UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ANTONIO MOREIRA NETO v. **E.L. TATUM, JR.,** Warden, Federal Correctional Institute, Berlin; **PATRICIA H. HYDE**, Field Office Director at ICE Boston Field Office; **KRISTI NOEM**, Secretary of the U.S. Department of Homeland Security; and, **PAMELA BONDI,** Attorney General of the United States, in their official capacities Respondents.	**PETITION** **FOR WRIT OF** **HABEAS CORPUS**

INTRODUCTION

1. Antonio Moreira Neto (hereinafter referred to as "Antonio," "Mr. Moreira," or "Petitioner") seeks to file this Petition for Writ of Habeas Corpus with the Court.
2. Mr. Moreira is a Brazilian citizen who entered the U.S. on June 28, 2004. Before detention, Mr. Moreira was residing at 57 Prospect Heights, Apartment 2, Milford, MA. He is currently detained at the Federal Correctional Institution, located at 1 Success Loop Road, Berlin, NH, 03570.
3. Mr. Moreira is currently scheduled for a Master Calendar Hearing before the Chelmsford, Massachusetts, Immigration Court on August 25, 2025, at 01:30 p.m.
4. On July 27, 2025, Mr. Moreira was detained by Immigration and Customs Enforcement ("ICE"). Mr. Moreira was then transferred out of Massachusetts, where he resided, to Berlin, New Hampshire, where he remains detained.

5. On August 11, 2025, Petitioner attempted to get a Bond Hearing before the Immigration Court, as he is not a danger to the community, since he has no criminal record, and he is not a flight risk. However, the Immigration Court denied jurisdiction over his case, claiming that he was "an applicant for admission," despite being in the country for over 21 years.
6. The Immigration Court then scheduled a Master Calendar Hearing for July 25, 2025, at 01:30 p.m.
7. Petitioner has been detained for several weeks now without any opportunity to even have a hearing with an Immigration Judge – or any impartial adjudicator – to consider his release.
8. Petitioner's detention violates the Fifth Amendment of the United States Constitution.
9. Accordingly, to vindicate Petitioner's statutory and constitutional regulatory rights, this Court should grant the instant petition for a writ of habeas corpus. Mr. Moreira requests that this Court immediately release him from detention, also enjoining Respondents from re-detaining him unless there are changes in the circumstances that would justify detention.
10. In order to preserve his rights while this case is pending, Petitioner also asks the Court Issue a preliminary injunction ordering the Chelmsford Immigration Court to vacate the Master Calendar Hearing of August 25, 2025, at 01:30 p.m., and to place the case on "status docket" for the duration of these proceedings, to prevent them from scheduling a new hearing related to the removal proceedings while the habeas is being processed, in order to maintain *status quo*. Furthermore, Petitioner also requests this Court to issue a restraining order to prevent Petitioner from being transferred from the

state of New Hampshire for the duration of these proceedings.

JURISDICTION

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question).

13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, and the Petitioner is currently detained within the jurisdiction of this District. 28 U.S.C. § 2241.

PARTIES

15. Petitioner is a Brazilian citizen who entered the U.S. on June 24, 2004. He has been living here for more than 21 years. He is detained at Berlin Federal Correctional Institution, in Berlin, New Hampshire. He is in custody and under the direct control of Respondents and their agents.

16. Respondent, E.L. Tatum Jr., is named in his official capacity as the Warden of Berlin Federal Correctional Institution. In this capacity, Mr. Tatum has custody over Mr. Moreira because ICE contracts the Berlin Federal Correctional Institution to house immigration detainees, including Mr. Moreira.

17. Respondent, Patricia H. Hyde, Field Office Director at Boston Field Office, is sued in

her official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. She is a legal custodian of the Petitioner and has the authority to release her.

18. Respondent, Kristi Noem, is sued in her official capacity as the Secretary of U.S. Department of Homeland Security ("DHS"). In her capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

19. Pamela Bondi, Attorney General of the United States, is sued in her official capacity, and as the legal representative of the U.S. government.

STATEMENT OF FACTS

20. Mr. Moreira is a Brazilian citizen who entered the U.S. on June 24, 2004. Before detention, Mr. Moreira was residing at 57 Prospect Heights, Apartment 2, Milford, MA. He is currently detained at Berlin Federal Correctional Institution, in Berlin, New Hampshire.

21. On July 27, 2025, Mr. Moreira was detained by Immigration and Customs Enforcement ("ICE"). Mr. Moreira was then transferred out of Massachusetts, where he resided, to Berlin, New Hampshire, where he remains detained.

22. On August 11, 2025, Petitioner attempted to get a Bond Hearing before the Immigration Court, as he is not a danger to the community, since he has no criminal records, and he is not a flight risk. However, the Immigration Court denied jurisdiction over his case, claiming that he was "an applicant for admission," meaning "an applicant for admission

coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." 8 CFR § 1001.1 (q).

23. Petitioner, through Undersigned Counsel, objected to the Immigration Judge's finding, arguing that nothing in the record supported such conclusion, and that Petitioner has been living in the United States for over twenty years. Petitioner also pointed out documents showing that she was no longer an arriving alien, the circumstances surrounding her detention, and the "Notice of Custody Determination" issued by the Department of Homeland Security, which clearly does not identify him as an arriving alien.

24. The Immigration Court then scheduled a Master Calendar Hearing for July 25, 2025, at 01:30 p.m. The Petitioner is now at risk of receiving a removal order without the possibility of being released.

25. The reason for Petitioner's detention remains unclear, especially as he did not have an opportunity to at least be heard by an Immigration Judge to consider the reasons for his detention. Petitioner is also not tied to any reasonably foreseeable removal. Petitioner has only lived in Massachusetts while in the United States, where his legal counsel is also physically present.

26. Petitioner's detention violates the Fifth Amendment of the United States Constitution. Petitioner is being detained without even having an opportunity to have a bond hearing. He is at risk of being removed from the country without having an opportunity to return

to his family, settle his affairs, or organize his things after spending more than 20 years in the United States.

PRELIMINARY INJUNCTION

27. Petitioner, through his attorneys, respectfully moves this Court to issue a preliminary injunction in this case to preserve the *status quo* of the Petitioner for the duration of these proceedings. Fed. R. Civ. P. 65(a).

28. Petitioner has a Master Calendar Hearing before the Immigration Court on August 25, 2025, at 01:30 p.m. The hearing was scheduled immediately after the Immigration Judge denied jurisdiction over Respondent's bond motion. The possibility of the Respondent being ordered removed at the hearing may significantly harm him and any future possibility of relief he would have available.

29. Detention by itself considerably affects the Petitioner's ability to consider his alternatives and to make a strategic decision in his case, considering the uncertainty of whether he will need to be detained for the duration of his removal proceedings. If Respondent's removal proceedings move forward, there is a likelihood that Respondent will be ordered removed, which would significantly affect his current situation and the potential alternatives he would have to remain in the U.S.

30. There are several studies that show how immigration detention negatively affects noncitizens, including increased rates of depression, anxiety, and PTSD.[1] Combined with the harmful conditions that many facilities in the U.S. immigration detention system currently offer, individuals who are detained are placed in a difficult to defend themselves in their removal proceedings, as they are not sure how long they will still

[1] Caitlin Patler, Altaf Saadi & Paola Langer, The Health-Related Experiences of Detained Immigrants with and without Mental Illness, 11 J. Migration & Health 100302 (2025), https://doi.org/10.1016/j.jmh.2025.100302.

be detained.[2] These circumstances, combined with the government's aggressive immigration policies, show that a lot of people are feeling pressured into abandoning their cases to avoid a prolonged detention.[3]

31. If the Court does not grant this preliminary injunction, there is a risk that Petitioner here will be one more person pressured into abandoning his defense before the immigration court to anticipate his release. Not granting this injunction will validate the Respondents' stratagem of using unlawful detention to pressure noncitizens to leave the country without a fair opportunity to present their cases before the immigration court adequately. Thus, Petitioner respectfully asks this Court to Issue a preliminary injunction ordering the Chelmsford Immigration Court to vacate the Master Calendar Hearing of August 25, 2025, at 01:30 p.m., and to place the case on "status docket" for the duration of these proceedings, to prevent them from scheduling a new hearing related to the removal proceedings while the habeas is being processed, in order to maintain *status quo*.

LEGAL FRAMEWORK

32. The Supreme Court held in *Zadvydas v. Davis* that civil incarceration is only acceptable "in certain special and narrow non-punitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest." 533 U.S. 678, 690 (2001). The Supreme Court further established the principle that noncitizens in deportation or removal proceedings are just as entitled to due process

[2] *See* Detention by the Numbers, Freedom for Immigrants, https://www.freedomforimmigrants.org/detention-statistics [https://perma.cc/FC6R-UKJD]; Nat'l Immigrant Just. Ctr., Locked Away: The Urgent Need for Immigration Detention Bond Reform 4 (2023), https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2023-06/NIJC-Policy-Brief_ICE-Bond-Reform_May-2023.pdf [https://perma.cc/CV6M-FB95].

[3] Kate Morrissey, *ICE Is Pressuring People in Custody to Self-Deport. Many Are Giving Up*, *Capital & Main* (Aug. 6, 2025), https://capitalandmain.com/ice-is-pressuring-people-in-custody-to-self-deport-many-are-giving-up.

protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'"). The Ninth Circuit has also recognized that individuals detained under non-mandatory detention, especially Section 1226(a), are entitled to several protections including "several layers of review of the agency's initial custody determination, an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change. *See* generally 8 U.S.C. § 1226(a)(1)–(2); 8 C.F.R. §§ 236.1, 1003.19." *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022)

33. Under 8 U.S. Code § 1225, "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." Applicants for admission are among the individuals who can be placed in expedited removal, in which case they are subject to mandatory detention. INA § 235(b)(1)(B)(i)(IV).

34. If an applicant for admission is not placed in expedited removal proceedings under INA § 235 or is later placed in removal proceedings under INA § 240, detention is no longer mandatory. In these cases, noncitizens are sometimes released from custody and allowed to remain in the United States for the duration of their proceedings. 8 U.S. Code § 1226 (a).

35. However, if an individual who was placed in proceedings as an arriving alien, is released into the United States, and several years later is detained for a different reason, the Immigration Courts have refused to claim jurisdiction over their custody redetermination. 8 CFR § 1003.19 (h)(1)(i)(B); *See also Matter of X-K-*, 23 I&N, Dec. 731 (BIA 2005) ("There is no question that Immigration Judges lack jurisdiction over arriving aliens who have been placed in section 240 removal proceedings, because they are specifically listed at 8 C.F.R. § 1003.19(h)(2)(i)(B) as one of the excluded categories.")

36. Mr. Moreira's detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. The habeas petition is the only way for the Petitioner to have his custody analyzed by a Court, since the Immigration Courts have denied jurisdiction.

CLAIMS FOR RELIEF

Violation of Fifth Amendment Right to Due Process

37. Mr. Moreira's detention by DHS violates his rights under the Due Process Clause of the Fifth Amendment to the United States Constitution. The allegations in the above paragraphs are realleged and incorporated herein. Immigration detention violates due process if it is not reasonably related to the purpose of ensuring a noncitizen's removal from the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92, 699-700 (2001); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Where removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and is unlawful. *See id.* at 699-700.

38. The Supreme Court has also established the principle that noncitizens in deportation

or removal proceedings are just as entitled to due process protections as anyone else. *See Zadvydas*, 533 U.S. at 690 (2001) ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person . . . of . . . liberty . . . without due process of law.'")

39. The Immigration and Nationality Act (INA) establishes the statutory framework governing the entry, presence, and removal of noncitizens in the United States. Regulations promulgated by the agencies charged with enforcing the INA set forth specific procedures for classifying noncitizens. When a noncitizen arrives at the border seeking entry into the United States, they are deemed an "applicant for admission." The INA defines several grounds of "inadmissibility." For example, a noncitizen who arrives at a port of entry without a valid visa or other required entry document – such as Respondent – may be found inadmissible pursuant to 8 U.S.C. § 1182(a)(7).

40. The record reflects that on July 27, 2025, Petitioner was served with a Notice to Appear and placed in removal proceedings as an "alien present in the United States who has not been admitted or paroled." He was placed in removal proceedings pursuant to 8 U.S.C. § 1229. This conclusion is reinforced by the July 16, 2025, Warrant for Arrest of Alien, in which the Deportation Officer expressly cited INA § 236, codified at 8 U.S.C. § 1226.

41. Despite this evidence, the Department of Homeland Security argued that Petitioner was being detained pursuant to 8 U.S.C. § 1225, codified as INA§ 235, as "an applicant for admission." The Immigration Judge agreed with this argument and

declined jurisdiction to hear Petitioner's bond motion.

42. The sole statutory exception permitting the release of individuals detained under § 1225(b) is the parole authority in § 1182(d)(5)(A). Under that provision, noncitizens detained as inadmissible upon inspection at the border may be paroled into the United States only "for urgent humanitarian reasons or significant public benefit." *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). Parole operates as a legal fiction: the noncitizen is physically allowed into the United States but is "treated," for legal purposes, "as if stopped at the border." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)).

43. It could even be argued that noncitizens paroled into the United States occupy a fundamentally different – and less protected – status than "those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Here, however, there is no record evidence that Mr. Moreira was released for urgent humanitarian reasons or significant public benefit. There is no evidence, indeed, that he ever applied for admission.

44. The Department of Homeland Security, represented here by the Respondents, is raising an argument that *all* inadmissible noncitizens present in the United States must be detained pending the finality of their removal proceedings, regardless of any prior release with the government's acquiescence during the pendency of their removal proceedings. This position would render significant portions of 8 U.S.C. § 1226 meaningless, violating one of the most basic canons governing the interpretation of federal statutes, which provides that a statute "should be construed so that effect is

given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ..." *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted); *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023). "This principle ... applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

45. Here, the IJ position was that the Respondent is subject to mandatory detention provisions, and he should be detained until the finality of his removal proceedings without the opportunity to have a bond hearing, despite his significant ties to the U.S., as he has been living here for more than twenty years. If the IJ's interpretation of § 1225 is correct and this section's mandatory detention provisions apply to all noncitizens present in the United States who have not been admitted, it would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens. *See* § 1226(c)(1)(A), (D), (E); *Shulman*, 58 F.4th at 410-11; *Torres*, 976 F.3d at 930. Under the IJ's proposed interpretation, which is based by a recent change in DHS's policies, § 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an enumerated crime, including those "present in the United States without being admitted or paroled," would be meaningless and superfluous because "all noncitizens who have not been admitted" would already be governed by § 1225's mandatory detention authority. *See Shulman*, 58 F.4th at 410-11. *See also Corley*, 556 U.S. at 314, n.5 (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which includes observing the "antisuperflousness" canon).

46. The Supreme Court's decision in *Jennings* likewise supports harmonizing §§ 1225 and 1226 in a manner contrary to Respondent's position. The Court described § 1225 as part of the 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." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). In contrast, the Court explained that § 1226 governs "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including those "who were inadmissible at the time of entry." *Id.* at 288. The Court summarized the distinction succinctly: "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.

47. Notably, several of the exceptions in § 1226(c) that would be rendered superfluous under the IJ's interpretation of §§ 1225 and 1226 were only recently enacted by Congress in the Laken Riley Act ("LRA"). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995) (citation omitted). Enacted in January 2025, the LRA amended multiple INA provisions, including §§ 1226 and 1225. See LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pertinent here, the LRA added a new category of noncitizens to § 1226(c)'s mandatory detention authority—those deemed inadmissible, including for being "present in the United States without being admitted or paroled," who have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E);

LRA, Pub. L. No. 119-1. By specifically excepting these criminally implicated inadmissible noncitizens from § 1226(a)'s default discretionary detention framework, Congress necessarily left all other inadmissible noncitizens—those without the specified criminal involvement—subject to § 1226(a). See *Jennings*, 583 U.S. at 289; *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

48. Additionally, Congress enacted the LRA in the context of the longstanding agency practice of applying § 1226(a) to inadmissible noncitizens already residing in the country. Another "customary interpretive tool" is the principle that "[w]hen Congress adopts a new law against the backdrop of a 'longstanding administrative construction,'" courts "generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–98 (1981)). In *Monsalvo Velazquez*, the Court emphasized that when a statute is "susceptible" to more than one reasonable interpretation, courts should adopt the reading that is "consistent" with the statute's "longstanding administrative construction." *Id.* Congress's amendments to § 1226(c) in the LRA were made with full awareness of decades of agency practice treating inadmissible noncitizens—such as Mr. Moreira—under § 1226(a)'s discretionary detention framework. Congress, therefore, presumably intended to preserve "the same understanding" of the statute as had been consistently applied by the agency. *Id.*

49. The legislative history of § 1226 reinforces that it governs the detention of noncitizens—like Mr. Moreira—who were found in the United States after not having applied for admission. Prior to the enactment of the Illegal Immigration Reform and

Immigrant Responsibility Act ("IIRIRA"), the predecessor to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States. See 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. INS*, 180 F.3d 992, 994 (9th Cir. 1999) (noting that a "deportation hearing" was the "usual means" of proceeding against a noncitizen physically present in the United States). Like § 1226(a), the predecessor statute authorized discretionary release on bond. See 8 U.S.C. § 1252(a)(1) (1994). When Congress enacted IIRIRA, it expressly stated that § 1226(a) "restates the current provisions in [the predecessor statute] 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; see also H.R. Rep. No. 104-828, at 210. Because noncitizens in Mr. Moreira's position were entitled to discretionary detention under the predecessor statute, and Congress confirmed that IIRIRA did not narrow that authority, § 1226 should likewise be interpreted to allow discretionary release on bond for similarly situated noncitizens.

50. It should also be noted that the IJ's interpretation of § 1226 is undermined by the Department of Homeland Security's longstanding practice of treating noncitizens taken into custody while residing in the United States—including those who were initially found inadmissible upon inspection but released into the country with the government's acquiescence and who have committed no crimes since—as detained under § 1226(a). See *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). "[T]he longstanding practice of the government—like any other interpretive aid—can

inform [a court's] determination of what the law is." *Id.* (internal quotations omitted, second brackets in original). The Supreme Court has further recognized that deference to executive interpretations of federal statutes is "especially warranted when [the interpretation] was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.* This principle is particularly compelling here, where an individual who has resided in the United States with the government's acquiescence for years is subjected to an infringement of liberty interests—discussed infra—solely due to a regime change seeking to expedite removal of non-criminal noncitizens under discretionary conditions.

51. *Indeed, mandatory detention for all applicants has only been the official policy of the Department of Homeland Security ("DHS") for a few weeks, since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had "revisited its legal position*:" [footnote 10: The existence of the memorandum was first reported by the Washington Post on July 14, 2025. Maria Sacchetti & Carol D. Leonnig, ICE declares millions of undocumented immigrants ineligible for bond hearings ... The memorandum itself was subsequently leaked by legal advocacy groups. ... The admitted novelty of the Government's legal argument may shed some light on why the Petitioner and Court had such a difficult time recognizing it at first blush.] *DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that [section 1225] of the Immigration and Nationality Act (INA), rather than [section 1226], is the applicable immigration detention authority for all applicants for admission. See Martinez v.*

Hyde, ___ F. Supp. 3d___, No. CV 25-11613, 2025 WL 2084238, at *4-6 (D. Mass. July 24, 2025) (emphasis added).

52. However, DHS's and the IJ's selective reading of the statute—which disregards its "seeking admission" language—violates the rule against surplusage and undermines the plain meaning of the text. See *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("'[E]very clause and word of a statute' should have meaning."), quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883); *United States v. Abbas*, 100 F.4th 267, 283 (1st Cir. 2024) ("'We begin, as always, with the text of the statute' and read it 'according to its plain meaning at the time of enactment,'" quoting *United States v. Winczuk*, 67 F.4th 11, 16 (1st Cir. 2023), cert. denied, 145 S. Ct. 319 (2024)). The statutory phrase "seeking admission" is not explicitly defined but necessarily conveys a present-tense, ongoing action. See *Matter of M-D-C-V-*, 28 I.&N. Dec. 18, 23 (B.I.A. 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process,'" quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011–12 (9th Cir. 2020)).

53. Furthermore, in *Jennings v. Rodriguez,* the Supreme Court makes a clear distinction between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 804 F. 3d 106. The opinion of the Supreme Court recognizes that **"§ 1226 applies to aliens already present in the United States. . . ." and that "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'"** § 1226(a). As long as the detained alien is not covered by § 1226(c), the Attorney General "may release" the alien on "bond . . .

or conditional parole." § 1226(a). Furthermore, Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. *See* 8 CFR §§ 236.1(d)(1), 1236.1(d)(1).

54. This understanding has long been supported by the Supreme Court over the years, indicating that noncitizens have fewer protections in their ***initial entry.***

55. In *Nishimura Ekiu*, the Court clarifies that arriving aliens are only individuals who have never been to the U.S., holding that **"foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law**." *See Nishimura Ekiu v. United States,* 142 U.S. 651 (1892) (emphasis added).

56. In *Landon*, the Court held that an alien seeking **initial admission** to the United States requests a privilege and is therefore afforded fewer constitutional rights. *See Landon v. Plasencia,* 459 U.S. 21, 32 (1982) (emphasis added).

57. In *Shaugnessy v. United States ex rel. Mezei,* the Court again ratifies that the different protections are for those "on the threshold of initial entry". *See Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

58. In *Thuraissigiam*, the Court again reinforces the limited protections for individuals seeking **initial entry to the United States**. *See Department of Homeland Security v. Thuraissigiam,* 591 U.S. 199, 220 (2020) (emphasis added).

59. In *United States v. Flores-Montano,* the Supreme Court reiterated that the power over immigration is "at its zenith at the **international border.**" *See United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004) (emphasis added).

60. Additional cases in the Answer to the Petition also refer to "initial entry." *See Leng May Ma v. Barber,* 357 U.S. 185, 187 (1958*); also Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206 (1953). Therefore, there is no question that the Supreme Court has long recognized a ***distinction*** between those who are arrested at the border trying to enter the country and those arrested while in the country.

61. The ultimate question is whether noncitizens who have resided in the United States for several years are entitled to fundamental due process protections, including a hearing before an independent adjudicator to determine the lawfulness of their detention. As supported in this brief, there are numerous legal arguments to support the conclusion that they are entitled to such rights. Beyond the technical legal analysis, however, it is also a matter of basic fairness and common sense: all individuals, regardless of immigration status, are entitled to fundamental protections of liberty.

> Were it true that "arriving" noncitizens have no due process rights, it would mean that such individuals – including those living freely among us on parole – could "be subjected to the punishment of hard labor without a judicial trial." *Clerveaux*, 397 F. Supp. 3d at 316 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 704 (2001) (Scalia, J., dissenting)). And it would mean that a noncitizen living here on parole could be taken into custody and beaten by local police without any violation of the Fourth Amendment. That cannot be the law.
> *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *16 (W.D.N.Y. July 16, 2025)

62. Furthermore, the understanding by the Immigration Judge here directly violates the First Circuit finding in *Hernandez Lara v. Barr*, No. 19-1524 (1st Cir. 2020), which decided that in order for the government to detain a noncitizen under 1226(a), "due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by the preponderance of the

evidence that she poses a flight risk." *Hernandez Lara v. Barr*, No. 19-1524 (1st Cir. 2020).

63. Petitioner cannot be expected to be reasonably removed from the country, and her detention violates the Due Process Clause of the Fifth Amendment. DHS has failed to demonstrate that she is a danger to the community or a flight risk, and the government has failed to give her an opportunity to have her custody reconsidered by an immigration judge. Furthermore, as an alternative to detention, ICE could employ its Intensive Supervision Appearance Program ("ISAP").[4] Government data suggests that this program has been highly successful in preventing flight risk.[5]

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter.

(2) Issue an Order to Show Cause ordering Respondents to show cause why Petition should not be granted within three days.

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

(4) Issue a restraining order preventing Petitioner from being transferred out of the state of New Hampshire for the duration of these proceedings.

(5) Issue a preliminary injunction ordering the Chelmsford Immigration Court to vacate the Master Calendar Hearing of August 25, 2025, at 01:30 p.m., and to place the case on

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[4] *ERO Alternatives to Detention Infographic*, U.S. Immigration and Customs Enforcement, Apr. 2021, available at https://www.ice.gov/doclib/detention/atdInfographic.pdf.

[5] *Immigration: Alternatives to Detention (ATD) Programs*, Congressional Research Service, Jul. 8, 2019, available at https://crsreports.congress.gov/product/pdf/R/R45804 (citing GAO study of ISAP program where 99% of those monitored returned to court).

"status docket" for the duration of these proceedings, to prevent them from scheduling a new hearing related to the removal proceedings while the habeas is being processed, in order to maintain *status quo*.

(6) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted,
On behalf of the Petitioner
By His Attorney

Date: 8/19/2025

/s/ Kimberly Kirkland

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