. The plain text of 8 U.S.C. § 1226(a) indicates that it governs Petitioner's detention. It is the INA's "default" detention authority, *Jennings*, 583 U.S. at 288, and it applies to non-citizens who are detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).[14] Section 1226(a) applies to people who are inadmissible and people who are deportable[15] and provides for the general right to seek release on bond, unless the detained individual falls within discrete categories of non-citizens who are subject to mandatory detention under 8 U.S.C. §§ 1226(c).

39. The discrete categories of individuals subject to mandatory detention under 8 U.S.C. § 1226(c) includes some non-citizens who are inadmissible, not just people who are deportable. *See* 8 U.S.C. §§ 1226(c)(1)(A), 1226(c)(1)(D), and 1226(c)(1)(E).[16]

40. Respondents do not claim that Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c). Instead, they claim he is subject to mandatory detention under 8 U.S.C. §

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[14] Section 1226(a)'s reference to a "warrant issued by the Attorney General," permits, but does not require, issuance of a warrant for detention to be governed by 8 U.S.C. § 1226(a). The INA provides for exceptions to the warrant requirement, *see* 8 U.S.C. § 1357(a)(2), and non-citizens who reside in the United States without being legally admitted and are subject to warrantless arrest may still be detained pending a final order of removal under 8 U.S.C. § 1226(a) if they are not otherwise subject to mandatory detention under 8 U.S.C. § 1226(c). *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025) ("permitting – but not requiring – the Attorney General to issue warrants").

[15] Grounds of deportability are found in 8 U.S.C. § 1227 and generally apply to people like lawful permanent residents who have been legally admitted to the United States, while grounds of inadmissibility are found in 8 U.S.C. § 1182 and apply to people, like Petitioner, who have not yet been legally admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

[16] Earlier this year Congress confirmed 8 U.S.C. § 1226's applicability to inadmissible non-citizens like Petitioner by amending 8 U.S.C. § 1226(c) to make inadmissible non-citizens subject to mandatory detention if they meet the criteria set out in 8 U.S.C. § 1226(c)(1)(E). *See* Laken Rilery Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), *available at*: https://www.congress.gov/119/plaws/publ1/PLAW-119publ1.pdf (accessed Sept. 16, 2025).

1225(b)(2).[17] ECF Dkt. 20, at 4-6. Their argument is consistent with DHS's and DOJ's recent reinterpretation of these provisions, which provides "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227]," except for people who must be detained under 8 U.S.C. § 1226(c). ECF Dkt. 18, at 8 ¶27.[18]

41. Respondents' argument that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) misreads the statute. First, the fact that 8 U.S.C. § 1226(c) excepts certain inadmissible non-citizens from §1226's bond authority proves that 8 U.S.C. § 1226(a) applies to inadmissible non-citizens, like Petitioner. *See Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1256-57 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Courts must interpret statutes to "give effect, if possible, to every clause and word of a statute." *Parker v. Drilling Management Services, Ltd. v. Newton*, 587 U.S. 601, 611 (2019); *Ortega v. Housing Authority of City of Brownsville*, 572 F.Supp.2d 829, 839 (S.D. Tex. 2008) (courts disfavor interpretations of statutes that render language superfluous). Detaining all inadmissible non-citizens pursuant to 8 U.S.C. § 1225(b)(2) would render 8 U.S.C.

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[17] Respondents omit crucial language when they write that the "Supreme Court has recognized that 1225(b)(2) 'applies to all applicants for admissible not covered by § 1225(b)(1). [*sic*]" ECF Dkt. 20, at 4 ¶8. Respondents do not provide a cite, but Petitioner believes this is from *Jennings v. Rodriguez*, 583 U.S. 281, 285 (2018). The full quote provides that § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (*with specific exceptions not relevant here*)." *Id.* (emphasis added). *Jennings* dealt specifically with mandatory detention authority for people arriving "at the Nation's borders and ports of entry." *Id.* The exceptions referred to by the Supreme Court include people like Petitioner who meet the definition of an applicant for admission, *see* 8 U.S.C. § 1225(a), but who are "already in the country" and therefore subject to detention under 8 U.S.C. § 1226(a). *Jennings*, 583 U.S. at 289. People "seeking admission into the country" are detained under 8 U.S.C. § 1225(b)(2). *Id.*

[18] *See supra*, at n.2.

§ 1226(c)'s explicit references to inadmissible non-citizens meaningless. There would be no reason for Congress to except inadmissible aliens from 8 U.S.C. § 1226(a)'s bond provisions because they would already be subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See, e.g., Aguilar Maldonado v. Olson, et al.,* No. 25-cv-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) (describing the presumption against superfluity when interpreting Section 1226(c) and 1225(b)(2)).

42. Congress recently amended 8 U.S.C. § 1226(c) when it passed the Laken Riley Act. *See supra*, at n.16. When Congress amends a statute, courts "presume it intends its amendment to have real and substantial effect." *Securities and Exchange Commission v. Hallam*, 42 F.4th 316, 337 (5th Cir. 2022). Respondents' interpretation of 8 U.S.C. § 1225(b)(2) as applicable to all inadmissible non-citizens would nullify Congress's recent amendments to 8 U.S.C. § 1226(c). Moreover, new statutory provisions enacted "against a backdrop of longstanding administrative construction" should be "understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S.Ct. 1232, 1242 (2025) (internal citations omitted). Petitioner, who is not subject to mandatory detention under the Laken Riley Act amendments, should be understood to be eligible for bond consistent with agency guidance issued contemporaneously with IIRIRA. *See* 62 FR 10312-01, 10323 (Mar. 6, 1997).

43. The structure of the statutory scheme also supports 8 U.S.C. § 1226(a)'s application to Petitioner. *See Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (considering statutory structure when interpreting provision of the INA); *King v. Burwell*, 576 U.S. 473, 492 (2015) (provision that "may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme…."). By its title, 8 U.S.C. § 1225 concerns "expedited removal of inadmissible arriving aliens." Section 1225(b)(1) encompasses only the "inspection8 U.S.C. § 1225(b)" of certain

"arriving aliens" and other non-citizens designated by the Attorney General pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii) who recently entered the United States. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2)(A) contains a similar limitation to non-citizens who are "seeking admission" at the time of inspection. (2)(A).[19] The use of the present tense necessarily implies some action that must be occurring at the time of inspection. *See Carr v. U.S.*, 560 U.S. 438, 449 (2010) (use of present-tense verbs indicates prospective orientation); *see, e.g., Martinez v. Hyde*, --- F.Supp.3d ---, 2025 WL 2084238, at *6 (D. Mass. Jul. 24, 2025) ("seeking admission" implies some sort of present-tense action). Respondents' interpretation of § 1225(b)(2) as applying to all inadmissible non-citizens, regardless of whether they are "seeking admission" at the time of inspection, again renders superfluous the words chosen by Congress.

44. IIRIRA's legislative history also supports Petitioner's construction of 8 U.S.C. § 1226(a). Prior to IIRIRA, people who resided in the United States without being legally admitted were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (generally permitting release on bond of "any alien" who is not convicted of an aggravated felony and subject to other statutory criteria). When Congress passed IIRIRA, it explained that the current 8 U.S.C. 1226(a) "restates [8 U.S.C. § 1252(a)(1) (1994)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No.

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[19] The BIA claims applying 8 U.S.C. § 1225(b)(2) to a subset of "applicant[s] for admission," 8 U.S.C. 1225(a)(1), who are "seeking admission" somehow leaves non-citizens in Petitioner's position without any kind of status under the INA. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 221 (BIA 2025). But it does not follow that Petitioner would lack all legal status if he is not also considered as "seeking admission." He would simply be an applicant for admission, alleged to be inadmissible, and subject to detention under 8 U.S.C. § 1226(a). *See, e.g., Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503, at *11 (N.D. Cal. Sept. 12, 2025).

104-469, pt. 1, at 229.[20]

45. By detaining Petitioner without bond, purportedly under the authority of 8 U.S.C. § 1225(b)(2), Respondents "go[] beyond what Congress has permitted [them] to do" and act *ultra vires*. *Ayala Chapa v. Bondi*, 132 F.4th 796, 798-99 (5th Cir. 2025) (citing *City of Arlington v. FCC*, 569 U.S. 290, 297-98 (2013)). The plain text, statutory structure, and legislative history all make clear that 8 U.S.C. § 1226(a) governs Petitioner's detention because he has resided in the United States for years without being legally admitted and was not "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A) at the time of inspection.

V. Respondents' detention of Petitioner without bond violates due process.

46. "Freedom from imprisonment…lies at the heart of the liberty that [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690 (2001). Due Process requires "adequate procedural protections" to ensure that the Government's asserted justification for detention "outweighs the individual's constitutionally protected interest in avoid physical restraint." *Id.*

47. Courts determine whether civil detention violates due process by applying the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See, e.g., Lopez Benitez*, 2025 WL

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[20] In *Matter of Yajure Hurtado* the BIA claims this history "does not undermine or alter earlier statements…that aliens present in the United States without inspection will be considered 'seeking admission.'" 29 I&N Dec. 216, at 224-25 (citing H.R. Rep. No. 104-469, pt. 1, at 225). But this is not what the legislative history says. The portion of the legislative history cited by the BIA discusses "alien[s]…paroled under [8 U.S.C. § 1182(d)(5)]," who are "seeking admission," and lawful permanent residents returning to the United States, who are not. H.R. Rep. No. 104-469, pt. 1, at 225. Petitioner is neither and should not be considered "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). The BIA's broader statement that Congress's intent was to "eliminate the prior statutory scheme that provided aliens who entered the United States without inspection more procedural and substantive rights than those who presented themselves to authorities for inspection" reveals nothing about the applicability of 8 U.S.C. § 1225(b)(2) to Petitioner. 29 I&N Dec. at 224-35. Congress addressed this situation by developing one removal procedure and providing that non-citizens "who enter illegally or who overstay the period of authorized admission will have a greater burden of proof…and will face tougher standards for most discretionary immigration benefits…." H.R. Rep. No. 104-469, pt. 1, at 12.

2371588, at *9-*13 (S.D.N.Y. Aug. 13, 2025); *Gashaj v. Garcia*, 234 F.Supp.2d 661, 670 (W.D. Tex. 2002). Courts weigh: (1) the private interest affected; (2) the risk of erroneous deprivation and value of additional procedural safeguards; and (3) the Government's interest, including the administrative burdens, that additional safeguards entail *See Mathews*, 424 U.S. 319, 335 (1976).

48. Petitioner's private interest is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas*, 533 U.S. at 693 (2001) ("[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Petitioner remains detained hours away from his family and home. He faces the prospect of detention for several more months as his removal case proceeds. Additional detention risks denying Petitioner's abiity to see his daughter in-person before she enlists in the military. Exh. 4 (Decl. of Cardenas).

49. The risk of erroneous deprivation is high in this case. The purpose of adversarial bond proceedings before a netural arbiter is to mitigate this risk. Petitioner is a 63-year-old man who has resided with his family in the Rio Grande Valley area of Texas for more than two decades. The IJ found that Petitioner was "not a danger and not a flight risk – or that any flight risk" could be mitigated by a $4,000 bond. ECF Dkt. 20-1. Civil detention must bear some rational relationship to its only legitimate purposes, to prevent flight and reduce danger to the community. *See Zadvydas*, 533 U.S. at 690-91. Petitioner seeks release or, alternatively, the basic procedures already available to him under governing federal law to mitigate this risk.[21]

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[21] Humanitarian parole procedures under 8 U.S.C. § 1182(d)(5) are inadequate to mitigate this risk because, as Respondents point out, DHS has "sole discretion" whether to grant parole. ECF Dkt. 20, at 5 ¶8. Where freedom from physical detention is at stake, greater procedural protections are required. *See, e.g., Ramirez v. Watkins*, 2010 WL 6269226, at *20 (Nov. 3, 2010) ("if an alien makes a showing via a habeas petition that continued detention is no longer

50. Respondents do not attempt to show any countervailing interest. *See generally* ECF Dkt. 20. They have a legitimate interest in ensuring the safety of the community and the ability to remove people who are subject to final removal orders. These interests are adequately protected by the IJ's August 14, 2025, bond order.

VI. The proper remedy.

51. Petitioner seeks an order requiring Respondents to release him outright or, alternatively, on conditions set out in the IJ's August 14, 2025, bond order. ECF Dkt. 18, at 14; Exh. 2. While some courts have ordered outright release, *see Rosado v. Figueroa*, 2025 WL 2337099, at *19; *Lopez Benitez v. Francis*, 2025 WL 2371588, at *15, others have ordered individualized bond hearings. *See, e.g., Kostak v. Trump*, 2025 WL 2472136, at *4; *Gomes v. Hyde*, 2025 WL 1869299, at *9; *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285, at *3. Should the Court determine the immediate release is inappropriate, no additional hearing is needed and Petitioner should be released on the conditions set out in the IJ's bond order. *See, e.g., Leal-Hernandez v. Noem*, 2025 WL 2430025, at *15.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court deny Respondents' motion seeking dismissal of his Second Amended Petition for Writ of Habeas Corpus, grant the petition, and order Respondents' to immediately release Petitioner or, alternatively, release Petitioner subject to the conditions set out in the IJ's August 14, 2025, bond order.

Dated: September 17, 2025.

Respectfully submitted

/s/ Carlos M. Garcia
Carlos M. Garcia

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reasonable in the absence of an individualized hearing, the alien must be afforded a hearing before the habeas court at which the Government bears the burden of justifying continued detention" based on flight risk and danger to the community).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel for Respondents on September 17, 2025, by filing the same with the Court electronic case filing system.

/s/ Peter McGraw
Peter McGraw