

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AGUSTIN SANTOS RAMIREZ, and
JOSE GUADALUPE SALAZAR GONZALEZ,

Petitioners,

v.

No. 1:25-cv-01008-KWR-JMR

MARISA FLORES, Field Office Director of
Enforcement and Removal Operations, El Paso
Field Office, Immigration and Customs
Enforcement; KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND SECURITY;
PAMELA BONDI, U.S. Attorney General;
TODD LYONS, Acting Director and Senior
Official Performing the Duties of the Director
of U.S. Immigration and Customs Enforcement; and
GEORGE DEDOS, Warden¹ of Cibola County
Correctional Center, in their official capacities,

Respondents.

**MOTION TO DISMISS
WRIT OF HABEAS CORPUS (DOC. 1)**

INTRODUCTION

Respondents, Immigration and Customs Enforcement (“ICE”), the Department of
Homeland Security (“DHS”), and Pamela Bondi, U.S. Attorney General (collectively
“Respondents”), hereby submit this Motion to Dismiss Petitioners’ Writ of Habeas Corpus (Doc.
1).

¹ The undersigned does not represent the Warden of the Cibola County Correctional Center, as Cibola is a private facility and the Warden is not a federal employee. However, all arguments made on behalf of the remaining Defendants apply equally to the Warden.

Petitioners are noncitizens of the United States, who entered the country unlawfully and without inspection, and are currently detained pending removal proceedings before the U.S. Immigration Court. Petitioners ask the Court to grant release from custody or, in the alternative, to order Respondents to provide a bond review hearing within seven days. *See* Doc. 1 at 16. Petitioners allege that mandatory detention pursuant to Immigration and Nationality Act (“INA”) § 235(b) violates both the INA itself and Fifth Amendment due process protections. *Id.* at 14-15; *see also* 8 U.S.C. § 1225(b). Petitioners argue their appropriate classification falls under INA § 236, which would entitle Petitioners to bond review proceedings. *See generally* 8 U.S.C. § 1226.

Respondents request the Court deny or dismiss the petition (Doc. 1) as Petitioners are appropriately classified under § 1225(b)(1) per guidance from the Board of Immigration Appeals (“BIA”) in *Matter of Yajure Hurtado*. *See* 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Additionally, when a noncitizen is inadmissible under § 1225(b) judicial review is extremely limited, and the Court lacks subject matter jurisdiction. *See* 8 U.S.C. § 1225(b)(1)(A)(i); *see also* 8 U.S.C. § 1252(e)(2)(A)-(C); *Vaupel v. Ortiz*, 244 F. App'x 892, 894 (10th Cir. 2007). Alternatively, should the Court find § 1226 applies to Petitioners, the appropriate relief would be a bond review rather than immediate release.

FACTUAL BACKGROUND

I. Agustín Santos Ramírez

Petitioner Ramirez is a noncitizen of the United States and citizen of Mexico, without lawful status in the United States. On or about June 21, 2025, Petitioner Ramirez was detained due to his unlawful presence in the United States. Petitioner Ramirez was charged with violations of INA § 212(a)(7)(A)(i)(I) and INA § 212(a)(6)(A)(i). On October 2, 2025, an Immigration Judge (“IJ”) sustained the charges of removability. Petitioner Ramirez is currently detained pursuant to

INA § 212(d)(5). Upon information and belief, Petitioner Ramirez’s next immigration court date is currently scheduled for December 4, 2025.

II. Jose Gonzalez

Petitioner Gonzalez is a noncitizen of the United States and citizen of Mexico, without lawful status in the United States. On or about June 21, 2025, Petitioner Gonzalez was detained due to his unlawful presence in the United States. Petitioner Gonzalez was charged with violations of INA § 212(a)(6)(A)(i). On October 9, 2024, an IJ sustained the charge of removability. Petitioner Gonzalez is currently detained pursuant to INA § 212(d)(5). Upon information and belief, Petitioner Gonzalez’s next immigration court date is currently scheduled for November 21, 2025.

LEGAL BACKGROUND

I. Detention of “Arriving Aliens” Under §1225 vs. §1226

Generally, when a noncitizen arrives in the United States they are “an applicant for admission,” who must “be inspected by immigration officers” to ensure that they may be admitted into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as “arriving aliens” and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *see also* 8 U.S.C. § 1225(b)(1)(A)(i). Aliens who enter illegally, but are detained shortly after unlawful entry, cannot be said to have “effected an entry” and remain, similar to an alien detained at a port of entry, “on the threshold” and subject to § 1225. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). These arriving aliens can be subject to an expeditious process to remove them from the United States. 8 U.S.C. § 1225(b)(1). Under this process, known as expedited removal, arriving aliens who entered illegally, lack valid entry documentation or make material misrepresentations shall be “order[ed]...removed from the

United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be inadmissible pursuant to § 1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless “shall be detained for a [removal] proceeding” unless the examining immigration officer determines that the noncitizen is “clearly and beyond a doubt entitled to be admitted.” *Id.* In comparison, when a noncitizen is charged as removable *from within the United States*, traditionally § 1226 “generally govern[ed] the process of arresting and detaining...aliens pending their removal.” 8 U.S.C. § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Under § 1226(a), “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a).

The difference between these noncitizens is significant for due process purposes. *Thuraissigiam*, 591 U.S. at 106–07, 138–40; *See also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the “unique constitutional status of arriving aliens with no ties to the United States”). For example, the Supreme Court considered whether § 1225(b) imposes a time limit on the length of detention and whether such noncitizens detained under this authority have a statutory right to a bond hearing. *Jennings*, at 296–303 (The Supreme Court held that “nothing in the statutory text [of § 1225(b)] imposes any limit on the length of detention” nor “says anything whatsoever about bond hearings.”) The sole means of release for noncitizens detained pursuant to § 1225(b) is temporary parole *at the discretion of DHS* under 8 U.S.C. § 1182(d)(5). *Id.* at 300.

For “more than a century” the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *See also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (“the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of

law.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative”); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (an alien on the threshold of initial entry stands on a different footing: “Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned”).

Thuraissigiam dealt with a habeas action involving a noncitizen detained under §1225(b) who raised Fifth Amendment challenges. *Thuraissigiam*, 591 U.S. at 106–07. The Supreme Court reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statute. *Id.* at 107 (a noncitizen seeking initial entry “has no entitlement to procedural rights other than those afforded by statute”). Accordingly, Congress may authorize detention, even for prolonged periods of time, and such detention does not deprive §1225(b) aliens “of any statutory or constitutional right.” *Id.* An alien who enters the country illegally is treated as an “applicant for admission” and has only those rights that Congress has provided by statute. *Thuraissigiam*, 591 U.S. at 140. The due process clause requires nothing more. *Id.*

II. *Matter of Yajure Hurtado*

On September 5, 2025, the Board of Immigration Appeals (“BIA”) published a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be “arriving aliens” and are properly detained under 8 U.S.C. § 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission

as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.

The BIA concluded that arriving aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the argument that “because [petitioner] has been residing in the interior of the United States for almost 3 years...he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* Specifically, if the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA further rejected arguments that: (1) the immigration judge’s interpretation of § 1225(b)(2)(A) would render superfluous § 1226(c)(1)(A); (2) the relevant legislative history of the INA supports an interpretation that would permit bond hearings for individuals present in the United States without admission; (3) DHS’s “longstanding practice” indicates that aliens present without admission are entitled to bond hearings; and (4) *Matter of Q. Li*, 29 I. & N. 66 (BIA 2025), supports a conclusion that aliens detained with a warrant of arrest are detained under § 1226(a). *Id.* at 221–27.

III. Burden of Proof Under § 1225 and § 1226.

In an immigration context, under both § 1225 and § 1226, it is generally the petitioner’s burden to show that he or she is eligible for release or bond. *See, e.g.*, 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien . . .

provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.”); *See also Matter of Adeniji*, 22 I. & N. Dec. 1102, 1102 (BIA 1999). This principle is well established in immigration law, even in cases where additional due process and individualized procedures are applicable. *See, e.g., Demore v. Kim*, 538 U.S. 510, 532, (2003) (Justice Kennedy concurring and citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“the permissibility of continued detention pending deportation proceedings turns solely upon the alien’s ability to satisfy the ordinary bond procedures – namely, whether if released the alien would pose a risk of flight or danger to the community”)) (emphasis added).

Similarly, it is also the petitioner’s burden to show entitlement to relief from removal on the merits. *See, e.g.,* 8 U.S.C. § 1229a(c)(2) (outlining the burden of proof in removal proceedings: “the alien has the burden of establishing . . . that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible . . . or by clear and convincing evidence that the alien is lawfully present); *see also* 8 U.S.C. § 1229a(c)(4)(B) (when considering applications for relief from removal “the immigration judge will determine whether or not . . . the applicant has satisfied the applicant’s burden of proof”); *Matter of Gabriel Almanza-Arenas*, 24 I. & N. Dec. 771, 774-776 (BIA 2009) (in determination of whether the immigration judge improperly applied the REAL ID Act to petitioner’s case, the BIA found that “respondent is seeking discretionary relief from removal, so he bears the burden of proof”).

IV. Judicial Review of §1225 Determinations

More broadly, the Supreme Court has long recognized the political branches’ broad power over immigration is “at its zenith at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and “it is not within the province of any court, unless expressly

authorized by law, to review [that] determination.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); see also *Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court’s “general reaffirmations” of the political branches’ exclusive authority to admit or exclude aliens “have been legion”). Control of the nation’s borders is vested in the political branches because that authority is “vital and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations,” matters “exclusively entrusted to the political branches of government.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952). Therefore, the Executive Branch has broad constitutional and statutory power over the administration and enforcement of the nation’s immigration laws. *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); See e.g., 6 U.S.C. § 202(4); 8 U.S.C. § 1103(a)(1), (3).

Congress has delegated broad discretion to executive officials under the INA and these grants of statutory authority are particularly sweeping in the context of parole. *Amanullah v. Nelson*, 811 F.2d 1, 6 (1st Cir. 1987). Similarly, the Executive Branch is provided significant deference when it decides to admit or exclude noncitizens, as this power is a sovereign prerogative. *Thuraissigiam*, 591 U.S. at 139 (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). The Constitution gives the political department of the government “plenary authority to decide which aliens to admit.” *Id.* (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). Critically, “a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.” *Id.* See also *Jennings*, at 286 (“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.”); *Shaughnessy*, at 544.

In 2007, the 10th Circuit held that “[t]he scope of judicial review of orders of removal under § 1225(b)(1) is extremely narrow.” *Vaupel v. Ortiz*, 244 F. App’x 892, 894 (10th Cir. 2007).

Judicial review of determinations made under 8 U.S.C. § 1225(b)(1) is available in habeas corpus proceedings, but such review is strictly limited to determinations of:

- (a) Whether the petitioner is an alien,
- (b) Whether the petitioner was ordered removed under such section, and
- (c) Whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee...or has been granted asylum.

Id. at 894. See also 8 U.S.C. § 1252(e)(2)(A)-(C).

Section 1252(e)(5) further provides that in determining whether an alien has been ordered removed under § 1225(b)(1), the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. *Id.* at 895 ("There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal").

In *Vaupel*, the petitioner argued the court may determine whether the expedited removal statute was lawfully applied to an alien. *Id.* However, the 10th Circuit emphasized the language of §1252(e)(5) "clearly and unambiguously precludes review in a habeas proceeding of whether the alien is actually inadmissible or entitled to any relief from removal." *Id.* See also *Brumme v. INS*, 275 F.3d 443, 447-48 (5th Cir.2001) (rejecting claim that § 1252(e) permits habeas review of whether 8 U.S.C. §1225(b)(1) was applicable to petitioner); *Li v. Eddy*, 259 F.3d 1132, 1134 (9th Cir. 2001) ("on its face, [§ 1252(e)(2)] does not appear to permit the court to inquire into whether § 1225(b)(1) was properly invoked, but only whether it was invoked at all. Were there any doubt of congressional intent, it is resolved by [§ 1252(e)(5)], that expressly declares that judicial review does not extend to actual admissibility").

V. Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, they are empowered to hear only those cases authorized and defined in the Constitution which have been entrusted to them under a jurisdictional grant by Congress. *Henry v. Off. of Thrift Supervision*, 43 F.3d 507, 511 (10th Cir. 1994). The party invoking federal jurisdiction, generally the plaintiff, bears the burden of establishing its existence. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). Rule 12(b)(1) allows defendants to raise the defense of lack of subject matter jurisdiction by motion. *See* Fed. R. Civ. P. 12(b)(1). Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction “generally take one of two forms: (1) a facial attack on the sufficiency of the complaint’s allegations as to subject matter jurisdiction; or (2) a challenge to the actual facts upon which subject matter jurisdiction is based.” *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002).

Ripeness is a justiciability doctrine derived from the case or controversy clause of Article III. *Auto-Owners Ins. Co. v. Bolt Factory Lofts Owners Ass’n*, 823 F. App’x 686, 690 (10th Cir. 2020). Whether a claim is ripe for review bears on a court’s subject matter jurisdiction. *Id.* The Tenth Circuit has “distilled Article III’s ripeness requirement into a two-factor analysis, examining (1) ‘the fitness of the issue for review,’ and (2) ‘the hardship to the parties’ of withholding judicial review.” *Travelers Cas. Ins. Co. of Am. v. A-Quality Auto Sales, Inc.*, 98 F.4th 1307, 1314 (10th Cir. 2024). As to the first factor, for an action to be ripe for review it cannot be “dependent on ‘contingent future events that may not occur as anticipated or indeed may not occur at all. *Id.* The second factor considers whether the challenged action creates a direct and immediate dilemma for the parties.” *Id.*

ARGUMENT

I. Petitioners are Appropriately Classified under § 1225 per *Hurtado*

Pursuant to 8 U.S.C. § 1225(b)(2)(A), “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.” 8 U.S.C. § 1225(b)(2)(A). Petitioners, under the *Hurtado* view, fall squarely within the ambit of § 1225(b)(2)(A)’s mandatory detention requirement. Petitioners would be “applicant[s] for admission” to the United States, i.e., aliens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress’s broad language here is intentional, an undocumented alien is to be “deemed for purposes of this chapter an applicant for admission.” *Id.* Petitioners are “deemed” an applicant for admission based upon 1) the undocumented status and 2) that Petitioners have not demonstrated to an examining immigration officer that they are “clearly and beyond a doubt entitled to be admitted,” making detention mandatory under §1225. *See* 8 U.S.C. § 1225(b)(2)(A).

At least three courts have adopted this general interpretation in recent months. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an “applicant for admission” upon the straightforward application of the statute); *Vargas Lopez v. Trump* No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding that § 1225(b) applied despite alien’s presence in the country for over ten years, noting “overlap” between §1225 and §1226 authorities); *Chavez v. Noem* No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding the *Hurtado* decision supported by the plain language of the statute, and that such an interpretation does not render § 1226, nor additions thereto by the Laken Riley Act, superfluous). Respondents acknowledge that a number of other courts have reached different results on this emergent issue. *See, e.g.*, Doc. 1 at 8-9.

As Petitioners are properly classified under § 1225 per the BIA guidance in *Hurtado*, there can be no Fifth Amendment violation as Petitioners would have only those rights that Congress has specifically provided by statute. *Thuraissigiam*, 591 U.S. at 140; *Jennings*, at 296–303; *See also* 8 U.S.C. § 1182(d)(5). The Court should therefore deny or dismiss the petition (Doc. 1).

II. Court Lacks Subject Matter Jurisdiction

Petitioners do not contest that they are “aliens”, do not contest that they have been ordered removed and do not contend that they have been lawfully admitted or granted asylum. *See generally* Doc. 1. A grant of temporary parole by DHS is the only available avenue for release pending removal proceedings under § 1225, and that decision is made at the sole discretion of DHS; as is, importantly, the revocation of that parole. *See* 8 U.S.C. § 1182(d)(5)(a) (“when the purposes of such parole shall, *in the opinion of [DHS]*, have been served the alien shall forthwith return or be returned to the custody from which he was paroled.”) (emphasis added). No Court has jurisdiction to review any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to § 1225(b)(1). *Mursalin v. Dedos*, No. 1:25-CV-00681-MIS-JMR, 2025 WL 3140824, at *8 (D.N.M. Nov. 10, 2025); *see also* 8 U.S.C. 1252(a)(2)(A)(i).

Even if Petitioners had a valid asylum claim or other avenue for relief from removal, judicial review of the § 1225(b)(1) determination itself would remain barred. *Vaupel*, at 895 (“There shall be no review of whether the alien is actually inadmissible or *entitled to any relief from removal*) (emphasis added). Petitioners have not been granted asylum, and therefore the § 1225(b)(1) determination remains outside the scope of judicial review. *Id.* at 894. Furthermore, while Petitioners’ immigration cases are pending this matter is not ripe for judicial review.

III. Petitioners’ Due Process Rights as § 1225 “Arriving Aliens” Have Been Met

Even should this Court find jurisdiction to review, Petitioners' limited due process rights have been met. As arriving aliens under § 1225, Petitioners have no due process protections beyond that afforded by statute. Petitioners have received all the protections granted by the relevant statutes, and therefore the due process challenges must fail. *See generally United States v. Verdugo-Urquidez*, 494 U.S. 259, 270–71 (1990); *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Thuraissigiam*, 591 U.S. at 131.

IV. Should § 1226 Apply, Bond Review is Only Appropriate Remedy

Should the Court agree with Petitioners' primary contention that classification under § 1226, rather than § 1225, is appropriate, the appropriate relief, if any, would be to return Petitioners to their requested status: classification under § 1226 with eligibility for a bond review in the normal course.

For example, in the context of noncitizens detained under §1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee's release pending conclusion of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa. Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request); *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) ("The only remedy for an alien challenging their mandatory detention is a bond hearing") (citing *Hernandez T. v. Wolf*, 2020 WL 634235, at *3 (D.N.J. Feb. 11, 2020)). Thus, even if a bond hearing was an available remedy for Petitioner, granting immediate release is not authorized or warranted.

This position is further supported by the jurisdictional bar of 8 U.S.C. § 1226(e), which strips the Court of jurisdiction to review "discretionary judgment[s] regarding the application of [§1226]. *See* 8 U.S.C. § 1226(e). Section 1226(e) further directs that "[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the

revocation or denial of bond or parole.” *Id.* Should Respondents classify Petitioners as eligible for bond review under § 1226, the result of that bond review would not be subject to judicial review. It would therefore make little sense for the Court to impose its own judgement on bond (or release) upon the U.S. Immigration Court. The appropriate remedy would be to remand the case back to the U.S. Immigration Court to conduct an evidentiary bond hearing under § 1226.

CONCLUSION

The Court should deny or dismiss the Petition for Writ of Habeas Corpus (Doc. 1) as Petitioners are appropriately classified under § 1225 pursuant to BIA guidance in *Hurtado*, the Court lacks subject matter jurisdiction to review these claims and Petitioners’ due process rights as § 1225 “arriving alien[s]” have been met as a matter of law. For these reasons the Court should deny or dismiss the petition (Doc. 1). Should the Court agree with Petitioners that § 1226 applies, the only appropriate remedy is to remand the matter for § 1226 bond proceedings before the U.S. Immigration Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 17, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey
RYAN M. POSEY
Assistant United States Attorney