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INTRODUCTION

For two decades, Respondents recognized without controversy that individuals like Petitioner, who were detained in the interior of the United for immigration removal proceedings States years after entering, were properly detained pursuant to 8 U.S.C. § 1226(a). Particularly if they were previously subject to detention and release pursuant to § 1226(a). Now, suddenly, Respondents consider Petitioner to be “seeking admission” to the United States pursuant to 8 U.S.C. § 1225(b)(2). Such legal interpretation has been rejected by a considerable number of District Courts.¹ This Court should reject it as well.

FACTS

Petitioner entered the United States without inspection on February 5, 2002. *See* ECF No. 1-1 (Notice to Appear) at 1. Declaration of Michael Coles (“Coles Decl.”) ECF No. 7-1, at ¶ 6. He was apprehended by Department of Homeland Security (“DHS”) officers not long thereafter. *Id.*

¹ *See, e.g., Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Rivera Zumbi v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *S.D.B.B. v. Johnson*, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Hernandez Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

That same day, Petitioner was served with a Notice to Appear, placing him in removal proceedings pursuant to 8 U.S.C. § 1229a. *Id.* The Notice to Appear charged him with being removable as “an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” *Id.* at 1. That same day, ICE issued a Warrant for Arrest of Alien, taking him into custody “as authorized by section 236 of the Immigration and Nationality Act,” or 8 U.S.C. § 1226. *See* ECF No. 1-2 (Warrant for Arrest of Alien). Three days later, ICE released Petitioner on his own recognizance “in accordance with section 236 of the Immigration and Nationality Act,” or 8 U.S.C. § 1226. *See* ECF No. 1-4 (Order of Release on Recognizance). On December 11, 2022, Petitioner was ordered removed in absentia for failing to attend a hearing in immigration court in Arlington, Va. Coles Decl. ¶ 7.

On April 25, 2018, Petitioner’s U.S.-citizen wife filed an I-130 Petition for Alien Relative on Petitioner’s behalf, which was approved on November 5, 2020. *See* ECF No. 1-5 (I-130 approval notice); Coles Decl. ¶ 10. Petitioner subsequently filed a Motion to Reopen his removal proceedings, which was granted on August 3, 2023. *See* ECF No. 1-6 (Order of the Immigration Judge); Coles Decl. ¶ 11. Petitioner then filed a Motion to Dismiss his removal proceedings, which was granted without prejudice on September 18, 2023. *See* ECF No. 1-7 (Order on Motion to Dismiss); Coles Decl. ¶ 13. On October 20, 2023, Petitioner filed an I-601A Application for Provisional Unlawful Presence Waiver, pursuant to 8 C.F.R. § 212.7(e). *See* ECF No. 1-8 (I-601 receipt notice); Coles Decl. ¶ 14. That application has not yet been adjudicated.

On or about September 21, 2025, Petitioner was arrested and taken into ICE custody and issued a new Notice to Appear. Coles Decl. ¶ 15. A second Notice to Appear was issued on September 21, 2025, commencing removal proceedings against Petitioner Boquin Oliva, which are currently pending and there not yet a final order of removal against Petitioner. *Id.* Petitioner

has sought to terminate proceedings based on his pending applications, and also filed for Cancellation of Removal as alternative relief in those proceedings. Coles Decl. ¶ 16. Respondents consider Petitioner detained pursuant to 8 U.S.C. § 1225(b)(2). *See* Opp at 5.

LEGAL BACKGROUND

I. IMMIGRATION DETENTION LEGAL FRAMEWORK

When a noncitizen is alleged to have violated immigration laws, they are placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a. Detention is authorized for “certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a), or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the “default” provision for immigration detention for those subject to removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept as provided in subsection (c) of this section,’ the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on [] bond’ or ‘conditional parole.’” *Id.*

Alternatively, mandatory detention is authorized for “certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2),” [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be “applicants for admission” may be subject to mandatory detention under two separate subsections. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an “arriving alien,” and if they have not been physically present in the United States continuously for a two-year period immediately prior. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of “applicant[s] for admission” specifically when “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,” *i.e.*, for traditional removal proceedings (emphasis added).

An “arriving alien” or an applicant for admission “seeking admission” may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a “parole bond” – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination whether to set a bond. The noncitizen may then seek a custody review hearing before the IJ, who has the authority to modify ICE’s custody determination. 8 C.F.R. § 1003.19. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, he must still appear in immigration court for the IJ to determine his removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ’s inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006).

For decades, Respondents afforded § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *R&R adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (“Respondents’ proposed application of § 1226 is also belied by the Department of Homeland Security’s

‘longstanding practice’ of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government’s acquiescence, who have committed no crime after release, as detained under § 1226(a),” citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

II. NEW ICE MEMO REINTERPRETING 8 U.S.C. § 1225(b)(2)

On July 8, 2025, ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). See ICE memorandum “Interim Guidance Regarding Detention Authority for Applications for Admission.”² This memo concerns the detention of “applicants for admission” as defined by § 1225(a)(1). “Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* (“For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.”) In addition to the announcement reinterpreting § 1225(b)(2), the memo further clarifies that “[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

Moreover, ICE maintains that “DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position.” *Id.* ICE fails to clarify under what legal authority, then,

² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited Oct. 16, 2025).

those prior releases were effectuated. Rather, ICE signals the resulting lack of “correct” paperwork is nonetheless permissible. *Id.* (“Accordingly, ERO and HIS are not required to ‘correct’ the release paperwork by issuing INA § 212(d)(5) parole paperwork.”)

III. RECENT BIA DECISION *Matter of Yajure Hurtado*

On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE’s re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. at 216. The BIA held that the respondent was an “applicant for admission” within the scope of § 1225(b), and therefore subject to mandatory detention. The BIA characterized the issue before it as “one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?” *Id.* at 220 (emphasis added).

The BIA reasoned that individuals “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer.” *Id.* at 228. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225 n.6 (“We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled ‘Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,’ 62 Fed. Reg. 10312,

10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”). Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229. The BIA decision is binding on all immigration judges nationwide.

Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 (“It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.”).

ARGUMENT

I. THIS COURT RETAINS JURISDICTION TO GRANT RELIEF IN THIS CASE.

Petitioner challenges his detention, not the removal proceedings against them. Neither 8 U.S.C. § 1252(g) nor Section 1252(b)(9) strip this Court of jurisdiction over this case, which is solely a challenge to Petitioner’s detention while his removal proceedings play out. The Supreme Court held in 2001 that notwithstanding 8 U.S.C. § 1252(g), “§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges” to detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Subsequently, in *Jennings*, 583 U.S. at 292-93, the high court explained that 8 U.S.C. § 1252(b)(9) also does not strip habeas jurisdiction over challenges to detention. *See also Bowrin v. INS*, 194 F.3d 483, 490 (4th Cir. 1999) (“We find, therefore, that district courts reviewing aliens’ habeas petitions filed pursuant to § 2241 may consider both statutory and constitutional questions when presented. . . . Only questions of pure law will be considered on § 2241 habeas review. Review of factual or discretionary issues is prohibited.”); *see*

also *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783800, at *3-4 (E.D. Va. Sept. 30, 2025). As the Fifth Circuit explained in *Texas v. United States*, the Supreme Court “rejected the unexamined assumption that § 1252(g) covers the universe of deportation claims—that it is a sort of ‘zipper’ clause that says ‘no judicial review in deportation cases unless this section provides judicial review.’” 126 F.4th 392, 417 (5th Cir. 2025).

Second, this Court may review the legality of detention and issue a declaratory judgment, even in this habeas matter, particularly when the classic remedy of release is out of reach. Respondents’ argument that “this Court lacks subject matter jurisdiction to issue an independent declaratory judgment within the context of a writ of habeas corpus,” overstates the limited nature of habeas matters. Opp at 8. None of the cases cited by Respondents so much as mention declaratory judgments, let alone curtail this Court’s authority to grant declaratory relief. Opp at 7. Rather, as the Supreme Court explained, claims for relief that “necessarily imply the invalidity of [] confinement” therefore “fall within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas.” *Trump v. JGG*, 145 S. Ct. 1003, 1005 (2025). Habeas courts have long entertained challenges from noncitizen detainees arguing that ICE is applying the wrong statute of detention. *See, e.g., Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

Where, as here, the Court cannot order immediate release (the classic habeas relief), this Court has clear authority to issue a declaratory judgment determining the legality of detention and rights to a bond hearing. A habeas court can adjudicate a claim that the government is violating *statutes*, as well as the Constitution, in wrongly detaining an individual: review of a final agency action may proceed, absent a special statutory review proceeding, by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction.” 5 U.S.C. § 703. *See Lucas R. v. Azar*, 2018

WL 10483438, at *6 n.7 (C.D. Cal. Sept. 6, 2018). This Court can issue declaratory relief where there is a live controversy between the parties as to which statute of detention properly applies.

II. RESPONDENTS ORIGINALLY DETERMINED PETITIONER WAS SUBJECT TO DETENTION PER 8 U.S.C. § 1226(a), WHICH THEY HAVE NEVER RESCINDED OR CORRECTED, AND SUGGESTS THE SAME DETENTION AUTHORITY APPLIES TODAY.

Petitioner was originally encountered in 2002 at or near the border in Hidalgo Texas, and was subject to ICE's discretionary arrest and detention authority pursuant to 8 U.S.C. § 1226(a) at that time. This initial assessment is persuasive as to ICE's current detention authority. This District recently decided a similar matter and held that a petitioner who has previously been detained and released under § 1226(a) was again subject to that same detention authority. *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *6 (E.D. Va. Sept. 30, 2025). (“... [T]he federal respondents' treatment of Mr. Quispe-Ardiles since he arrived in the United States supports the conclusion that he is detained pursuant to § 1226(a).”) In this case, immediately after his initial entry into the United States, Respondents issued a warrant for his arrest under § 1226(a), ECF Nos. 1-2. This is consistent with the authority to issue a warrant for arrest for an individual already in custody, following a determination of proceedings and detention authority. 8 C.F.R. § 287.3(d). Petitioner was ultimately released on his recognizance under the same § 1226(a) authority. ECF No. 1-4. According, to *Jennings*, “[s]ection 1226(a)’s default rule permits the Attorney General to issue warrants for the arrest and detention of these aliens pending the outcome of their removal proceedings.” Respondents do not deny these facts. Opp. at 4; Coles Decl. ¶ 6.

When Petitioner was rearrested in 2025, Respondents simply state that “[h]e was taken into immigration custody pursuant to INA § 235(b)(2)(A); 8 U.S.C. § 1225(b)(2)(A) as an alien who is an applicant for admission because he is present in the United States without admission or parole.” Coles Decl. ¶ 15. However, Respondents fail to attach any records that identify the authority for

Petitioner's rearrest. ECF No. 7-1 generally. Today, twenty-three years later, Respondents do not aver that the 2002 custody determination was made in error or show any records purporting to correct or rescind these determinations. *Id.* Per the July 2025 ICE memo, they need not bother. However, this is more than a question of correcting old paperwork. ICE previously determined that their authority to detain was discretionary and never revisited that legal determination.

Now, over two decades later, ICE would treat Petitioner today as if he is still standing at the border during that original encounter. But Petitioner is not. Because "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission and those who are within the United States after an entry, *irrespective of its legality*," this Court should not subject Petitioner to less process now than he was afforded at the time of his entry. *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added). *See also Quispe Ardiles*, 2025 WL 2783800, at *13, citing *Hasan*, 2025 WL 2682255, at *8 ("Given this precedent, it is 'doubtful that Congress intended § 1225(b)(2) to apply' to individuals like Mr. Quispe-Ardiles who were detained after being present in the U.S. for several years, who had not committed any crimes, and who had attended every required meeting with immigration officials."). This Court should decline to adopt Respondents erroneous interpretation of § 1225(b)(2).

III. PETITIONER IS SUBJECT TO DETENTION UNDER 8 U.S.C. § 1226(a)

For those individuals encountered in the interior of the United States, 8 U.S.C. § 1226(a) has been "the default rule" for discretionary detention of those "already present in the United States," during their removal proceedings. *Jennings*, 583 U.S. at 303. *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 into the United States and those who are detained after they have already entered the country, legally or otherwise.") Respondents' new interpretation of Sections 1225(b)(2) and 1226(a) is fundamentally flawed: it ignores key statutory language, renders whole

sections of Section 1226(c) nugatory, and ignores decades of settled practice without good reason.

A. Respondents' new interpretation of 8 U.S.C. § 1225(b)(2), the mandatory detention statute, ignores key statutory language.

As opposed to 8 U.S.C. § 1226(a), 8 U.S.C. § 1225(b) governs detention at or near the borders of the United States. Section § 1225 applies to “applicants for admission” who are defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States ... shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1). Section 1225(b)(1) dictates the mandatory detention of a subset of “arriving aliens” who present for admission at ports of entry or pass credible fear interviews, neither of which is relevant here. “Section 1225(b)(2) applies to all other applicants for admission.” *Jennings*, 583 U.S. at 287 (explaining that §1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)”). *See also Hasan*, 2025 WL 2682255, at *5.

Mandatory detention under 8 U.S.C. § 1225(b)(2) applies to an applicant for admission when “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.” The statute defines “admission” as “the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). Respondents argue that Petitioner is subject to mandatory detention because, they claim, Petitioner is an applicant for admission. Opp at 10-16. Further, Respondents argue that all applicants for admission present in the U.S. are necessarily “seeking admission.” Opp at 12. Respondents rely on *Jimenez-Rodriguez* though, notably, the Fourth Circuit did not hold in *Jimenez-Rodriguez* that all noncitizens who are present in the U.S. but have not been lawfully admitted are “seeking admission.” 996 F.3d 190.

The textual requirement of “seeking admission” must do some work or it is rendered mere surplusage in the statute and interpreted out of meaning. *Corley v. United States*, 556 U.S. 303, 314 (2009). First, the statute defines an applicant for admission as an individual present who has not been admitted. Respondents argue that “[b]y simply being in the U.S. without being admitted, Petitioner is in fact actively seeking admission into the U.S.” Opp at 11. But this argument empties the statutory requirement of “seeking admission” of any meaning. All applicants for admission are already subject to § 1225(b)(2), therefore “seeking admission” must require something different.

The definition of an admission requires an entry, lawful means, and “inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). This means mandatory detention under § 1252(b)(2) is required for those applicants for admission who are “seeking [lawful entry of into the U.S. after inspection and authorization by an immigration officer] and not clearly entitled to be admitted.” But for those individuals (like Petitioner) already present in the United States, they are not seeking *another* entry. Many are simply seeking lawful status, without transiting the border anew. Several lawful statuses available to individuals already present in the United States do not require an admission (or entry) as part of their eligibility requirements yet would still result in lawful status in the United States. *See, e.g.*, 8 U.S.C. § 1158(a)(1) (“Any alien who is physically present in the United States *or who arrives* in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum[.]”); 8 U.S.C. § 1229b(b)(1)(A) (cancellation of removal and adjustment of status for a noncitizen who “has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application”). These applications involve lawful means and an inspection and authorization by an immigration official,

but do not require *entry*. So it must be possible under the statute to be an “applicant for admission” yet not necessarily “seeking admission” if they are already present in the United States.

Respondents cite several cases for their sweeping proposition that would equate all applicants for admission with those “seeking admission.” *Lopez-Sorto* concerned an individual seeking to return to the United States in order to apply for protection, and its analysis turned on what constituted “residing” in the United States. 103 F.4th 242, 251 (4th Cir. 2024). In that context, the Circuit examined the ways by which one might enter the United States, including “admission,” *id.*, but did not consider what would constitute “seeking admission.” Respondents miscite the *Vargas* decision, which held that alien who wishes to stay in the country constitutes “an “applicant for admission,” consistent with the conclusion of the BIA in *Hurtado* and *Jennings*.” 2025 WL 2780351, at *9. *Matter of Lemus* is a nonbinding BIA decision that examined whether 8 U.S.C. § 1255(i) could waive unlawful presence as when triggered by a prior departure (the Board held it could not). 25 I. & N. Dec. 734, 742-744 (BIA 2012). To the extent *Lemus* touches on what constitutes “seeking admission” and purports to equate applicants for admission with “seeking admission,” this Court owes little deference to the agency’s reasoning and should decline to extend that interpretation for the reasons stated above. *Loper Bright*, 603 U.S. at 412.

Because “seeking admission” requires also seeking *entry* into the United States, this situates 8 U.S.C. § 1225(b)(2) back at the border (rather than the interior), as it has been understood to apply for decades. “As noted, § 1225(b) applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Jennings*, 583 U.S. at 297.

B. Respondents’ new interpretation of 8 U.S.C. § 1225(b)(2) would render surplusage other bases of detention under 8 U.S.C. § 1226(c).

Respondents’ re-interpretation of 8 U.S.C. § 1225(b)(2) would not only void language in its own subsection but also render meaningless entire other bases for detention under 8 U.S.C. §

1226, including § 1226(c)(1)(A), (D), and (E). Because of this, Respondents’ re-interpretation cannot be correct. “One of the most basic interpretive canons is that a statute should be construed so that effect is given to all its provisions, and no part will be inoperative or superfluous, void or insignificant.” *Hasan*, 2025 WL 2682255, at *8, citing *Corley v. United States*, 556 U.S. 303, 314 (2009). “If an interpretation of one provision ‘would render another provision superfluous, courts presume that interpretation is incorrect.’” *Id.*, citing *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). This presumption is “strongest when an interpretation would render superfluous another part of the same statutory scheme.” *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386, (2013).

Section 1226(c) allows for detention of various classes of criminal aliens, including any alien who “(A) is inadmissible by reason of having committed any offense covered in section 1182 of this title.” Or “(D) is inadmissible under section 1182(a)(3) of this title...” Or the most recently added sections pursuant to the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). “The LRA amendments mandate detention for noncitizens charged as inadmissible under Sections 1182(a)(6)(A) (the inadmissibility ground for a noncitizen “present in the United States without being admitted or paroled”), 1182(a)(6)(C) (the inadmissibility ground for misrepresentation), or 1182(a)(7) (the inadmissibility ground for lacking valid documentation) *and* if the noncitizen has been arrested for, charged with, or convicted of certain crimes. *Id.*” *Rodriguez*, 779 F. Supp. 3d at 1246. “This mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)’s mandatory detention provisions.” *Hasan*, 2025 WL 2682255, at *8.

Respondents deny nullification of § 1226(c) provisions under their interpretation, but the cases cited do not support the proposition. First, Respondents highlight that the statute applies to “any” alien (Opp at 14), but the subsections differentiate between those who are “inadmissible”

and those who are “deportable.” *See generally* 8 U.S.C. § 1226(c). Next, *Azumah v. USCIS* is inapposite as it did not touch 1226(c) whatsoever but rather considered the naturalization application of an individual became a lawful permanent resident, then committed a crime of moral turpitude, departed the United States, and had reentered. 107 F.4th 272, 274-5 (4th Cir. 2024).

Respondents reliance on *Vargas Lopez* is misplaced, as that decision did not analyze whether Respondents’ reading of § 1225(b)(2)(A) renders portions of § 1226(c) superfluous. *Vargas Lopez v. Trump*, No. 8:25-cv-526, 2025 WL 2780351, at *9-10 (D. Neb. Sept. 30, 2025); *Opp* at 14. Next, the Southern District of California, in *Chavez*, did hold that § 1226(c) is not rendered superfluous, but its analysis was flawed in two respects. *Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). First, *Chavez* states, “[a]s the *Jennings* court explained, § 1226 ‘generally governs the process of arresting and detaining’ certain aliens, namely ‘aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission.’ 583 U.S. at 288, 138 S.Ct. 830 (emphasis added).” *Id.* at *5. However, the court overlooks that the Laken Riley amendment adding subsection (E) was passed subsequent to this language in *Jennings* and requires detention of individuals who are inadmissible because they are present have not been admitted (under § 1182 (6)(A)) and then commit criminal acts. Second, while *Chavez* is correct that the Laken Riley amendment adding § 1226(c)(1)(E) removed the Attorney General’s discretion with respect to these individuals, the court misses the import of this amendment. *Id.* If individuals present without having been admitted are already subject to mandatory detention under § 1225(b)(2)(A) as applicants for admission, regardless of any subsequent criminal acts, then an amendment to § 1226(c) to require mandatory detention for those individuals was entirely unnecessary.

Because Respondents' interpretation of § 1225(b)(2) would render important subsections of § 1226(c) superfluous, it should not be adopted by this Court.

C. Decades of practice in applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the United States is evidence of the agency's prior view.

Lastly, the agency's decades of practice applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the United States remains a persuasive indicator as to the broader interpretation of the statutory detention scheme. "[A]s the Supreme Court explained in *Loper Bright*, cases dating back centuries have considered "the longstanding practice of government" as they would "any other interpretive aid." *Rodriguez*, 779 F. Supp. 3d at 1251, citing *Loper Bright*, 603 U.S. at 386. At the time of the statutes' enactment, it was understood that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." *Rodriguez*, 779 F.Supp.3d at 1260-61, citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Respondents do not dispute that their new position was announced for the first time on July 8, 2025, after decades of interpretation and implementation to the contrary. By the policy's own language, ICE announced a sea-change for immigration detention. "Effective immediately, it is the position of DHS that such aliens are subject to detention under [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)]." *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.*

The Board's decision in *Yajure Hurtado* was its first to take the position that 8 U.S.C. § 1225(b)(2) applied to all individuals present without having been inspected and admitted. 29 I. & N. Dec. at 216. Indeed, in an unpublished decision just one year prior, the Board stated that it was

“unaware of any precedent stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here.” *Rodriguez*, 779 F. Supp. 3d at 1261.

Lastly, the LCA was enacted by Congress less than a year prior to the announcement of this new detention policy, when ICE was still applying § 1226(a) to individuals who had entered the United States without inspection. “Another ‘customary interpretive tool’ is the principle that ‘[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,’ courts ‘generally presume the new provision should be understood to work in harmony with what has come before.’” *Rodriguez*, 779 F.Supp.3d at 1259, citing *Monsalvo Velazquez v. Bondi*, 604 U.S. --, 145 S.Ct. 1232 (2025).

For these reasons, Respondents’ interpretation of § 1225(b)(2) should be set aside, and Petitioner should be found eligible for a bond hearing under § 1226(a).

D. Petitioner is present in the United States and is not “seeking admission.”

Petitioner was taken into immigration custody shortly after entering without inspection in 2002. Respondents immediately issued a warrant for his arrest under § 1226(a) (ECF No. 1-2), placed him into removal proceedings (ECF No. 1-1), and then released him from custody under their § 1226(a) discretionary authority (ECF No 1-4). Two decades later, Petitioner’s removal proceedings were terminated altogether. ECF No. 1-7. Even if Respondents could make out a case that Petitioner was seeking admission at the time he was initially encountered (which Petitioner does not concede), Respondents’ argument would fail following the termination of those initial removal proceedings.

Today, Petitioner is unquestionably present in the United States and, while seeking lawful status, he not necessarily seeking “lawful entry.” Petitioner has been placed in fresh removal proceedings, and Respondents declined to reinstate the original proceedings that resulted from his

original entry. Coles Decl. ¶ 15. Today, unlike in 2002, Petitioner is eligible for cancellation of removal, which requires at least a decade of physical presence. *See* 8 U.S.C. 1229b(b)(1)(A). Crucially, cancellation of removal does not require a lawful entry in order to establish eligibility for relief from removal. *See* § 1229b(b)(1). Accordingly, the Court need not decide at what point (either temporally or geographically) an individual having entered without inspection ceases “seeking admission” and is simply present without having been admitted. But Petitioner – encountered over two decades after his entry, a long-term resident of Virginia, and whose removal proceedings were terminated at the time of his encounter – has undoubtedly passed that point.

IV. RESPONDENTS’ DEPRIVATION OF BOND HEARINGS FOR PETITIONER VIOLATES CONSTITUTIONAL DUE PROCESS.

The District of Maine recently addressed the question of whether the government violates due process by holding noncitizens subject to Section 1226(a) detention without the right to a bond hearing before an Immigration Judge, and found that it did. *Chogllo Chafla v. Scott*, 2025 WL 2688541, at *9-*12 (D. Me. Sept. 22, 2025). As the *Chogllo Chafla* court explained, procedural due process claims are subject to the *Mathews* test, which balances the nature of the private interest involved, the risk of erroneous deprivation and the probative value of additional process, and the Government’s interest. *Id.* at *9, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See also D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (applying *Mathews* to immigration detention).

On the first prong, private interest, the *Chogllo Chafla* court cited various Supreme Court cases to note that “the Fifth Amendment entitles noncitizens to due process of law in the context of removal proceedings,” and “the interest in being free from physical detention by [the] government” is “the most elemental of liberty interests[.]” 2025 WL 2688541, at *10, quoting *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). That paramount liberty interest cannot be abridged without “adequate procedural protections.”

Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

On the second prong, risk of erroneous deprivation, the *Chogllo Chafila* court explained that “these types of factual determinations are properly decided by an Immigration Judge after a detention hearing, and only highlight the need for a hearing with properly allocated burdens to explore the risk, or lack thereof, that a noncitizen may pose to flight or dangerousness.” *Id.* Indeed, since the purpose of immigration detention is to reduce flight risk and danger to the community, *see Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), it seems self-evident that a review hearing before an administrative law judge would reduce the risk of erroneously confining a noncitizen who in fact poses neither risk. *See also Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025) (“The purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people are ultimately detained.”).

And on the third prong, government interest, the *Chogllo Chafila* court explained that the government cannot have an interest in detention for detention’s sake alone. 2025 WL 2688541, at *10. The government cannot claim excessive burden when it is merely being asked to provide a procedure that it routinely provided in cases of this nature for decades without complaint. *See also Hyppolite*, 2025 WL 2829511, at *15 (“[U]ntil recently, the government has long provided noncitizens with bond hearings before detention pursuant to § 1226(a), and there is an established process for doing so that DHS can readily follow here. By contrast, the fiscal and administrative burdens of keeping Hyppolite — who the record suggests is not a flight risk nor a danger to the community — detained are extremely high.”); *Santos Garcia v. Garland*, 2022 WL 989019, at *9 (E.D. Va. March 31, 2022) (“The calculus may differ when the only remedy an immigration

detainee seeks in a federal district court is outright release from detention. But here, where the habeas petition also seeks the opportunity to present his case for release to an Immigration Judge, the Government’s administrative burden of conducting such a bond hearing is minimal.”).

The Fourth Circuit case *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022) applied the *Mathews* test and found that the procedures the government was, at that time, routinely applying to noncitizens like Petitioner here—namely, a bond hearing before an Immigration Judge—satisfied due process. *Id.* at 358-365. *Miranda* certainly does not stand for the principle that due process allows the government to throw out those procedures entirely.

In the end, Respondents do not dispute that if Petitioner is subject to Section 1226(a), he is entitled to an Immigration Judge bond hearing under the statute and regulations. Even taking at face value the statement of the Supreme Court in *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) that “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned,” it is clear that Congress intended Petitioner to have access bond pursuant to 8 U.S.C. § 1226(a); that is the process that Petitioner is due.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus should issue. This Court should declare that Petitioner is properly detained by Respondents (if at all) pursuant to 8 U.S.C. § 1226(a), and should order Respondents to provide Petitioner with a bond hearing in front of an Immigration Judge within 15 days.

Respectfully submitted,

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Date: October 22, 2025

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

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