

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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REFUGIO RAMIREZ OVANDO,

Petitioner,

v.

JUAN BALTASAR, Warden of the Aurora
Contract Detention Facility owned and operated
by GEO Group, Inc.;

ROBERT GUADIAN, Field Office Director,
Denver Field Office, U.S. Immigration and
Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security;

TODD LYONS, Acting Director of Immigration
and Customs Enforcement (ICE);

PAM BONDI, Attorney General, U.S.
Department of Justice;

Respondents.

Case No. 25-cv-2597

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS**

PRELIMINARY STATEMENT

1. Refugio Ramirez Ovando (“Mr. Ramirez Ovando”) is a father of four U.S. citizen children and has lived in the United States for 20 years. He owns his home and has worked for the same employer for 18 years. He has never been arrested or convicted of a crime. His only arrest occurred May 19, 2025, when Immigration and Customs Enforcement (“ICE”) encountered him while looking for someone else. Nonetheless, ICE arrested and jailed him for being unlawfully present in the United States and placed him in removal proceedings.
2. Mr. Ramirez Ovando sought release from custody through a request for bond. The immigration judge (“IJ”) ruled that he was not eligible for bond, wrongly concluding that he was a noncitizen “seeking admission” to the U.S. and therefore ineligible for bond under 8 U.S.C. § 1225(b)(2). The IJ’s decision is a 180-degree reversal from the plain language of the immigration detention statutes, all principles of statutory construction, and decades of agency interpretation, and is unsupported by binding case precedent. The IJ also ruled that in the alternative Mr. Ramirez Ovando be released on \$5,000 bond if she had jurisdiction to do so as he does not present a danger to the community or a risk of flight.
3. 92 days later, ICE continues to unlawfully jail Mr. Ramirez Ovando without bond at the Aurora facility. He now seeks redress from this Court to remedy his unlawful deprivation of liberty.

PARTIES

4. ICE incarcerates Mr. Ramirez Ovando at Aurora facility in Aurora, Colorado. Mr. Ramirez Ovando has resided in Colorado for approximately 20 years along with his spouse and four U.S. citizen children, who are 17, 15, 12, and 8 years old.

5. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). She is responsible for the implementation and enforcement of the Immigration and Nationality Act (“INA”). She also oversees ICE, which is responsible for Mr. Ramirez Ovando’s detention. Respondent Noem has ultimate custodial authority over Mr. Ramirez Ovando and is sued in her official capacity.
6. Respondent Todd M. Lyons is the Acting Director of U.S. ICE and is sued in his official capacity. Respondent Lyons is responsible for Mr. Ramirez Ovando’s detention.
7. Respondent Robert Guadian is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Respondent Guadian is the immediate custodian of Mr. Ramirez Ovando and is responsible for Mr. Ramirez Ovando’s detention and removal.
8. Respondent Juan Baltasar is the Warden of the Aurora facility where ICE jails Mr. Ramirez Ovando. Respondent Baltasar is a legal custodian of Mr. Ramirez Ovando. He is sued in his official capacity.
9. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice (“DOJ”), of which the Executive Office for Immigration Review (“EOIR”) and the immigration court system it operates is a component agency. She is sued in her official capacity.

JURISDICTION AND VENUE

10. Defendants incarcerated Mr. Ramirez Ovando on May 19, 2025, 92 days ago in Aurora, Colorado. He is currently jailed in the district and is under direct control of Respondents and their agents.

11. This action arises under 28 U.S.C. § 2241; the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101-1538 and its implementing regulations; the Administrative Procedure Act, 5 U.S.C. §§ 500-596, 701-706; and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas* claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).
12. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States, and under 28 U.S.C. § 2241, the federal *habeas* statute.
13. The Court may grant relief pursuant to 28 U.S.C. § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201; the All Writs Act, 28 U.S.C. § 1651; FED R. CIV. P. 57, 65; and its inherent authority to grant equitable relief. *E.g.*, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).
14. Venue is proper under 28 U.S.C. §§ 1391(b)(2) and (e) because Defendants jail Mr. Ramirez Ovando within the jurisdiction of this Court in Aurora, Colorado, because Mr. Ramirez Ovando is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this District. 28 U.S.C. § 1391; *Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973) (laying out venue factors).

STATUTORY FRAMEWORK

15. Congress authorized civil detention of noncitizens in removal proceedings or facing removal from the U.S. for specific, non-punitive purposes. *Jennings*, 583 U.S. at 287–289; *Demore*, 538 U.S. at 515–16; *Zadvydas*, 533 U.S. at 690. Detention generally is

discretionary under 8 U.S.C. § 1226(a), or mandatory under §§ 1225(b), 1226(c), and 1231(a)(2).

16. Under § 1226(a) and its implementing regulations, a noncitizen may request a bond hearing at any time to contest whether they may be released on bond during the pendency of removal proceedings. 8 U.S.C. § 1226(a). Section 1226(a) of title 8 of the U.S. Code provides, in relevant part:

(a) Arrest, Detention, and Release:

On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General –

(1) may continue to detain the arrested [noncitizen]; and

(2) may release the [noncitizen] on –

(A) bond of at least \$1,500 with security approved by, and containing conditions proscribed by, the Attorney General; or

(B) conditional parole

17. Conversely, § 1226(c) requires DHS to detain noncitizens during removal proceedings in limited circumstances related to specific criminal legal contacts. Most relevant here, Congress recently amended the statute in 2025 to require mandatory detention of noncitizens who entered the country unlawfully *and* are charged with, arrested for, convicted of, or admit to committing several specifically enumerated crimes. 8 U.S.C. § 1226(c)(1)(E). Specifically, the statute requires the detention of a noncitizen who:

(E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and

(ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

18. Section 1225 also requires detention in limited circumstances. It provides that a noncitizen “present in the United States who has not been admitted or who arrives in the United States

. . . shall be deemed for purposes of this chapter an applicant for admission” 8 U.S.C. § 1225(a). These applicants “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. As explained by the Court, § 1225(b)(1) applies to arriving noncitizens and certain other noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These noncitizens are generally subject to expedited removal “without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum . . . or a fear of persecution.” *Id.*; § 1225(b)(1)(A)(i). Those who claim asylum or fear of persecution are “detained for further consideration of the application for asylum.” *Id.*; § 1225(b)(1)(B)(ii). Those who do not have a fear and fail to make a claim of persecution are detained until removed. *Id.* §§ 1225(b)(1)(A)(i); (B)(iii)(IV).

19. “Section 1225(b)(2) is broader” and “applies to all applicants for admission not covered by § 1225(b)(2)” *Jennings*, 583 U.S. at 287, including noncitizens “*seeking admission into the country*”, *id.* at 289 (emphasis added).
20. The Supreme Court summarizes the interplay between §§ 1226 and 1225 as follows: “In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking admission into the country* under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings*, 583 U.S. at 289 (emphasis added).
21. Finally, 8 U.S.C. § 1231(a)(2) also triggers mandatory detention of certain noncitizens who have a final order of removal.

22. None of the mandatory detention provisions apply to Mr. Ramirez Ovando.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

23. Mr. Ramirez Ovando entered the United States without inspection over twenty years ago in May of 2005 and has resided in the country ever since. During that time he has become a loving father who supports four U.S. citizen children between the ages of 8 and 17 years old; supports two of his children who have been enrolled in special education with Individualized Education Programs (IEPs) at their school; is gainfully employed with the same employer for 18 years; owns his own home; is the full-time financial provider for his wife and four children; and assists his wife with her Type II diabetes condition and his 12-year-old son with his recent prediabetes condition.

24. Mr. Ramirez Ovando's 17-year-old daughter has a history of mental health issues that predate his arrest by ICE. During his detention, her condition has worsened considerably, and she was recently diagnosed with Post Traumatic Stress Disorder ("PTSD"), Generalized Anxiety Disorder ("GAD:"), Major Depressive Disorder ("MDD"), and Excoriation Disorder ("skin picking"). His 15-year-old son has developed signs of mild anxiety, mild depression, and symptoms of PTSD. His eight-year-old son has also recently developed symptoms of separation anxiety and depression.

25. On May 19, 2025, ICE took Mr. Ramirez Ovando into custody while leaving his home in Clifton, Colorado – nearly 700 miles from the border or nearest port of entry – during an ICE operation targeting an unrelated person. Agents pulled Mr. Ramirez over while driving, identified him through his Colorado driver's license, realized that he wasn't the person who was the subject of their investigation, yet detained, arrested, and placed him into removal proceedings.

26. Mr. Ramirez Ovando hired undersigned counsel to represent him in custody redetermination proceedings to seek release on bond. On May 30, 2025, Mr. Ramirez Ovando appeared with counsel for a bond hearing before IJ Cintron at the Aurora GEO detention facility.
27. At the May 30, 2025, hearing IJ Cintron *sua sponte* raised an unpublished BIA decision that contravenes three decades of settled precedent and agency practice. That decision classified noncitizens who had entered the country without inspection years beforehand and built full lives in the country in the same detention category as noncitizens who are “seeking admission” at or just after entry at the border, holding that such individuals are subject to mandatory detention under 8 U.S.C. § 1225(b), and that IJs lack jurisdiction to consider them for release on bond under 8 U.S.C. § 1226(a). Redacted Decision, AXXX-XXX-269 (BIA May 22, 2025).
28. The DHS trial attorney did not raise this argument. Indeed, after arresting him, ICE processed Mr. Ramirez Ovando for detention as a noncitizen eligible for bond under § 1226(a). The notice to appear—the charging document in immigration removal proceedings—and I-213 Record of Deportable/Inadmissible Alien, both of which created by ICE when it places a person into detention and removal proceedings, did not allege that Mr. Ramirez Ovando was subject to mandatory detention under 8 U.S.C. § 1225(b). In addition, ICE provided Mr. Ramirez Ovando with an initial custody determination via Form I-286, indicating ICE understood he was subject to § 1226(a) and eligible for bond.
29. Nevertheless, IJ Cintron *sua sponte* requested counsel brief the matter for the Court. Counsel received a short continuance and briefed how 8 U.S.C. § 1226(a) governed detention and why Mr. Ramirez Ovando was statutorily eligible for release on bond. Mr.

Ramirez Ovando also submitted additional exhibits and evidence to support the argument.

DHS did not file any legal argument or response.

30. On June 13, 2025, Mr. Ramirez Ovando appeared for continued bond proceedings before IJ Kane. At that hearing, IJ Kane issued a written decision finding that Mr. Ramirez Ovando was subject to mandatory immigration detention under 8 U.S.C. § 1225(b) despite having lived in the country and in Colorado for two decades. IJ Kane also found in the alternative that if the court has jurisdiction, Mr. Ramirez Ovando should be released on a bond of \$5,000 based on Mr. Ramirez Ovando's lack of flight risk or danger to the community, his noteworthy equities, and his strong prospects for relief.

31. On June 26, 2025, Mr. Ramirez Ovando filed an appeal to the BIA of IJ Kane's decision that the court lacked jurisdiction to grant a bond. That appeal remains pending.

LEGAL ANALYSIS

32. "The purpose of the habeas corpus is to impose limitations on the Government's ability" to act without a legitimate purpose. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020). The habeas remedy is "adaptable" and its "precise application and scope" depends "upon the circumstances." *Boumediene v. Bush*, 533 U.S. 723, 779 (2008). The circumstances here require the Court to find that 8 U.S.C. § 1226(a) governs ICE's authority to jail Mr. Ramirez Ovando and that he is eligible to for release from custody on bond. Finding otherwise is unlawful.

33. Indeed, every federal court to consider this issue found that the appropriate statute of detention for someone like Mr. Ramirez Ovando who entered without inspection (EWI) and resides in the country to be § 1226(a), and therefore eligible for bond. *Maldonado v. Olson*, 25-cv-03142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v.*

Noem, 25-cv-01789, 2025 WL 2379285 (C.D. Ca. Aug. 15, 2025); *Dos Santos v. Noem*, 25-cv-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, --- F.Supp.3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Ceja Gonzalez et al., v. Noem*, 25-cv-02054 (C.D. Cal. Aug. 13, 2025); *Maldonado Bautista et al. v. Santacruz et al.*, 5:25-cv-01873 (C.D. Cal. July 28, 2025); *Diaz Martinez v. Hyde, et al.*, --- F. Supp. 3d ---, 2025 WL 2084238 at *2–3 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025); *Rodriguez Vasquez, v. Bostock, et al.*, ---F. Supp ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).

This Court should find the same because to do otherwise would violate the plain language of § 1226(a), principles of statutory construction, legislative history, and longstanding agency practice.

I. Detaining Mr. Ramirez Ovando Under § 1225(b)(2) Rather Than § 1226(a) Violates the Plain Meaning of § 1226(a) and Renders Significant Parts of § 1226 Superfluous.

34. By its plain terms, § 1226(a) applies to anyone who is detained “pending a decision on whether the [noncitizen] is to be removed from the United States” “and pending such decisions ... the Attorney General *may release* the [noncitizen] on bond...” 8 U.S.C. § 1226(a)(2) (emphasis added). The section confirms that this authority includes not just people who are deportable, but also those who are inadmissible, such as Mr. Ramirez Ovando, for entering the country without inspection.

35. This plain meaning is reinforced by a neighboring provision, 8 U.S.C. § 1226(c). While section 1226(a) provides the default rule—allowing noncitizens to seek release on bond—§ 1226(c) carves out specific limited exceptions, including inadmissible noncitizens with certain criminal contacts, that are subject to mandatory detention. 8 U.S.C. §§

1226(c)(1)(A), (D), (E). Section 1226(c) makes clear that § 1226(a) applies to people like Mr. Ramirez Ovando. As the district court in *Rodriguez Vasquez* explained:

A plain reading of this exception implies that the default discretionary bond procedures in Section 1226(a) apply to a noncitizen who, like Rodriguez [Vasquez], is present without being admitted or paroled but has not been implicated in any crimes as set forth in Section 1226(c). *See* § 1226(a) (Attorney General may release noncitizen on bond “except as provided in subsection (c)”). As the Supreme Court has recognized, when Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). This lends strong textual support to Rodriguez [Vasquez]’s position that “inadmissible” noncitizens like himself are included within Section 1226.

Rodriguez Vasquez, 2025 WL 1193850 at *12.

36. As recently as January 2025, Congress made it unequivocally clear that it considers § 1226(a) to apply to inadmissible noncitizens like Mr. Ramirez Ovando. Laken Riley Act of 2025 (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025). The amendment requires mandatory detention of individuals who entered without inspection and are inadmissible, but only if they were *also* arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E). Thus, the recently codified LRA explicitly added language to the mandatory detention statute that requires two prongs to trigger mandatory detention for a person subject inadmissibility under § 1182(a)(6): 1) entry without inspection; *and* 2) an arrest, charge, or conviction of certain crimes. By amending the statute to include such individuals in § 1226(c), Congress reiterated that the general detention framework in § 1226(a) governs the detention of people subject to inadmissibility under § 1182(a)(6) who are not “seeking admission” to the country and do not have certain contacts with the criminal legal system. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559, U.S. 393, 400 (2010) (observing that the statutory exception would be unnecessary if the

statute at issue did not otherwise cover the excepted conduct). As the Supreme Court has recognized, when Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Id*; see also *Rodriguez Vasquez*, 2025 WL 1193850 at *14; *Diaz Martinez*, 2025 WL 2084238 at *7.

37. A contrary ruling would therefore violate one of the “most basic interpretative canons, . . . [that a] ‘statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). “Here, the presumption against superfluity is at its strongest because the Court is interpreting two parts of the same statutory scheme, and Congress even amended the statutory scheme this year when it passed the Laken Riley Act The Government’s novel interpretation of § 1225(b)(2) runs headlong into that new addition.” *Maldonado*, 2025 WL 2374411 at * 12. This Court cannot find that “Congress passed the Laken Riley Act to ‘perform the same work’ that was already covered by § 1225(b)(2).” *Id*.

38. In sum, the plain language of § 1226(a) applies to people like Mr. Ramirez Ovando who are already living in the United States.

II. The Plain Meaning of 8 U.S.C § 1225(b)(2) Makes Clear that the Statute Does Not Apply to People like Mr. Ramirez Ovando who are Already Living in the United States, but Instead to People who are “Seeking Admission” to the United States.

39. The text of § 1225 reinforces the longstanding reading that § 1226(a) governs the detention of individuals like Mr. Ramirez Ovando who live in the United States. As the Supreme Court recognized, § 1225 is concerned “primarily [with those] seeking entry”, *Jennings*, 583 U.S. at 297, i.e., cases “at the Nation’s borders and ports of entry, where the

Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Id.* at 287.

40. For one, the title of § 1225 indicates Congress’ intent to have the section apply to “[a]rriving [noncitizens].” 8 U.S.C. § 1225. Paragraphs (b)(1) and (b)(2) in § 1225 also reflect this understanding. Paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving [noncitizens]”—encompasses only the “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney General designates, and only those who are “inadmissible under section 212(a)(6)(c) or 212(a)(7).” 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)’s text demonstrates that it is focused only on people *arriving* at the border or a port of entry or who have *recently* entered the United States and not those already residing here.

41. Paragraph (b)(2) is similarly limited to people “seeking admission” when they *arrive* in the United States or very shortly thereafter. The title explains that this paragraph addresses the “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking admission” but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting subsection (b)(2) to those “seeking admission,” Congress confirmed that it did not intend to sweep individuals like Mr. Ramirez Ovando into this section—those who entered the United States decades ago and have been residing here since that time.

42. Ruling otherwise would render § 1225(b)(2)’s “seeking admission” language mere “surplusage and negate[] the plain meaning of the text.” *Diaz Martinez*, 2025 WL 2084238 at *6. When called on to resolve a dispute over a statute’s meaning, [courts] normally seek

[] to afford the law’s terms their ordinary meaning” *Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021). In other words, “until and unless someone points to evidence suggesting otherwise, affected individuals and courts alike are entitled to assume statutory terms bear their ordinary meaning.” *Id.* at 163. Here, the phrase at issue – “seeking admission” – “necessarily implies some sort of present-tense action.” *Diaz Martinez*, 2025 WL 2084238 at *6. In other words, § 1225(b)(2) “applies where an individual is an applicant who is also *doing* something: seeking admission.” *Id.* (emphasis in original). “This understanding accords with the plain, ordinary meaning of the words ‘seeking’ and ‘admission.’” *Lopez Benitez*, 2025 WL 2371588 at * 7.

43. “For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as already present there.” *Id.*
44. Moreover, subparagraph (b)(2)(C) addresses “[t]reatment of [noncitizens] *arriving* from contiguous territory,” i.e., those who are “*arriving* on land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress’ focus in § 1225 on those who are *arriving* in the United States—not those already *residing* here for years. Similarly, the title of § 1225 refers to the “inspection” of “inadmissible *arriving*” noncitizens. *See Dublin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe the statute).
45. Finally, the entire statute 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.* § 1225(a)(3), (b)(1), (b)(2), (d) (emphasis added); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act’s “broader structure . . . to determine [the statute’s] meaning”).

46. The Supreme Court agrees. In *Jennings*, the Court framed its discussion of § 1225 as part of a process that “generally begins at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] *seeking to enter* the country is admissible.” 583 U.S. at 287 (emphasis added). Then, when 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 288. The Court summarizes the distinction as follows: “In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking* admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Id.* at 289. (emphasis added). *See also Rodriguez Vasquez*, 2025 WL 1193850 at *14 (relying on analysis in *Jennings*); *Maldonado*, 2025 WL 2374411 at * 12 (same).

47. Here, Mr. Ramirez Ovando is not an arriving noncitizen or seeking admission to the country. He is instead a noncitizen who has resided in and built deep ties to this country for two decades and who ICE arrested and detained deep within the interior of the United States. ICE’s detention authority is therefore under § 1226(a) and Mr. Ramirez Ovando is eligible for release on bond.

III. The Legislative History of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Supports Detention Pursuant to 8 U.S.C. § 1226(a).

48. The history of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 also supports the conclusion that Mr. Ramirez Ovando is detained pursuant to 8 U.S.C. § 1226(a). Prior to the passage of IIRIRA, the statutory authority for bond hearings was found at INA § 242(a). That statute provided for a noncitizen's detention during deportation proceedings, as well as authority to release the noncitizen on bond. INA § 242(a) (1994). Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.*
49. In passing IIRIRA, Congress focused on the perceived problem of *recent* arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228 – 29; H.R. Rep. No. 104-828, at 209. Prior to IIRIRA, people like Mr. Ramirez were not subject to mandatory detention. *See* INA § 242(a)(1) (1994) (authorizing the Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States). Had Congress intended to make such a monumental shift in immigration law—thereby subjecting millions of people to mandatory detention—it would have clearly done so. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001) (noting that Congress does not “alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes”); *Cf. Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change”).
50. Congress did not do so. Instead, Congress said the opposite, noting that the new § 1226(a) merely “restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and *release on bond a[] [noncitizen] who is not lawfully*

in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same). Mr. Ramirez Ovando is therefore eligible for bond. A contrary ruling would run afoul of this legislative history.

IV. Nearly Three Decades of Longstanding Agency Practice Since 1996 Reflects that Mr. Ramirez Ovando is Detained Pursuant to 8 U.S.C § 1226(a).

51. DHS’ and the Executive Office for Immigration Review’s (EOIR) longstanding practice of considering people like Mr. Ramirez Ovando as detained under § 1226(a) supports Mr. Ramirez Ovando’s eligibility for bond. In fact, EOIR confirmed when implementing regulations that § 1226(a) applies to Mr. Ramirez Ovando and similarly situated people. 62 Fed. Reg. at 10,323 (“Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination*”) (emphasis added).

52. As the Supreme Court explained, “[T]he longstanding practice of the government – like any other interpretive aid – can inform [a court’s] determination of what the law is.” *Loper Bright Enterprises* at 386; *see also Abramski v. United States*, 573 U.S. 169, 203 (2014) (a longstanding interpretation “is powerful evidence that interpreting the Act in [this] way is natural and reasonable.”).

53. The court in *Diaz Martinez* found this longstanding agency practice to be persuasive in finding that § 1226(a) governs the detention of noncitizens like Mr. Ramirez. “While non-binding, contemporaneous, consistent interpretations of a statute by the Executive agency charged with its administration can provide useful guidance.” *Diaz Martinez*, 2025 WL 2084238 at *8. The government promulgated the “regulations implementing section 1225[] mere months after its passage as part of” IIRIRA and confirmed therein that “[d]espite

being applicants for admission, [noncitizens] present without having been admitted or paroled . . . will be eligible for bond redetermination.” *Id.* (citing 62 Fed. Reg. 10,312-01).

54. Finally, applying § 1225(b)(2) to people both contemporaneously seeking admission and to those in the country for years “is consonant with the core logic of our immigration system.” *Diaz Martinez*, 2025 WL 2084238 at *8. Courts must recognize that “Congress legislates against the backdrop of certain unexpressed presumptions.” *Id.* (quoting *Hewitt v. United States*, 605 U.S. ---, 145 S. Ct. 2165, 2173, --- L.Ed.2d --- (2025), cleaned up). Here, “the distinction between a [noncitizen] who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Zadvydas*, 533 U.S. at 693. To find that the same statute requiring detention without the opportunity for bond applies equally to individuals like Mr. Ramirez Ovando—who entered the U.S. two decades ago, raised four U.S. citizen children, and developed deep community, religious, economic, and other ties in the United States—and to those who are apprehended at or shortly after crossing the U.S. border who have no ties to the country whatsoever—violates that maxim.

CLAIMS FOR RELIEF

COUNT I

Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Bond Hearings

55. Petitioner incorporates the allegations of fact set forth in the preceding paragraphs.

56. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to grounds of inadmissibility because they previously entered the country without being admitted. Such noncitizens are properly

detained under § 1226(a) and eligible for bond, unless they are subject to a mandatory detention provision such as § 1225(b)(1), § 1226(c), or § 1231.

57. Nonetheless, the IJ found that she lacked jurisdiction to review Mr. Ramirez Ovando's request for bond, finding him subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

58. The unlawful application of § 1225(b)(2) to Mr. Ramirez Ovando that unlawfully mandates his continued detention violates the INA.

COUNT II

Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 & 1003.19 Unlawful Denial of Release on Bond

59. Petitioner incorporates the allegations of fact set forth in the preceding paragraphs.

60. In 1997, after Congress amended the INA through IIRIRA, EOIR and then-Immigration and Naturalization Service issued an interim rule to interpret and apply the IIRIRA. Specifically, under the heading "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*" 62 Fed. Reg. at 10,323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and implementing regulations.

61. Nonetheless, DHS and the Immigration Judge in this case deemed Petitioner subject to mandatory detention under § 1225(b)(2).

62. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious

63. Petitioner incorporates the allegations of fact set forth the preceding paragraphs.
64. The APA provides that a “reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
65. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to a mandatory detention provision such as § 1225(b)(1), § 1226(c), or § 1231.
66. Nonetheless, the IJ found that she lacked jurisdiction to review Mr. Ramirez Ovando’s request for bond, finding him subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).
67. Moreover, Respondents have failed to articulate a reasoned explanation for their decisions, which represent changes in the agencies’ policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.
68. The application of § 1225(b)(2) to Mr. Ramirez Ovando is arbitrary, capricious, and not in accordance with law; it therefore violates the APA. *See* 5 U.S.C. § 706(2).

COUNT IV

Violation of Fifth Amendment Due Process Clause

69. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
70. The Fifth Amendment provides that “No person shall ... be deprived of life, liberty, or property[] without due process of law.”
71. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
72. Moreover, “The Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.
73. Respondents’ mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates his due process rights

PRAYER FOR RELIEF

WHEREFORE, Mr. Ramirez Ovando prays this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Enjoin respondents from transferring Mr. Ramirez Ovando outside the jurisdiction of the District of Colorado pending resolution of this case;
- 3) Issue a writ of habeas corpus directing Respondents to immediately release Mr. Ramirez Ovando or in the alternative, order his release on the bond of \$5,000 that the IJ previously set in this matter;
- 4) Declare that Mr. Ramirez Ovando’s detention is governed by § 1226(a) and not § 1225(b)(2);

- 5) Award Mr. Ramirez Ovando attorneys' fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 6) Grant such further relief as the Court deems just and proper.

VERIFICATION

I, Leslie Bezanilla, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

/s/ Leslie Bezanilla

Dated: August 19, 2025

CERTIFICATE OF SERVICE

I, Hans Meyer, hereby certify that on August 19, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Leslie Bezanilla, hereby certify that I have mailed via certified USPS a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on August 19, 2025.

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