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

JORGE RIVERA SANCHEZ, **Petitioner,**	§	
vs.	§	**Civil Action No. 1:25-cv-186**
FRANCISCO VENEGAS, Warden, El Valle Detention Center, **Respondent.**	§	

REPLY TO GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

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1. Petitioner, Jorge Rivera Sanchez, challenges the extent of Respondent's authority to detain him without bond under the Immigration and Nationality Act ("INA") and the Fifth Amendment. ECF Dkt. 1, at ¶¶6, 41-46. He seeks release from unlawful detention or, alternatively, an order requiring a bond hearing. *Id.*, at 12.

2. On July 8, 2025, the U.S. Department of Homeland Security ("DHS"), acting "in coordination with [the U.S. Department of Justice ("DOJ")]," *see* ECF Dkt. 1, at ¶¶37-38, adopted a new interpretation of 8 U.S.C. § 1225(b)(2)(A) that "would subject millions of noncitizens to mandatory detention without the possibility of a bond hearing, regardless of how long they have resided in the United States and without regard to whether they pose a flight risk or danger." *Lepe v. Andrews*, --- F.Supp.3d ---, 2025 WL 2716910, at *1 (E.D. Cal. Sept. 23, 2025). When DHS first detained Petitioner, it treated him as subject to 8 U.S.C. § 1226, *see* ECF Dkt. 1, at ¶22, but today Respondent applies the Government's new interpretation of Section 1225(b)(2)(A) to Petitioner. Dozens of district courts have rejected this new legal interpretation.[1]

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[1] *See, e.g.*, *Santiago Santiago v. Noem*, EP-25-CV-361-KC, 2025 WL 2792588, at *6-*14 (W.D. Tex. Oct. 1, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278, at *1-*5 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser, et al.*, No. 25-cv-06924, 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) ("The Government has not pointed to a single district court that has agreed with its construction of 1225(b)(2)."); *Chang Barrios v. Shepley*, No. 1:25-CV-00406-JAW, 2025 WL 2772579, at *4-*12 (D. Me. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *3-*10 (E.D.N.Y. Sept. 29, 2025); *Hernandez Lopez v. Hardin*, 2:25-cv-830-KCD-NPM, 2025 WL 2732717, at *1 (M.D. Fla. Sept. 25, 2025); *Rivera Zumba v. Bondi*, 25-cv-14626, 2025 WL 2753496, at *4-*11 (D.N.J. Sept. 26, 2025); *Barrajas v. Noem*, 4:25-cv-00322-SHL-HCA, 2025 WL 2717650, at *3-*6 (S.D. Iowa Sept. 23, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712437, at *1-*5 (N.D. Iowa Sept. 23, 2025); *Sanchez Roman v. Noem*, 2:25-cv-01684-RFB-EJY, 2025 WL 2710211, at *1-*7 (D. Nev. Sept. 23, 2025); *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

3. Respondent cites courts that agree with the new construction of § 1225(b)(2)(A). *See generally*, ECF Dkt. 8. Instead, they argue the INA strips jurisdiction to consider Petitioner's claims, *id.*, at ¶¶11-17, that Petitioner failed to exhaust administrative remedies, *id.*, at ¶¶ 18-20, and they invite the Court to follow the Board of Immigration Appeals' ("BIA") decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.*, at ¶¶8-10.

4. Petitioner replies and argues: (1) that the INA does not bar judicial review; (2) that prudential exhaustion is not required; (3) that the BIA's recent decision in *Matter of Yajure Hurtado* is at odds with decades of agency practice and is not binding on this Court or entitled to deference; (4) that Respondent's continued detention of Petitioner is *ultra vires* of 8 U.S.C. § 1226(a); and (5) 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. 8, grant Mr. Rivera Sanchez's petition for writ of habeas corpus, ECF Dkt. 1, and order

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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).

Respondent to release Petitioner from detention or provide for a bond hearing.

BACKGROUND AND PROCEDURAL HISTORY

6. Petitioner has resided in the Rio Grande Valley area of Texas for nearly twenty years, since approximately 2006. Exh. 1, at ¶20.

7. In November 2023, Petitioner was detained at the DHS checkpoint in Falfurrias, Texas. *Id.*, at ¶21. On or about November 16, 2023, a Notice to Appear ("NTA") was filed in Petitioner's removal proceedings under 8 U.S.C. § 1229a. *Id.*, at ¶24; ECF Dkt. 1-2. The NTA charges Petitioner with being present in the U.S. without having been admitted or paroled under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*[2]

8. On or about November 15, 2023, Petitioner was served with an Order of Release on Recognizance ("OREC"). ECF Dkt. 1, at ¶22. The OREC states:

> "You have been arrested and placed in removal proceedings. In accordance with [8 U.S.C. § 1226] of the INA and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:…" *Id.*; ECF Dkt. 1-1.

9. In accordance with his OREC, Petitioner attended regularly scheduled check-ins with ICE officers. On or about August 5, 2025, officials arrested Petitioner. ECF Dkt. 1, at ¶¶22-23.

10. Respondent is detaining Petitioner at the El Valle Detention Center in Raymondville, Texas under the purported authority of 8 U.S.C. § 1225(b)(2)(A). *Id.*, at ¶27; ECF Dkt. 8, at ¶¶8-10 (arguing Petitioner is subject to 8 U.S.C. § 1225(b)(2)(A)).

11. Petitioner requested that an Immigration Judge ("IJ") conduct a hearing and set a bond for his release pending his removal proceedings, but the IJ found a lack of jurisdiction,

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[2] About seventeen years ago, Petitioner was convicted of a misdemeanor of driving while intoxicated, *see* ECF Dkt. 8, at ¶3; ECF Dkt. 8-2, but this does not form the basis of any charge in Petitioner's removal proceedings or affect the Court's analysis of his habeas claims. *See* ECF Dkt. 1-2.

determining in accordance with DHS's and DOJ's recent and abrupt change in agency practice, that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). ECF Dkt. 1, at ¶26; ECF Dkt. 1-3. Petitioner subsequently sought habeas relief in this court. ECF Dkt. 1.

ARGUMENT AND AUTHORITIES

I. Standard of Review

12. Respondent raises both jurisdictional issues, ECF Dkt. 8, at 7-10 (arguing that the INA bars review), and merits issues. ECF Dkt. 8, at 5-7 (arguing that "Petitioner is subject to mandatory detention under…8 U.S.C. § 1225(b)(2)"). The Court should consider this Respondent's complete return under 28 U.S.C. § 2243 despite its label as a Rule 12(b)(1) motion.

13. 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). Below, Petitioner addresses the issues in that order. 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. The INA does not bar jurisdiction.

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

14. Respondent argues that 8 U.S.C. § 1226(e) bars judicial review. ECF Dkt. 8, at ¶¶11-12. They mischaracterize Petitioner's claims as challenging a discretionary decision by one agency, DHS, to "refus[e] to accept the bond." *Id.*, at ¶11. No bond was ordered by an IJ and Petitioner

does not challenge any discretionary decision to refuse a valid bond. ECF Dkt. 1, at ¶¶23, 26. Rather, Petitioner challenges the extent of the Government's authority under the INA and Fifth Amendment to detain him without bond. *See* ECF Dkt. 1, at ¶¶6, 28-40, 41-43 ("The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention, is *ultra vires* and violates the INA."); 44-46 ("Denying [Petitioner] access to release from custody through required bond proceedings violates procedural and substantive due process.").

15. 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.").

16. 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 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). *See 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.").

17. Respondent did not "delay…compliance" with any bond determination as a matter of discretion. ECF Dkt. 8, at ¶11.[3] They reversed long-standing agency practice, ECF Dkt. 1, at ¶¶36-38, and, despite previously treating Petitioner as subject to § 1226, ECF Dkt. 1-1, now claim that he is subject to mandatory detention under §1225(b)(2)(A). ECF Dkt. 8, at 5-6; Exh. 1-3 (IJ Bond order). Unlike in the case cited by Respondent, Petitioner challenges the legislation that Respondent uses to detain him. *Cf. Al-Siddiqi v. Nehls*, 521 F.Supp.2d 870, 875 (E.D. Wis. 2007) (no challenge to "legislation that authorized his detention without bail").

18. Furthermore, Respondent recognizes that 8 U.SC. § 1226(e) "does not strip courts of jurisdiction over constitutional questions." ECF Dkt. 8, at ¶11 (citing *Demore v. Kim*, 538 U.S. at 517)). This Court rightfully permits constitutional challenges to Respondent's authority to detain non-citizens 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). Petitioner's claims are unaffected by § 1226(e).

b. Section 1252 does not bar review.

19. Next, Respondent argues that 8 U.S.C. § 1252 bars review. ECF Dkt. 8, at ¶¶14-17. They do not clearly specify which subdivisions of Section 1252 apply. *See, e.g. id*, at ¶¶14 (citing §1252(B)(ii), which Petitioner assumes refers to § 1252(a)(2)(B)(ii)), 16 (discussing "decision[s] or action[s] to commence proceedings, adjudicate cases or execute removal orders," but not citing §1252(g)). No provision of 8 U.S.C. § 1252 provides the "particularly clear" congressional

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[3] Respondent also has not "revoke[d] a bond or parole" within the meaning of 8 U.S.C. § 1226(b). This applies when 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). Respondent now claims that 8 U.S.C. § 1225(b)(2)(A) applies to Petitioner, not that any bond or parole was revoked. ECF Dkt. 8, at ¶¶8-10.

intent required to bar habeas jurisdiction. *Demore*, 538 U.S. at 517 (2003).

20. Section 1252(a)(2)(B)(ii) only applies to actions expressly made discretionary by statute. *Kucana v. 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. 8, at ¶11, Respondent cites no statute that expressly gives DHS discretion to refuse a valid bond. *Id.* Petitioner challenges the extent of Respondent's authority to detain him without bond which is not a matter made discretionary by a statute.[4] Section 1252(a)(2)(B)(ii) does not bar review.

21. Respondent argues 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. 8, at ¶15. Again, it is unclear what provision of 8 U.S.C. § 1252 Respondent is arguing for, if any. DHS charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). ECF Dkt. 1, at ¶24; ECF Dkt. 1-3. Nothing about the charge of inadmissibility mandates Petitioner's detention. Petitioner does not challenge DHS's charge in this lawsuit.

22. To the extent Respondent argues Petitioner's claims are subject to 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9), 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);

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[4] Respondent also does 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)(A). ECF Dkt. 8, at ¶¶8-10. This provision does not speak to Respondent's discretionary authority at all and, in any event, is the basis for Petitioner's challenge to the extent of Respondent's detention authority, highlighting the need for judicial review of the merits.

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 U.S.C. §§ 1252(a)(5) and 1252(b)(9) do not apply.[5] *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.").

23. Finally, Respondent refers to "decision[s] or action[s] to commence proceedings, adjudicate cases, or execute removal orders," but do not cite 8 U.S.C. § 1252(g). ECF Dkt. 8, at ¶16. That provision "applies only to three discrete actions" set out in the statute. *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999); *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (§1252(g) "protect[s] from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders."). Petitioner does not challenge any of these actions. Proceedings commence when DHS "files [the NTA] 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

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[5] Respondent cites *Carlson v. Landon*, 342 U.S. 524, 533 (1952) for the proposition that "detention is necessarily part of" deportation procedures. ECF Dkt. 8, at ¶8. 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).

alien…."). There is no final removal order and Petitioner does not challenge execution of such an order. "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); *see also Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (detention "is not itself a decision to 'execute removal orders'"). No provision in the INA strips the Court of jurisdiction to consider Petitioner's claims. *See, e.g., 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 not be required.

24. Respondent argues that Petitioner has not exhausted administrative remedies. ECF Dkt. 8, at ¶¶18-20. Petitioner alleges he sought a bond determination from the IJ. ECF Dkt. 1, at ¶26; ECF Dkt. 1-3. Despite DHS's and DOJ's new agency practice, *id.*, at ¶¶36-38, and the BIA's recent decision confirming this change in *Matter of Yajure Hurtado*, Respondent takes issue with the fact that Petitioner did not further pursue administrative remedies. ECF Dkt. 8, at ¶20. Courts considering DHS's new agency practice have repeatedly rejected this argument.[6]

25. There are two forms of exhaustion: statutory and prudential. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Respondent cites 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).

26. 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

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[6] *See, e.g., Chiliquinga Yumbillo v. Stamper*, 2:25-cv-00479-SDN, 2025 WL 2783642, at *3-*4 (D. Me. Sept. 30, 2025); *J.U. v. Maldonado*, 2025 WL 277276, at *3-*4 (E.D.N.Y. Sept. 29, 2025); *Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228, at *3-*4 (S.D. Ca. Sept. 24, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712427, at *3 (N.D. Iowa Sept. 23, 2025).

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)).

27. Several reasons to excuse exhaustion exist. Petitioner sought a bond redetermination before an IJ. The IJ and Respondent both claim that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). 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). Respondent does not claim that the Court would benefit from additional record development. ECF Dkt. 8, at ¶¶18-20. Moreover, appeal of the IJ's August 20, 2025, bond decision would be futile considering DHS's new interpretation 8 U.S.C. §§ 1225(b)(2) and 1226(a) was developed "in coordination with DOJ". ECF Dkt. 1, at ¶38. The BIA has upheld this abrupt departure from long-standing agency practice in recent weeks. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner brings Due Process claims. ECF Dkt. 1, at ¶¶41-46. At the very least, Petitioner's constitutional claim would remain 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.

28. Respondent argues that *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is "binding precedent on immigration judges." ECF Dkt. 8, at ¶10. They do not argue that it is

binding on this Court. *See generally* ECF Dkt. 8. Several district courts have already determined that *Matter of Yajure Hurtado* is not binding or entitled to deference.[7]

29. 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)(A).

30. Petitioner clearly alleges Respondent's recent departure from decades of agency practice interpreting 8 U.S.C. § 1226(a). ECF Dkt. 1, at ¶¶36-38. This sudden change bears on whether the Court should defer to the BIA. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (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 itself determined that an individual present in the United States without inspection who was arrested and placed in removal proceedings 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). Tr. of Oral Argument at 44:23–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)).[8] Petitioner has resided in the United

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[7] *See, e.g., Rivera Zumba v. Bondi*, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025) ("The Court need not defer to…*Matter of Yajure Hurtado*, and its newly-minted interpretation of § 1225(b)(2)(A)); *Lepe v. Andrews*, --- F.Supp.3d ---. 2025 WL 2716910, at *8 (E.D. Ca. Sept. 23, 2025) (rejecting *Matter of Yajure Hurtado* and citing the Government's prior "longstanding practice" consistent with the statutory text and scheme) (*citing Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024)); *Chogllo Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541, at *7-*9 (D. Me. Sept. 21, 2025); *Salcedo Aceros v. Kaiser*, 25-cv-06924-EMC, 2025 WL 2637503, at *9 (N.D. Ca. Sept. 12, 2025) ("First, the BIA decision is entitled to little deference.").

[8] Full transcript *available at:*

States for nearly 20 years and would clearly be detained pursuant to § 1226(a) under the agency's prior long-standing practice. *Matter of Yajure Hurtado* contradicts this practice.

31. *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 nearly two decades.[9] 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).[10]

32. The "validity of [the agency's] reasoning" also can lend persuasive authority, but *Matter of Yajure Hurtado* directly conflicts with dozens of recent district court decisions[11] and decisions

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https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/21-954_m6hn.pdf (accessed Oct. 1, 2025).

[9] The NTA does not designate Petitioner as an "arriving alien." ECF Dkt. 1-2.

[10] *Available at*: https://www.govinfo.gov/content/pkg/FR-1997-03-06/pdf/97-5250.pdf (accessed Oct. 1, 2025).

[11] *See supra* n.1.

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 Respondent acknowledges 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)).

IV. Petitioner is detained under 8 U.S.C. § 1226(a). Continuing his detention without access to bond proceedings is *ultra vires.*

33. 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).[12] Section 1226(a) applies to people who are inadmissible and people who are deportable 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).

34. 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.

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[12] Section 1226(a)'s refers to a warrant issued by the Attorney General," but the INA provides for exceptions to the warrant requirement. *See* 8 U.S.C. § 1357(a)(2). 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"). Lack of a warrant does not somehow convert the detention authority to 8 U.S.C. § 1225(b)(2)(A).

See 8 U.S.C. §§ 1226(c)(1)(A), 1226(c)(1)(D), and 1226(c)(1)(E).[13]

35. Respondent does 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. § 1225(b)(2).[14] ECF Dkt. 8, at ¶¶8-10. 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. 1, at ¶37.[15]

36. Respondent's argument 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. §

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[13] 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 Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), *available at*: https://www.congress.gov/119/plaws/publ1/PLAW-119publ1.pdf (accessed Oct. 1, 2025).

[14] Respondent omits 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. Respondent does 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.*

[15] *See* Immigration and Customs Enforcement, "Interim Guidance Regarding Authority for Applicants for Admission," July 8, 2025, *available at*: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (accessed Oct. 1, 2025).

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). A reading that all inadmissible non-citizens are detained pursuant to 8 U.S.C. § 1225(b)(2)(A) would render 8 U.S.C. § 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)).

37. Congress recently amended 8 U.S.C. § 1226(c) when it passed the Laken Riley Act. *See supra*, at n.14. 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). Respondent's interpretation 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).

38. 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 "inspection" 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. 8 U.S.C. § 1225(b)(2)(A).[16] 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). Respondent's interpretation of § 1225(b)(2)(A) 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.

39. 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

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[16] 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).

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. 104-469, pt. 1, at 229.[17]

40. By detaining Petitioner without bond, purportedly under the authority of 8 U.S.C. § 1225(b)(2), Respondent "goes beyond what Congress has permitted [him] to do" and acts *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).

V. Respondent's detention of Petitioner without bond violates due process.

41. "Freedom from imprisonment…lies at the heart of the liberty that [the Due Process

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[17] 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.

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 avoiding physical restraint." *Id.*

42. 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 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 administrative burdens that those safeguards may entail *See Mathews*, 424 U.S. at 335 (1976).

43. 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."). He has lived in the United States for nearly 20 years and has rights protected by the Due Process clause. *See Zadvydas v. Davis*, 533 U.S. 678, 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 away from his family his work, and his home.

44. The risk of wrongful detention is high. The purpose of adversarial bond proceedings before a neutral arbiter is to mitigate this risk. Petitioner has resided with his family in the Rio Grande Valley area of Texas for nearly two decades. After his initial arrest and detention in November of 2023, DHS saw fit to release Petitioner on his own recognizance. ECF Dkt. 1-1.

Respondent does not claim there is a change in circumstances regarding Petitioner's risk of flight or danger to the community. 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 available to him under governing law.[18]

45. Respondent does not attempt to show any countervailing interest. *See generally* ECF Dkt. 8. 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 bond proceedings available under 8 U.S.C.§ 1226(a), the proper authority for Petitioner's detention.

VI. The proper remedy.

46. Petitioner seeks an order requiring Respondent to release him or, alternatively, that the Court order a bond hearing. ECF Dkt. 1, at 12. Some courts considering similar claims have ordered release, *see Santiago Santiago v. Noem*, 2025 WL 2792588, at *13-*14 ("The Court is persuaded that the appropriate remedy here is immediate release."); *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.[19] If the

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[18] Humanitarian parole procedures under 8 U.S.C. § 1182(d)(5) do not mitigate this risk because, as Respondent points out, DHS has "sole discretion" whether to grant parole. ECF Dkt. 8, at ¶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 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").

[19] The Court terminated the Attorney General, who has control over immigration courts, as a Respondent . ECF Dkt. 6. Respondent notes that "the originally named federal

Court determines a bond hearing is appropriate, Petitioner respectfully requests that the Court either conduct the bond hearing itself or order the Government to conduct the hearing, enjoin them from denying bond on the basis that Petitioner is detained under § 1225(b)(2)(A), and require the application of the § 1226(a) standards. *See, e.g., Inlago Tocagon v. Moniz*, 25-cv-12453-MJJ, 2025 WL 2778023, at *5 (D. Mass. Sept. 29, 2025).

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court deny Respondent's motion seeking dismissal of his Second Amended Petition for Writ of Habeas Corpus, grant the petition, and order Respondent to immediately release Petitioner or, alternatively, conduct a bond hearing.

Dated: October 2, 2025.

Respectfully submitted

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respondents…make the custodial decisions regarding aliens detained in immigration custody…." ECF Dkt. 8, at n.1. Francisco Venegas is sued in his official capacity. ECF Dkt. 1, at ¶15. Official capacities suits "are really suits against the government." *Smart v. Holder*, 368 Fed.Appx. 591, 593 (5th Cir. 2010). The Court still has authority to order a bond hearing.

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel for Respondent on October 2, 2025, by filing the same with the Court electronic case filing system.

/s/ Peter McGraw
Peter McGraw