IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINA
ALEXANDRIA DIVISION

HENRI WALKER PALACIOS ZEPEDA,

Petitioner,

v.

JEFFREY CRAWFORD, Warden, Farmville Detention Center; MATTHEW ELLISTON, Deputy Assistant Director for Field Operations, Eastern Division, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; 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.

Case No: 1:25-cv-01561

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION

Petitioner Henri Walker Palacios Zepeda, by and through undersigned Counsel, files this reply to Respondents' opposition to his Petition for a Writ of Habeas Corpus. *See* ECF 9. This Court should reject the Respondents' arguments for the reasons that follow.

1. **Mr. Palacios is Not Subject to Mandatory Detention and is Not an Applicant for Admission**

The Respondents argue that Mr. Palacios is subject to mandatory detention because he is an "applicant for admission" according to their interpretation of that term as used in 8 U.S.C. § 1225(a) (INA § 235(a)). It is worth noting that Respondents' arguments are not novel; most of

their arguments are the same points that have been soundly rejected in over thirty (30) cases nationwide, and several more before this very judicial district. *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255, at *5-*9 (E.D. Va. Sept. 19, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800, at 4-*7 (E.D. Va. Sept. 30, 2025)*; *Luna Quispe v. Crawford*, 2025 WL 2783799, at 4-*6 (E.D. Va. Sept. 29, 2025); *Perez Bibiano v. Lyons*, No. 1:25-cv-01590 (E.D. Va. Oct. 1, 2025) (Brinkema, J.); *Diaz Gonzalez v. Lyons*, No. 1:25-cv-01583, at *5-*6 (E.D. Va. Oct. 1, 2025) (Brinkema, J.). Respondents acknowledged the ample case law contrary to their position but indicate that they wish to preserve the arguments for a potential appeal. Nonetheless, Mr. Palacios will address certain points for emphasis for those purposes.

A. The cases that Respondents cite do not support their proposed position.

First, Respondents lean heavily on the passage in *Jennings v. Rodriguez* deeming § 1225(b)(2) a "catchall provision that applies to *all* applicants for admission not covered by [§ 1225(b)(1)]." ECF 9 at 4 (emphasis in original). However, their reliance on *Jennings* is misplaced. *Jennings* clearly states that § 1225(b) governs "[noncitizens] seeking admission into the country" whereas § 1226(a) is the "default rule" governing the detention and removal of noncitizens "already present in the United States." 583 U.S. 281, 288-89 (2018); *see also Abreu v. Crawford*, 2025 WL 51475, at *3 (E.D. Va. Jan. 8, 2025) ("There is a statutory distinction between noncitizens who are detained upon arrival to the United States and those who are detained after they have already entered the country, legally or otherwise.").

Respondents claim that *Jennings* stands for the proposition that to fall under § 1226 detention, a noncitizen must be charged with grounds of deportability from 8 U.S.C. § 1227, rather than inadmissibility. ECF 9 at 9-10. However, § 1227 clearly states that its provisions apply to noncitizens "*in* and *admitted to* the United States[.]" 8 U.S.C. § 1227(a) (emphasis added).

Resolving these two provisions with the Respondents' proposed analysis would produce an absurd result: only noncitizens already in and admitted to the U.S. (and therefore subject to the grounds of removability under § 1227(a)) are eligible for discretionary bond under § 1226(a). As a jurist from this district pointed out in *Hasan*, however, "Section 1226(a) does not contain a requirement of lawful status, and 'courts are not free to read into the language [of a statute] what is not there.'" 2025 WL 2682255, at *6 (quoting *O'Hara v. Nika Techs., Inc.*, 878 F.3d 470, 475 (4th Cir. 2017)). If Congress intended for § 1226(a) to only apply to those who are already present in the U.S. and who have been admitted, it would have stated so.

Respondents argue that Mr. Palacios is not present in the U.S. because he was not lawfully admitted. ECF 9 at 11. Yet, on the Notice to Appear (NTA) submitted with their response, the issuing officer had the opportunity to designate Mr. Palacios as an arriving alien but instead checked the box indicating that Mr. Palacios is *already present* in the United States. ECF 9-1, (Notice to Appear); *see Luna Quispe*, 2025 WL 2783799, at *6 ("Petitioner has been present in the since 2006, and indeed, in the very document that charges him as removable, the Government checked the box stating that Mr. Palacios is "an alien present in the United States who has not been admitted or paroled[.]"). Under *Jennings* and considering Respondents' own acknowledgement that Mr. Palacios is already present in and not arriving to the U.S., the Respondents' position cannot stand.

In support of this contention, Respondents cite *Lopez-Sorto v. Garland*, in which the Fourth Circuit examined whether a noncitizen resided in the U.S. before ICE removed him. 103 F.4th 242, 249, 252 (4th Cir. 2024). First, the facts of that case could not be more different than the facts in this case. Mr. Lopez-Sorto was originally admitted to the U.S. as a Lawful Permanent Resident at eight years old. *Id.* at 243. He was also placed into removal proceedings with the issuance of a

NTA charging him with *removability,* not inadmissibility. *Id.* Respondents placed great emphasis on the grounds of inadmissibility versus removability in their analysis of whether Mr. Palacios is present in the U.S., so we bring that to the Court's attention here. Mr. Lopez-Sorto was a LPR charged with removability, and he did not challenge his grounds of removability, and was then removed from the country. *Id.*

The relevant question in that case was whether Mr. Lopez-Sorto could return to the United States after DHS physically removed him from the country pursuant to a DHS directive. *Id.* at 249. Importantly, Mr. Lopez-Sorto had several criminal convictions. *Id.* at 251. The court reviewed the three ways one could return to the United States under the directive: (1) if the noncitizen is returning to United States to be restored to lawful permanent resident status; (2) if the noncitizen's physical presence is required for removal proceedings; or (3) if a noncitizen is granted relief in immigration court allowing the noncitizen to lawfully reside in the United States. *Id.* at 250.

Respondents state that the Fourth Circuit found that Mr. Lopez-Sorto could not be physically present in the United States if not also admitted. ECF 9 at 11. But that is not what the court found. The court determined that the only way Lopez-Sorto could return to the United States was through legal authorization, called parole, to be *present* in the country but without being admitted. *Lopez-Sorto*, 103 F.4th at 251. Importantly, the Court noted that a parolee is "regarded as stopped at the boundary line," and went on to say that "in the absence of an *entry*, the Supreme Court has concluded that a [noncitizen] can neither dwell nor reside within the [United States]." *Id.* at 252 (emphasis added). Thus, *Lopez-Sorto* does not support Respondents' proposition: rather, *Lopez-Sorto* makes clear that even those who unlawfully enter the United States are not seeking admission.

Respondents also cite *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021), though

they do acknowledge that the procedural posture and facts of that case were different than the present. ECF 9 at 11-12. We also draw the Court's attention to the fact that Mr. Jimenez-Rodriguez was actually *released on bond during his proceedings*, underlining once more the longstanding practice of allowing bond for individuals present in the U.S. without admission or parole. *Jimenez-Rodriguez*, 996 F.3d at 192. Like *Lopez-Sorto*, the facts, procedural posture, and statutes analyzed vary so greatly here, so that analysis should not be applied in Mr. Palacios' case.

Respondents state that *Zadvydas v. Davis*, 533 U.S. 678 (2001) is inapposite to Mr. Palacios' case (ECF 9 at 16) yet go on to cite it in their discussion of the burdens of proof for detention cases. ECF 9 at 22. They quote *Zadvydas* and discuss the post-removal detention period and when the burden is on the government to show that there is a significant likelihood that the removal order will be executed in the reasonably foreseeable future. ECF 9 at 22 (quoting *Zadvydas*, 533 U.S. at 701). However, in Respondents' own words, this comparison is inapposite because there is no removal order in Mr. Palacios' case. The matter of post-removal order burden of proof is neither applicable nor appropriate here.

B. Respondents' reading of the law would render the Laken Riley Act's (LRA) additions to 8 U.S.C. § 1226(c)(1) superfluous.

Respondents contend that their interpretation of the law would not render § 1226(c)(1) superfluous, pointing out that the provisions of mandatory detention pursuant to § 1226(c)(1) also apply to certain lawful permanent residents. ECF 9 at 13. True, but Respondents fail to acknowledge that the LRA's additions to the statute in § 1226(c)(1)(E) *specifically address and mandate detention for noncitizens inadmissible under § 1128(a)(6)(A)(i)* – the same group of noncitizens that Respondents claim to be *already* automatically subject to mandatory detention under its novel interpretation of §§ 1225 and 1226. To the extent that Respondents put forth this argument to make another point, that is unclear.

In addition, Respondents argue that because § 1225(b)(2)(A) uses specific mandatory language, as opposed to the permissive language of § 1226(a), it should govern "as a matter of statutory construction" because the permissive language is more "general" than the mandatory language.[1] ECF 9 at 9. They contend that holding that § 1226(a) governs here "would render mandatory detention under § 1225(b) meaningless." *Id.* (citing *Florida v. U.S.*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023)). Their citation to *Florida v. U.S.* is irrelevant, because the court there held, "§ 1226(a) does not apply to applicants for admission apprehended at the Southwest Border." *Id.* Mr. Palacios is not asking this Court to apply § 1226(a) to an applicant for admission apprehended at the Southwest Border.

If applying § 1226(a) in this case would render § 1225(b) meaningless as Respondents argue, then it would be reasonable to expect that an immigration court, the Board of Immigration Appeals (BIA), the federal district and circuit courts, or the U.S. Supreme Court would have identified such a grave shortcoming before today – after all, for the past twenty-five (25) years, § 1226(a) *has* been applied in cases such as these, all under the watchful eye of the aforementioned agencies and courts. Respondents' concerns about making sections of law meaningless are better directed towards their own argument in favor of an interpretation that would render the LRA's additions to § 1226(c)(1) superfluous.

C. Mr. Palacios is not an applicant for admission, and Respondents' interpretation of this term and § 1225(b)(2) depart from immigration legal precedent.

Respondents' attempt to construe Mr. Palacios' interpretation of § 1225(b)(2) as something

[1] Respondents point out in their opposition that Mr. Palacios was not placed in expedited removal proceedings, which, according to Respondents, seems to lend to their interpretation that he is an applicant for admission. ECF 9 at 8, n.3. Respondents cite to *Matter of E-R-M- & L-R-M,* 25 I&N Dec. 520 (BIA 2011). In that case, the BIA held that DHS has the discretion to place noncitizens into expedited removal proceedings or regular removal proceedings because the word "shall" in 8 U.S.C. § 1225(b)(1)(A)(i) does not actually mean shall. Instead, it means "may." By this logic, perhaps the word "shall" in § 1225(b)(2) also means "may," and thus, Mr. Palacios is not subject to *mandatory* detention.

novel and "proposed" for the first time in the instant matter. ECF 9 at 10. This could not be further from the case. For nearly three decades, Respondents themselves and the courts have interpreted § 1225(b)(2) to not include noncitizens such as Mr. Palacios. Before July 8, 2025, "DHS's long-standing interpretation has been that § 1226(a) applied[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Transcript of Oral Argument at 44:24-45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (quoting the Solicitor General). *See also Jennings*, 583 U.S. at 289 (construing the difference between § 1225(b)(2) and § 1226(a) and concluding that the former applies to noncitizens "seeking admission into the country," whereas the later governs noncitizens "already in the country who are subject to removal proceedings").

And even longer has immigration law and the Supreme Court recognized a legal and statutory distinction between those seeking admission "on the threshold" of our country's borders or apprehended shortly after entering the country. *See Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (observing that the Supreme Court recognized additional rights and privileges for noncitizens not extended to those merely "on the threshold of entry") (quoting *Shaughnessy v. United States* ex rel. *Mezei*, 345 U.S. 206, 202 (1953)); *Zadvydas,* 533 U.S. at 693 ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). Mr. Palacios's interpretation of § 1225(b)(2) adheres to immigration law precedent, and it is in fact Respondents' reading of § 1225(b) that represents a departure from longstanding precedent. *Accord Hasan*, 2025 WL 2682255, at *9; *Luna Quispe*, 2025 WL 2783799, at *6 ; *Quispe-Ardiles*, 2025 WL 2783800, at *7.

Respondents also misstate Congress's intent when changing the statutory scheme when it passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. No. 104-208, 110 Stat 3009 (1996), to support this argument. ECF 9 at 10. Respondents, while

citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), state that Congress changed the term "entry" to "admitted" to "make sure that those who entered the U.S. without inspection did not have more procedural or substantive *due process* rights than those who present themselves to authorities for inspection." *Id.* (emphasis added). This is a dangerous misconstrual of the cited materials.

Congress did not limit any noncitizen's *constitutional* substantive or procedural due process rights; rather, the House Report in a subtitle called "Revision Procedures for *Removal* of Aliens" states that the change is to keep those who enter without inspection from "gain[ing] *equities* [positive factors] and *privileges* [special advantages] in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." H.R. Rep. No. 104-469, pt. 1 at 225 (emphasis added). Restricting the equities and privileges of a person who entered unlawfully makes sense given the full statutory scheme: it should be harder to ***remove*** a person who has been lawfully admitted than someone who was never lawfully admitted, whether by virtue of requesting entry at the border or entering the U.S. without inspection. As the Third Circuit explained in *Martinez v. Attorney General*:

> [N]on-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights[2] afforded in deportation proceedings while non-citizens who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings . . . To remedy this unintended and undesirable consequence, the IIRIRA substituted admission for entry and replaced deportation and exclusion proceedings with the more general removal proceeding.

693 F.3d 408, 413 n.5 (3d Cir. 2012). *Compare* 8 U.S.C. § 1182 *with* 8 U.S.C. § 1227 (showing that there are more inadmissibility grounds than deportability grounds, and thus it is harder to be

[2] Undersigned Counsel recognizes that the Third Circuit used the word "rights" in its decision, but nothing in the text of the decision indicates that the court in that case meant to imply that IIRIRA changed noncitizens' *constitutional* rights.

lawfully admitted to the U.S. or permitted to stay than to be deported from the country after a lawful admission). But it does not follow that a person who entered without inspection is also an applicant for admission in the context of detention under § 1225(b)(2)(A).

The Respondents also suggest that Mr. Palacios is requesting this Court to read in additional due process rights that the INA has never provided for noncitizens in this country. ECF 9 at 10. This is blatantly untrue, and the Respondents' attempts to "Frankenstein" a legal doctrine on this point are unavailing. First, Respondents' reliance on *DHS v. Thuraissigiam* for the contention that noncitizens are entitled to no more process than the INA provides is misplaced, as that case involved a noncitizen that U.S. Customs and Border Patrol detained merely 25 yards after crossing the southwest land border of the United States. 591 U.S. 103, 113 (2020). The Supreme Court found Mr. Thuraissigiam to be on the "threshold of entry" and specifically held that "an alien *in respondent's position* has only those rights regarding admission that Congress has provided by statute." *Id.* at 140 (emphasis added). But the Court also made crystal clear that "noncitizens who have established connections in this country have due process rights in deportation proceedings." *Id.* at 108.

Additionally, Respondents' quote from *Nishimura Ekiu* leaves out a key portion of the sentence: for "foreigners who have never been naturalized, ***nor acquired any domicil[e] or residence within the United States***, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." 142 U.S. 651, 660 (1892) (bold and italics added for emphasis). The Respondents are conveniently omitting portions of sentences to piece together a legal argument that is at odds with centuries of jurisprudence. From 1892 to the present, it is clear that noncitizens with established connections and long-time residence in the U.S. are treated differently

than those who are on our nation's threshold or apprehended shortly after effectuating an illegal entry. *See also Mathews v. Diaz*, 426 U.S. 67, 77, 80 (1976) (holding that noncitizens are not entitled to welfare benefits, but stating that "as the [noncitizen's] tie grows stronger, so does the strength of his claim to an equal share of that munificence" and acknowledging that "[e]ven one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of due process]").

The legal distinction between noncitizens "on the threshold" and those apprehended after residing in the U.S. for many years supports Mr. Palacios' position that he is not an "applicant for admission." Just because an ICE Officer has taken one look at the case and designated Mr. Palacios as an "applicant for admission" does not mean that he is one. The exact language of § 1225(b)(2) is: "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." (italics added).

The use of the phrase "seeking admission" to describe an "applicant for admission" presumes an affirmative and ongoing action. *See Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 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))). As many courts have found over decades and indeed the last several weeks, the statutory framework for "applicant for admission" necessitates some ongoing action or attempt to effectuate an entry into the U.S. at the time an applicant is inspected by an immigration officer. *See Cerritos Echevarria v. Bondi*, 2025 WL 2821282, at *6 (D. Ariz. Oct. 3, 2025); *Luna Quispe*, 2025 WL 2783799, at *5 (noting that "1225(b)(2)(A) brings within its scope only those individuals actively seeking

admission into the country, and not those that have already entered the country (albeit unlawfully).") (citing *Hasan*, 2025 WL 2682255, at *8)). Even *Thuraissigiam*'s definition of "applicant for admission" comports with this position: "an alien who tries to enter the country illegally is treated as an 'applicant for admission.'" 591 U.S. at 140. Notice the present tense of the word "tries," which suggests that to be an "applicant for admission" one must be presently attempting to effectuate an entry into the U.S., or have very recently done so.[3]

Additionally, it is arguable that Mr. Palacios has been inspected or examined by an immigration officer in the way § 1225 contemplates for "applicants for admission." Certainly, "not every encounter with an immigration officer necessarily constitutes an examination or inspection under section 1225." *Cerritos Echevarria*, 2025 WL 2821282, at *6 (quoting *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390, *7 (D.N.H. 2025)). The "verbiage" of 1225 "suggests that the sort of "inspection" contemplated by § 1225(b)(2)(A) is an inspection by an examining immigration officer that occurs at the time an alien first applies for or otherwise seeks admission to the United States—not an encounter with an ICE/[Enforcement and Removal Operations] officer 24 years later." *Cerritos Echevarria*, 2025 WL 2821282, at *6.

It is difficult to see how Mr. Palacios could be deemed "seeking admission" at the time of his arrest and detention on August 21, 2025, because at that point, he had been present in the U.S. for 21 years, having arrived in the U.S. in 2004, and had not sought to effectuate a legal entry into the U.S. at any time. Further, Respondents, despite a conveniently timed affidavit from an officer

[3] Other judicial districts around the country have undertaken this same analysis of the "seeking admission" language in 1225(b)(2) and concluded similarly. *See Lopez-Campos v. Raycroft*, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) ("'[S]eeking admission' ... implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection."); *Belsai D.S. v. Bondi*, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) ("One who is "seeking admission" is presently attempting to gain admission into the United States); *Lopez Benitez*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025) (interpreting "seeking admission" to mean a person who is actively "seeking" "lawful entry").

with no firsthand knowledge of Mr. Palacios' case stating otherwise, declined to mark "You are an arriving alien" on Mr. Palacios' Notice to Appear. "Arriving alien is the active language used to define the scope of section 1225(b)(2)(A) in its implementing regulation. 8 C.F.R. § 235.3(c)(1)." *Martinez v. Hyde*, --F. Supp. 3d--, 2025 WL 2025 2084238, at *6 (D. Mass. July 24, 2025). Respondents cannot reconcile their categorization of Mr. Palacios as an applicant for admission with their own actions that suggest otherwise.

The plain meaning of the word "seeking," read in light of the statutory framework of 1225(b)(2) and its implanting regulations, as well as Respondents' and federal courts' historical treatment of noncitizens similarly situated to Mr. Palacios, supports the conclusion that he is not an applicant for admission, and thus is not subject to mandatory detention.

2. Respondents' Due Process Arguments Grossly Minimize Mr. Palacios' Liberty Interest and Are Premised on the Erroneous Conclusion That He Is Subject to Mandatory Detention

Respondents claim that the only process Mr. Palacios is due is what is afforded under the mandatory detention provision in the INA. *See* ECF 9 at 13. This argument falls flat for two reasons. First, it misses the entire point of Mr. Palacios' claim. He is not arguing that the mandatory detention provision itself is violative of due process, but that Respondents' misclassification of him under that provision violates his right to due process. ECF 1 at 12-14. Second, Respondents' contention that due process ends at the INA dangerously undermines long standing and core principles of this legal doctrine. *See supra* Section 1.C. The U.S. Supreme Court made clear that due process is "guaranteed [and] applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also United States v. Lopez-Collazo*, 824 F.3d 453, 461 (4th Cir. 2016) ("[A]liens who have once passed through our gates, even illegally, may

be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." (quoting *Shaughnessy v. United States* ex rel. *Mezei*, 345 U.S. 206, 212 (1953))).

Respondents cite *Mathews v. Diaz*, including the quote, "[a]ny rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution." ECF 9 at 17 (quoting 426 U.S. 67, 81 (1976)). Maybe so, but the "flexibility" Respondents seek here is the unlawful detention of thousands of noncitizens with strong ties to the U.S., such as Mr. Palacios, a flexibility that they did not seek until 25-plus years after those provisions were put into effect. If Respondents need to respond to "changing world conditions," they can put forth evidence supporting the proposition that Mr. Palacios is a danger to the community or a flight risk, which they have not done. Further, *Mathews v. Diaz* actually recognized that undocumented noncitizens present in the U.S. who have formed connections to the country are afforded additional procedural protections than those without these same connections. 426 U.S. at 77, 80.

Respondents also argue that there is no substantive due process violation here because Mr. Palacios' liberty interest is weaker than the government's interest in immigration enforcement. ECF 9, 16-20. Mr. Palacios is being subject to an arbitrary restraint on his bodily freedom because the Respondents have misclassified him as subject to the no-bond detention scheme of § 1225(b)(2). This unequivocally violates his substantive due process rights. *See Hasan*, at *11 (finding that Petitioner's substantive due process rights were implicated where the DHS's use of the automatic stay provision resulted in arbitrary detention); *J.U. v. Maldonado*, 2025 WL 2772765, at *9 (E.D.N.Y. Sept. 26, 2025) (finding due process violation where the government was unlawfully holding petitioner subject to mandatory detention).

Further, while the government does have an interest in immigration enforcement, there is no reason to think that the discretionary detention scheme of § 1226(a) does not properly serve this interest. *See Hasan*, 2025 WL 2682255, at *4. Neither in Mr. Palacios' immigration court proceedings, nor in these proceedings, did Respondents put forth any individualized evidence that would indicate that Mr. Palacios is a danger to the community or a flight risk. He has every incentive to pursue relief from removal in immigration court, as he is eligible for Cancellation of Removal for Certain Nonpermanent Residents, Form EOIR-42B, which his family is in the process of helping undersigned Counsel prepare. Indeed, the government's actions raise the question of "'whether the detention is not to facilitate deportation, or to protect against the risk of flight or dangerousness, but to incarcerate for other reasons.'" *Id.* at *13 (quoting *Herrera*, —— F.Supp.3d at ——, 2025 WL 2581792 (quoting *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring)).

Further, the Respondents misunderstand the meaning of "indefinite." Indefinite does not mean forever; it means there is no "exact limit." *Indefinite*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/indefinite#dictionary-entry-1 (last visited Oct. 1, 2025). Here, there is no known end date for Mr. Palacios' detention. Mr. Palacios continues to languish in detention, and if Respondents prevail, he will continue to do so during the pendency of his removal proceedings, because the government will hold him mandatorily detained and without access to bond. *See* IMMIGR. AND CUSTOMS ENF., *Interim Guidance Regarding Detention Authority for Applicants for Admission*, (July 8, 2025) (accessible at: https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the government's current policy, Mr. Palacios could even obtain a positive outcome in his removal proceedings but remain detained

because of the manner of his entry.

Even one day spent in detention is an affront to Mr. Palacios' constitutional rights, considering that Respondents are subjecting him to an unlawful mandatory detention schema wholly and soundly rejected by courts nationwide and previously unobserved in the decades of custody redetermination practice. These harms are not speculative, and the Respondents' attempts to minimize them are unavailing and indicative of their lack of concern for the Constitution.

Respondents' procedural due process analysis again minimizes Mr. Palacios' liberty interest and impermissibly inflates the government's interest in the instant case. First, it is worth noting that Respondents' arguments are premised on the erroneous conclusion that Mr. Palacios is subject to mandatory detention under § 1225(b)(2) and that he has been afforded all process he is due under this statute. However, Mr. Palacios will respond to the government's analysis of the *Mathews v. Eldridge* factors. 424 U.S. 319 (1976).

First, it is well established in this judicial district that noncitizens who have erroneously been subjected to no-bond detention have a significant liberty interest at stake. *See Hasan*, 2025 WL 2682255, at *11; *Luna Quispe*, 2025 WL 2783799, at *8 ("Petitioner's interest at stake is his bodily freedom, the "most elemental of liberty interests"') (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *Quispe-Ardiles*, 2025 WL 2783800, at *9 (same). Mr. Palacios recognizes that the cited cases all had a fact pattern where the petitioners were denied release on bond due to DHS's invocation of the automatic stay provision. An increasingly common fact pattern is like the instant case, where noncitizens are erroneously classified as no-bond detainees, which deprives them of ever accessing a meaningful bond hearing. Courts in other judicial districts are finding that this classification deprives noncitizen petitioners of their due process rights as well, and are ordering petitioners' release. *J.U.*, 2025 WL 2772765; *Sanchez Roman v. Noem*, 2025 WL

2710211 (D. Nev. Sept. 23, 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025).

Respondents also contend that Mr. Palacios' liberty interest is diminished because his release would assist an "ongoing violation of U.S. law." ECF 9 at 18. Not only is this argument nonsensical, but it has been foreclosed by this judicial district in *Luna Quispe*. Just as in the instant case, "Respondents' fail to recognize that releasing Petitioner on bond . . . does not preclude the government from moving forward with its removal proceedings against Petitioner at the appropriate time." 2025 WL 2783799, at *8. The government's ability to remedy an "ongoing violation of U.S. law" is served through removal proceedings, not blanket mandatory detention of all noncitizens who entered the U.S. without authorization.

As to the second *Mathews* factor, the idea that Mr. Palacios could seek parole from detention for "humanitarian reasons or a significant public benefit" does not comport with procedural due process. ECF 9 at 19. Parole varies starkly from bond, as a neutral fact finder (an Immigration Judge) is not involved and the decision is in the discretionary power of the DHS, the agency responsible for erroneously classifying Mr. Palacios as a no-bond detainee in the first place. *See* § 1182(d)(5)(A) ("The *Secretary of Homeland Security* may, except as provided in subparagraph (B) or in section 1184(f) of this title, *in his discretion* parole into the United States temporarily under such conditions as he may prescribe *only on a case-by-case basis*) (emphasis added to show the discretionary nature of this request to the DHS); *See also Mandatory Detention, Bond, and Parole*, Univ. of Miami Sch. Of Law. Immigr. Clinic, https://www.law.miami.edu/_assets/pdf/immigration-clinic/8_mandatory_detention.pdf (last accessed Oct. 3, 2025). It is illogical to expect Mr. Palacios to seek parole from the very agency

that is fighting tooth and nail to keep him detained unconstitutionally.

Respondents' argument as to the third *Mathews* factor, that the government has a significant interest in continued mandatory detention, also falls flat because mandatory detention is "valid where it advances a legitimate governmental purpose," such as "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *J.U.*, 2025 WL 2772765, at *10. Respondents have put forth no arguments that the discretionary detention scheme of § 1226(a) would not also serve these legitimate interests. *See Luna Quispe*, 2025 WL 2783799, at *9 (analyzing this exact argument and concluding similarly). Respondents point out that "[t]here is always a public interest in prompt execution of removal orders[.]" ECF 9 at 19 (quoting *Nken v. Holder*, 556 U.S. 418, 436 (2009)). True, but Respondents do not present evidence – nor does evidence exist – that there is a removal order in Mr. Palacios' case requiring "prompt execution."

For the foregoing reasons, this Court should find that Mr. Palacios' due process rights are violated by his unlawful mandatory detention.

3. Immediate Release From Detention Is Warranted In Mr. Palacios' Case

Mr. Palacios maintains that immediate release is the only option that would remedy the harm that he has suffered and ensure that his due process rights are protected. A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (noting that at "common-law habeas corpus was, above all, an adaptable remedy"). Here, this court should order immediate release if it finds that Mr. Palacios' no-bond detention violates his constitutional rights. Other courts have done so where in these circumstances. *Rivera Zumba v. Bondi*, 2025 WL 2753496, at *11 (D.N.J.

Sept. 26, 2025) (concluding that habeas relief is flexible in nature and fashioning "a remedy that returns petitioner to her position prior to her unlawful detention."); *Lopez Campos v. Raycraft*, 2025 WL 2496379, at *10 (E.D. Mich. Aug. 29, 2025).

Immediate release is the only option that would protect Mr. Palacios' due process rights as there are several issues that may arise with a bond proceeding before an immigration judge. First, Immigration courts have been upholding the unlawful mandatory detention scheme as they are bound by the Board of Immigration Appeal's decision in *Matter of Yajure Hurtado*. 29 I&N Dec. at 219 (holding that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under § 1225(b)(2), not § 1226(a)). In fact, Mr. Palacios *already had* a bond hearing, and there, the Immigration Judge upheld the BIA's unconstitutional decision in *Yajure Hurtado*. ECF 1, Exh. 3 (Bond Denial). Forcing Mr. Palacios into a bond hearing before the same tribunal that already upheld a detention schema violating his due process rights is not, in fact, a remedy for the due process violation Mr. Palacios faces. The U.S. District Court for the Eastern District of New York recognized this concept in *J.U. v. Maldonado*, explaining: "[T]he only cure to that unlawful detention is the vacatur of detention – that is, the release of Petitioner from ICE custody." 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025); *see also Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (bond hearing "is no substitute for the requirement that ICE" must follow prior to the initial decision to "strip a person of the freedom that lies at the heart of the Due Process Clause").

Further, even if this Court orders a bond hearing, Respondent DHS may assert the automatic stay provision, which would perpetuate Mr. Palacios' detention and hold him mercy to the same provision that courts nationwide have found to be unconstitutional. *See, e.g.*, *Hasan,* 2025 WL 2682255, at *4; *Luna Quispe,* 2025 WL 2783799, at *2-*3. If this were to transpire, Mr.

Palacios' case would come back before this Court once more, expending unnecessary resources, compounding Mr. Palacios' suffering, and re-litigating an issue clearly spoken on by the courts. Moreover, Respondent DHS could go on to file a full appeal of a bond grant before the Board of Immigration Appeals, prolonging Mr. Palacios' detention, which was unlawful at its inception and continues to be unlawful unless this Court grants an appropriate remedy in his case.

If the Court does find it the appropriate relief to order Respondents to provide Mr. Palacios an individualized bond hearing, it would be appropriate to both release Mr. Palacios pending his bond hearing and order the burden to be shifted to Respondent DHS to prove by clear and convincing evidence that Mr. Palacios poses a danger to the community, or by a preponderance of the evidence that he is a flight risk. *See Perez Bibiano v. Lyons*, No. 1:25-cv-01590, at *5-*6 (E.D. Va. Oct. 1, 2025) (Brinkema, J.) (ordering an immediate release of Petitioners from custody pending bond hearing to be held within 14 days, citing 8 U.S.C. § 1226(a), 8 C.F.R. § 1236.1(d)(1)); *Diaz Gonzalez v. Lyons*, No. 1:25-cv-01583, at *5-*6 (E.D. Va. Oct. 1, 2025) (Brinkema, J.) (same).

While Respondents argue against this Court allocating the burden on the government in any future bond proceeding, "allocating the burden in this manner reflects the concern that 'because the [noncitizen's] potential loss of liberty is so severe . . . he should not have to share the risk of error equally.'" *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025). And the consensus with courts around the country since 2020, and indeed in the past two months, has been to utilize this burden-shifting framework. *Id.* at *12-*13 (concluding as such and collecting cases).

4. Conclusion

For the reasons stated above, Mr. Palacios respectfully requests that this Court assumes

jurisdiction over this matter, declares that the Respondents' actions violate Mr. Palacios' constitutional rights, and orders the relief requested in his habeas petition.

Respectfully submitted,

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