IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT MIDDLE DISTRICT OF PENNSYLVANIA

SARA LUCIOLA VILLA HERNANDEZ	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:25-cv-1847
	)	
	)	
MICHAEL KUNES, Warden of Clinton County Correctional Facility; JASON KORMANIC, Warden of Clinton County Correctional Facility; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,	)	
Respondents.		

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR HABEAS CORPUS RELIEF

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INTRODUCTION

Petitioner, Sara Luciola Villa Hernandez, escaped persecution in Colombia and is seeking asylum in the United States. Since arriving to the United States in 2024, Petitioner has become a vital member of her community. However, in August 2025, Immigration and Customs Enforcement ("ICE") arrested Petitioner and took her into Department of Homeland Security ("DHS") custody. Since Petitioner entered the United States without permission or parole, she is subject to detention under 8 U.S.C. § 1226(a) and is eligible for a bond hearing before an Immigration Judge ("IJ"). However, on July 8, 2025, DHS issued Interim Guidance ("Policy") alleging that all noncitizens (like Petitioner) who entered without permission or parole are ineligible for release on bond. This policy upended decades of well-established interpretation of detention authority under section 1226(a) and 8 U.S.C. § 1225(b) and unlawfully condemns noncitizens like Petitioner to continued detention when they should be otherwise eligible for release. The Court should grant injunctive relief for the following reasons.

First, Petitioner has demonstrated a likelihood of success on the merits. DHS' Policy depriving Petitioner of a bond hearing violates the Immigration and Nationality Act ("INA") and Petitioner's Fifth Amendment due process rights. Indeed, numerous district courts have already ruled in favor of noncitizens similarly situated to Petitioner.

Second, Petitioner will suffer irreparable harm if the Court does not provide emergent habeas relief. Unless this Court grants habeas relief, it is certain that Petitioner will be remain detained for indefinite period of time in violation of her due process rights. Additionally, if this Court does not grant relief Petitioner will be forced to continue with her asylum case in detention even though she is statutorily eligible for a bond hearing.

Third, the balance between that harm and the harm injunctive relief would cause to the other litigants and the public interest weighs in favor of Petitioner. The potential harm to Petitioner if injunctive relief is not granted is grave. She would be forced to remain confined despite her statutory right to a bond hearing. In comparison, the harm to Respondents is minimal. Respondents' position regarding the governing detention authority is meritless, and Respondents cannot in good faith argue that release or a constitutionally adequate bond hearing could cause harm.

For these reasons, Petitioner respectfully requests that this Court: 1) enjoin Respondents from transferring Petitioner outside this district while this matter is pending; and 2) order that Respondents release Petitioner from detention, or in the alternative provide Petitioner a constitutionally adequate bond hearing at which DHS bears the burden, within 3 days.

STATEMENT OF FACTS

Petitioner repeats and incorporates by reference each Statement of Facts contained in the Petition for Writ of Habeas Corpus as if fully set forth herein.

STATUTORY BACKGROUND AND LEGAL FRAMEWORK

I. HABEAS RELIEF

To obtain habeas corpus relief, a petitioner must demonstrate that she is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241(c)(3). This Court has habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal. *See Demore v. Kim*, 538 U.S. 510, 517-18 (2003).

II. DETENTION AUTHORITY UNDER THE INA

INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2). Finally, the INA also provides for detention of noncitizens who are subject to final orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b). The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most recently amended earlier this year by the Laken Riley Act ("LRA"), Pub. L. No.119-1, 139 Stat. 3 (2025).

Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 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). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior the enactment of the IIRIRA, in which noncitizens who were not deemed "arriving"

were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that section 1226(a) simply "restates" the detention authority previously found at section 1252(a)).

On July 8, 2025, DHS issued a memo to all employees of ICE stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." The memo further stated DHS' new position with regard to custody determinations as follows:

> An "applicant for admission" is an 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. INA § 235(a)(1) [8 U.S.C. § 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)] and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The 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, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

See https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last accessed Sept. 28, 2025) (emphasis original).

As a result, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, to be subject to mandatory detention under section 1225(b) and ineligible for release on bond. Conversely, according to DHS "[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, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

STANDARD OF REVIEW

A TRO may issue if the movant shows (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in their favor, and (4) that a TRO is in the public interest. *See M.G. ex rel. Garcia v. Armijo*, 117 F.4th 1230, 1238 (10th Cir. 2024); *D.B.U. v. Trump*, 779 F.Supp.3d 1264, 1273 (D. Colo. 2025) ("The legal standard governing TROs is the same standard governing preliminary injunctions.").

ARGUMENTS

I. PETITIONER HAS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE STATUTORY DETENTION

DHS' new Policy directly impacts Petitioner and violates the INA and Petitioner's Fifth Amendment right to due process. There is no dispute that Petitioner would have been considered subject to discretionary detention under 8 U.S.C. § 1226(a) and eligible for a bond hearing before DHS abrupt policy change on July 8, 2025, and the BIA's decision in *Matter of Yajure Hurtado*. As other courts have observed, DHS' Policy "reflects a novel interpretation of the immigration detention statutes," adopted a little over two months ago. *See Martinez v. Hyde*, 2025 WL 2084238, at *4-5 & nn.9-11 (D. Mass. July 24, 2025). Petitioner is "one of the millions of noncitizens living within the United States facing drastic consequences from respondents' policy change." *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *12 (D.N.J. Sep. 26, 2025). Petitioner challenges the lawfulness of his continued detention and demonstrates a likelihood of success on the merits of his Petition for Writ of Habeas Corpus for the reasons set forth below.

A. Petitioner is Statutorily Eligible for a Bond Hearing

The plain text of section 1226(a) demonstrates that it, not section 1225(b), applies to Petitioner's detention. Section 1226(a) "provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal." *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citation omitted). As the Supreme Court has remarked, section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting section 1226(a)). Section 1226(c) carves out a statutory category of noncitizens for whom detention is mandatory, consisting of individuals who have committed certain "enumerated . . . criminal offenses [or]

terrorist activities." 8 U.S.C. § 1226(c). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. *See* § 1226(c)(1)(A), (D), (E). This is in stark contrast with mandatory detention provision under 8 U.S.C. § 1225(b)(2), which "supplement[s] § [1226's] detention scheme." *Diaz*, 53 F.4th at 1197. Section 1225(b) "applies primarily to [noncitizens] seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297; *see* 8 U.S.C. § 1225(b) (entitled "Inspection of applicants for admission").

Thus, the plain text of section 1226(a) applies to noncitizens like Petitioner. The fact that section 1226(a) is the default rule for arrest and detention and that section (c) carves out exceptions further demonstrates that the discretionary bond procedures apply to noncitizens like Respondent who are present without being admitted or paroled and have not been implicated in any crimes set forth in subsection (c). The Supreme Court has held that when Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

The recent enactment of Laken Riley Act further supports this finding. The Act added language to section 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under INA § 212(a)(6)(A) (the inadmissibility ground for entry without inspection) or INA 212 § (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of new certain crimes (not previously covered by section 1226(c)) are now subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. §

1226(c)(1)(E). By including such individuals under section 1226(c), Congress reaffirmed that section 1226(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 212(a)(6)(A) or 212(a)(7).

When interpreting statutes, "the inquiry 'begins with the statutory text, and ends there as well if the text is unambiguous.'" *In re Vill. Apothecary, Inc.*, 45 F.4th 940, 947 (6th Cir. 2022). In order to do this, courts must also look at the text "when placed in context." *Id.* If section 1226(a) did not apply to Petitioner—like Respondents contend—vast portions of the section 1226(a) would be rendered meaningless. This is because DHS contends that noncitizens like Petitioner who entered without inspection are really "applicants for admission" and therefore subject to mandatory detention under section 1225(b)(2). Courts have made it clear that statutes must be interpreted as a whole, "giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (quoting *Rodriguez v. Sony Computer Ent. Am., LLC*, 801 F.3d 1045, 1051 (9th Cir. 2015)).

It is noteworthy 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." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (internal quotation marks omitted). Here, DHS' sudden reversal—particularly after Congress just recently amended section 1226 to include the LRA provisions—further undermines the Department's argument that the detention authority for noncitizens like Respondent lies under section 1225(b) instead of section 1226(a).

B. DHS' Position That Petitioner Is Subject to Mandatory Detention Under Section 1225(b) Is Baseless

As noted above, DHS' new position contends that Petitioner is subject to mandatory detention under section 1225(b)(A) because he is an "applicant for admission." But section 1225(b)(A) concerns a completely different category of noncitizens. In *Jennings*, the Supreme Court discussed section 1225(b) as part of a process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." 583 U.S. at 287. As for section 1226(a), *Jennings* described it as governing "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including noncitizens "who were inadmissible at the time of entry." *Id.* at 288. The Court then summarized the distinction as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ [1225](b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings under §§ [1226](a) and (c)." *Id.* at 289; *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a noncitizen "who tries to enter the country illegally is treated as an applicant for admission . . . and a [noncitizen] who is detained shortly after unlawful entry cannot be said to have effected an entry") (cleaned up).

DHS' newfound position misconstrues the phrase "applicant for admission" to suggest that every person, other than those who have been admitted, are subject to mandatory detention. Section 1225(a)(1) defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). According to DHS, section 1225(b)(1) generally applies to arriving aliens and section 1225(b)(2) serves as a broader catchall provision for all applicants for admission not covered by section 1225(b)(1). In

other words, DHS argues that every noncitizen who entered without parole or inspection is an "applicant for admission" pursuant to section 1225(a)(1) and is therefore subject to mandatory detention. However, 8 U.S.C. § 1225(b)(2)(A) states in full that:

> Subject to subparagraphs (B) and (C), 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.
>
> *Id.*

Thus, for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an "examining immigration officer" must determine that the individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." DHS' position conveniently overlooks these conditions and treats "applicants for admission" the same as those "seeking admission."

The phrase "seeking admission" is undefined in the statute but necessarily implies some sort of present-tense action. Indeed, only those who take affirmative acts, like submitting an "application for admission," are those that can be said to be "seeking admission" within section 1225(b)(2)(A). *See Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *23 (D.N.J. Sep. 26, 2025) ("the Court agrees with petitioner and other courts that § 1225(b)(2) plainly contemplates present affirmative conduct by 1) a noncitizen who is 'seeking admission' and 2) and an inspecting immigration official who must determine whether that individual is entitled to admission to the United States . . . . Thus, even if petitioner could be deemed 'an applicant for admission,' under § 1225(a)(1), as respondents claim, [Petitioner] does not meet the requirements of § 1225(b)(2), because she was never 'seeking entry' nor inspected by immigration officials.") (citing *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 LX 284582, at *2 (D. Mass. July 24, 2025)).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner who have already entered and are now residing in the United States. *See Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding that an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States."). Accordingly, INA § 235(b)(2)'s reference to "applicants for admission" must be read "in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act's "broader structure . . . to determine [the statute's] meaning").

The broader statutory structure of immigration detention authority also demonstrates the inapplicability of section 1225(b) to Petitioner's case. *See King*, 576 U.S. at 492 (explaining that an act's "broader structure" can be a useful tool "to determine [a statute's] meaning."); *see also Biden v. Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of INA provision). This is particularly true where "a provision . . . may seem ambiguous in isolation." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). In such situations, the statute's meaning "is often 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." *Id.*

The broader text of section 1225(b) reinforces this understanding of the two sections' structure and application. "To begin with, the titles and headings of § 1225 repeatedly cabin its application to 'Inspections,' which, as petitioner convincingly argues, occur." *Zumba*, 2025 LX 482036 at *24; *see also Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at *15 (E.D. Mich. Aug. 29, 2025) (although "not binding, [titles or headings] are instructive and provide

the Court with the necessary assurance that it is at least applying the right part of the statute in a given circumstance."); *Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute."). Moreover, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), and sets out procedures for "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d).

In addition, "[t]urther and seriously weakening respondents' position, even after the July 8 policy change, ICE arrested petitioner pursuant to a warrant Form I-200, *which specifically referenced INA § 236*:" *Zumba*, 2025 LX 482036, at *25 (emphasis original).

C. Prevailing Case Law Supports Petitioner's Position

Virtually every district court across the country has agreed with Petitioner's arguments on this issue. *See*, e.g., *Zumba,* 2025 LX 482036; *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025) *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Marcelo v. Trump*, No. 3:25-cv-00094-RGE-WPK, 2025 LX 466469 (S.D. Iowa Sep. 10, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Martinez v. Hyde*, 1:25-cv-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) ("[S]ection 1125(b)(2) cannot be read to mandate detention of non-citizens already present within the United States, based on certain inadmissibility grounds, as that would nullify a recent amendment to the immigration statues."); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July

7, 2025) ("DHS cannot convert the statutory authority governing . . . detention from [Section 1225(b)] to [Section 1226(a)] through the post-hoc issuance of a warrant.").

Judge Jennings' recent decisions in *Beltran Barrera v.*

Tindall, No. 3:25-cv-541-RGJ, slip op. at 5-10 (W.D. Ky. Sep. 19, 2025) and *Singh* are particularly illustrative. In *Barrera*, the court found that "based upon the statutory context, scheme, and text of Section 1225, the Court finds it difficult to find that an individual is "seeking admission" when that "noncitizen never attempted to do so." *Id.* at p. 5. The court further noted that "Courts across the country have been faced with similar questions of law and fact presented by the United States. And *every* court who has examined this novel interpretation of Section 1225 by the United States has rejected their theory and adopted Petitioner's. This includes courts within the Sixth Circuit, and across the country." *Id.* (emphasis original).

On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) that affirmed DHS' position. However, the decision is of no precedential value to this Court and is owed no deference, particularly since the Supreme Court's decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted . . . courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous."). Under a pure *de novo* standard of review, this Court should find that the Respondents' position is not supported at all by the statutory provisions of the INA. As the court in *Marcelo* recently held, "[t]he reasoning in the Board of Immigration Appeals' decision largely tracks that argued by Federal Respondents in this matter" but that the rationale is not compelling because the "legislative history and congressional intent of the Immigration and Nationality Act do not support mandatory detention for all noncitizens present in the United States; and the weight of caselaw evaluating noncitizen

detention pursuant to removal proceedings falls squarely in line with the Court's conclusions. The Court does not find the Board of Immigration Appeals' interpretation persuasive nor binding on the Court." *Marcelo*, 2025 LX 466469 at *23. This Court should adopt the same holding for the reasons set forth above.

Lastly, in *Bautista v. Santacruz Jr.*, the Central District of California, issued a nationwide class action certification striking *Matter of Hurtado*, and finding that non-citizens who entered the US without inspection or detention are eligible for bond under section 236 of the INA. If the Court held that Immigration Judges must hold bond hearings for uninspected non-citizens, then non-citizens who entered the US under section 236 are presumably entitled to a bond hearing on the same ground. *See Bautista v. Santacruz Jr*, 25-cv-01873 (C.D.CA. 2025).

D. Mandatory Detention Under Section 1225 Violates the Due Process Clause

The Supreme Court has held that "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001). "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." *Id.* at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (explaining that due process "protects every [noncitizen] from deprivation of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection") (internal citations omitted).

The adequacy of due process for civil detainees is generally guided by the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous

release from detention is the appropriate relief . . . ."); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025) ("[g]iven that the government does not assert any other basis for petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release."). Alternatively, if the Court does not grant release, it should order a bond hearing where the burden of proof at the bond hearing is shifted to DHS to prove danger to the community or risk of flight. *See Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (granting petitioner's "request to shift the burden of proof in said bond hearing. Respondents shall bear the burden of justifying, by clear and convincing evidence, Petitioner's continued detention."). In addition, the Court should also enjoin Respondents from transferring Petitioner out of the district before an ultimate decision on the merits. *See Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 349750, at *5 (W.D. Tex. Sep. 9, 2025) ("[t]he Court finds persuasive the decisions enjoining removal and transfer of petitioners under the Court's inherent power to preserve its ability to hear the case" and that enjoining transfers was necessary "[t]o ensure the ability to meaningfully assess [Petitioner's] Petition.").

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's Motion for TRO and Preliminary Injunction.

Dated: November 26, 2025

Respectfully Submitted,

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Sara Luciola Villa Hernandez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 26, 2025

/s/ Nneka Jackson
Nneka Jackson

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2025, I filed the foregoing petition electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Nneka Jackson
Nneka Jackson