UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARIF DEMIREL, Petitioner, v. WARDEN OF THE FEDERAL DETENTION CENTER PHILADELPHIA; BRIAN McSHANE, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Philadelphia Field Office; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; and KRISTI NOEM, in her official capacity as Security of the Department of Homeland Security. Respondents.	Case No. 2:25-cv-05488-PD

PETITIONER'S REPLY BRIEF
IN SUPPORT OF THE
PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

The Petitioner (hereinafter referred to as "Arif") is a Turkish citizen, who entered the United States without inspection in about April of 2023, to request asylum. *See* Pet'r's Ex. 2, Notice to Appear, ECF No. 1. Arif was fleeing political and religious persecution from his native Turkey.

Customs and Border Patrol encountered Arif upon his entry onto U.S. soil and was briefly detained before being released to his sponsor in Delaware. *See* Pet'r's Ex. 2, ECF No. 1. Upon his release, Arif was required to report to ICE, which he did faithfully until September 18, 2025, when he was detained upon reporting, as instructed.

While Arif was living freely in the United States, he applied for asylum with USCIS and received an Employment Authorization Card, valid for five years. Arif is currently in removal proceedings while detained and is scheduled for an Individual Hearing before the Elizabeth Immigration Court on January 21, 2026. *See* Resp'ts' Ex. B, ECF No. 8.

For nearly thirty years, Respondents and the federal courts recognized that noncitizens who entered the United States without inspection and were apprehended years later were eligible for a bond hearing before an immigration judge under 8 U.S.C. § 1226(a). Presently, Arif and similarly-situated immigrants have been denied a bona fide bond determination in Immigration Court because the Respondents advance a new statutory interpretation that defies the text, structure,

and purpose of the Immigration and Nationality Act (INA), and reverses decades of consistent agency practice. The government's novel position mandates the detention, without a bond hearing, of millions of longtime residents of the United States. It is contrary to the plain language of the statute; Congress's intent and understanding of the detention statutes, expressed most recently in January 2025; long-standing agency practice; and the agency's conduct in this case. It is no surprise that, to the best of counsel's knowledge, this new interpretation has been squarely rejected by a majority of federal courts to address this issue, including in *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486 (E.D. Mich. Aug. 29, 2025), and *Pizarro Reyes v. Raycraft*, 2:25-cv-12546 (E.D. Mich. Sept. 9, 2025).[1] Many District Courts have rejected the holding of *Matter of Yajure Hurtado*. Some of the more than fifty district courts that have rejected the government's new interpretation are cited in the footnote[2] below, the habeas petition, and within this brief. Multiple District Courts have ordered bond hearings and have held that 1226(a), and not 1225(b)(2), authorizes detention. As court after court has held, § 1225 is a border inspection scheme that does not apply to noncitizens who were already residing in the United States when they were apprehended. Instead,

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[1] The one apparent exception, *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025), denied an ex parte temporary restraining order but has not issued a final judgment on the merits.

[2] *See, e.g., Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (D. Ariz. Oct. 3, 2025); *Vasquez v. Bostock*, 3:25-cv-05240-TMC (W.D. Wash. Sept. 30, 2025).

§ 1226(a) plainly applies. And those courts all rejected the government's argument that exhaustion is a barrier to habeas relief.

As Arif's detention under § 1225(b)(2)(A) is unlawful under the INA and violates his procedural due process rights, and the Respondents have not argued in the alternative that Petitioner should be detained under § 1226(a), the Court should not construe the record to authorize his continued detention on that basis. *See Bethancourt v. Soto,* No. 25-cv-16200 at 17 (D.N.J. Oct. 22, 2025).

This Court should grant Arif's petition and order Respondents to immediately release him and permanently enjoin Respondents from re-detaining him under § 1225. *See, e.g., id. and Zumba*, 2025 WL 2753496, at *11.

ARGUMENTS

I. This Court Has Jurisdiction Over This Matter

Respondents claim that 8 U.S.C. § 1252(g) bars Petitioner's claim, contending this claim is a challenge to Respondents' actions to commence removal proceedings. The Respondents further argue that 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction because it is an action taken by Respondents to remove the Petitioner. Lastly, the Respondents argue that 8 U.S.C. § 1252(a)(2)(B)(ii) shields discretionary decisions like what charges of inadmissibility to lodge. Resp'ts' Resp. 6-11. All of Respondents' arguments are unavailing.

Respondents' opposition adopts a much broader reading of 8 U.S.C. § 1252(g) than the law supports. Respondents' reading ignores controlling

precedent limiting § 1252(g) to three narrow actions, none of which are at issue here. The Supreme Court cautioned that the jurisdiction bar under § 1252(g) is "narrow" and only "limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders.'" *Dept. of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 12 (2020) (emphasis added). "We have previously rejected as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'" *Id.* (emphasis added) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). "Section 1252(g)'s bar on judicial review of claims arising from the government's decision to execute removal orders does not preclude jurisdiction over the challenges to the legality of the detention at issue here." *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023) (emphasis added). Petitioner's unconstitutional detention is not tied to a decision to "commence" removal proceedings, rather the claimed statutory basis for his detention.

In this matter, Respondents misstate Petitioner's claim. Petitioner is not challenging Respondents' right to commence proceedings, adjudicate his case, the execution of any final removal order that may result, or even their discretionary decision to detain him. Petitioner is challenging the legality of his current detention, specifically, his detention pursuant to 8 U.S.C. § 1225(b)(2). "Habeas corpus proceedings have long served as a mechanism by which aliens challenge

Executive interpretations of immigration laws. They also have served as a means through which aliens have challenged the legality of immigration-related detention." *See Rico-Tapia v. Smith, et al.*, Civ. No. 25-00379 SASP-KJM (D. Haw. Oct. 10, 2025) (citing *I.N.S. v. St. Cyr*, 533 U.S. 289, 301-07 (2001)).

Additionally, Respondents' reliance on 8 U.S.C. § 1252(b)(9) is an answer to a question that has not yet been asked. Section 1252(b)(9) prohibits habeas corpus review of final orders of removal, or, as Respondents frame it, "an action taken to remove" the Petitioner. Petitioner has not yet been ordered removed; thus, this action is not brought to contest what has not yet happened, or may never happen.

Respondents' argument regarding the applicability of 8 U.S.C. § 1252(a)(2)(B)(ii) also misses the point. First, Petitioner is not challenging the grounds of inadmissibility brought against him, but the statutory authority for his detention. While the district courts may not review discretionary decisions made by immigration authorities, they may review immigration-related detentions to determine whether they comply with requirements of the Constitution. *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). Whether Petitioner's detention is subject to Section 1225 or 1226 is not a discretionary decision; it is a matter guided by the plain text of those statutes.

The District Court of Hawaii, in *Rico-Tapia v. Smith*, tackled the same jurisdictional issue that Respondents raise here and found, "Rico-Tapia has brought this habeas action to challenge the constitutionality of his detention without a bond

hearing. "As '[h]abeas is the exclusive remedy . . . for the prisoner who seeks "immediate or speedier release" from confinement,' *Skinner v. Switzer*, 562 U.S. 521, 525 (2011) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)), Rico-Tapia's challenge is properly within this Court's habeas jurisdiction." *See Rico-Tapia v. Smith* at 9.

As the vast majority of the District Courts have found, this Court has jurisdiction over this matter.

II. Exhaustion of Administrative Remedies is Not Required in This Matter, as Such Would Be Futile

Respondents further argue that Petitioner failed to exhaust his administrative remedies. Respondents begin this argument by acknowledging the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) controls the applicability of § 1225(b)(2) and the availability of a bond hearing. *See* Resp'ts' Resp. 11. Despite this, Respondents insist that Petitioner should first redress his concerns administratively so that the court of appeals could be provided with a complete record. *Id.* at 12. "Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003).

Respondents go on to state that "[e]xhaustion is particularly appropriate because agency expertise is required to the applicability of § 1225(b) as opposed to § 1226(a)." *See* Resp'ts' Resp. 12. The BIA has already spoken through *Matter of Yajure Hurtado.* There is no other executive branch agency that oversees the BIA to which Petitioner can appeal, and an appeal to the BIA, regarding an issue that they issued a precedential decision on, is futile.

III. Because § 1225 Only Applies to the Inspection of Recent Arrivals, § 1226 Governs the Detention of Residents like Arif.

The text, structure, and purpose of the INA all support Arif's argument that § 1226(a) governs his detention, and not § 1225(b)(2)(A). *See Lopez-Campos, supra.* The Court does not owe any deference to the agency's new interpretation of §§ 1225 and 1226. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). Here, the agency believes that the language of the statute is plain such that there are no gaps for the agency to fill. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025).

Many District Courts have rejected the holding of *Matter of Yajure Hurtado. See, e.g., Oliveira Gomes v. Hyde*, 2025 WL 1868299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025);

Sampiao v. Hyde, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2531027 (D. Me. Sept. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept.11, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex., Sept. 22, 2025); *Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept.19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 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); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Santiago Helbrum v. Williams,* 4:25-cv-00349 (S.D. Iowa Sept. 30, 2025); *Hernandez Marcelo v. Trump* (S.D. Iowa Sept. 10, 2025); *Brito Barajas v. Noem,* No. 4:25-cv-00322 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D.

Minn. Apr. 15, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Apr. 27, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aniscasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 251539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Lorenzo Perez v. Kramer*, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Oruna Carlon v. Kramer*, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Genchi Palma v. Trump*, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Duenas Arcey v. Trump*, 2025 WL 2676934 (D. Neb. Sept. 18, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379235 (C.D. Cal. Aug. 15, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2951930 (C.D. Cal. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 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); *Gamez Lira v. Noem*, 2025 WL 2676729 (D.N.M. Sept. 24, 2025); *Hernandez Lopez v. Hardin* (M.D. Fla. Sept. 25, 2025). In decision after decision, federal courts have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

A. The rules of statutory interpretation show that § 1226 applies here.

Sections 1226(a) and 1225(b)(2)(A) work in tandem to cover different categories of noncitizens: § 1226 provides a discretionary detention scheme for individuals who are "already in the country" and are detained "pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while § 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *Id.* at 287. Conversely, § 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Indeed, there is a "line historically drawn between these two sections" and the categories of noncitizens they respectively

cover. *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

This understanding situates each detention provision "in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted). *See also Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (looking to statutory structure to inform interpretation of INA provision). Placing a provision in its larger context is especially important where the provision "may seem ambiguous in isolation" but can be "clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). And the one meaning which permits a logical and compatible effect here is that § 1225 and § 1226 each cover different categories of noncitizens.

Section 1225's plain text shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)-(b), (d). That section repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4); sets out procedures for "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id.* § 1225(a)(2), (b)(2)(B), (b)(2)(C). Even the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens (emphasis

added). *Cf. Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (relying on section title to help construe statute). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the U.S. border. Arif, of course, arrived at the border over two years ago and has been residing in the United States since.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested "on a warrant . . . pending a decision on whether [they are] to be removed from the United States." *See also Jennings,* 583 U.S. at 289 (§ 1226(a) applies to those "already in the country" who are detained "pending the outcome of removal proceedings"). On its face, the provision plainly applies to Arif, who was arrested "on a warrant" years after he entered the U.S. and is now detained "pending a decision on" his removal. *See* Resp'ts' Ex. A, ECF No. 8. Thus, § 1226(a), and not § 1225(b)(2)(A), is clearly the proper detention authority for Arif.

1. Section 1225(b)(2) cannot apply to Arif because he is not an "applicant for admission."

Respondents first argue that, despite having lived in this country for years, Arif is an "applicant for admission" and can be detained under § 1225(b)(2)(A) as

if he were fictionally at the border attempting entry.[3] Respondents zoom too far into the statute. The term "applicant for admission," when viewed in its statutory context, cannot be understood without acknowledging Congress's choice to deploy the term within § 1225's border inspection scheme. By contrast, the term "applicant for admission" appears nowhere in § 1226. This comparative context thus clarifies that the term refers to a specific category of "arriving" noncitizens being "inspected" at or near the border. *See* 8 U.S.C. § 1225. Indeed, in *Bautista v. Santacruz Jr.*, the court rejected this exact argument, finding that the petitioners—who had been residing in the U.S.—were not "applicants for admission." No. 5:25-CV-1873-BFM (C.D. Cal. July 28, 2025), Dkt. 14 at 7-8.

Thus, when § 1225(a)(1) describes "applicants for admission" as a noncitizen "present in the United States who has not been admitted," the larger context of § 1225 clarifies that this definition refers to individuals who were apprehended in the interior of the country after having recently crossed the border. In sum, Arif—who has resided here for more than two years—is not an "applicant for admission" as that term should be understood within the INA, and thus he cannot be mandatorily detained under § 1225(b)(2)(A).

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[3] Respondents' reliance on *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020), to support this statutory fiction is misleading at best. The Supreme Court was clearly referring to the scope of due process protections in the context of people who physically "arrive at ports of entry" (airports are offered as an example). *Id.*

2. Section 1225(b)(2) cannot apply to Arif because he is not "seeking admission" to the United States.

Even if Arif were an "applicant for admission," § 1225(b)(2)(A) also requires an independent and separate showing that he is "seeking admission" to the United States. Respondents' interpretation of "seeking admission" has even less statutory footing: they argue that the term encompasses anyone seeking "a lawful means of entering" the country without regard to where or when that right may be granted, thus mandating the detention of any noncitizen present in the United States who has not been lawfully admitted or paroled. Such a broad interpretation of "seeking admission" flies in the face of the INA's text, structure, and purpose, and defies the common-sense meaning of the term.

Interpreting the INA properly shows that "seeking admission" describes a much narrower class: recent arrivals who are presenting themselves for admission at or near the border. Again, the text and structure of § 1225 clearly show that it deals with inspections of recent arrivals at or near the border. *See supra* Section I. By deploying "seeking admission" within § 1225's border inspection scheme—and not § 1226—Congress intended for this term to cover the detention of noncitizens seeking admission at or near the border. That is why the statute's implementing regulations, which were "promulgated mere months after passage of the statute and have remained consistent over time," *Lopez Benitez v. Francis*, 25-CV-5937-DEH, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025), describe those seeking

admission as "arriving aliens," 8 C.F.R. § 235.3(c)(1), who are "coming or attempting to come into the United States," 8 C.F.R. § 1.2 (emphasis added). *See Martinez*, 2025 WL 2084238 at *6 (the regulations' use of "arriving alien" is "roughly interchangeable with an 'applicant . . . seeking admission'" as used in § 1225(b)(2)(A)); *see also Lopez Benitez*, 2025 WL 2371588, at *7 (same). Thus, only those who take affirmative steps to seek admission while "coming or attempting to come into the United States" can reasonably be said to be "seeking admission" under § 1225(b)(2)(A). *See Gonzalez v. Noem*, 25-CV-2054-ODW-BFM at 8 (C.D. Cal. Aug. 13, 2025).

The word "seeking" is the present participle of the verb "seek." It thus has a temporal element-Petitioner must have been in the process of seeking admission at the time of the inspection. *United States v. Balint*, 201 F.3d 928, 933 (7th Cir. 2000) ("[U]se of . . . the present participle, or '-ing' form of an action verb, generally indicates continuing action."). It is difficult to see how Arif could be deemed to be "seeking" admission at the time of his encounter with ICE. By that point, he had been present in the U.S. for about two and a half years. If he became an "applicant for admission" at the time of his initial entry, by Respondents' interpretation he would be in a perpetual state of seeking admission the entire time between his entry and encounter. This "would seem to push the statutory text beyond its breaking point." *Echevarria v. Bondi*, 25-03252 at *12 (D. Ariz. Oct. 3, 2025).

Arif is not presenting himself for admission at the border; he arrived there over two years ago and has been residing in Delaware ever since. He simply wishes to remain in the country, not to enter it. All that Respondents can say in response to this obvious fact is that noncitizens like Arif must be seeking admission. But even Respondents' massive presumption does not make their case. Regardless of whether Arif desired a lawful means of entering, the reality is that he is not trying to enter the United States; he is already here. Thus, he cannot be considered "seeking admission" in any reasonable way, rendering § 1225(b)(2)(A) wholly inapplicable to his detention.

B. Congressional intent shows that § 1226(a) applies to Arif.

Congress intended for § 1226 to govern the detention of noncitizens who entered the U.S. without inspection. Congress most recently expressed this understanding earlier this year in the Laken Riley Act. This act added a subsection to § 1226 that specifically mandated detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025).

Respondents' interpretation of the statutes renders this recently amended section superfluous. *Lopez-Campos*, *supra*. If Congress intended or understood § 1225 to govern the detention of noncitizens like Arif, who were apprehended years after entering the country, it would have placed these amendments within § 1225, not § 1226.

When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There is no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b). *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).

C. Long-standing agency practice shows that § 1226(a) applies here.

Petitioner's position is not a novel interpretation of the INA. It has been Respondents' own understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course three months ago in a policy ICE issued "in coordination with the Department of Justice."

Following IIRIRA, the agency drafted new regulations that provided: "[a]liens 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." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The relevant regulations restrict only "arriving aliens" from an immigration court bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). An "arriving alien" is, as relevant here, "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q).

In fact, as recently as August 4, the Attorney General designated for publication a decision in which the BIA reviewed under § 1226(a) the merits of a bond request by a noncitizen who unlawfully entered the United States. *Matter of Akhmedov*, 29 I&N Dec. 166, 166 n.1 and 166-67 (BIA 2025). "The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper Bright*, 603 U.S. at 385-86.

IV. Due Process Entitles Arif to a Bond Hearing.

Respondents claim that Arif is only due the removal procedures provided by Congress. While that may be true for some people apprehended while crossing the border, *see Thuraissigiam*, 591 U.S. at 139, that is not true for people like Arif who have resided in the United States and "develop[ed] the ties that go with" that longtime residence, *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Indeed, there has long been a legal "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." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added).

And the process due here is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Arif invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Arif is limited to ensuring his appearance at future immigration proceedings and preventing danger to the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). But because Respondents denied Arif a proper bond hearing, "there is nothing in the record demonstrating that [Arif] is a flight risk or a danger to the community."[4] *Lopez Benitez,* 2025 WL 2371588 at *12. Therefore, the risk of erroneously depriving Arif of his physical freedom continues to be unbearably high. *See id.* Without the bond hearing that he is entitled to under § 1226(a), Arif will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Due process thus requires that Arif be afforded a bond hearing under § 1226(a). *See Lopez-Campos, supra.*

[4] Respondents may point to Petitioner's arrest for DUI, but he has not been convicted of those allegations. In fact, Petitioner's current incarceration makes defending himself much more difficult, as coordination between detention facilities and local municipal courts for video appearances is often difficult, and sometimes impossible.

Importantly, Respondents contend that Petitioner's detention is not unreasonably prolonged, citing that other courts in this District have held that detentions under 1225(b) considerably longer than Arif's detention were not unreasonable; however, "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

CONCLUSION

Arif respectfully requests that this Honorable Court grant his petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests this court order his immediate release from custody.

Dated: November 10, 2025

/s/Matthew J. Archambeault

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Certificate of Service

I hereby certify that on November 10, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/Matthew J. Archambeault
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