UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SIXTO HERNANDEZ HERNANDEZ, **Petitioner,** **v.** **JEFFREY CRAWFORD, et. al.,** **Respondents.**	**Case No: 1:25-CV-1565-AJT-WBP**

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner Sixto Hernandez Hernandez ("Mr. Hernandez") herein responds to the Federal Respondents' ("Respondents") opposition to the grant of a writ of habeas corpus, filed October 2, 2025.[1] Respondents argue that this Court does not have jurisdiction to entertain the petition even though Mr. Hernandez is not challenging his removal, but rather his custody in civil detention. Respondents also argue that even if the Court has jurisdiction, that Mr. Hernandez's continued detention is lawful, even though he is not, and never has been, an applicant for admission or seeking admission into the United States. They further argue that they have complied with the due process clause's requirements for both procedural and substantive due process. Finally, Respondents believe that the appropriate remedy should the Court grant the petition is an individualized bond hearing, even though appropriate habeas corpus relief is immediate release, not prolonging the petitioner's unlawful detention.

I. The Immigration and Nationality Act ("INA") Does Not Strip the Court of Jurisdiction to Review Petitions for a Writ of Habeas Corpus.

Respondents contend that two provisions in the INA strip the Court of jurisdiction over Mr. Hernandez's writ of habeas corpus. First, Respondents argue that 8 U.S.C. § 1252(b)(9) takes all power away from federal courts to review a habeas corpus petition because, according to Respondents, a challenge to the legality of Mr. Hernandez's detention is a matter arising out of a removal proceeding. Opp. at 6-7. This argument is unconvincing because it is legally incorrect, and several jurists in this Court have already rejected this argument. *See Hasan v. Crawford*, 2025 WL 2682255, at *4 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Luna Quispe v. Crawford*, 2025 WL 2783799, at *2-3 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Quispe-Ardiles v. Noem*, 2025 WL 2783800, at *3-4 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.).

This Court and dozens of others have found that § 1252(b)(9) does not preclude challenges to

[1] One of Respondents' arguments is that the Mr. Hernandez cannot seek attorney's fees, and Mr. Hernandez agrees. Opp. at 6, n.4. Thus, Mr. Hernandez, through counsel, requests to withdraw that request for relief.

the constitutionality and legality of the government's interpretation of 1225(b)(2). *See, e.g.*, *Hasan*, 2025 WL 2682255, at *3 n.7 (collecting cases); *Quispe-Ardiles*, 2025 WL 2783800, at *3; *Maldonado v. Olson*, 2025 WL 2374411, at *4-*8 (D. Minn. Aug. 15, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *5-*7 (D. Md. Aug. 24, 2025). Department of Justice ("DOJ") regulations specifically state that custody proceedings are separate and apart from removal proceedings. 8 C.F.R. § 1003.19(d) ("Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding."; *Hasan*, 2025 WL 2682255, at *4. Indeed, Mr. Hernandez is not challenging the decision to place him into removal proceedings or whether he is removable from the United States. Because Mr. Hernandez is only challenging his detention while his removal proceedings are ongoing, the Court has jurisdiction to consider his habeas corpus petition. *See Hasan*, 2025 WL 2682255, at *4.

Second, Respondents argue that 8 U.S.C. § 1252(g) deprives federal courts of jurisdiction to review any claims arising from the federal government's decision to initiate or pursue removal proceedings, including a habeas corpus petition. Opp. at 7-8. However, this argument is nonsensical and goes against the plain meaning of the statute. The header for this statute is "Judicial Review of *Orders of Removal*". (emphasis added). Subsection (g) reads "[N]o court shall have jurisdiction to hear any cause of claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

Respondents interpret this language to sweep in all challenges to Executive Branch actions. Opp. at 7-8. This reading of § 1252(g) again has been rejected time and time again in this judicial district and others. *Hasan*, 2025 WL 2682255, at *4; *Quispe-Ardiles*, 2025 WL 2783800, at *4; *Luna Quispe*, 2025 WL 2783799, at *3. Illustratively, even one of the cases Respondents rely on, *Reno v.*

Am.-Arab Anti-Discrimination Comm. cautions *against* interpreting § 1252(g) in such a broad manner. 525 U.S. 471, 482 (1999) ("It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings."). Importantly, since custody and bond proceedings are separate and apart from removal proceedings, a noncitizen need not have an ongoing removal proceeding to request a custody redetermination hearing before the immigration judge. *See* 8 C.F.R. § 1003.19(d); Executive Office for Immigration Review ("EOIR") Immigration Court Practice Manual Chapt. 9.3(b) ("An Immigration Judge has jurisdiction over [custody] cases *even if a charging document has not been filed.*") (emphasis added).

Mr. Hernandez's habeas corpus petition does not challenge the three distinct decisions outlined in § 1252(g). *See generally*, Petition (ECF 1). He is not challenging the decision to place him in removal proceedings or the adjudication of these proceedings, nor is there a removal order in his case. Mr. Hernandez's habeas corpus petition regarding his unlawful detention is "independent of, and collateral to, the removal process." *Luna Quispe*, 2025 WL 2783799, at *3 (quoting *Ozturk v. Hyde*, 136 F.4th 382, 397 (2d Cir. 2025)). Because bond and custody proceedings are separate and apart from removal proceedings, this Court has jurisdiction over Mr. Hernandez's habeas corpus petition.

II. Mr. Hernandez's Detention Is Illegal Because He Is Not Subject to Mandatory Detention.

Respondents next contend that Mr. Hernandez's detention is lawful because he is an applicant for admission and seeking admission and is therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Respondents correctly state that this Court has identified three requirements for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A): (1) be an applicant for admission; (2) be seeking admission; and (3) be not clearly and beyond doubt to be admitted to the United States. Opp. at 9 (citing *Luna Quispe*, Mem. Op. at 8 (quoting 8 U.S.C. § 1225(b)(2)(A)) (quotations omitted). Respondents spend *eleven pages* of their opposition trying to show that Mr. Hernandez meets all the above requirements. Opp. at 8-19. Respondents' arguments fail.

A. Mr. Hernandez Is Not an Applicant for Admission.

First, Respondents claim that because Mr. Hernandez is an applicant for admission, he must be detained. Respondents rely on the definition of an applicant for admission at 8 U.S.C. § 1225(a)(1) and ignore other sections of the INA. Opp. at 9. For example, § 1101(a)(4) defines an application for admission as "the application for admission *into* the United States . . .". (emphasis added). Further, § 1225(b)(2)(A) uses the term "applicant for admission" in the context of an immigration officer determining whether a noncitizen seeking admission, in the present tense, is entitled to enter. Thus, an applicant for admission is only a person who is requesting to enter the United States. *See Luna Quispe*, 2025 WL 2783799, at *5; *Hasan*, 2025 WL 2682255, at *8; *see also DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1967 (2020) (noting that the noncitizen was stopped within 25 yards of the U.S.-Mexico border and subject to 8 U.S.C. § 1225(b)(1)).

Respondents respectfully criticize the *Hasan* court's failure to address "whether [Hasan] was seeking admission or was not clearly and beyond a doubt entitled to be admitted." Opp. at 10, n.6. However, that was not necessary there, nor is it necessary here. As established here and in *Hasan*, neither Mr. Hasan nor Mr. Hernandez are applicants for admission in the sense that § 1225(b)(2) would govern their detention and release and would thus need to make such a showing.

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. Opp. 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 ensure 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." Opp. at 10-11 (emphasis added).

However, 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 United States 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 lawfully admitted to the United States 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).

B. Mr. Hernandez Is Not Seeking Admission to the United States.

Next, Respondents allege that Mr. Hernandez is an applicant for admission seeking admission. Thus, Respondents argue that Mr. Hernandez is subject to mandatory detention under § 1225(b)(2)(A). Their arguments here also fail.

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

First, Respondents lean heavily on *Jennings v. Rodriguez* deeming § 1225(b)(2) a "catchall provision that applies to all applicants for admission not covered by [§ 1225(b)(1)]." Opp. at 8-9. 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 of noncitizens "already present in the United States." 583 U.S. 281, 288-289 (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 believe that simply being in the United States without being admitted means that a noncitizen is actively seeking admission. Op. at 11. They mistakenly rely on *Lopez-Sorto v. Garland*, 103 F.4th 242 (4th Cir. 2024) for this proposition because Respondents misstate part of the court's holding. Opp. at 12. The relevant question in that case was whether Lopez-Sorto could return to the United States after DHS physically removed him from the country pursuant to a DHS directive. 103 F.4th at 249. Importantly, Lopez-Sorto was inadmissible for 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 remove 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 a Lopez-Sorto could not be physically present in the United States if not also admitted. Opp. at 12. But that is not what the court found. The court determined that the only way Lopez-Sorto could return to the United Sates was through legal authorization, called parole, to be *present* in the country but without being admitted. *Id.* 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 do not seem to dispute that Mr. Hernandez is a noncitizen already present in the United States. In Supervisory Detention and Deportation Officer Justin Richardson's affidavit, Mr. Richardson indicates that Mr. Hernandez "entered the United States" was issued a first Notice to Appear (NTA) charging him with inadmissibility under 8 U.S.C. § 1128(a)(6)(A)(i). FREX 1 at ¶¶ 6-7. The officer that issued Mr. Hernandez's first NTA had the opportunity to designate him as an arriving alien but instead checked the box indicating that he was *already present* in the United States. PEX. 1 (Notice to Appear); *see Luna Quispe*, 2025 WL 2783799, at *6 ("Petitioner has been present in the United States since 2006, and indeed, in the very document that charges him as removable, the Government checked the box stating that Petitioner is "an alien present in the United States who has not been admitted or paroled[.]").

The record in this case is clear that Mr. Hernandez was originally found inside the United States and was only charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) as a person who is "present *in* the United States without being admitted or paroled *or* who arrives *in* the United States at any time or place other than as designated . . .". (emphasis added). He was not charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(a)(1)(I), which requires that he be applying for (or seeking) admission. Respondent DHS only later added that charge to Mr. Hernandez's second NTA after Mr. Hernandez's August 2025 detention to make him *appear to be* an applicant for admission, although DHS again marked that he is present in the United States. PEX. 2. Under *Jennings* and considering Respondents' own acknowledgement that Mr. Hernandez is already present in and not arriving into the United States, Respondents' position is untenable.

Thus, Mr. Hernandez is not seeking admission. Any other interpretation of the phrase "seeking

admission" would require the Court to find that "seeking", in the present tense, could also mean "was seeking" or "has sought". Thus, we could ascribe whatever meaning we want to a phrase, regardless of the natural rules of the English language.

Moreover, Respondents contend that their reading of § 1225(b)(2)(A) does not make the Laken Riley Act's (Pub. L. 119-1, 129 Stat. 3 (2025)) additions to 8 U.S.C. § 1226(c)(1) (criminal grounds of mandatory detention) superfluous. Opp. at 14-15. They point out that the mandatory detention provisions pursuant to § 1226(c)(1) also apply to certain lawful permanent residents. *Id.* True, but Respondents fail to acknowledge that the Laken Riley Act'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. Opp. at 15.[3] They contend that holding that § 1226(a) governs here "would render mandatory detention under § 1225(b) meaningless." Opp. at 15-16 (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." *Florida*, 660 F. Supp. 3d. at 1275. Mr. Hernandez is not asking this Court to apply § 1226(a) to an applicant in those

[3] Respondents note earlier in their opposition that Mr. Hernandez was not placed in expedited removal proceedings, which, according to Respondents, seems to lend to their interpretation that he is an applicant for admission. Opp. at 9, n.5. 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." Perhaps the word "shall" in § 1225(b)(2) also means "may," and thus, Mr. Hernandez is not subject to *mandatory* detention.

circumstances. 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 25 years, § 1226(a) *has* been applied in cases such as these, all under the watchful eye of the aforementioned agencies and courts.

Further, Respondents claim that *Jennings* stands for the proposition that for a noncitizen to be subject to § 1226 detention, DHS must charge him with a ground of deportability from § 1227. Opp. at 16. 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 Respondents' proposed analysis would produce an absurd result: only noncitizens already in and admitted to the United States (and therefore subject to the grounds of removability under § 1227(a)) are eligible for discretionary bond under § 1226(a). As this Court noted 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)) (internal quotations omitted). If Congress intended for § 1226(a) to only apply to those who are already present in the United States and who have been admitted, the statute would say so.

Still, Respondents acknowledge the ample jurisprudence nationwide, and in this judicial district, holding that for detention under § 1225(b)(2), it is not enough to show that the applicant for admission be merely present in the United States; rather, the noncitizen must be "actively seeking admission" to be detained under this section. *See, e.g.*, *Luna Quispe*, 2025 WL 2783799, at *4 n.4 (citing *Lopez Benitez v. Francis*, No. 25 Civ. 5937, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025)); *Martinez v. Hyde*, 2025 WL 2084238, at *3-4 (D. Mass. 2025)); *see also Leal-Hernandez v. Noem*, 2025 WL 2430025, at *9 (D. Md. Aug. 24, 2025) (finding that petitioner was subject to §

1226(a) and not § 1225(b) because he was arrested in the interior of the United States and thus not an "arriving alien."). There is nothing about the procedural posture of Mr. Hernandez's case that would warrant a holding distinct from, for example, the opinion in *Hasan*, concerning a petitioner with a nearly identical fact pattern to that of Mr. Hernandez.

For these reasons, Mr. Hernandez is neither an applicant for admission nor is he seeking admission. Thus, Mr. Hernandez is not subject to mandatory detention under § 1225(b)(2)(A).

III. Respondents Are Violating Mr. Hernandez's Constitutional Due Process Rights.

Next, Respondents claim that they have not violated Mr. Hernandez's due process rights because he has received all the due process that the INA provides. Respondents claim that the only process Mr. Hernandez is due is the process the INA affords under the mandatory detention provision. Opp. at 19-20. This argument fails for two reasons.

First, it misses the entire point of Mr. Hernandez's claim. He is not arguing that the mandatory detention provision itself is violative of due process, but that the Respondents' misclassification of him under that provision violates his due process rights. Am. Pet. at ¶ 47. Second, Respondents' contention that due process ends at the INA dangerously undermines long standing and core principles of this legal doctrine. *Zadvydas v. Davis* 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." 533 U.S. 678, 693 (2001) (internal quotations omitted); *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 also argue that there is no substantive due process violation here because Mr. Hernandez's liberty interest is weaker than the government's interest in immigration enforcement.

Opp. at 24-27. Further, the Respondents' characterization of Mr. Hernandez's claims as speculative grossly minimizes the harm is suffering because of his unlawful detention. Opp. at 24. Respondents are subjecting Mr. Hernandez to 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 (D.N.Y. Sept. 26, 2025) (finding due process violation where the government was unlawfully holding petitioner subject to mandatory detention).

Even one day spent in detention is an affront to Mr. Hernandez's constitutional rights, considering that Respondents are subjecting him to an unlawful mandatory detention schema that courts nationwide have wholly and soundly rejected and that was 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.

Further, while the government does have an interest in immigration enforcement, there is no reason to conclude that the discretionary detention scheme of § 1226(a) does not properly serve this interest. *See Hasan*, 2025 WL 2682255, at *4. Neither in Mr. Hernandez's immigration court proceedings, nor in these proceedings, have Respondents cited any evidence that would indicate that Mr. Hernandez 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 asylum and withholding of removal, 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)).

Respondents' procedural due process analysis again minimizes Mr. Hernandez's 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. Hernandez 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. Hernandez will respond to the government's analysis of the *Mathews* factors. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

First, it is well established in this judicial district that noncitizens who Respondents have erroneously 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. Hernandez recognizes that the cited cases all involved DHS's invocation of the automatic bond stay provision that kept the petitioners from being released on bond. An increasingly common fact pattern is like the instant case, where noncitizens are erroneously classified as no-bond detainees, which deprives them of ever having a meaningful bond hearing. Courts in other judicial districts have found 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); *Choglo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025).

Respondents also contend that Mr. Hernandez's liberty interest is diminished because his release would assist an "ongoing violation of U.S. law." Opp at 25-26. Not only is this argument nonsensical, but this Court foreclosed this argument 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 lack legal status in the United States.

Regarding the second *Mathews* factor, the idea that Mr. Hernandez could seek parole from detention for "humanitarian reasons or a significant public benefit" does not comport with procedural due process. Opp. at 26. Parole is vastly different than bond, as a neutral fact finder is not involved; rather, Respondent DHS adjudicates those requests solely based on discretion. Thus, the agency responsible for erroneously classifying Mr. Hernandez as a no-bond detainee in the first place would also be responsible for adjudicating his parole request. *See* § 1182(d)(5)(A) ("The *Secretary of Homeland Security* may . . . *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). It is illogical to expect Mr. Hernandez to seek parole from the very agency that has unconstitutionally detained him.

Respondents' argument as to the third *Mathews* factor, that the government has a significant interest in continued mandatory detention, also fails 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). Additionally, Mr. Hernandez is not subject to a final removal order, so the Respondents' argument that the public has an interest in "prompt execution of removal orders" is unavailing. Opp. at 27. Thus, the Court should find that Mr. Hernandez's unlawful mandatory detention violates his due process rights.

IV. The Only Remedy for Unlawful Detention Is Immediate Release.

Finally, Respondents argue that the only relief that Mr. Hernandez should be granted is a bond hearing pursuant to usual procedures. Opp. at 28. However, this remedy is grossly inadequate. First, everyone agrees that Mr. Hernandez already had a bond hearing. Am. Pet. at ¶ 15; Opp. at 6. Second, the purpose of habeas corpus is to request release from unlawful detention, not just an *opportunity* to request release. Respondents' suggested relief is nonsensical and would necessarily require further due process violations.

Mr. Hernandez already had a bond hearing on September 11, 2025. Am. Pet. ¶ 15; Opp. at. 6. Mr. Hernandez, through counsel, argued that the immigration judge had jurisdiction to consider his bond request. Mr. Hernandez also submitted arguments and ample evidence to support his request for bond pursuant to the bond factors in *Matter of Fatahi*, 26 I&N Dec. 791, 795 n.3 (BIA 2016). However, the immigration judge found that he did not have jurisdiction due to the recent BIA decision in *Yahurte Hurtado*, 29 I&N Dec. 216. Am. Pet. ¶ 15.

Even if a new bond hearing could somehow remedy Mr. Hernandez's unconstitutional detention, that remedy would require this court to go above and beyond the normal relief granted in a habeas corpus case. As noted, the appropriate remedy for unlawful detention is immediate release. *See Thuraissigian*,140 S. Ct. at 1969-1971 (noting that the purpose of habeas corpus is to (1) challenge illegal confinement and (2) secure release). Respondents' suggested relief would require the Court to (1) order the immigration court, through Respondent Bondi, to have a bond hearing and (2) order that the immigration judge, through Respondent Bondi, not apply *Yajure Hurtado* in Mr. Hernandez's case.

Immigration courts have been upholding the unlawful mandatory detention scheme because the BIA's decision in *Matter of Yajure Hurtado* requires them to do so. 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)). Put simply, forcing Mr. Hernandez into a bond

hearing before the same tribunal that is unquestioningly violating noncitizens' due process rights daily is not, in fact, a remedy for the due process violation he faces.

Even if this Court orders a bond hearing, and the immigration judge grants Mr. Hernandez a bond, Respondent DHS may assert the automatic stay provision. The automatic stay would perpetuate Mr. Hernandez's 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. Hernandez's case would come back before this Court once more, expending unnecessary resources, compounding Mr. Hernandez's suffering, and re-litigating the auto-stay issue, which this Court and others have found unconstitutional. Moreover, Respondent DHS could file a full bond appeal before the BIA, prolonging Mr. Hernandez's detention, which was unlawful at its inception and continues to be unlawful unless this Court grants an appropriate remedy in his case. Thus, Respondents' remedy does not involve release, only the *possibility* of release, which is not an appropriate remedy in a habeas corpus action. *See Thuraissigian*,140 S. Ct. at 1969-1971.

If the Court finds it appropriate to order that Respondents provide Mr. Hernandez a new individualized bond hearing, it would be just to both release Mr. Hernandez pending his bond hearing and order that Respondent DHS prove by clear and convincing evidence that Mr. Hernandez 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 such and collecting cases).

V. CONCLUSION

Mr. Hernandez is unlawfully detained under 8 U.S.C. § 1225(b)(2)(A). He is not an applicant for admission nor is he seeking admission as Respondents suggest. The only way to arrive at that conclusion would be for the Court to become an English-language and legal contortionist. This detention has violated Mr. Hernandez's due process since his arrest and continues to this day. The only proper remedy is immediate release.

Respectfully submitted,

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10/07/2025
Date

CERTIFICATE OF SERVICE

I certify that on October 7, 2025, a copy of the foregoing Reply to Federal Respondents' Opposition to the Petition for a Writ of Habeas Corpus and attached exhibits were served on Respondents' counsel via the Court's CM/ECF system.

//S// Doran Michelle Shemin
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