UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

FLAVIO BLADIMIR CHOGLLO CHAFLA Petitioner, v. RODNEY S. SCOTT, et al., Respondents.	Case 2:25-cv-00437-SDN
LUIS GERMAN LEMA TAMAY Petitioner, v. RODNEY S. SCOTT, et al., Respondents.	Case 2:25-cv-00438-SDN
VICTOR MANUEL TENESACA LEMA Petitioner, v. RODNEY S. SCOTT, et al., Respondents.	Case 2:25-cv-00439-SDN

PETITIONERS' REPLY TO GOVERNMENT OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioners Flavio Bladimire Choglio Chafla, Luis German Lema Tamay, and Victor Manuel Tenesaca Lema by and through their attorney, Shantanu Chatterjee, respectfully submit this Reply to Respondents' Opposition to Petitioner's Petition for Writ of Habeas Corpus. *See*

Doc. 17. Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules Governing Section 2254 cases and Local Rule 7(d)(1)[1].

The Respondents have detained the Petitioners without the possibility for release on bond. This is because, the Government contends, the cause of Petitioners' detention is pursuant to 8 U.S.C. § 1225(b)(2), which subjects the Petitioners to "mandatory detention." Because the Respondents have denied the Petitioners' eligibility for release on bond, Petitioners will be deprived of the Due Process right to a bond hearing in which the Government has the burden of proof pursuant to *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (holding that a noncitizen detained under 8 U.S.C. § 1226(a) has the Due Process right to a bond hearing in which the government must "either (1) prove by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove by a preponderance of the evidence that [the noncitizen] poses a flight risk.").

The Petitioners seek release from the Respondents' custody because the proffered basis for the Petitioners' detention is unlawful. The Petitioners do not dispute that they each entered the United States without examination. *See* 8 C.F.R. § 235.1 ("Scope of examination"). However, the Petitioners maintain that 8 U.S.C. § 1226, not 8 U.S.C. § 1225, is the statute that governs their detention because they have resided in the United States for years prior to their arrests by the Respondents. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281 (2018) (stating that 8 U.S.C. § 1226 is the default statute that applies when the Department of Homeland Security arrests a noncitizen that is already in the United States). Because the Respondents' proffered basis for the Petitioners' detention is inapposite, and denies Petitioners a bond hearing in which the

[1] The Government's Return and Response to the Orders to Show Cause is effectively a dispositive motion to dismiss the Petitioners' habeas corpus petitions because the Government has requested dismissal. *See* Doc. 17 at 16 ("The Government respectfully submits that the court should dispose of and dismiss these matters."). Local Rule 7(d)(1) provides that "A memorandum of law in support of or in opposition to a motion to dismiss…or any other dispositive motion may not exceed 20 pages." *Id.*

Government has the burden of proof, the Respondents' detention of the Petitioners violates both the Immigration and Nationality Act and the Fifth Amendment right to due process of law.

PROCEDURAL HISTORY

Petitioners Flavio Bladimir Chogllo Chafla (Dkt. #7, Sept. 2, 2025 (the "Chogllo Chafla Petition" or "Chogllo Chafla Pet.")), Luis German Lema Tamay (Dkt. #9, Sept. 3, 2025 (the "Lema Tamay Petition" or "Lema Tamay Pet.")), and Victor Manuel Tenesaca Lema (Dkt. #9, Sept. 3, 2025 (the "Tenesaca Lema" or "Tenesaca Lema Pet.")) are all citizens of Ecuador. *See* Chogllo Chafla Pet. 1; Lema Tamay Pet. ¶1; Tenesaca Lema Pet. 1. All Petitioners are in the custody of Respondents. *See* Doc. 17. Petitioner Flavio Bladimir Chogllo Chafla entered the United States without examination in February of 2019. *See* Chogllo Chafla Pet. 3. Petitioner Luis German Lema Tamay entered the United States without examination in April of 2019. *See* Lema Tamay Pet. 2. Petitioner Victor Manuel Tenesaca Lema entered the United States without examination in March of 2021. *See* Tenesaca Lema Pet. 2.

None of the Petitioners were detected or arrested by the Department of Homeland Security ("DHS") while they were arriving to the United States border. Rather, each Petitioner already entered the United States, and had resided in the United States for over two years, when DHS arrested him. Nonetheless, the Respondents, through the Government, now contend that "ICE maintains mandatory detention authority to hold Petitioners **without bond** pursuant to 8 U.S.C. § 1225(b)(2)." *See* Doc. 17 (emphasis added).

Each Petitioner has filed a Motion for Bond with the Chelmsford Immigration Court pursuant to 8 USC § 1226(a)(2). *See* Bond Requests of Flavio Bladimir Chogllo Chafla, and Luis German Lema Tamay, and Victor Manuel Tenesaca Lema. Petitioners Flavio Bladimir Chogllo Chafla and Luis German Lema Tamay are set for custody redetermination hearings on September

18, 2025, and Petitioner Victor Manuel Tenesaca Lema is set for a custody redetermination on September 24, 2025. *See* Custody Hearing Notice of Flavio Bladimir Chogllo Chafla; Custody Hearing Notice of Luis German Lema Tamay; Custody Hearing Notice of Victor Manuel Tenesaca Lema. However, ICE's position that the Petitioners are mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2) will likely result in the Immigration Judge refusing to find jurisdiction pursuant to a recent Board of Immigration Appeals ("BIA") decision that expanded mandatory detention under 8 U.S.C. § 1225(b)(2) to all noncitizens that entered the United States without a visa, admission, or parole. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (holding that "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."). Even if the Petitioners were to appeal the Immigration Judge's denial of their bond request, according to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024. *See Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850, at *5 (W.D. Wash. Apr. 24, 2025).

Therefore, the Petitioners respectfully request the Court to declare that their detention violates the Due Process Clause of the Fifth Amendment and order the Respondents to release them. Alternatively, the Petitioners request that the Court conduct a bail hearing in which the Government bears the burden of proof. As a tertiary alternative, the Petitioners request that the Court order the Respondents to provide the Petitioners with a bond hearing under 8 U.S.C. § 1226(a) and enjoin the Respondents from denying the Petitioners' eligibility for bond on the basis that they are detained pursuant to 8 U.S.C. § 1225(b)(2).

ARGUMENT

1. Legal Framework for Immigration Detention

Two statutes principally govern the detention of noncitizens: 8 U.S.C. § 1225 and 8 U.S.C. § 1226[2]. The general distinction between § 1225 and § 1226 is that § 1225 applies to noncitizens *seeking* to enter the United States, whereas § 1226 applies to noncitizens that have already entered the United States. The statute upon which the Government relies to justify the Petitioners' detention—8 U.S.C. § 1225[3]—is effectively a border processing statute that applies to noncitizens "seeking to enter the country." *Jennings v. Rodriguez*, 583 U.S. 281 (2018) ("That process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible") (citing 8 U.S.C. § 1225). In the immigration context, the term "admission" means "the lawful entry of [an] alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

8 U.S.C. § 1225 applies to noncitizens seeking entry to the United States that are either "arriving in the United States" or "who have not been admitted or paroled." *Id.* § 1225(b)(1) applies primarily to noncitizens formerly in expedited removal proceedings and the "Credible Fear Interview" procedure. 8 U.S.C. § 1225 contains a provision governing "Asylum interviews," or "Credible Fear Interviews," when a noncitizen that is seeking to enter the United States and is in the custody of DHS "indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." *Id.* § 1225(b)(1). The statute provides that a noncitizen subject to the Credible Fear Interview process is subject to mandatory detention: "Any alien subject to the procedures under this clause shall be detained pending a final determination of

[2] Another statute, 8 U.S.C. § 1231, governs the detention of noncitizens who have been ordered removed. The Government does not contend that the Petitioners have prior orders of removal.

[3] 8 U.S.C. § 1225 also governs expedited removal proceedings. However, the Government now stipulates and concedes that the Petitioners are not subject to expedited removal. *See* Doc. 17 at 2.

credible fear of persecution and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(IV). "Whether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release." *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 111 (2020).

8 U.S.C. § 1225(b)(2) applies to the "Inspection of other aliens" seeking to enter the United States. *See id.* § 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." *Id.* "Section 1225(b)(1) mandates detention for further consideration of the application for asylum, §1225(b)(1)(B)(ii), and §1225(b)(2) requires detention for a [removal] proceeding, §1225(b)(2)(A)." *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (internal quotations omitted).

Whereas 8 U.S.C. § 1225 applies to noncitizens *seeking* to enter the United States, "**§ 1226 applies to aliens already present in the United States.**" *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphases added). "Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." § 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* § 1226(a) establishes a discretionary detention framework for noncitizens arrested and detained "[o]n a warrant issued by the Attorney General." For such individuals, the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on . . . bond of at least $1,500," or (3) "may release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1)- (2). The arresting immigration officer makes an initial custody determination, but noncitizens have the

right to request a custody redetermination (i.e., bond) hearing before an Immigration Judge. See 8 C.F.R. §§ 1236.1(c)(8), (d)(1). **Noncitizens detained under 8 U.S.C. § 1226(a) have the Due Process right to a bond hearing in which the government must "either (1) prove by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove by a preponderance of the evidence that [the noncitizen] poses a flight risk.**" *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (emphasis added).

8 U.S.C. § 1226(c) provides criteria for mandatory detention for certain noncitizens already in the United States. *See id.* Through the Laken Riley Act, enacted in January 2025, Congress expanded § 1226(c)'s mandatory detention requirement to a new category of noncitizens, but only where two criteria are met. See Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (adding 8 U.S.C. § 1226(c)(1)(E)). Under Section 1126(c)(1)(E), the Attorney General must also detain a noncitizen if he (i) is inadmissible because he is present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), obtained documents or admission through misrepresentation or fraud, *id.* § 1182(a)(6)(C), or lacks valid documentation, *id.* § 1182(a)(7); **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," 8 U.S.C. §§ 1226(c)(1)(E)(i)-(ii) (emphasis added). Therefore, entering the United States without admission, parole, or a visa is a necessary, yet insufficient, condition for mandatory detention under the Laken Riley Act. *See id.*

2. <u>8 U.S.C. § 1225 does not Apply to the Petitioners.</u>

The Government contends that although Petitioners are not subject to expedited removal, "ICE submits that § 1225…is the specific detention authority applicable to Petitioners." *See* Doc.

14 at 13. The Government concedes that none of the Petitioners are subject to expedited removal, but contends that all Petitioners remain subject to mandatory detention under 8 U.S.C. § 1225(b)(2) "because Petitioners are present in the United States without being admitted, making detention mandatory." Doc. 17 at 13.

The Government's argument contradicts the Supreme Court's construction of 8 U.S.C. § 1225 and § 1226. In *Jennings v. Rodriguez*, the Supreme Court ruled that § 1225 applies "where the Government must determine **whether an alien *seeking to enter* the country is admissible**." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). The Government does not dispute that each Petitioner has already entered the United States, but contends that Petitioners remain subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because "Petitioners are present in the United States without being admitted, making detention mandatory." Doc. 17 at 13. However, it is salient that the Notices to Appear issued by the Respondents against the Petitioners do *not* charge them as being "arriving aliens" under § 1225. *See* Doc. 17-3; Doc. 17-4.

The Government's expansive reading § 1225 extends mandatory detention to all noncitizens seeking lawful status in the United States, rather than noncitizens seeking *entry* to the United States—and yields an absurd result. One can "seek admission" from anywhere in the world, "for example, by applying for a visa at a consulate abroad." *Matter of Lemus-Losa*, 25 I&N Dec. 734, 741 (BIA 2012). Therefore, the Government's expansive reading of § 1225 would require DHS to take into custody foreign nationals applying for immigration status in the United States at embassies abroad until their visa applications are resolved. Indeed, as the Attorney General has previously recognized, "section [1225] (under which detention is mandatory) and

section [1226] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens." *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (Att'y Gen. 2019).

The Government's argument conflates the mandatory detention criteria for noncitizens seeking to enter the United States with noncitizens already in the United States. 8 U.S.C. § 1226(c), not § 1225(b), governs the mandatory detention of noncitizens already in the United States. *See Jennings*, 583 U.S. at 289 ("who falls into one of several enumerated categories involving criminal offenses and terrorist activities."). § 1226(c) therefore applies *only if* a noncitizen has been convicted of certain criminal offenses and terrorist activities. *See id.* at § 1226(c)(1)(A)-(E). The Laken Riley Act, § 1226(c)(1)(E), also requires as a necessary, insufficient condition that the noncitizen "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title." *Id.* This requirement is, in effect, that the noncitizen entered the country unlawfully without being admitted or paroled, obtained documents or admission through misrepresentation or fraud, or lacks valid documentation. *See id.* § 1226(c)(1)(E) further requires that the noncitizen "is charged with, is arrested for, [or] is convicted of" certain crimes contemplated by the statute. *See id.* Interpreting § 1225(b)(2) to apply to noncitizens who are arrested on a warrant while residing in the United States, as the Government does, would render Section 1226(c)(1)(E)'s criminal conduct criterion superfluous for noncitizens who are inadmissible on two of the three grounds specified in the inadmissibility criterion. *See* 8 U.S.C. § 1226(c)(1)(E)(i) (covering noncitizens who are inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7)). The Government's interpretation of § 1225(b)(2) would therefore largely nullify a statute Congress enacted this very year, and should be rejected pursuant to the principle against surplusage. *See, e.g., Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon

against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.")

The Respondents do not contend that the Petitioners are detained under § 1226(c). None of the Petitioners has the requisite criminal history to trigger § 1226(c). § 1226(c) is the statute that governs the mandatory detention of noncitizens, like the Petitioners, that are already in the United States. Therefore, the Respondents have wrongfully classified the Petitioners as mandatorily detained, which effectively denies the Petitioners the right to a bond hearing in which the government bears the burden of proof.

3. **The Respondents' Denial of the Petitioners' Right to a Bond Hearing in which the Government Has the Burden of Proof Violates the Due Process Clause of the Fifth Amendment.**

The Petitioners are not subject to mandatory detention. The Government contends that "ICE maintains mandatory detention authority to hold Petitioners without bond pursuant to 8 U.S.C. § 1225(b)(2)." *See* Doc. 17 at 2. The Respondents' classification of the Petitioners as mandatorily detained under § 1225(b)(2) deprives the Petitioners of the Due Process right to a bond hearing, in which DHS has the burden of proof, under § 1226(a) and *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (holding that noncitizens detained under 1226(a) have the Due Process right to a full bond hearing in which the government must "either (1) prove by clear and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove by a preponderance of the evidence that [the noncitizen] poses a flight risk.").

The Respondents' wrongful classification of the Petitioners pursuant to § 1225(b)(2) will deprive the Petitioners of the right to a full bond hearing as prescribed by the First Circuit in *Hernandez-Lara*. The Government contends that "ICE maintains mandatory detention authority to hold Petitioners without bond pursuant to 8 U.S.C. § 1225(b)(2)." Doc. 17 at 2. For the

reasons stated *supra*, 8 U.S.C. § 1225(b)(2) does not apply to the Petitioners because they have already resided in the United States for several years, and are not "seeking admission into the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Therefore, the Respondents' detention of the Petitioners without bond violates the Due Process Clause of the Fifth Amendment.

The Government further contends that "[e]ven were this Court to alternatively conclude that Petitioners are instead detained pursuant to the broad civil arrest and detention authority provided under 8 U.S.C. § 1226(a), Petitioners could nonetheless avail themselves of the various due process protections provided under that provision." Doc. 17 at 2. Notwithstanding this contention, the fact is that "ICE maintains mandatory detention authority to hold Petitioners without bond pursuant to 8 U.S.C. § 1225(b)(2)." *Id.* Because the Respondents deny that the Petitioners are eligible for release on bond pursuant to § 1226(a), the Petitioners will *not* be able to avail themselves of the Due Process protections afforded under § 1226(a) and *Hernandez-Lara*. As the Government correctly points out, a recent agency decision adopted the Respondents' expansive reading of § 1225(b)(2) and extended § 1225(b)(2)'s mandatory detention requirement to all noncitizens that entered the United States unlawfully. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, the Respondents' wrongful classification of the Petitioners' detention under § 1225(b)(2) will deprive the Petitioners of a full bond hearing in which DHS has the burden of proof.

To the extent that the Government cites *Yajure Hurtado* to support the proposition that § 1225(b)(2) applies to all noncitizens—including the Petitioners—that entered the country without admission or parole, the Court should reject the BIA's sweeping expansion of mandatory detention under § 1225(b)(2). "[C]ourts must exercise independent judgment in determining the

meaning of statutory provisions," and they "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 394, 413 (2024). The BIA's decision in *Yajure Hurtado* contradicts the plain meaning of § 1225 and § 1226, as well as factually similar decisions in other districts that rejected the extension of § 1225(b)(2) to noncitizens already in the United States. *See, e.g.*, *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same).

To the extent that the Court determines that the Petitioners are not detained under § 1225(b)(2), but rather under § 1226, the Petitioners respectfully request that the Court enjoin the Respondents from denying bond eligibility to the Petitioners on the basis that they are detained pursuant to 8 U.S.C. § 1225(b)(2)[4].

4. <u>The Court May Order the Respondents to Release the Petitioners Because the Statutory Basis for the Petitioners' Detention Does Not Apply to Them.</u>

"[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits." *Gomes v. U.S. Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972)). In a recent habeas corpus case, a District of Massachusetts court ordered the respondents to release the petitioner because their proffered basis for the petitioner's detention did not apply to the petitioner. *See Martinez v. Hyde et al.*, No. 1:25-cv-11613-BEM, slip op. at 4 (D. Mass.

[4] The Government argues that "even if an IJ disagrees with DHS's position that Petitioner is detained under § 1225 at a bond hearing and finds jurisdiction under § 1226, the agency could invoke the automatic stay provision at 8 C.F.R. § 1003.19(i)(2)." Doc. 17 at 15. However, a District of Massachusetts court determined that the petitioner's detention under 8 C.F.R. § 1003.19(i)(2) violated the petitioner's procedural Due Process rights under the Fifth Amendment. *See Sampaio v. Hyde et al.*, No. 1:25-cv-11981-JEK, slip op. at 3 (D. Mass. Sept. 9, 2025) ("Applying the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court concludes that the application of the automatic stay regulation in this case violates [petitioner's] procedural due process rights.").

June 17, 2025) (ordering that the Respondents release the Petitioner because 8 U.S.C. §1225 did not apply and "Respondents identify no other basis for Petitioner's detention."). In this case, the Petitioners are seeking precisely the same relief that the court granted in *Martinez v. Hyde*.

Here, the Respondents' proffered statutory basis for the Petitioners' detention is improper; they are detaining noncitizens already in the United States under a statute that applies only to "alien[s] seeking admission" at the time of their inspection at the border. *See* 8 U.S.C. § 1225(b)(2). The Respondents contend that they are not detaining the Petitioner pursuant to 8 U.S.C. § 1226, but rather 8 U.S.C. § 1225(b). *See* Doc. 17 at 2. Taking the Respondents at their word, they are detaining the Petitioner based on a statute that "applies primarily to aliens seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (citing 8 U.S.C. § 1225(b)). "[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." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Ordering the Petitioners' release is the proper remedy because the basis proffered by the Respondents for their detention, § 1225(b)(2), does not apply to them.

If the Court is not inclined to order the Respondents to release the Petitioners, the Petitioner requests the Court to conduct a bail hearing in which the Government bears the burden of proof pursuant to *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). If a noncitizen demonstrates "that detention is no longer reasonable," then "'the alien must be afforded a hearing before the habeas court at which the government bears the burden of justifying continued detention based on traditional bail factors such as the alien's risk of flight and potential danger to the community.'" *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 455, 477 (D. Mass. 2010) (quoting *Alli v. Decker*, 644 F.Supp.2d 535, 541–42 (M.D. Pa. 2009) (reversed in part on other

grounds)). In this case, the Court should conduct its own bail hearing to protect the Petitioners' Due Process rights because the Respondents' only basis for Petitioners' detention is inapplicable and therefore unreasonable. "The habeas court's determining whether a petitioner is entitled to release also serves the 'historic purpose of the writ,' namely, 'to relieve detention by executive authorities without judicial trial.'" *Id.* at 478 (quoting *Zadvydas*, 533 U.S. at 699).

Alternatively, if the Court determines that the Petitioners are detained under 8 U.S.C. § 1226(a), the Court may order the Respondents to request bond hearings for each Petitioner at which the Immigration Judge considers the Petitioner's eligibility for bond under § 1226(a), and in which the Respondents are enjoined from denying the Petitioner's bond eligibility on the basis that he is detained pursuant to 8 U.S.C. § 1225(b)(2). Courts in other districts, as well as the First Circuit, have ordered this remedy where a noncitizen was denied bond due to the application of the incorrect legal standard. *See, e.g., Gomes v. Hyde*, 2025 WL 1869299, at *18-19 (D. Mass. July 7, 2025); *Hernandez-Lara*, 10 F.4th at 46 (permitting the government to hold a new bond hearing and stipulating the burden of proof to be applied at that hearing); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021) (same); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (similar).

CONCLUSION

For the reason described above, Petitioners' Petitions should be granted, and Respondents should be ordered to release each Petitioner immediately pursuant to his statutory eligibility for release. Alternatively, the Court may conduct its own bail hearing. If the Court finds that the Petitioners are detained under 8 U.S.C. § 1226(a), the Court may order the Respondents to conduct bond hearings for each Petitioner at which the Immigration Judge considers the Petitioner's eligibility for bond under § 1226(a), and in which the Respondents are enjoined from denying the Petitioner's bond eligibility.

Dated: September 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Shantanu Chatterjee, Counsel for Petitioner hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: September 16, 2025

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