UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MAYNOR ANTONIO RAMIREZ VALVERDE,

Petitioner,

v.

Case No.: 25-CV-1502

SAM OLSON, et al.,

Respondents.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C.§ 2241

Petitioner Maynor Antonio Ramirez Valverde, a citizen of Nicaragua, has resided in the United States since 2022, when he [redacted] Before he was arrested by ICE, he lived in Sun Prairie, Wisconsin, with his U.S. citizen girlfriend and other roommates. On September 5, 2025, he encountered ICE agents at his home as they were conducting an operation to take his roommate into custody. Although Petitioner was not a target of the operation, ICE arrested him, too. He is currently detained at the Dodge County Jail pending the outcome of removal and asylum proceedings.

Had Petitioner encountered ICE at any point during the 28 years before July 8, 2025, he likely would have been released from immigration custody on bond and would now be at home. However, as of that date, the Department of Homeland Security departed from decades of Executive Branch practice and adopted a new interpretation of the immigration laws, under which noncitizens who have been residing peacefully in the United States for years are held in immigration custody without the possibility of bond pending conclusion of their removal or asylum proceedings. This new interpretation conflicts not only with longstanding practice, but also with the text of the relevant laws and Congress's demonstrated understanding of them, as reflected in

recently passed legislation. So clear are these points that federal courts across the county have issued dozens of recent decisions invalidating DHS's new interpretation of the statutes, with additional decisions being released every day. These decisions also recognize that the detention without bond of noncitizens like Petitioner—who does not have a criminal record and is not a flight risk—violates due process.

Because DHS's new interpretation is contrary to both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment, Petitioner applies to this Court for a writ of habeas corpus under 28 U.S.C. § 2241 requiring Respondents to release Petitioner if he is not provided with a bond hearing before an immigration judge within three business days.

I. BACKGROUND

A. Background on Relevant Immigration Laws

This case involves two sections of the Immigration and Nationality Act ("INA") that relate to the detention of noncitizens, 8 U.S.C. § 1225 and 8 U.S.C. § 1226.

After Petitioner was arrested, DHS issued a warrant indicating that it was exercising its detention authority pursuant to 8 U.S.C. § 1226. (Graham Decl. ¶ 45 & Ex. 2.) This section generally governs the process of "arresting and detaining" noncitizens who are already inside the United States but who are subject to removal. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). It distinguishes between two different categories of noncitizens: those who may be released on bond pending a decision on removal, and those subject to mandatory detention due to their criminal history. *Id.* Those in the first category are governed by § 1226(a), which the Supreme Court has called the "default rule." *Id.* Those in the second category are governed by § 1226(c).

Section 1225, in turn, generally applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible."

Jennings, 583 U.S. at 287. Under § 1225(a)(1), a noncitizen who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission must "be inspected by immigration officers" to ensure that they may be admitted into the country consistent with U.S. immigration law. 8 U.S.C. § 1225(a)(3).

Under § 1225, a noncitizen can fall into one of two categories, "those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" and "to certain other aliens designated by the Attorney General in his discretion." *Id.* Noncitizens covered by § 1225(b)(1) are subject to an expedited removal process under § 1225(b)(1)(A)(i). In contrast, § 1225(b)(2) applies to a noncitizen who is an applicant for admission that is also "seeking admission." 8 U.S.C. § 1225(b)(2)(A). For these noncitizens, if the examining immigration officer determines that the noncitizen "is not clearly and beyond a doubt entitled to be admitted," then the noncitizen must be detained for removal proceedings (not expedited removal) under 8 U.S.C. § 1229a. *Id.* The Supreme Court has interpreted § 1225(b)(2)(A) to require detention of the noncitizen seeking admission without bond pending the decision on removal. *Jennings*, 583 U.S. at 297–303.

B. The Department of Homeland Security Reverses Decades of Practice under Sections 1225 and 1226.

This habeas petition arises out of the Department of Homeland Security's recent adoption of a new interpretation of § 1225 and § 1226. For decades, the Executive Branch had considered individuals who were present in the United States for a period of time prior to their arrest eligible for bond hearings under § 1226(a). *See* 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) ("Despite 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."). Section 1225, in turn, generally had been applied only to individuals who arrived at an official port of entry (*e.g.*, an international airport or border crossing) or who had been apprehended trying to enter the country at an unauthorized location. *See Jennings*, 583 U.S. at 287 (describing § 1225 as applying "at the Nation's borders and ports of entry").

Although § 1225 had long been deemed inapplicable to detainees like Petitioner, on July 8, 2025, DHS "revisited its legal position on detention and release authorities." *See* Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025) (available by clicking the hyperlink, last viewed Oct. 20, 2025). Under DHS's new legal position, all ICE employees are to consider anyone present in the United States without being admitted as an "applicant for admission" under § 1225 who is "seeking admission" and thus not eligible for bond. *Id.* The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, or even decades. This change in position has since been approved by the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. Sept. 5, 2025), and is therefore binding on all immigration judges.

C. Factual Background[1]

Petitioner is a citizen of Nicaragua who has resided in the United States since 2022. He lives in Sun Prairie, Wisconsin with his girlfriend, who is a United States citizen, and other

[1] Petitioner's facts are supported by his verified petition, the declarations of his immigration counsel (Laura Graham), Petitioner's own translated declaration, and the declaration of Respondents' counsel. Respondents concede that the relevant facts are undisputed and that a hearing is not required. (Mem. in Opp. at 6, ECF No. 14.)

roommates. Petitioner has a history of stable employment in the United States, most recently working on a dairy farm in Waunakee, Wisconsin. Prior to that, he worked construction jobs in the Madison area. (Graham Supp. Decl., Ex. A, ¶ 5 (translated declaration of Petitioner).) He has no criminal history to speak of—either in the United States or in Nicaragua. (*Id.* ¶ 2.)

On the morning of September 5, 2025, Petitioner returned home from his night shift at the dairy farm to find ICE agents conducting an operation at his residence that led to the arrest of his roommate. (*Id.* ¶ 5.) Although Petitioner was not an intended target of the operation, ICE agents arrested him too. He is now in immigration custody at the Dodge County Jail in Juneau, Wisconsin.

DHS placed Petitioner in removal proceedings under 8 U.S.C. § 1229a. The Notice to Appear charges him with two violations of the INA. (Decl. of Laura Graham Ex. A.[2]) First, Petitioner is charged with being 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, in violation of 8 U.S.C. § 1182(a)(6)(A)(i). (This charge is commonly referred to as entering the United States "without admission" or "without inspection.") Second, Petitioner is charged with being an immigrant who, at the time of application for admission, was not in possession of certain entry and identification documents, in violation of 8 U.S.C. § 1182(a)(7)(A)(i)(I).

Petitioner intends to pursue two forms of relief from removal with the assistance of immigration counsel. First, he intends to seek asylum under 8 U.S.C. § 1158 or, in the alternative, withholding of removal under 8 U.S.C. § 1231(b)(3) or relief under the Convention Against Torture. *See* 8 C.F.R. § 1208.16(c). Here, Petitioner has a fear-based claim due to having been targeted by Nicaraguan security forces based on his participation in anti-Sandinista protests in

[2] This declaration was previously filed on September 29, 2025.

2018. (Graham Supp. Decl. ¶ 7 & Ex. A. ¶ 7.) He also has a well-founded fear of prosecution by the repressive Sandinista government. Second, Petitioner intends to seek relief from removal through a petition for U nonimmigrant status (a "U visa") under 8 C.F.R. § 214.14. Here, Petitioner will show that, when he first arrived in the United States, he became a victim of domestic violence by his former partner and helped law enforcement investigate that criminal activity. (Pet. ¶ 49.)

After Petitioner was arrested, DHS issued a warrant indicating that it was exercising its detention authority pursuant to 8 U.S.C. § 1226. (Graham Decl. ¶ 45 & Ex. 2.) Because Petitioner has no criminal history, he is not subject to mandatory detention under § 1226(c) and therefore is eligible for bond under § 1226(a). However, following his arrest, and consistent with DHS's new interpretation of § 1225, ICE issued a custody determination to continue his detention *without* an opportunity to post bond or be released on other conditions. (Pet. ¶ 50.) On October 10, 2025, Petitioner appeared before an immigration judge pursuant to his request for a custody redetermination. (Decl. of Brian Pawlak ¶ 2, Ex. 1.) However, the judge refused to conduct a bond hearing, citing *Matter of Yajure Hurtado* and stating that immigration judges "lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission." (*Id.* at 1.)

As a result, Petitioner remains in detention without the possibility of bond. Absent relief from this Court, he will be detained in the Dodge County Jail or another immigration detention center until at least December 8, 2025, the date of his next immigration hearing. (Pawlak Decl. ¶ 3, Ex. 2.) During that detention, Petitioner will be separated from his U.S. citizen girlfriend and his community in the Madison area. Further, while he is detained, it will be difficult for him to work with his immigration counsel to prepare his asylum claim that constitutes his defense to removal. (Graham Supp. Decl. ¶¶ 5–7.)

Petitioner therefore seeks a writ of habeas corpus from this Court directing Respondents to comply with § 1226(a) by providing him with an individualized bond hearing.

II. SUBJECT MATTER JURISDICTION

Respondents contend that the Court lacks subject-matter jurisdiction due to the jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(b)(9) and 1252(g). However, as discussed below, neither provision applies to the claims raised here.

A. Section 1252(b)(9) does not apply to a claim involving detention without a bond hearing.

Respondents contend that the "zipper clause" in § 1252(b)(9) strips this Court of jurisdiction. That clause channels certain challenges to removal proceedings into a single appeal from the final order of removal. *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 230 (2020). It states in relevant part that "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States . . . shall be available only in judicial review of a final order [of removal]." 8 U.S.C. § 1252(b)(9). However, as the Supreme Court has held, this provision does not prevent a district court from exercising jurisdiction over a claim that a noncitizen is being unlawfully detained without the opportunity for bond.

In *Jennings*, the Court held that § 1252(b)(9) does not deprive federal courts of jurisdiction to decide whether "certain statutory provisions [specifically, §§ 1225(b), 1226(a), and 1226(c)] require detention without a bond hearing." 583 U.S. at 289, 292.[3] The Court reasoned that legal

[3] *Jennings* was decided by eight Justices. Part II of Justice Alito's plurality opinion found that § 1252(b)(9) did not prevent the Court from considering a challenge to detention without bond. Only the Chief Justice and Justice Kennedy joined that part of the opinion. However, Justice Breyer's dissenting opinion, which Justices Ginsburg and Sotomayor joined, also found that § 1252(b)(9) did not preclude jurisdiction. *Jennings*, 583 U.S. at 355. Thus, as other federal courts have recognized, at least five Justices agreed that § 1252(b)(9) does not apply to claims involving detention without a bond hearing. *See, e.g., Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*,

questions relating to detention without a bond hearing do not "aris[e] from" the action taken to remove a noncitizen. *Id.* at 293. The Court recognized that, in some sense, detention without bond may arise from the decision to remove, but interpreting the statute to include that sense "would lead to staggering results," as it would include all claims related to confinement, even those involving personal injuries suffered during the confinement *Id.* The Court reasoned that interpreting the zipper clause in this "extreme way would also make claims of prolonged detention effectively unreviewable," since "[b]y the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place." *Id.* Although the Court declined to define the precise scope of § 1252(b)(9), it held that it did not apply to a challenge to detention without bond because the challengers were "not asking for review of an order of removal," were "not challenging the decision to detain them in the first place or to seek removal," and were "not challenging any part of the process by which their removability will be determined." *Id.* at 294.

Here, *Jennings* is dispositive. The claims raised in this habeas petition challenge detention without a bond hearing under two of the same statutes at issue in *Jennings*, §§ 1225 and 1226. If review is delayed until a final order of removal is entered, the claims will be unreviewable, as by then the detention without bond will already have occurred. Finally, Petitioner is not seeking review of a removal order (none exists), is not challenging the decision to detain him in the first place (only the decision to not provide an individualized bond hearing after detention was initiated), and is not challenging any part of the process by which his removability will be determined (instead, he will use that process to establish his asylum claim). Accordingly, § 1252(b)(9) does not apply.

---

524 F.Supp.3d 919, 952 n.24 (N.D. Cal. 2021); *Catholic Legal Immigr. Network, Inc. v. Exec. Off. for Immigr. Rev.*, 513 F.Supp.3d 154, 167 n.2 (D.D.C. 2021).

Notably, many other district courts—including those in the Seventh Circuit, *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *3–4 (N.D. Ill. Oct. 16, 2025); *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348, at *2–3 (S.D. Ind. Oct. 11, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763, at *2 (S.D. Ind. Sept. 22, 2025)—have likewise rejected the argument that § 1252(b)(9) precludes habeas petitioners from challenging DHS's new interpretation of § 1225(b)(2)(A). *See, e.g., Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *4 (W.D. Tex. Oct. 16, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at *7 (D. Nev. Oct. 14, 2025); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729, at *6 (D. Minn. Oct. 8, 2025). To Petitioner's knowledge, none of the many federal decisions that have addressed this issue in recent months has held that § 1252(b)(9) precludes jurisdiction. Even one of the few cases that agree with Respondents on the merits has rejected their jurisdictional arguments. *See Chavez v. Noem*, __ F. Supp. 3d __, 2025 WL 2730228, at *2 (S.D. Cal. 2025).

B. Section 1252(g) applies only in three limited circumstances that are not present here.

Respondents also rely on § 1252(g), which states that, except as § 1252 otherwise provides, "no court shall have jurisdiction to hear any cause or 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." Once again, however, the Supreme Court has already rejected Respondents' position. In *Reno v. American-Arab Anti-Discrimination Committee*, the Court held that § 1252(g) "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" 525 U.S. 471, 482 (1999). Petitioner's claims do not challenge these discrete actions. Instead, they challenge the decision to detain him without a bond hearing. Thus, § 1252(g)

does not apply, as other district courts within the Seventh Circuit considering challenges to DHS's new interpretation of § 1225(b)(2)(A) have held. *Ochoa Ochoa*, 2025 WL 2938779, at *3; *Alejandro*, 2025 WL 2896348, at *2–3; *Campos Leon*, 2025 WL 2694763, at *2. District courts from around the country agree. *See, e.g.*, *Vieira*, 2025 WL 2937880, at *3; *E.C.*, 2025 WL 2916264, at *7; *Eliseo A.A. v. Olson*, 2025 WL 2886729, at *5; *Chavez*, 2025 WL 2730228, at *3.

The Seventh Circuit itself followed *Reno* in *Parra v. Perryman*, where it held that § 1252(g) did not bar a claim challenging detention without bond under 8 U.S.C. § 1226(c). 172 F.3d 954, 956–57 (7th Cir. 1999). Respondents try to distinguish *Parra* by arguing that Petitioner "does not challenge the constitutionality of mandatory detention" but instead "argues that his detention without a bond redetermination hearing violates his right to due process." (ECF No. 14 at 8 n.6.) Respondents then disingenuously suggest that Petitioner was provided a bond hearing. (*Id.*) In fact, as Respondents well know, after Petitioner requested a custody redetermination hearing, the immigration court entered an order stating that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."[4] (Pawlak Decl., Ex. 1.) It is this supposed "lack of authority" that Petitioner challenges, which makes his claim materially identical to the claim in *Parra*. In other words, because Petitioner's claim "concerns detention while the administrative process lasts," it is not barred by § 1252(g). *Parra*, 172 F.3d at 957.

Respondents also write that "[t]he Supreme Court has been explicit: detention pending removal is a 'specification of the decision to "commence proceedings" which . . . § 1252(g)

[4] As Petitioner's immigration counsel explains, "[d]uring the hearing on October 10, 2025, the immigration judge did not consider or make any findings regarding whether Petitioner presents a danger or a flight risk, nor did the immigration judge consider the evidence Petitioner submitted regarding his eligibility for bond." (Supp. Graham Decl. ¶ 4.)

covers.'" (ECF No. 14 at 9.) Respondents then cite *Reno* as the source of this "explicit" statement. (*Id.*) The problem is that the statement is nowhere to be found in *Reno*, which did not concern detention pending removal or even mention such detention. What *Reno* actually states is that "'the decision . . . to issue a show cause order' . . . might well be considered a mere specification of the decision to 'commence proceedings.'" 525 U.S. at 485 n.9. In the present case, then, § 1252(g) might apply had Petitioner challenged the decision to issue a Notice to Appear. *See Ochoa Ochoa*, 2025 WL 2938779, at *3 (noting that decision to issue NTA "commences" removal proceedings). But *Reno* does not hold or even suggest that § 1252(g) applies to a challenge to detention without the possibility of bond. It does not, as *Parra* and the many district-court cases rejecting Respondents' jurisdictional argument confirm. Therefore, this Court's jurisdiction is secure.

III. MERITS

A federal court may issue a writ of habeas corpus when the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). As explained below, Petitioner is in custody in violation of both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

A. Petitioner's detention without bond violates the INA.

As discussed in this section, DHS's new construction of § 1225 contravenes ordinary principles of statutory interpretation. In recent weeks, many district courts around the country—including those in the Seventh Circuit, *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025)—have recognized that § 1226, not § 1225(b)(2)(A), applies to the detention of noncitizens like Petitioner who were arrested and detained in the United States pursuant to a warrant.

1. The textual structure of the INA establishes that Petitioner's detention is governed by § 1226.

"In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself." *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019).

The INA's text and structure shows that § 1225 and § 1226 apply in different circumstances. Section 1226 applies when, pursuant to a "warrant" issued by DHS, a noncitizen is "arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). In contrast, § 1225 applies when the noncitizen is before an "examining immigration officer" and is "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). As the title to § 1225 indicates, that generally occurs when the noncitizen "arriv[es]" at the United States. *See Jennings*, 583 U.S. at 287–88 (recognizing that § 1225 applies "at the Nation's borders and ports of entry," while § 1226 applies to aliens "once inside the United States"); *Alejandro*, 2025 WL 2896348, at *7 ("§ 1225's structure shows that it applies to aliens arriving to the United States rather than aliens like Mr. Alejandro who are already present in the United States"); *Beltran Berrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at * (W.D. Ky. Sept. 19, 2025) (assigning weight to title of § 1225 and finding that "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already"); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) ("[t]he use of 'arriving' to describe noncitizens strongly indicates that the statute governs the entrance of noncitizens to the United States"). The fact that § 1225 applies to "stowaway[s]" and "crewm[e]n" further reinforces its applicability to arriving noncitizens rather than those arrested pursuant to a warrant within the United States. *Pizarro Reyes*, 2025 WL 2609425, at *5. Finally, throughout its text, § 1225 repeatedly refers to "inspections"—a term that typically connotes an

examination upon or soon after physical entry to the United States.[5] Thus, the structure of the statutory scheme indicates that detention of a noncitizen arrested under a warrant is governed by § 1226, while the detention of a noncitizen detained upon arrival in the United States is governed by § 1225.

In the present case, Petitioner was arrested and detained pursuant to a warrant. (Graham Decl. Ex. B.) That warrant expressly references Section 236, which is 8 U.S.C. § 1226. (*Id.*) Petitioner was not apprehended at the border or a port of entry,[6] and as discussed more fully below, was not "seeking admission" to the United States at the time. As another district court in the Seventh Circuit has recognized when distinguishing § 1226 from § 1225, "[i]t is difficult to find that § 1226(a) carries any meaning if the aliens it expressly addresses—those arrested and detained pursuant to warrants—are not actually subject to its provisions." *Campos Leon*, 2025 WL 2694763, at *3. Accordingly, Petitioner's detention and eligibility for bond is governed exclusively by § 1226.

2. Section 1225 does not apply to Petitioner because he was not "seeking admission" when he was detained.

Further textual support for the Executive Branch's previously longstanding interpretation of § 1225(b)(2)(A) is found in the term "seeking admission."

---

[5] The INA does not define "inspection," but the context of its use in that statute shows that it refers to the process of admission at a port of entry. *See, e.g.*, 8 U.S.C. § 1752a (providing for "model points of entry" to be established including "enhanced queue management in the Federal Inspection Services area leading up to primary inspection"); 8 U.S.C. § 1187 (requiring data sharing under visa waiver program for officers "conducting inspections at ports of entry"); 8 U.S.C. § 1225a (setting forth rules governing "preinspection" that may take place in foreign airports prior to boarding).

[6] Notably, Petitioner's notice to appear does not check the box next to "arriving alien." Instead, it describes Petitioner as "an alien present in the United States who has not been admitted or paroled." (Graham Decl. Ex. A at 1.)

The relevant text provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Section 1225(a)(1) defines "applicant for admission" as "[a]n alien present in the United States who has not been admitted 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)." This definition covers someone, like Petitioner, alleged to be a noncitizen present in the United States who has not been admitted. However, for § 1225(b)(2)(A) to apply, the applicant for admission must also be "seeking admission." As other district courts have recognized, this separate term must be given its own meaning different from "applicant for admission" to prevent rendering part of the statutory text surplusage. *Alejandro*, 2025 WL 2896348, at *7; *Campos Leon*, 2025 WL 2694763, at *3; *Lopez Benitez v. Francis*, __ F. Supp. 3d __, 2025 WL 2371588, at *6–7 (S.D.N.Y. 2025); *Martinez v. Hyde*, __ F. Supp. 3d __, 2025 WL 2084238, at *6 (D. Mass. 2025), *appeal docketed*, 1st Cir. No. 25-1902; *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025). If "seeking admission" has no separate meaning from "applicant for admission," the former term would do no work. The statute would instead provide for detention of any "applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Lopez Benetiz*, 2025 WL 2371588, at *6.

Moreover, the term "seeking admission" implies continuing action, such as requesting admission to the United States at a port of entry. *See Lopez Benetiz*, 2025 WL 2371588, at *6 ("the active construction of 'the phrase "seeking admission,"' though undefined in § 1225(b)(2)(A),

'necessarily implies some sort of present-tense action.'"); *Hyppolite*, 2025 WL 2829511, at *9 ("the category of applicants for admission covered by § 1225(b)(2) who are 'seeking admission' is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering"). It would be inconsistent with the ordinary meaning of the words "seeking" and "admission" to describe a noncitizen like Petitioner—who was present in the United States for years at the time of detention and was not taking active steps to gain admission—as someone "seeking admission" at that time. The court in *Lopez Benetiz* illustrated this point with the following analogy:

> This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years.

2025 WL 2371588 at *7.

Accordingly, because Petitioner has been residing in the United States for years and was not "seeking admission" at the time of his detention, § 1225(b)(2)(A) does not govern his detention or bond eligibility.

3. A recent amendment to § 1226(c) confirms that Congress does not understand § 1225(b)(2) to apply to all noncitizens present in the United States without admission.

Although § 1226 authorizes bond for most noncitizens detained pursuant to a warrant, it makes certain categories of criminal noncitizens ineligible for bond. *See* 8 U.S.C. § 1226(c). On January 29, 2025, Congress and the President amended § 1226(c) by passing the Laken Riley Act,

Pub. L. No. 119-1. That Act added new subsection 1226(c)(1)(E) to the statute. The new subsection provides for mandatory detention of a noncitizen who meets two conditions: (1) the noncitizen "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title," *and* (2) the noncitizen "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E).

Importantly, one of the reasons for inadmissibility cited in the first condition of amended § 1226(c)(1)(E) includes the very reason DHS now contends Petitioner and others like him are subject to detention under § 1225(b)(2)(A): the noncitizen is "[a]n alien present in the United States without being admitted or paroled." *See* 8 U.S.C. § 1182(a)(6)(A). But according to the Laken Riley Act, being present in the United States without being admitted or paroled is insufficient to warrant mandatory detention. Instead, the noncitizen must *also* meet the second condition: the noncitizen must be "charged with," "arrested for," etc., theft or one of the other specified crimes.

For this reason, DHS's current interpretation of § 1225(b)(2)(A)—under which *all* "alien[s] present in the United States without being admitted or paroled" are subject to detention under that section—renders the amendments made by the Laken Riley Act meaningless, in violation of the rule against surplusage. *See Corley v. United States*, 556 U.S. 303, 314 (2009) ("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).[7] If,

[7] DHS's interpretation violates other, related canons of statutory construction, including: (1) when Congress amends a statute, the court presumes it intends its amendment to have real and substantial effect, *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995); and (2) courts do not "lightly assume Congress

as DHS now asserts, *all* noncitizens present in the United States without being admitted were always subject to mandatory detention under § 1225(b)(2)(A), then Congress would have had no reason to add a new category of mandatory detention to § 1226(c) that provides for mandatory detention of a *subset* of those very noncitizens. Many district courts, including the Southern District of Indiana, have already recognized this point and cited it as a primary reason for rejecting DHS's strained interpretation of § 1225. *See, e.g., Alejandro*, 2025 WL 2896348, at *8; *Guerrero Orellana v. Moniz*, __ F. Supp. 3d __, 2025 WL 2809996, at *7 (D. Mass. Oct. 3, 2025) ("adopting the government's interpretation of §1225(b)(2)(A) would impermissibly render superfluous part of Congress's recent amendment to § 1226(c) in the Laken Riley Act"); *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876, at *12 (N.D. Cal. Oct. 3, 2025) ("[The Government's] view would render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it."); *Rodriguez v. Bostock*, __ F. Supp. 3d __, 2025 WL 2782499, at *18–19 (W.D. Wash. 2025) (same); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783800, at *6 (E.D. Va. Sept. 30, 2025) (same); *Barrajas v. Noem*, No. 4:25-CV-00322-SHL-HCA, 2025 WL 2717650, at *4 (S.D. Iowa Sept. 23, 2025) ("Under the Federal Defendants' interpretation of the interplay between §§ 1225 and 1226, the Laken Riley Act is meaningless. This is not how statutes are to be interpreted.").

Accordingly, to avoid rendering the Laken Riley Act meaningless, the Court must limit mandatory detention of noncitizens present in the United States without inspection to those noncitizens who committed theft or are otherwise subject to § 1226(c)(1)(E). As Petitioner is not accused of theft or any of the other listed crimes, he is eligible for bond under § 1226(a).

---

adopts two separate clauses in the same law to perform the same work," *United States v. Taylor*, 596 U.S. 845, 857 (2022).

4. The BIA's recent decision upholding DHS's interpretation of § 1225 is not entitled to deference and is not persuasive.

Respondents do not argue that the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025), which upheld DHS's new interpretation of § 1225, is entitled to deference or is persuasive authority. However, out of an abundance of caution, Petitioner will show that it is neither.

First, although courts previously afforded *Chevron*[8] deference to BIA's interpretation of ambiguous immigration laws, *see, e.g., Zaragoza v. Garland*, 52 F.4th 1006, 1013 (7th Cir. 2022), that is no longer the case. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Instead, "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." *Id.* And even if deference to agency interpretations of ambiguous statutes were still allowed, such deference would not be warranted here because the statute is not ambiguous. The rule against surplusage is dispositive: interpreting § 1225(b)(2)(A) to authorize mandatory detention of those present in the United States without inspection would render the amendments made by the Laken Riley Act meaningless.

Second, *Yajure Hurtado* is not persuasive. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (the "weight of [the Executive Branch's] judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control"). To begin with, the decision itself admittedly contradicts decades of prior Executive Branch practice, under which immigration judges conducted bond hearings for noncitizens who entered the United States without inspection. *See Matter of Yajure Hurtado*, 29

[8] *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

I&N Dec. at 225 n.6. Even after *Loper Bright*, this "longstanding 'practice of the government'" is entitled to weight. 603 U.S. at 386.

Moreover, the BIA's purported textual interpretation is unsound. *See Valencia Zapata v. Kaiser*, __ F. Supp. 3d __, 2025 WL 2741654, at *10 (N.D. Cal. 2025) ("not only does *Yajure Hurtado* merit little deference due to its inconsistency with earlier BIA decisions, but its reasoning is also at odds with the text of sections 1225 and 1226"). The BIA's reading of § 1225 treats the phrases "applicant for admission" and "seeking admission" as synonymous, which renders the phrase "seeking admission" in § 1225(b)(2)(A) superfluous. *Id.* at *10. And, as discussed above, the BIA's reading renders superfluous the recent Laken Riley Act amendments. Although the BIA took notice of those amendments, it completely missed their import. The BIA stated that "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA." *Yajure Hurtado*, 29 I&N Dec. at 221–22. The BIA failed to appreciate that the amendments inform the meaning of § 1225(b)(2)(A) by showing that Congress could not have understood it to provide that all noncitizens present in the United States without inspection are subject to mandatory detention. If that was Congress's understanding, there would have been no reason for it to amend § 1226(c) and duplicate § 1225(b)(2)(A)'s existing mandatory-detention requirement, but only as to those noncitizens present in the United States without inspection who are accused of theft and other crimes.

The BIA also claimed that failing to adopt DHS's new interpretation of the statutory scheme would render § 1225(b)(2)(A) superfluous because no applicants for admission who were not already covered by the expedited removal process of § 1225(b)(1) would be covered by Section § 1225(b)(2)(A). *Yajure Hurtado*, 29 I & N. Dec. at 221. That is false. Section 1225(b)(1) applies

to arriving noncitizens who are inadmissible on grounds relating to misrepresentation or lack of proper documentation, while § 1225(b)(2) applies to arriving noncitizens who are inadmissible on one of the other grounds enumerated in 8 U.S.C. § 1182, such as their criminal convictions or foreign policy concerns. Those individuals are subject to mandatory detention under § 1225(b)(2), but they are not subject to expedited removal under § 1225(b)(1). *See Valencia Zapata*, 2025 WL 2741654, at *10. Thus, § 1225(b)(1) and § 1225(b)(2) applied in different circumstances even before DHS's recent about-face.

For these reasons, this Court should join the many other district courts around the country that have refused to either defer to *Yajure Hurtado* or assign it persuasive value. *See, e.g., Ochoa Ochoa*, 2025 WL 2938779, at *7; *S.D.B.B., v. Johnson*, 1:25-cv-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Hyppolite*, 2025 WL 2829511, at *11; *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Elias Escobar v. Hyde*, No. 1:25-CV-12620-IT, 2025 WL 2823324, at *3 (D. Mass. Oct. 3, 2025); *Cordero Pelico*, 2025 WL 2822876, at *9; *D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at *7 (D. Minn. Oct. 1, 2025); *Beltran Barrera*, 2025 WL 2690565, at *5.

5. Affording bond hearings to noncitizens charged with being present in the United States without admission but denying bond to those detained at the border does not create "perverse incentives."

Respondents contend that Congress's decision to afford bond hearings to noncitizens charged with being present in the United States without admission, but denying such hearings to those arriving legally at the border, creates "a perverse incentive to enter at an unlawful rather than a lawful location." (ECF No. 14 at 14.) Here, Respondents cite *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020). But that case dealt with two classes of *arriving* noncitizens—those arriving at lawful ports of entry and those crossing illegally—and did not compare arriving noncitizens to those who have been present in the United States for years. *See*

id. at 107 (noncitizen "attempted to enter the country illegally and was apprehended just 25 yards from the border"). And this distinction is key, as Supreme Court jurisprudence has long sanctioned different treatment of noncitizens who have only recently set foot on U.S. soil and those who have developed ties to this country. *See Pablo Sequen v. Kaiser*, No. 25-CV-06487-PCP, 2025 WL 2650637, at *5 (N.D. Cal. Sept. 16, 2025) (collecting Supreme Court cases going back to 1903).

In any event, it was rational for Congress to create a statutory system under which noncitizens present in the United States for years (albeit illegally) may be released on bond while noncitizens encountered at the border may not. Noncitizens who arrive at the border have yet to establish ties to a community within the United States. Thus, bond hearings at the border are unlikely to reliably reveal whether the noncitizens are flight risks or dangers to the community, and Congress could have mandated their detention pending removal to eliminate the risk of their fleeing or committing crimes in the United States. But noncitizens who have been in the United States for years are likely to have an established track record to present at a bond hearing. It is less risky to release these noncitizens pending a decision on removal or asylum. Accordingly, it is not "perverse" to interpret §§ 1225 and 1226 consistently with how Congress and the Executive Branch have interpreted them for nearly all of the past 28 years.

6. The cases upholding DHS's new interpretation of § 1225 are not persuasive.

Finally, Petitioner acknowledges that three district courts have upheld DHS's position that all noncitizens present in the United States without admission are subject to detention without bond under § 1225(b)(2)(A). *See Vargas Lopez v. Trump*, __ F.Supp.3d __, (D. Neb. 2025); *Chavez v. Noem*, __ F. Supp. 3d __, 2025 WL 2730228 (S.D. Cal. 2025); *Pena v. Hyde*, No. 25-11983-NMG, (D. Mass. July 28, 2025).[9] However, any review of these cases will show that they are not

[9] Respondents also cite *Florida v. United States*, which did not involve DHS's new interpretation of § 1225 but instead involved the detention of "aliens arriving at the Southwest Border." 660

persuasive. *Chavez* and *Pena* devote only a few paragraphs analyzing the statute before concluding that DHS's position is correct. *Chavez*, 2025 WL 2730228, at *4–5; *Pena*, 2025 WL 2108913, at *1–2. And the *Vargas Lopez* court's consideration of the petition was "hampered by the mistakes made in it." 2025 WL 2780351, at *1.

Other district courts, including the Southern District of Indiana, *Alejandro*, 2025 WL 2896348, at *6, have acknowledged Respondents' cases and have refused to follow them. *See, e.g., Mejia v. Woosley*, No. 4:25-cv-82-RGJ, 2025 WL 2933852, at *3 n.2 (W.D. Ky. Oct. 15, 2025); *Puga v. Asst. Field Off. Dir.*, No. 25-24535-CIV, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025); *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *4 (D. Ariz. Oct. 3, 2025). This Court should follow suit and join the chorus of other district courts that have rejected DHS's new interpretation of § 1225(b)(2)(A). *See, e.g., Luna Quispe v. Crawford*, 25-cv-1471, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664, 2025 WL 2809996, at *6 (D. Mass. Oct. 3, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Rodriguez Vazquez v. Bostock*, No. 25-cv-05240, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910, at *9 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427, at *5 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at

F.Supp.3d 1239, 1248–49 (N.D. Fla. 2023). Although this case holds that DHS does not have discretion to refuse to detain such arriving aliens under § 1225, it does not address whether noncitizens who have been present in the United States for years are subject to detention under § 1225 when they are arrested in the United States pursuant to a warrant.

*3 (W.D. Ky. Sept. 22, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390, at *10 (D.N.H. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, No. 25-cv-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-cv-01789, 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15, 2025); *Anicasio v. Kramer*, 25CV3158, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. Civ. 5937, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025).

B. Alternatively, if § 1225(b)(2)(A) applies to Petitioner, he is entitled to habeas relief because his continued detention without an individualized bond hearing violates procedural due process.

If the Court concludes that Petitioner is not in custody in violation of the INA, then it should grant the writ on the alternative ground that Petitioner's continued detention without an individualized bond hearing deprives him of liberty without due process of law, in violation of the Due Process Clause of the Fifth Amendment.

Noncitizens like Petitioner "who have established connections in this country have due process rights in deportation proceedings." *Thuraissigiam*, 591 U.S. at 107; *see also Demore v. Kim*, 538 U.S. 510, 523 (2003) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). Indeed, "[c]ourts in this circuit and across the country regularly grant habeas relief to alien detainees whose mandatory detention without bond pending removal is unconstitutional as applied to them." *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019).

In evaluating a procedural due process claim brought by a noncitizen detainee, courts within the Seventh Circuit apply the balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335

(1976). *See Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999); *Ruderman v. Kolitwenzew*, 459 F. Supp. 3d 1121, 1132 (C.D. Ill. 2020). Under *Mathews*, the Court weighs: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Ultimately, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Turning to the first *Mathews* factor, Petitioner has a significant private interest in remaining free from detention. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has been living in the United States since 2022. He resides with his U.S. citizen girlfriend in Sun Prairie, Wisconsin, has built ties within his community, and has obtained employment in the dairy and construction industries. His continued detention at Dodge County Jail alongside those who have been accused or convicted of serious crimes is an extreme incursion on his liberty interest in remaining at home pending the outcome of his removal and asylum proceedings. Every hour he is detained is frightening and harms his mental well-being.

Second, "'the risk of an erroneous deprivation [of liberty] is high' where, as here, '[Petitioner] has not received any bond or custody redetermination hearing.'" *Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB (HC), 2025 WL 2855193, at *6 (E.D. Cal. Oct. 8, 2025) (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16,

2025), *report and recommendation adopted* 2025 WL 1808676 (July1, 2025)). Civil immigration detention, which is "nonpunitive in purpose and effect[,]" is ordinarily justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690. Petitioner has no criminal history and, because of his ties to the community in Sun Prairie, is not a flight risk. Thus, "the probable value of additional procedural safeguards, *i.e.*, a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5.

Third, the government's interest in detaining Petitioner without a hearing is low. *Rodriguez*, 2025 WL 2855193, at *7. In immigration court, custody hearings are routine and impose a "minimal" cost. *Id.* The government's interest is further diminished where a person does not have a criminal record. *Id.*

On balance, then, the *Mathews* factors show that Petitioner is entitled to a bond hearing. Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. *See Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). A noncitizen detainee who has lived peacefully in the United States for more than three years is entitled to the same procedural safeguard. Other district courts—including the Northern District of Illinois, *Ochoa Ochoa*, 2025 WL 2938779, at *7—have recently recognized as much under similar circumstances. *See, e.g., Rodriguez*, 2025 WL 2855193, at *7; *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025); *Hyppolite*, 2025 WL 2829511, at *16; *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025).

Finally, Petitioner notes that, although the Supreme Court has rejected a due process challenge to Section 1226(c)'s mandatory detention of certain *criminal* noncitizen detainees who

concede their removability, *see Demore*, 538 U.S. at 531, the Court's holding does not extend to the mandatory detention of *noncriminal* detainees with valid defenses to removal. In considering Section 1226(c), the Court found that it "mandate[d] detention during removal proceedings for a limited class of deportable aliens—including those convicted of an aggravated felony." *Demore*, 538 U.S. at 517–18. And in *Demore*, the habeas petitioner "[did] not dispute the validity of his prior convictions, which were obtained following the full procedural protections our criminal justice system offers." 538 U.S. at 513. The Supreme Court held that the detention of "a criminal alien who has conceded that he is deportable, for the limited period of [the detainee's] removal proceedings" did not violate due process because such detention "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Id.* at 528.

Unlike *Demore*, this case involves a noncitizen who has not been found guilty of any crime and who intends to assert valid defenses to removal based on his eligibility for asylum. Thus, the concerns over flight and criminal recidivism that motivated Congress to enact § 1226(c) are not present here. Notably, one district court has already distinguished *Demore* on this basis when holding that the Lakin Riley Act amendments to § 1226(c)—which require mandatory detention of those who are merely *accused* of theft and other offenses—violate procedural due process. *See Doe v. Moniz*, __ F. Supp. 3d __, 2025 WL 2576819, at *9–11 (D. Mass. 2025). In the present case, Petitioner has not even been accused of any crime and does not have a criminal record. Due process therefore requires that he be provided with an individualized bond hearing before being deprived of his liberty interest in remaining in his community pending resolution of his removal and asylum proceedings.

IV. CONCLUSION

For the reasons stated, Petitioner is in custody in violation of federal law (the INA) and the Constitution (the Due Process Clause of the Fifth Amendment). Petitioner respectfully requests that the Court grant his petition for a writ of habeas corpus and order that Respondents release Petitioner from detention unless, within 3 business days from the date of the Court's order, Petitioner is provided with an individualized bond hearing pursuant to 8 U.S.C. § 1226(a). The Court should make clear that, at the hearing, the immigration judge must exercise jurisdiction to consider granting Petitioner release on bond based on an individualized determination of the usual factors considered at a bond hearing (such as whether he is a flight risk or a danger to the community) and must not consider Petitioner subject to detention without bond under 8 U.S.C. § 1225(b)(2)(A).

Dated this 20th day of October, 2025.

/s/ Michael J. Ashton
Kevin Long
Kevin.Long@quarles.com
Michael J. Ashton
Michael.Ashton@quarles.com
QUARLES & BRADY, LLP
411 E. Wisconsin Ave., Suite 2400
Milwaukee, WI 53202
(414) 277-5000

Emily M. Feinstein
QUARLES & BRADY LLP
33 East Main Street, Suite 900
Madison, WI 53703
(608) 251-5000
Emily.Feinstein@quarles.com

Laura Graham
Supervising Attorney
Community Immigration Law Center (CILC)
944 East Gorham St, Madison, WI 53703
608-640-4446

Attorneys for Petitioner Maynor Antonio Ramirez Valverde

QB\99084114.1