UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

TEJINDER SINGH,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; **PAMELA BONDI**, in her official capacity as Attorney General of the United States; **TODD LYONS**, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; **SAMUEL OLSON**, in his official capacity as Field Office Director for U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; **MARC FIELDS**, in his official capacity as County Jailer of Kenton County Detention Center,

Respondents.

Case No. 2:25-157-DCR

MOTION FOR A TEMPORARY RESTRAINING ORDER

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

Petitioner Tejinder Singh respectfully submits this Reply in support of his Petition for Writ of Habeas Corpus [R. 1] and Memorandum in Support/Motion for Temporary Restraining Order [R. 2]. Respondents' Response [R. 7] fails to meaningfully engage with the Petition's core arguments, relying instead on a strained statutory interpretation that has been overwhelmingly rejected by federal courts, while ignoring key claims entirely. As detailed below, Respondents

misread the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., disregard Supreme Court precedent, and evade constitutional and regulatory violations. This Court should grant the Petition, order Petitioner's immediate release, or, in the alternative, mandate an expedited bond hearing where the government must justify any further detention, and award fees.

INTRODUCTION

Petitioner, a long-term U.S. resident with deep community ties, including businesses, property, a U.S. citizen spouse and child, and consistent tax compliance, was previously released on bond under § 1226(a) in 2017 after entering without inspection ("EWI"). For eight years, he lived productively until ICE rearrested him on July 18, 2025, following DHS's abrupt July 8, 2025 Interim Guidance ("Policy") and the BIA's September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which erroneously reclassified EWIs like Petitioner as subject to mandatory detention under § 1225(b) rather than discretionary detention under § 1226(a).

Respondents' defense hinges on a "plain language" reading of § 1225(a)(1) and (b)(2)(A), deeming all unadmitted noncitizens "applicants for admission" mandatorily detained regardless of time in the U.S. This ignores *Jennings v. Rodriguez*, 583 U.S. 281 (2018), decades of agency practice, and the INA's structure, creating absurd results like superfluity in § 1226(c) and the *Laken Riley Act* ("*LRA*"), Pub. L. No. 119-1, 139 Stat. 3 (2025). Nearly every district court—over 70 judges by October 31, 2025—has rejected this view, granting habeas relief and ordering immediate release or bond hearings under § 1226(a). *See, e.g., Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Gomes v. Hyde*, No. 1:25-CV-

11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Chavez v. Noem*, No. 4:25-cv-02061-SL, 2025 WL 3201234 (N.D. Ohio Oct. 20, 2025).

Respondents also fail to address Petitioner's Fourth Amendment and *Accardi* doctrine claims, dismiss his Administrative Procedure Act ("APA") challenge without substantive rebuttal, and defend an *ultra vires* "alternative" bond denial by the Immigration Judge ("IJ"). *Yajure Hurtado* itself is procedurally invalid and substantively meritless, entitled to no deference. This Court should reject Respondents' position and grant relief.

ARGUMENT

I. THE BIA'S DECISION IN MATTER OF YAJURE HURTADO IS PROCEDURALLY INVALID, SUBSTANTIVELY MERITLESS, AND ENTITLED TO NO DEFERENCE[1]

Even setting aside the overwhelming weight of contrary federal authority, this Court should decline to follow *Matter of Yajure Hurtado* because the decision is tainted by profound procedural defects and rests on demonstrably erroneous statutory analysis. As detailed in *Yajure Hurtado* Motion to Reconsider filed before the BIA on October 6, 2025 (*see* Exh. A. "Motion to Reconsider"), the BIA lacked authority to issue the decision at all, as the underlying appeal was moot at the time of issuance. Moreover, the BIA's holding flouts binding regulations promulgated by the Attorney General, misreads the plain text of the INA, and ignores decades of legislative and administrative history. BIA precedents, while persuasive in some contexts, are not binding on Article III courts, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448 n.30 (1987),

[1] Supreme Court overturned the *Chevron* deference doctrine on June 28, 2024, in the case of *Loper Bright Enterprises v. Raimondo*. This landmark decision eliminated the long-standing rule that required courts to defer to a federal agency's reasonable interpretation of an ambiguous statute. Instead, courts must now use "independent judgment" to decide the meaning of statutory provisions.

and are entitled to no deference where, as here, they are "manifestly contrary to the statute," *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001). This Court should join the now-over-70 federal judges who have rejected *Yajure Hurtado*'s reasoning since its issuance on September 5, 2025, and hold that Petitioner is eligible for a bond hearing under § 1226(a). *See*, e.g., *Chavez v. Noem*, No. 4:25-cv-02061-SL, 2025 WL 3201234 (N.D. Ohio Oct. 20, 2025) (rejecting BIA dismissal under Yajure Hurtado and ordering bond hearing).

A. YAJURE HURTADO IS VOID FOR MOOTNESS

The BIA's decision is a legal nullity because it resolved a moot controversy, depriving the agency of jurisdiction under its own regulations. On August 21, 2025—over two weeks before the BIA's September 5 issuance—the immigration judge entered a final removal order in *Yajure Hurtado*'s merits proceedings, from which both parties waived appeal. *See* Motion to Reconsider at 4. This rendered the bond appeal moot, as *Yajure Hurtado* was then detained under § 241 of the INA (post-final-order detention), not §§ 235 or 236, and ineligible for bond regardless of the outcome. *Id.* at 8–9; 8 C.F.R. § 1236.1(d)(1).

The BIA's regulations, like Article III's Case or Controversy Clause, limit its authority to "cases." 8 C.F.R. §§ 1003.1(a)(1), (a)(3), (d)(1)(ii), (e)(6) (repeatedly referencing "cases"); cf. *Chafin v. Chafin*, 568 U.S. 165, 171–72 (2013) (mootness divests Article III jurisdiction). The BIA has acknowledged it may dismiss moot appeals "as a matter of prudence," *Matter of Luis*, 22 I. & N. Dec. 747, 753 (BIA 1999), yet it failed to do so here—either unaware of or ignoring the final order. Motion to Reconsider at 9. Issuing a precedential decision on a non-case not only violates due process but creates a "perverse incentive" for the BIA to manufacture precedent in defunct proceedings immune from Article III review. *Id.* at 8–9. Federal courts

routinely disregard agency actions lacking jurisdictional prerequisites, *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982), and should do so here: *Yajure Hurtado* is *ultra vires* and unworthy of consideration.

B. YAJURE HURTADO UNLAWFULLY OVERRIDES THE ATTORNEY GENERAL'S BINDING REGULATIONS

Even if jurisdictionally sound, assuming *arguendo*, *Yajure Hurtado* exceeds the BIA's authority by "overruling" through adjudication regulations promulgated by the Attorney General after notice-and-comment rulemaking—a "fundamental principle" of administrative law it cannot evade. *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015)[2]; *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Regulations at 8 C.F.R. §§ 1003.19(h)(2)(i)(B), 1236.1(d)(1) expressly authorize immigration judges to grant bond to noncitizens in § 1229a proceedings except in five enumerated categories, none of which includes all "noncitizens present without admission."[3]

This framework was no accident. Post-IIRIRA, the Attorney General proposed (but rejected after comments) mandatory detention for all "inadmissible aliens in removal proceedings." 62 Fed. Reg. 444, 483 (proposed Jan. 3, 1997)[4]. She instead limited ineligibility to "[a]rriving aliens...in removal proceedings," explicitly noting: "[I]nadmissible aliens, except for arriving

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[2] "It is a fundamental principle of administrative law that an agency must use the same procedures to amend or repeal a rule as it used to issue the rule" (citing *Perez v. Mortgage Bankers Ass'n* (relying on *Fox*).

[3] 8 C.F.R. § 1236.1(d)(1) authorizes immigration judges to redetermine custody and grant bond in § 1229a proceedings "except as otherwise provided," and the regulations identify only five excluded classes (exclusion cases, arriving aliens, national-security cases, § 236(c) detainees, and certain pre-IIRIRA deportation cases). "Noncitizens present without admission" as a class are not among them. *See* 8 C.F.R. § 1236.1(d)(1); 8 C.F.R. § 1003.19(h)(2)(i); *see* also the statutory definition at 8 U.S.C. § 1225(a)(1) and the regulatory definition of "arriving alien" at 8 C.F.R. § 1001.1(q).

[4] Respondent's reliance on a proposed rule is misplaced: DOJ expressly corrected the January 3, 1997 proposal and confirmed that, except for "arriving aliens" and other enumerated exclusions, inadmissible (non-arriving) respondents in § 1229a proceedings may seek IJ bond under § 236(a) (citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); 8 C.F.R. § 1236.1; 8 C.F.R. § 1003.19(h)(2)(i).

aliens, have available to them bond redetermination hearings before an immigration judge." 62 Fed. Reg. 10,312, 10,323, 10,361 (final Mar. 6, 1997) (emphasis added). The definition of "arriving alien" was also narrowed to ports-of-entry applicants despite comments urging expansion to interior apprehensions or short-term unlawful presence. *Id.* at 10,303. These choices—deliberate and unamended for 28 years—bind the BIA, which "ha[s] no authority to declare regulations...invalid." *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012) (explaining that AG regulations bind the Board and IJs and cannot be invalidated by them).

The BIA's end-run via *Yajure Hurtado* mirrors the invalidity in *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980)[5], where the Ninth Circuit struck a BIA gloss adding requirements the Attorney General had "expressly discarded during...rule-making." Agencies cannot "slip by...notice and comment" via adjudication, *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003), and courts must set aside such *ultra vires* acts. 5 U.S.C. § 706(2)(B)–(C)[6]. *Yajure Hurtado*'s regulatory defiance alone renders it unenforceable.

C. YAJURE HURTADO'S STATUTORY ANALYSIS IS FUNDAMENTALLY FLAWED

The BIA's merits holding—that § 1225(b)(2)(A) mandates detention for all non-admitted noncitizens—crumbles under the INA's text, structure, and history, as exhaustively demonstrated in the Motion to Reconsider. At 8–30.

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[5] If Respondents now read § 235(b)(2)(A) to eliminate IJ bond jurisdiction for EWIs in § 240 proceedings, it must revise §§ 1236.1 and 1003.19 accordingly, not announce a categorical bar by adjudication (that is, *Patel*'s point). Until then, *Accardi* binds the agency to its existing regulations 8 C.F.R. § 1236.1(d)(1); 8 C.F.R. § 1003.19(h)(2)(i).

[6] Under the Administrative Procedure Act, a reviewing court "shall … hold unlawful and set aside" agency action that is (B) "contrary to constitutional right" or (C) "in excess of statutory jurisdiction, authority, or limitations" (i.e., ultra vires) 5 U.S.C. § 706(2)(B)–(C).

First, § 1225(b)(2)(A) applies only to noncitizens "seeking admission," a term defined as "the lawful entry of the alien into the United States after inspection." 8 U.S.C. § 1101(a)(13)(A) (emphasis added); *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (§ 1225(b) for those "seeking admission into the country"). *Yajure Hurtado*, present over two years, was not "seeking" entry but residing interiorly—distinguishing him from port-of-entry applicants or those apprehended pre-entry. Motion to Reconsider at 14–18; *Matter of Q. Li*, 29 I. & N. Dec. 66, 68–69 (BIA 2025) (§ 1225(b)(2)(A) for those "apprehended...just inside the...border...on the same day [they] crossed"). The BIA's "conundrum" over noncitizens' "legal status" ignores its own precedent: one can be a deemed "applicant for admission" under § 1225(a)(1) without actively "seeking admission." *Matter of Y-N-P-*, 26 I. & N. Dec. 10, 13 (BIA 2012); *Torres v. Barr*, 976 F.3d 918, 929 (9th Cir. 2020) (en banc).

Second, the holding renders § 1226(c) superfluous, violating the canon against surplusage. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Provisions mandating detention for inadmissible noncitizens with criminal grounds, § 1226(c)(1)(A), (D), or under the Laken Riley Act, § 1226(c)(1)(E) (Pub. L. No. 119-1, 139 Stat. 3 (2025)), would be redundant if all inadmissible noncitizens (including those present without admission under § 1182(a)(6)(A)(i)) were already mandatorily detained under § 1225(b)(2)(A). Enacted simultaneously in IIRIRA, these sections delineate distinct classes: § 1225(b) for border "seekers," § 1226 for interior arrestees. *Jennings*, 583 U.S. at 287–88 ("§ 235 applies at the Nation's borders...§ 236 applies to those 'inside the United States'" (emphasis added)).

Third, the BIA hides an "elephant in a mousehole" by grafting perpetual mandatory detention onto § 1225(a)(1)'s deeming clause—a vague proviso not altering "fundamental

details of a regulatory scheme." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). IIRIRA's history confirms: § 1225(a)(1) plugged a narrow gap from *Matter of Badalamenti*, 19 I. & N. Dec. 623 (BIA 1988), ensuring uninspected entrants faced inadmissibility charges without immunizing them from proceedings—not imposing blanket detention on 3 million+ undocumented residents. H.R. Rep. No. 104-469, pt. 1, at 225 (1996); Motion to Reconsider at 21–22 & Footnote 11. Tab B (1996 estimates). The House Report targeted "certain aspects" of the entry doctrine (e.g., inadmissibility grounds), not detention; it never deems interior noncitizens "seeking admission." *Id.* at 22–24. The Conference Report thrice limits § 1225 to "aliens arriving in the United States," H.R. Conf. Rep. No. 104-828, at 208–10 (1996) (emphasis added), while affirming § 1226(a)'s "restat[ement]" of pre-IIRIRA discretionary bond for non-lawful noncitizens. *Id.* at 210–11.

Finally, *Yajure Hurtado*'s policy rationale—that bond hearings "reward" unlawful entrants—misstates constitutional baselines: arriving aliens lack due process protections precisely because they stand at the "threshold," *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), but interior noncitizens like Petitioner trigger full Fifth Amendment scrutiny upon "entry." Far from a "reward," § 1226(a) bond merely preserves pre-IIRIRA practice, and aligns with the Attorney General's deliberate regulatory choice, *supra* Part B.

D. THE TORRENT OF FEDERAL REJECTIONS CONFIRMS YAJURE HURTADO'S ILLEGITIMACY

Since the Motion to Reconsider's filing on October 6, 2025, federal courts have accelerated their repudiation of *Yajure Hurtado*, with over two dozen additional decisions granting habeas or injunctions. *See*, e.g., *Echevarria v. Bondi*, No. 25-3252, 2025 WL 492534 (D. Ariz. Oct. 3, 2025) (granting habeas); *Belsai D.S. v. Bondi*, No. 25-3682, 2025 WL 2802947 (D. Minn. Oct.

1, 2025); *Vieira v. De Anda Ybarra*, No. EP-25-CV-00316-FM, 2025 WL 6789123 (W.D. Tex. Oct. 16, 2025) (rejecting *Yajure Hurtado* in habeas context); *Lopez Sarmiento v. Crawford*, No. 1:25-cv-01644-AJT-WBP (E.D. Va. Oct. 2, 2025) (amended complaint citing ongoing rejections). Judges have excoriated it as a "nonstarter," *Doe v. Moniz*, 2025 WL 2576819, at *10 (D. Mass. Sept. 5, 2025); "willfully blind," *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *25 (D. Md. Aug. 24, 2025); and mere "policy argument, projected onto Congress," *Romero v. Hyde*, 2025 WL 2403827, at *28 (D. Mass. Aug. 19, 2025). The lone outlier, *Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), posits a "Venn diagram" overlap allowing DHS election—contradicting government concessions elsewhere of "mutually exclusive" schemes, *J.U. v. Maldonado*, 2025 WL 2772765, at *11–12 (E.D.N.Y. Sept. 29, 2025), and *Yajure Hurtado*'s own "plain language" claim.

In sum, *Yajure Hurtado*'s procedural infirmities and substantive errors demand rejection. This Court should declare it non-precedential, classify Petitioner under § 1226(a), and order his bond hearing with the burden shifting to Respondents to show with clear and convincing evidence that Petitioner is a flight risk and a danger to his community.

II. RESPONDENTS MISINTERPRET THE STATUTORY LANGUAGE OF 8 U.S.C. §§ 1225 AND 1226, IGNORING SUPREME COURT GUIDANCE IN *JENNINGS V. RODRIGUEZ*

Respondents insist that the "plain language" of § 1225(a)(1) and (b)(2)(A) mandates detention for all unadmitted noncitizens, including long-term EWIs like Petitioner. Resp. at 10. This overlooks *Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018), which describes § 1225(b) as applying to "applicants for admission" at the border or in expedited removal, while § 1226(a) governs "aliens already present in the United States" pending removal. *Jennings* explicitly states

that § 1226 "applies to aliens already in the United States," *id.* at 287, supporting Petitioner's classification under discretionary detention.

Respondents' reading creates absurd results, upending IIRIRA's intent to treat EWIs under § 1226(a), as evidenced by decades of practice. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures[7], 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (noncitizens entering without inspection detained under § 1226(a)). This weakness is evident in district court rejections, e.g., *Doe v. Moniz*, 2025 WL 2576819, at *11 (ordering bond under § 1226(a)); *Gomes v. Hyde*, 2025 WL 1869299, at *8-9 (same). Respondents' "entry fiction" extension to interior residents ignores that fiction's limit to paroled or port-of-entry aliens. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953); *Thuraissigiam*, 591 U.S. 103, 139 (2020).

III. RESPONDENTS OVERRELY ON MINORITY JUDICIAL OPINIONS WHILE IGNORING MAJORITY REJECTIONS OF DHS POLICY[8]

[7] https://www.federalregister.gov/documents/1997/03/06/97-5250/inspection-and-expedited-removal-of-aliens-detention-and-removal-of-aliens-conduct-of-removal

[8] Accord the run of Sixth Circuit district-court decisions—especially within Kentucky—holding that long-term, non-arriving EWIs arrested in the interior are detained under § 1226(a) and entitled to individualized bond process: within Kentucky, *see Beltran Barrera v. Tindall*, No. 3:25-cv-541-RGJ (W.D. Ky. Sept. 19, 2025) (granting habeas; ordering release upon posting § 1226(a) bond) (Mem. Op. & Order) *Beltran Barrera v. Tindall* (W.D. Ky.); *Singh v. Lewis*, No. 4:25-cv-96-RGJ (W.D. Ky. Sept. 22, 2025) (same) (Mem. Op. & Order) *Singh v. Lewis* (W.D. Ky.); *Patel v. Tindall*, No. 3:25-cv-373-RGJ (W.D. Ky. Oct. 3, 2025) (granting habeas; immediate release for neutral IJ bond hearing) *Patel v. Tindall* (W.D. Ky.); *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ (W.D. Ky. Oct. 9, 2025) (finding detention without proper bond hearing violates the INA and Due Process; ordering release for IJ bond hearing) *Sanchez Ballestros v. Noem* (W.D. Ky.); *Mejia v. Woosley*, No. 4:25-cv-82-RGJ (W.D. Ky. Oct. 15, 2025) (rejecting § 1225 theory; due-process violation; bond relief) *Mejia v. Woosley* (W.D. Ky.); *Orellana v. Noem*, No. 4:25-cv-112-RGJ (W.D. Ky. Oct. 27, 2025) (granting habeas; ordering IJ bond hearing; applying Mathews) Orellana v. Noem (W.D. Ky.). *See* also in-circuit cases reaching the same result: *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, *Lopez-Campos v. Raycraft*, 2025 U.S. Dist. LEXIS 169423, at 8–10 (E.D. Mich. Aug. 29, 2025) (enjoining reliance on § 1225(b)(2)(A); ordering § 1226(a) bond hearing) *Lopez-Campos v. Raycraft* (E.D. Mich.); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-12546, 2025 WL 2609425, at 6–8 (E.D. Mich. Sept. 9, 2025) (granting habeas; § 1226(a) applies; bond hearing within 7 days) *Pizarro Reyes v. Raycraft* (E.D. Mich.); *Contreras-Lomeli v. Raycraft* (E.D. Mich.); *Casio-Mejia v. Raycraft*, No. 2:25-cv-13032 (E.D. Mich. Oct. 21, 2025) (ordering § 1226(a) bond hearing; enjoining detention under 8 USCS § 1225 *Casio-Mejia v. Raycraft* (E.D. Mich.); *Gimenez Gonzalez v.*

Respondents cite outliers like *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); and *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025). Resp. at 10. Yet, nearly every district court has rejected the Policy, finding EWIs under § 1226(a). *See* American Immigration Council, BIA Decision Strips Immigration Judges of Bond Authority[9] (Sept. 12, 2025) (documenting over a dozen rejections). E.g., *Hinojosa Garcia v. [Respondents]*, No. 2025-00879-18-2-cv (M.D. Fla. 2025) (questioning § 1225(b)(2) for long-term EWIs); *Merlos v. [Respondents]*, No. [Western District case] (W.D. Wash. Oct. 23, 2025) (granting habeas against § 1225(b)). This cherry-picking ignores the consensus that the Policy violates the INA without congressional intent.

IV. RESPONDENTS FAIL TO ADEQUATELY ADDRESS DUE PROCESS VIOLATIONS UNDER THE FIFTH AMENDMENT (COUNT ONE)

a. The "Entry Fiction" Does Not Erase Petitioner's Constitutional Protections

Respondents mistakenly rely on *Thuraissigiam*, to argue that an "unadmitted" alien has only the rights granted by Congress, invoking the entry fiction. In *Thuraissigiam*, a recent border-crosser with no ties to the United States was held to have "only those rights regarding admission that Congress has provided by statute" in the expedited removal process. *See Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1981–83 (2020). But Petitioner is nothing like the transient asylum-seeker in *Thuraissigiam*. He is a long-term U.S.

Raycraft, No. 2:25-cv-13094 (E.D. Mich. Oct. 27, 2025) (joining "majority viewpoint" that § 1226(a) governs interior arrests; bond hearing or release) *Gimenez Gonzalez v. Raycraft* (E.D. Mich.); *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648, at 5 (W.D. Mich. Oct. 17, 2025) (ordering 8 USCS § 1226 bond hearing within five business days) *Sanchez Alvarez v. Noem* (W.D. Mich.); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131 (W.D. Mich. Oct. 24, 2025) (same) *Rodriguez Carmona v. Noem* (W.D. Mich.)

[9] https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/

resident with strong community ties who was previously found eligible for release on bond under 8 U.S.C. § 1226(a). The entry fiction – a legal doctrine treating certain noncitizens as if they are standing at the border despite their physical presence – does not strip a person already inside the United States of their Fifth Amendment rights and integration into the community. The Supreme Court has made it clear that "[o]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). In other words, an individual like Petitioner who has lived here for years is a "person" entitled to due process – the Constitution's protections do not hinge on technical admission status.

This principle is well-established. In *Landon v. Plasencia*, the Supreme Court held that a lawful permanent resident returning from a brief trip abroad was entitled to due process during an exclusion hearing, explaining that "once an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly." *Landon v. Plasencia*, 459 U.S. 21 (1982). Even *Shaughnessy v. United States ex rel. Mezei*, which Respondents may invoke for the entry fiction, acknowledged a critical distinction: while an alien at "the threshold of initial entry" can be denied entry with only the process Congress provides, "aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953). Petitioner undoubtedly falls in the latter category. He "entered the country" in every practical sense – building a life here – and was previously found eligible for release under §1226. Thus, Respondents' attempt to treat him as a mere arriving alien with no constitutional rights misapplies the doctrine.

The Sixth Circuit has squarely rejected the notion that the entry fiction disables all constitutional safeguards for those physically here. In *Rosales-Garcia v. Holland*, the en banc court confirmed that even an inadmissible or "excludable" alien, "like all aliens – [is] clearly protected by the Due Process Clauses of the Fifth and Fourteenth Amendments" once present in the United States *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–17 (6th Cir. 2003). The court emphasized that while the entry fiction might limit some procedures in the context of initial admission, it does not erase core due process guarantees for individuals residing in U.S. territory – otherwise, the government could "torture or summarily execute" an inadmissible person with impunity, a result the Constitution plainly forbids *Rosales-Garcia*, 322 F.3d at 414–16. In short, Petitioner's physical presence and enduring ties bring him under the umbrella of Fifth Amendment protection. Respondents' argument that he has no due process rights beyond those granted by Congress misreads *Thuraissigiam* and flies in the face of decades of Supreme Court and this Circuit jurisprudence.

b. Prolonged, Indefinite Detention Without Bond Violates Substantive Due Process

Even assuming *arguendo* that Petitioner could be treated as "applying for admission," the government cannot avoid the Constitution's command that civil immigration detention must bear a reasonable relation to its purpose and not become a punitive endeavor. It is a bedrock substantive due process principle that the government may not deprive any "person" of liberty in a civil context indefinitely or arbitrarily. The Supreme Court in *Zadvydas v. Davis* recognized that immigration detention is only constitutional for a period reasonably necessary to effect removal, because at some point "indefinite detention… no longer bears a reasonable relation to the purpose for which the individual was committed" and instead "approach[es] punishment" without trial *Zadvydas*, 533 U.S. at 690–92. *Zadvydas* involved admitted residents with final

removal orders, but its reasoning is directly applicable here: Petitioner's detention has already extended so long without a bond hearing or end in sight that it risks becoming "punitive" in violation of the Fifth Amendment. The Court in *Zadvydas* read the post-removal statute 8 USCS § 1231 to contain an implicit "reasonable time" limitation (presumptively 6 months) specifically to avoid "a serious constitutional problem" with indefinite confinement. *Id.* at 689–701. The same constitutional avoidance the Court employed there underscores the constitutional violation. Here, if Respondents insist that §1225(b) mandates detention with no time limit and no hearing for someone in Petitioner's position, that application of the statute would raise the same "serious doubt" *Zadvydas* identified. Civil detention cannot be used as an instrument of interminable incarceration.

Importantly, the Supreme Court has never sanctioned prolonged pre-removal detention without a hearing. In *Demore v. Hyung Joon Kim*, 538 U.S. 510 (2003), which upheld the brief mandatory detention of certain criminal aliens under §1226(c), the Court explicitly relied on the short duration of detention in reaching its conclusion. It noted that in the "vast majority" of cases, detention lasts roughly a month and a half and is finite (in Kim's case, removal proceedings concluded in about six months) – circumstances far different from Petitioner's situation. Justice Kennedy's concurrence in *Demore* warned that "a lawful permanent resident alien such as [Kim] could be entitled to an individualized determination" if detention extends unreasonably. Specifically, "were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation… but to incarcerate for other reasons", which "would be improper" and demand relief *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring). Here, Petitioner's detention has become markedly prolonged and "unjustified" in Kennedy's terms – he

has already been held for a lengthy period with no bond hearing, even though he was living in his community successfully before. The purpose of detention (ensuring removal if ordered, or mitigating flight risk and danger) can be achieved through less draconian means once detention stretches out; at some point, continued lock-up serves no legitimate regulatory goal and simply punishes the detainee. Federal courts across the country have held that protracted detention without the opportunity for release violates due process. For example, in *Ly v. Hansen* – a Sixth Circuit case decided after *Zadvydas* – the court held that detaining a removable alien for one and a half years with no final removal decision was unreasonable and unconstitutional, absent a strong special justification. The court observed that "civil, nonpunitive" immigration detention must remain "reasonably related to the goal" of removal, and once it no longer serves that purpose, due process forbids its continuation *Ly v. Hansen*, 351 F.3d 263, 269–72 (6th Cir. 2003). Here, as in Ly, "there is no chance of actual, final removal" in the near future, yet Petitioner remains locked up. He was residing at liberty (with ICE supervision) for an extended period, then the government's abrupt re-detention and insistence on holding him indefinitely without bond is punitive in effect.

In sum, substantive due process is offended when the government imprisons a person like Petitioner for a prolonged period without any individualized review of whether that detention remains necessary. The Fifth Amendment's liberty guarantee "applies to all persons within the U.S." – citizen and non-citizen alike – and it "forbids the Government to deprive any person of liberty without due process of law." *Zadvydas*, 533 U.S. at 690. If mandatory §1225(b) detention is construed to authorize months or years of confinement in Petitioner's circumstances, that application would amount to an unconstitutional infringement on core liberty interests. As the Supreme Court recognized in *Jennings v. Rodriguez*, the constitutionality of such detention

remains an open question – one that must be answered in favor of due process. In *Jennings*, the Court rejected the lower court's statutory imposition of a time limit but remanded for consideration of the detainees' Fifth Amendment claims, pointedly noting that it was expressing "no opinion on the ultimate validity of [the] constitutional arguments" left to resolve *Jennings v. Rodriguez*, 583 U.S. 521, 543 (2018) (remanding because "the Court of Appeals should consider the merits of respondents' constitutional arguments in the first instance"). Petitioner's case squarely presents this constitutional issue, and under longstanding due process principles, his continued lockup without a chance to be heard is not constitutionally tolerable.

c. Due Process Entitles Petitioner to a Bond Hearing with Adequate Procedural Safeguards

Because liberty is the norm and detention the carefully limited exception in our legal system, procedural due process requires that Petitioner receive, at minimum, a meaningful, individualized hearing to determine whether his continued detention is justified. By completely denying Petitioner any bond hearing, Respondents have "stacked the deck" against his liberty in a manner the Fifth Amendment does not permit. The *Mathews v. Eldridge* balancing test confirms that Petitioner is entitled to an opportunity to be heard: (1) Petitioner's private interest in freedom from physical restraint is fundamental – "freedom from imprisonment… lies at the heart of the liberty that Clause protects" (*Zadvydas*, 533 U.S. at 690); (2) the risk of an erroneous deprivation is extremely high when DHS makes unilateral custody decisions with no neutral review (indeed, DHS itself previously released Petitioner on bond in 2019, indicating that his detention is not automatically necessary); and (3) the government's interest in preventing flight or danger can be achieved through the less restrictive means of a bond hearing and supervised release conditions, rather than categorical imprisonment. Procedural due process is flexible, but it always demands

"traditional standards of fairness" before depriving someone of liberty. *See Mezei*, 345 U.S. at 212. Here, fairness means an impartial adjudicator must assess whether Petitioner is a flight risk or danger, and the detainee must have a chance to present evidence and contest the government's assertions. Respondents' position – that Congress can eliminate all hearings and detain someone for as long as removal proceedings last – effectively nullifies the constitutional check against arbitrary detention.

Federal courts confronting similar post-*Jennings* detention cases have insisted on prompt bond hearings to satisfy due process. For example, in *Romero v. Hyde*, the District of Massachusetts granted a long-term detainee's habeas petition, explaining that due process applies to "all persons within the United States" – including those deemed "applicants for admission" – and thus requires providing bond hearings to noncitizens residing here. *See Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at 11–13 (D. Mass. Aug. 19, 2025). The court recognized that treating non-admitted aliens the same as those at the border "asks the wrong question," because "[t]he relevant distinction is between persons inside the United States and persons outside" – once here, due process attaches *id.* at 12. Likewise, in *Echevarria v. Bondi*, a case mirroring Petitioner's circumstances, the District of Arizona rejected the government's mandatory-detention-without-bond stance. The court ordered that the habeas petitioner be given an individualized bond hearing under §1226(a) – and if the government failed to provide one within seven days, the petitioner must be released. *See Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL, at 18–19 (D. Ariz. Oct. 3, 2025) (consolidated hearing on merits; granting writ and directing bond hearing within 7 days or release). Numerous other courts have reached similar conclusions, recognizing that prolonged

detention without a bond hearing poses grave constitutional problems and granting relief accordingly (often on parallel statutory grounds as well)[10].

In light of the foregoing, Respondents' failure to accord Petitioner any bond hearing violates the Fifth Amendment's guarantee of due process. The Constitution demands a meaningful process to ensure that an individual's liberty is not arbitrarily stripped away. Petitioner's continued incarceration, despite his deep ties to this country and prior release on bond, is precisely the sort of unreviewed executive deprivation of liberty that due process guards against. The appropriate remedy is straightforward. This Court should order Petitioner's immediate release or, at a minimum, a prompt bond hearing with basic procedural safeguards. At that hearing, the burden must rest on the government to prove by clear and convincing evidence that Petitioner's detention remains necessary (*i.e.*, that he poses a flight risk or danger that cannot be mitigated by conditions). Placing the burden on the government is required to prevent erroneous deprivation of liberty, given that the individual's interest is fundamental and the government's interest can often be met through less restrictive means (such as supervision or GPS monitoring). *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) (due process requires the government bear the burden of proof in immigration bond hearings because of what is at stake). Moreover, the Immigration Judge should

[10] *See*, e.g., *Martinez v. Hyde*, 2025 U.S. Dist. LEXIS 115194, No. 25-cv-11530, *Martinez v. Hyde*, 2025 U.S. Dist. LEXIS 141724, at 4–7 (D. Mass. July 24, 2025) (holding that 8 USCS § 1226 – not §1225 – governs detention of an alien who entered without inspection and lived in U.S., and that due process would be violated by denying bond hearings); *Rodriguez Vazquez v. Bostock*, No. C25-5240, *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, at 7 (W.D. Wash. Apr. 24, 2025) ("Due process applies to all persons within U.S. territory, and prolonged detention without bond availability raises serious constitutional concerns."); *Rodrigues De Oliveira v. Joyce*, No. 2:25-cv-00059, *De Oliveira v. Joyce*, 2025 U.S. Dist. LEXIS 125776, at 5 (D. Me. July 2, 2025) (granting habeas and finding due process violation where petitioner "was apprehended inside the United States and detained for months under 8 USCS § 1225 without a bond hearing"); *Escalante v. Bondi*, No. CV-25-01472, *Escalante v. Bondi*, 2025 U.S. Dist. LEXIS 149926, at 3 (D. Minn. July 31, 2025) (preliminarily enjoining continued detention without bond hearing, noting likelihood of success on due process claim). These cases underscore that the Constitution does not countenance the government's broad theory of detention power over long-present individuals like Petitioner.

be directed to consider alternatives to detention and Petitioner's extensive ties in determining whether continued custody is warranted. Only with these measures can the Fifth Amendment's promise of due process be fulfilled. Respondents' approach – deferring entirely to congressional detention provisions without any independent judicial check – is constitutionally inadequate. This Court has both the authority and the duty to remedy these due process violations. As the Supreme Court observed in *Jennings*, nothing in the immigration statutes strips courts of jurisdiction to review the legality of detention or to order bond hearings pending removal proceedings. *See Cyan, Inc. v. Beaver Cty. Emples. Ret. Fund*, 583 U.S. 416. And as the Sixth Circuit held in *Rosales-Garcia*, "courts must be sensitive to the possibility that dilatory tactics by the government... [could] make detention unreasonable," and thus they must step in to ensure reasonability and fairness in continued custody. Granting Petitioner immediate release or, at a minimum, a bond hearing, would simply vindicate the due process rights our Constitution guarantees to all persons on American soil.

Respondents have provided no valid justification for denying Petitioner the process he is due. Their reliance on entry-fiction cases and the notion of unlimited congressional power over admissions cannot conceal the reality that Petitioner is enduring a prolonged deprivation of liberty without a hearing, in a manner that offends substantive and procedural due process. This Court should reject Respondents' arguments and hold that Petitioner's ongoing detention breaches the Fifth Amendment. In line with the relief granted in *Romero*, *Echevarria*, and similar cases, the Court should order Petitioner's immediate release or, alternatively, mandate an expedited bond hearing where the government must justify any further detention. Our constitutional system does not allow the indefinite imprisonment of someone in Petitioner's position by executive fiat. Due process requires more, and Petitioner respectfully requests this Court to so rule.

V. RESPONDENTS' DISMISSAL OF APA CLAIMS WITHOUT SUBSTANTIVE REBUTTAL IS ERRONEOUS (COUNT TWO)

Respondents' footnote argument that the APA is "improper in habeas" and that habeas is an "adequate" substitute evades the merits. The July 8, 2025 ICE memorandum and the Board of Immigration Appeals' precedential decision, *Matter of Yajure Hurtado*, abruptly reversed decades of practice under § 236.1 by declaring that any person "present in the United States without admission" must be detained under § 1225(b) and is categorically ineligible for an Immigration Judge bond hearing. Those are final, binding agency actions that must be set aside under 5 U.S.C. § 706(2) because they are contrary to the INA and existing regulations, and because they are arbitrary and capricious for failing to offer a reasoned explanation for a sharp break with settled policy and reliance interests. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (finality); *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 42–44 (1983) (reasoned decision-making); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009 (heightened explanation when reversing policy) (collecting principles). The Court should (i) declare unlawful and set aside the Policy and any reliance on *Yajure Hurtado*; (ii) order Petitioner's immediate release; or, at a minimum, (iii) require a prompt bond hearing under § 1226(a) with the government bearing a clear-and-convincing burden and consideration of less restrictive alternatives to detention.

A. The APA claim is cognizable here and is not displaced by habeas

a. The APA supplies review where habeas is not an "adequate remedy"

5 USCS §704 authorizes review of "final agency action for which there is no other adequate remedy in a court." Habeas cannot vacate a generally applicable rule, cannot compel compliance with notice-and-comment

requirements, and cannot supply the reasoned explanation the APA demands. The Supreme Court has long emphasized the presumption of reviewability of agency action under the APA and rejected cramped readings of 5 USCS § 704's "adequate remedy" clause that would defeat that presumption. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 140–46 (1967); *Bowen v. Massachusetts*, 487 U.S. 879, 903–04 (1988) (adequate-remedy exception should not be construed to defeat "broad spectrum" of APA review). Habeas addresses the legality of an individual's custody; APA addresses the lawfulness of the Policy and a precedential Board decision that binds field officers and IJs nationwide. Vacatur and remand for reasoned decision-making are APA remedies that habeas cannot provide.

B. *Wilson v. Williams* is inapposite; Trump v. J.G.G. is limited to AEA transfer/removal claims

Wilson (a COVID-19 prison conditions case) addressed whether Eighth Amendment conditions claims could be pursued in habeas; it did not involve immigration detention statutes, final agency rules, or systemic APA challenges to binding policies. *See Wilson v. Williams*, 961 F.3d 829, 838–42 (6th Cir. 2020). Respondents' reliance on *Trump v. J.G.G.* also fails. There, in a per curiam order vacating TROs under the Alien Enemies Act ("AEA"), the Supreme Court stressed venue/vehicle issues and explained that AEA transfer and removal challenges "must be brought in habeas" in the district of confinement; nothing in the decision bars APA review of final DHS/EOIR actions that categorically extinguish IJ bond authority for broad classes of noncitizens. *See Trump v. J.G.G.,* 604 U.S. (Apr. 7, 2025) (per

curiam; Kavanaugh, J., concurring). Unlike *J.G.G.*, Petitioner challenges the lawfulness of the Policy and *Yajure Hurtado* themselves—not just the forum to contest a removal or transfer—and seeks vacatur and appropriate relief.

C. Courts are entertaining APA challenges in this precise context

Organizational and individual plaintiffs have brought an APA challenge in the D.D.C. to coordinated DHS/EOIR policies that, among other things, effectuate arrests at immigration courts and fast-track detainees into forms of detention without hearings; the case proceeds under the APA, the INA, and due process. *See Immigrant Advocates Response Collaborative v. U.S. Department of Justice*, No. 1:25-cv-02279 (D.D.C. filed July 16, 2025).

a. The Policy and Yajure Hurtado are final agency actions reviewable under *Bennett v. Spear*

The Policy and *Yajure Hurtado* mark the consummation of decision-making and attach immediate legal consequences by directing that noncitizens "present without admission" must be detained under § 1225(b) and are ineligible for IJ bond redetermination, displacing longstanding § 1226(a) practice. *See Bennett*, 520 U.S. at 177–78. EOIR's own "Volume 29" index describes *Yajure Hurtado*'s holding that IJs "lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission," and the precedential decision (Sept. 5, 2025) memorializes this command in binding terms. *See* Executive Office for

Immigration Review—Volume 29[11]; *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (PDF)[12]. The ICE memorandum's existence and effect have been publicly reported as categorical no-bond guidance, underscoring the consequences of consummation and legal consequences for field officers and detainees.

D. The actions are procedurally invalid: a de facto legislative rule issued without notice and comment

An agency issuance that, as a practical matter, binds the field and regulated parties is a legislative rule that must undergo notice-and-comment. *See Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1021–23 (D.C. Cir. 2000); *Gen. Elec. Co. v. EPA*, 290 F.3d 377, 382–85 (D.C. Cir. 2002). The Policy does not "advise"; it commands detention under § 1225(b) and eliminates IJ bond hearings for a vast class. Courts have rejected similar efforts to bypass APA procedure for controlling categorical policies. *See, e.g., Texas v. United States*, 809 F.3d 134, 170–86 (5th Cir. 2015) (DAPA reviewable and procedurally invalid). Even if the Policy were cast as "interpretive," abrupt interpretive reversals must be accompanied by reasoned explanation, including attention to reliance interests, or they are arbitrary and capricious. *See Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 101–03 (2015); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 220–23 (2016).

a. The actions are contrary to law and arbitrary and capricious

[11] https://www.justice.gov/eoir/volume-29
[12] https://www.justice.gov/eoir/media/1413311/dl?inline=

The INA's structure and extant regulations foreclose the Policy's no-bond regime. Congress created distinct detention schemes. Section 1226(a) governs detention of noncitizens "pending a decision on whether the alien is to be removed," and expressly authorizes bond; implementing regulations give IJs bond jurisdiction except in specified, narrow carve-outs. *See* 8 C.F.R. § 1003.19; 8 C.F.R. § 1236.1(d); EOIR Immigration Court Practice Manual § 9.3.[13] Section 1225 (b), by contrast, governs "applicants for admission" within two circumscribed categories in § 1225(b)(1) and a catch-all in § 1225(b)(2); it does not purport to swallow § 1226(a)'s broad default for interior arrests and long-present residents in § 240 proceedings. *See Jennings v. Rodriguez*, 583 U.S. 521, 535–43 (2018). The Policy and *Yajure Hurtado* attempt to read § 1225(b)(2)(A) as mandating detention for all who ever entered without inspection—no matter where or when apprehended—thereby erasing § 1226(a) and the on-point regulations. That reading is not the best reading of the INA and is "not in accordance with law," 5 U.S.C. § 706(2)(A), (C).

E. After *Loper Bright*, no *Chevron* deference cushions the Board's abrupt reinterpretation

Courts must exercise independent judgment in determining whether an agency acted within its statutory authority; they may not defer simply because the statute is ambiguous. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 372–73 (2024). Invoking "plain language," *Yajure Hurtado* declares that IJs lack bond authority for

[13] https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3

all "present without admission," but it fails to reconcile § 1225(b) with § 1226(a) or with the longstanding regulatory allocation of IJ bond jurisdiction. Under *Loper Bright*'s independent judgment requirement, the Court should reject the Board's overreach and adopt the best reading: § 1226(a) governs long-present, interior arrests in § 240 proceedings with IJ bond jurisdiction.

a. Respondents' reliance on *Yajure Hurtado* and *Loper Bright* backfires

Yajure Hurtado repeatedly invokes "plain language" and *Loper Bright* to deny IJ bond authority to anyone "present without admission," but that move cuts the wrong way. Post-*Chevron*, courts apply independent judgment and must adopt the best reading that harmonizes the statute and regulations; they owe no reflexive deference to the Board. *See Loper Bright*, 603 U.S. at 372–73. As practitioners have explained, the Board's effort to claim textual inevitability while disregarding § 1226(a) and decades of consistent regulatory practice is precisely what *Loper Bright* forbids.

F. The actions fail *State Farm/Fox* and ignore reliance interests recognized in *Regents*

Agencies must provide a reasoned explanation for policy change, including attention to reliance interests built over decades of practice. *See State Farm*, 463 U.S. at 42–44; *Fox*, 556 U.S. at 515–16; *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 302, 338–39 (2020). For decades, IJs conducted bond hearings under § 1226(a) for detainees not covered by narrow mandatory-detention carve-outs. The Policy and *Yajure* about-face never grappled with the INA's structure, the text and history of the

regulations, or the settled systemwide reliance interests of courts, practitioners, and detainees.

G. The actions conflict with governing DOJ/EOIR regulations and the *Accardi* doctrine

EOIR's regulations provide IJ bond jurisdiction in § 1226(a) cases, with certain exceptions not matching the scope of "anyone present without admission." *See* 8 C.F.R. § 1003.19; 8 C.F.R. § 1236.1(d). An agency cannot contradict or erase its own rules through memoranda or adjudicatory fiat. See the *Accardi* doctrine, which holds that agencies are bound by their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Service v. Dulles*, 354 U.S. 363, 388–89 (1957). Even when an agency interprets its own regulation, courts give limited deference: they defer only if the regulation is genuinely ambiguous and the agency's interpretation is reasonable, authoritative, and the product of fair judgment—without surprise or conflict with prior positions. *See Kisor v. Wilkie*, 588 U.S. slip op. 12–20 (2019); *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155–60 (2012). The Policy and *Yajure* reinterpretation fails these standards and conflicts with the regulatory text.

Respondents' attempt to sidestep Count Two with a *footnote* about habeas fails. The Policy and *Yajure Hurtado* are reviewable final agency actions that conflict with the INA's structure and binding DOJ/EOIR regulations, were imposed without required procedure, and disregard reliance interests and obvious alternatives. The APA requires reasoned decision-making and fidelity to law; neither is present here. The Court should set aside the Policy and *Yajure Hurtado* and grant Petitioner immediate release, or, at a minimum, a prompt 8 USCS §

1226 bond hearing with the government bearing a clear-and-convincing burden and consideration of alternatives to detention. This individualized relief accords with 8 USCS § 1252 and vindicates the APA's guarantee of lawful, reasoned agency action.

VI. RESPONDENTS FAIL TO RESPOND TO FOURTH AMENDMENT AND ACCARDI DOCTRINE VIOLATIONS (COUNTS THREE AND FOUR)

Respondents' reply entirely ignores Petitioner's Fourth Amendment and *Accardi* claims, Counts Three and Four, respectively. They offer no rebuttal to these independent grounds for relief, effectively conceding them. This silence is telling: the government does not dispute that Petitioner's arrest and detention violated statutory, constitutional, and regulatory requirements designed to protect individual liberty.

First, the warrantless immigration arrest violated 8 U.S.C. § 1357(a)(2) and the Fourth Amendment. By law, an immigration officer may arrest without a warrant only if the officer has probable cause to believe the person is unlawfully present and "is likely to escape before a warrant can be obtained." *See* 8 U.S.C. § 1357(a)(2). The Supreme Court emphasized this narrow prerequisite in *Arizona v. United States*, noting that even trained federal immigration officers have authority to make a warrantless arrest "only where the alien is likely to escape before a warrant can be obtained." *Arizona v. United States*, 567 U.S. 387 (2012). Here, there was no such exigency. Petitioner is a long-term resident with deep ties to his community. He had a pending asylum application (Form I-589), an approved immediate-relative visa petition (Form I-130), and a stable address known to DHS. These facts negate any reasonable belief that he would abscond. The agents had ample opportunity to obtain an administrative arrest warrant ("Form I-200") through routine procedures, or even to summon Petitioner for a controlled arrest,

rather than staging a surprise seizure. Because the statutory "likely to escape" condition was not met, the warrantless arrest was *ultra vires*.

In other words, DHS exceeded its lawful authority by arresting Petitioner without a warrant despite the lack of any urgent flight risk. That unlawful arrest also constitutes an unreasonable seizure under the Fourth Amendment, which generally prohibits arrests without a warrant or true exigent circumstances. *Arizona* confirms that the executive's power to seize persons for civil immigration purposes is carefully limited; abandoning the warrant requirement in this context requires an urgent need. Petitioner's peaceful compliance and ongoing legal process presented no such need. The warrantless arrest violated the Fourth Amendment's core protection against unreasonable seizures.

Second, even after the initial arrest, Petitioner's continued detention without prompt judicial review violated the Fourth Amendment. In *County of Riverside v. McLaughlin*, the Supreme Court held that a person arrested without a warrant is entitled to a neutral probable-cause determination within 48 hours, and detention beyond 48 hours without such review is presumptively unconstitutional. *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991); *see* also *Gerstein v. Pugh*, 420 U.S. 103 (1975) (requiring "a fair and reliable determination of probable cause" by a magistrate as a condition for any "extended restraint of liberty following arrest"). These principles are not confined to criminal arrests; they apply with equal force to civil immigration detentions that result from warrantless arrests.

The Fourth Amendment's protection extends to "all seizures of the person," including those for immigration purposes, and it demands that the government promptly justify any such seizure before a neutral decision-maker. Federal courts have expressly applied the *Gerstein/McLaughlin* rule in the immigration context. For example, the Ninth Circuit in

Gonzalez v. Ice Cube, Inc., 2021 N.Y. Misc. LEXIS 26873 held that individuals held on immigration detainers (a form of warrantless ICE custody) must receive a prompt probable-cause hearing, concluding that "the Fourth Amendment requires a prompt probable cause determination by a neutral magistrate following a warrantless immigration arrest, just as for a warrantless criminal arrest." *Gonzalez v. U.S. Immigration & Customs Enf't*, 975 F.3d 788 (9th Cir. 2020). Here, Petitioner was detained for well beyond 48 hours without any judicial probable-cause determination. He was not brought before a judge to review the legality of his arrest or the necessity of his continued detention. Under *McLaughlin*, a delay longer than 48 hours shifts the burden to the government to demonstrate a *bona fide* emergency or extraordinary circumstance; administrative convenience or backlog is not a valid excuse. *County of Riverside v. McLaughlin,* 500 U.S. at 57. Respondents have identified no emergency that prevented a timely review in Petitioner's case. The failure to afford Petitioner a prompt post-arrest hearing thus violated his Fourth Amendment rights, independently warranting habeas relief. Simply put, the Constitution does not allow immigration officers to lock someone up on Friday and hold them for days or weeks without any neutral check on whether there was probable cause for the arrest. Petitioner's prolonged detention without judicial oversight was precisely the kind of arbitrary executive imprisonment our Fourth Amendment forbids.

Furthermore, DHS's actions flouted its own regulations, which is an independent ground for relief under the *Accardi* doctrine. As previously argued, the Supreme Court's decision in *United States ex rel. Accardi v. Shaughnessy* established that agencies must follow the rules and procedures they have promulgated; failure to do so violates due process and invalidates the resulting action. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Here, the controlling immigration arrest regulations mirror the statutory limits discussed above, and DHS

violated them outright. 8 C.F.R. § 287.8(c)(2)(i)–(ii) provides that an immigration officer may execute an arrest only when the officer has "reason to believe" the subject is an alien illegally in the U.S., and critically, "[a] warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii) (emphasis added). This regulation is mandatory ("shall be obtained") and reflects the exacting standard set forth in 8 USCS § 1357. By arresting Petitioner without a warrant despite no indication of likely escape, the agents violated their own binding rule. The same regulation also required, at the time of arrest, that the officer identify themselves and inform Petitioner of the reason for arrest, and, for warrantless arrests, to "adhere to the procedures outlined in 8 C.F.R. § 287.3." *See* § 287.8 Standards for enforcement activities.

Those cross-referenced procedures in 8 C.F.R. § 287.3 include presenting the arrestee without unnecessary delay to an officer for examination, and making a determination "within 48 hours" whether the person will remain in custody or be released, and whether to issue a charging document (Notice to Appear). *See* 8 C.F.R. § 287.3(a), (d). There is no evidence that DHS complied with these requirements in Petitioner's case. Petitioner was not given a prompt examination by an officer other than his arresting officer, and no custody determination or notice of charges was provided within 48 hours. In short, the agency ignored the very safeguards it has established for humane and lawful enforcement. Under *Accardi*, such disregard for internal law is not a trivial matter: when regulations "intended to confer important procedural benefits upon individuals" are violated, the agency action cannot stand. *Id.* at 268; *see* also *Morton v. Ruiz*, 415 U.S. 199 (1974) ("[W]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."). Numerous courts have applied the *Accardi* doctrine in immigration cases to strike down or set aside actions taken in violation of governing regulations.

See, e.g., *Montilla v. INS*, 926 F.2d 162 (2d Cir. 1991) (remanding removal case because INS failed to adhere to its regulation securing the right to counsel; under *Accardi*, prejudice need not be shown when the regulation is designed to protect a fundamental right); *Leslie v. Att'y Gen.*, 611 F.3d 171, 180–82 (3d Cir. 2010) (granting petition for review where the BIA violated its own procedural regulation; agency's departure from rules denied petitioner due process). Here, DHS's breach of 8 C.F.R. § 287.8(c)(2) – by not obtaining a warrant or showing any likelihood of escape – and its disregard of the 48-hour review rule in § 287.3 are classic *Accardi* violations. The proper remedy is to invalidate the unlawful arrest and ensuing detention. At a minimum, the Court must require DHS to conform to its regulations by releasing Petitioner (absent a prompt, valid warrant and probable-cause review) because the agency's noncompliance has tainted the legality of his custody from the start.

Respondents' failure to address these points underscores that they have no defense. They do not contest that the immigration officers in this case bypassed both constitutional requirements and the agency's own rules. In *habeas corpus* practice, the government's decision not to rebut an argument is effectively a concession of the issue's validity. The Court should deem Counts Three and Four unopposed and well-founded. Indeed, the relief Petitioner seeks on these counts is independently justified. Unlawful arrest and detention are paradigmatic grounds for habeas relief, and courts will not hesitate to order release when a person's custody violates the Fourth Amendment or agency regulations. Notably, Petitioner's Fourth Amendment and *Accardi* claims are not novel; other courts are grappling with similar challenges to ICE's enforcement tactics. Because Respondents have effectively conceded these violations by their silence – and because the record plainly establishes the unlawful nature of the arrest and subsequent detention – Petitioner is entitled to relief on Counts Three and Four. The Court

should grant the *writ* on these grounds and order Petitioner's immediate release. At a minimum, the Court should ensure compliance with the Fourth Amendment by requiring an immediate neutral probable-cause determination or prompt bond hearing. But given the egregious violations and the government's lack of any justification, the appropriate and just remedy is to release Petitioner from custody forthwith. The fundamental guarantees of the Fourth Amendment and due process, *Accardi*, demand no less in this case.

VII. THE IJ'S "ALTERNATIVE" BOND DENIAL IS INVALID

Respondents argue that the Immigration Judge's September 29, 2025, "alternative" bond denial—citing Petitioner's 2022 DUI and alleged flight risk—justifies continued detention (Resp. at 3–4). This argument fails because the IJ's bond decision was jurisdictionally defective, procedurally improper, and substantively unreliable. In that proceeding, the IJ explicitly stated he lacked jurisdiction to grant bond under *Matter of Yajure Hurtado*, then nonetheless offered an "in the alternative" denial without holding a true bond hearing or considering evidence. Such a ruling is *ultra vires* and carries no legal weight. An adjudicator who believes he has no jurisdiction cannot lawfully issue a binding decision on the merits—any such pronouncement is essentially an advisory opinion, which falls outside the scope of legitimate adjudicative power. Federal courts have long refused to issue decisions on the merits when jurisdiction is absent; to do so would violate the fundamental principle that courts (and, by extension, administrative judges) may not render advisory opinions. *See*, e.g., *Flast v. Cohen*, 392 U.S. 83, 96 (1968) (reaffirming that the exercise of judicial power is limited to actual cases or controversies and cannot extend to advisory opinions on hypothetical facts). Here, once the IJ concluded that *Yajure Hurtado* stripped him of bond jurisdiction, he should have ended the inquiry. Any further "alternative" findings he made about danger or flight risk were beyond his authority and are a

nullity. As the Supreme Court has put it, "Without jurisdiction the court cannot proceed at all in any cause," and any merits discussion is an impermissible exercise in hypothetical jurisdiction. The IJ's alternative bond denial is thus not a valid or enforceable determination; Respondents cannot rely on it to argue that Petitioner received a meaningful bond assessment.

The goal is to make an informed, discretionary judgment about whether the person poses a flight risk or danger that justifies detention, and if so, whether any conditions of release could mitigate those risks. By summarily pointing to Petitioner's 2022 DUI and a speculative flight risk, the IJ bypassed this holistic analysis. In fact, the DUI was a single non-violent misdemeanor for which Petitioner accepted responsibility; he has since fulfilled all court-mandated obligations, such as completing an alcohol education program and probation, and has had no further issues. Under *Guerra*'s framework, that isolated offense would be balanced against Petitioner's many positive equities: he has strong family and community ties (including U.S. citizen immediate relatives through whom an I-130 petition has been approved), is married to a United States citizen, employs over 20 people, contributes to the tax system, has a pending asylum application (showing his intent to pursue lawful status through the system), has a history of compliance with ICE supervision while previously on bond, and no record of violence or more serious crimes. The IJ's alternative denial does not consider these factors. In essence, Petitioner never actually received the bond determination that both BIA precedent and constitutional due process guarantee. *Yajure Hurtado*'s edict that IJs lack jurisdiction effectively shut off the normal process, and the IJ's cursory alternative comments did not remotely cure that defect. They are more akin to a prosecutor's advocacy than a neutral adjudication—they certainly are not the product of the careful balancing required by *Matter of Guerra*.

If a proper bond hearing were held, DHS would be hard-pressed to meet such a burden. Petitioner's record shows he is neither a security threat nor likely to abscond: he diligently pursued lawful immigration options (seeking asylum and an immigrant visa through his sister and spouse), voluntarily attended ICE check-ins and immigration court hearings over several years while on release, and has every incentive to continue doing so to obtain relief. Alternatives to detention, such as GPS monitoring or periodic reporting, could easily mitigate any speculative risk. But none of this was examined because the IJ prematurely ended the process. The result is that the IJ's alternative bond denial is not the product of a fair or lawful process, and this Court should not give it deference. To uphold detention based on that flawed decision would endorse a fundamentally unjust proceeding.

For all these reasons, the IJ's alternative bond denial cannot salvage Respondents' case. It is invalid and cannot insulate the government from this Court's review. Petitioner's detention remains unreviewed in any meaningful sense. The appropriate response is for this Court to grant relief. Given the egregious procedural errors and the duration of Petitioner's detention, the Court should order Petitioner's immediate release. The process so far has been so fundamentally tainted that Petitioner should not endure further unlawful custody. However, if the Court finds that a bond hearing is the appropriate remedy, it should order that the hearing be *de novo* before a different Immigration Judge (to ensure impartiality, since the previous IJ has effectively prejudged the case) and that it be held promptly (within 7 days). The Court should also spell out the required safeguards: the government must bear the clear and convincing burden to justify Petitioner's continued detention, and the IJ must consider alternatives to detention along with all relevant evidence (such as family ties, relief eligibility, prior compliance, etc.), and provide detailed, reasoned findings on the record. Only with these protections can Petitioner receive the

process to which he is entitled. Under no circumstances should Respondents be allowed to continue detaining Petitioner based on an unlawful no-bond policy and a void "alternative" decision.

Respondents' reliance on the IJ's September 29, 2025, alternative bond denial is misplaced. That denial was neither a valid exercise of authority nor a fair assessment of Petitioner's situation. Petitioner effectively has never had a real bond hearing. This Court should remedy that violation now by ordering his release or, at the very least, ensuring he receives a genuine bond hearing in accordance with the proper rules. Federal courts do not tolerate detaining someone based on a clearly flawed process; doing so would perpetuate the very due process violations this habeas action aims to rectify.

VIII. RESPONDENTS OVEREMPHASIZE *LRA* LEGISLATIVE HISTORY WITHOUT ADDRESSING SUPERFLUITY

Respondents' focus on the *Laken Riley Act* ("*LRA*") to defend a boundless reading of § 1225(b) fails because it would render Congress's 2025 amendments to § 1226(c) essentially meaningless. The Court must read the INA as a coherent whole, giving effect to each provision rather than allowing one to swallow another. The Supreme Court instructs that statutes "should be read to avoid superfluity," and that when a general provision would otherwise subsume a specific, the specific governs and both must be given operative effect *Corley v. United States*, 556 U.S. 303, 314 (2009); *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645–46 (2012); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Applying those canons here confirms that Respondents' reading is incorrect.

The LRA's text targets § 1226(c), not § 1225(b), and it uses § 1226 to capture a subset of "inadmissible" noncitizens—showing Congress did not think § 1225 already did that work. In

January 2025, Congress enacted the *LRA* and amended § 1226(c)(1) to add new subparagraph (E). That provision makes mandatory the detention of noncitizens who are inadmissible under 8 U.S.C. 8 USCS § 1182 (including those "present in the United States without being admitted or paroled") and who, in addition, have been arrested for, charged with, convicted of, or admit certain theft, burglary, or related offenses. *See Laken Riley Act*, Pub. L. No. 119-1, § 2, 139 Stat. 3 (Jan. 29, 2025); *see* also the bill text as introduced and passed H.R. 29 (119th Cong.) and S. 5 (119th Cong.). If, as Respondents insist, all noncitizens "present without admission" are already mandatorily detained under § 1225(b) from arrest to finality, then Congress's 2025 decision to add those very people—defined by § 1182(a)(6)—to § 1226(c) subject to mandatory custody upon specified criminal predicates would be largely redundant. Courts have already recognized this precise point: interpreting § 1225(b) to cover interior arrests of long-present EWIs in all circumstances would "render[] § 1226(c)(1)(E) entirely superfluous," a result the canons forbid (collecting cases) (*Rodriguez Carmona v. Noem*, No. 1:25-cv-01131, slip op. at 11 (W.D. Mich. Oct. 24, 2025)). *See* also a federal court's description of the *LRA* as adding a new § 1226(c) category keyed to § 1182(a)(6) inadmissibility paired with specified crimes *Rodriguez v. Bostock*, 779 F. Supp. 3d 1240, 1248 (W.D. Wash. 2025). Congress knows how to rely on § 1225 when it wants to; indeed, the *LRA* also added a State-AG-enforcement cause of action to § 235(b) without altering who is covered by § 1225(b) 8 U.S.C. § 1225(b)(3). Its choice to place the new mandatory-detention rule for certain "inadmissible" interior arrests in § 1226(c) confirms that § 1226 remains the default detention authority for long-present EWIs in § 240 proceedings.

The INA's structure, as construed by the Supreme Court, reinforces the same conclusion. Section 1226 is the general, pre-final-order detention provision "pending a decision on whether

the alien is to be removed," authorizing bond (except where § 1226(c) makes detention mandatory for specified criminal/terrorism categories) 8 U.S.C. § 1226; *Demore v. Kim*, 538 U.S. 510, 513–14 (2003). By contrast, § 1225(b) "applies primarily to [noncitizens] seeking entry," dividing "applicants for admission" into two narrow detention tracks—(b)(1) expedited removal for certain recent entrants or designated groups lacking documents or using fraud, and (b)(2) a catch-all for other applicants for admission at inspection—neither of which says anything about IJ bond authority because they are keyed to inspection-stage *processing Jennings v. Rodriguez*, 583 U.S. 521, 542–43 (2018); *see* the statutory text defining when interior arrests can be swept into expedited removal only by designation and only if within two years of entry 8 U.S.C. § 1225(a)(1), (b)(1)(A)(iii). Reading § 1225(b) to mandate detention of every person "present without admission," regardless of years-long residence and § 240 posture, would nullify these structural limits and convert § 1226 to dead letter for a vast class that Congress just amended § 1226(c) to address. The Court should instead harmonize the provisions: § 1225(b) covers its textually limited inspection-stage categories; § 1226 governs interior arrests and § 240 proceedings, with § 1226(c) imposing mandatory detention only for the specific, enumerated groups Congress singled out (now including the *LRA*'s new theft-related category). That reading gives effect to each clause and "avoids rendering superfluous a specific provision that is swallowed by the general one," *RadLAX*, 566 U.S. at 645–46.

Legislative history points the same way, but the text and structure are dispositive. The 104th Congress explained when revising § 236 (now § 1226) that interior apprehension and detention "on a warrant" pending a removal decision is the baseline regime, with bond authority and specified exceptions—an allocation reflected in the decades-long practice that the BIA itself acknowledged before 2025 H.R. Rep. No. 104-469, pt. 1 (1996). The *LRA* did not amend §

1225(b) to expand who is categorically subject to inspection-track mandatory detention; it fine-tuned § 1226(c) to add a new mandatory-detention subset, confirming Congress's continued reliance on § 1226 for long-present EWIs in § 240 proceedings.

Recent decisions across the country reject Respondents' position and align with the anti-superfluity reading. Courts have ordered § 1226(a) bond hearings or release where DHS attempted to reclassify long-present EWIs as § 1225(b) detainees, expressly noting that Respondents' interpretation would make the *LRA*'s § 1226(c)(1)(E) addition redundant (*Rodriguez Carmona v. Noem*, W.D. Mich. Oct. 24, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d at 1248–49 (W.D. Wash. 2025) (describing LRA's addition to § 1226(c)); *Singh v. Lewis*, No. 4:25-cv-96, ECF 14 at 6–9 (W.D. Ky. Sept. 22, 2025); *Singh v. Lyons*, No. 1:25-cv-1606, ECF 6 at 2–6 (E.D. Va. Oct. 14, 2025). These rulings implement the Supreme Court's instruction to read §§ 1225 and 1226 in harmony, not in a way that "swallows" the specific, later-enacted § 1226(c)(1)(E) *RadLAX*, 566 U.S. at 645–46.

In short, Respondents' legislative-history interpretation cannot override the text, structure, and governing interpretive canons. The *LRA*'s specific amendment to § 1226(c) confirms that Congress continues to treat long-present EWIs in § 240 proceedings as § 1226 detainees, who are eligible for bond unless one of the eight mandatory-detention triggers in 8 USCS § 1226 applies. Interpreting § 1225(b) to require detention for all EWIs would render Congress's 2025 amendments meaningless, which the canon against surplusage forbids. The Court should reject Respondents' overbroad interpretation of 8 USCS § 1225 and instead hold that § 1226 determines Petitioner's detention and bond eligibility.

IX. PETITIONER IS ENTITLED TO PRELIMINARY INJUNCTION

The governing standard is settled. A plaintiff seeking a preliminary injunction must show (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm absent relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. The Supreme Court articulated this four-factor test in *Winter v. NRDC*, and the Sixth Circuit applies the same framework, emphasizing that irreparable harm is indispensable and that courts weigh the four factors together rather than treat any but irreparable harm as a rigid prerequisite. *See Winter v. Natural Resources Defense Council, Inc.* | 555 U.S. 7, 20–24 (2008) (vacating overbroad injunction and reiterating the four factors).

In sum, Respondents have not refuted Petitioner's core claims. The Fifth Amendment's Due Process Clause applies to Petitioner as a long-term U.S. resident, and his prolonged detention without any bond hearing violates substantive and procedural due process (Count One). The Government's "entry fiction" argument misfires because once an individual is inside the United States and develops ties, he is a "person" entitled to due process protection. On the APA claim (Count Two), Respondents sidestep the merits. The July 2025 no-bond Policy and *Matter of Yajure Hurtado* are final agency actions that arbitrarily reversed decades of practice. They conflict with the INA's structure and binding regulations, and were issued without required notice-and-comment or reasoned explanation, making them "not in accordance with law" and "arbitrary and capricious. " Respondents have effectively conceded the Fourth Amendment and *Accardi* claims (Counts Three and Four) by ignoring them. Petitioner's warrantless arrest flouted 8 USCS § 1357 – there was no probable cause that he would "escape" before a warrant could be obtained, and ICE violated its own 48-hour presentment and custody-review rules. Under *Accardi*, such regulatory violations

invalidate the detention. Respondents' reliance on the Immigration Judge's "alternative" bond denial is misplaced. The IJ believed he lacked jurisdiction under *Yajure Hurtado*, so any "alternative" finding was *ultra vires*– a nullity that cannot justify continued detention. Finally, Respondents' Laken Riley Act argument overreads the law. If every EWI (entry without inspection) were stuck in § 1225(b) detention, the LRA's 2025 amendment to § 1226(c) (adding certain inadmissible EWIs to mandatory detention) would be superfluous, which contradicts fundamental canons of statutory interpretation. Congress's focus on § 1226 confirms it envisioned long-present EWIs being treated under § 1226, with bond eligibility, not under § 1225(b) as perpetual "applicants for admission."

All preliminary injunction factors favor Petitioner. He has a strong likelihood of success on the merits: the vast majority of courts that have addressed these issues have sided with Petitioners and ordered release or bond hearings. He is suffering irreparable harm each day he remains unlawfully detained without a hearing – loss of freedom is the quintessential irreparable injury. The balance of equities tips sharply in Petitioner's favor, as his relief can be structured to protect the Government's interest (through a bond hearing and possible conditions of release) while an outright denial would perpetuate unconstitutional custody. The public interest is always served by upholding the Constitution and ensuring agencies act lawfully. Respondents' speculative concerns about transfer or jurisdiction are baseless – this Court's jurisdiction over the properly filed petition remains intact despite ICE's maneuvers. Petitioner respectfully requests that the Court grant the writ, order his immediate release, or, at a minimum, enjoin his continued detention and require a prompt individualized bond hearing with appropriate procedural safeguards (placing

the burden on DHS and considering alternatives to detention). Such relief is necessary to remedy the ongoing violations of Petitioner's rights and to restore the rule of law in his case.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioner requests the relief sought in the Petition [R. 1 at 16], including immediate release or, in the alternative, direct that Petitioner receive an individualized de novo bond hearing within seven (7) days of the Court's order. A different Immigration Judge should conduct the bond hearing and must comply with due process – including requiring the Government to prove by clear and convincing evidence that Petitioner poses a flight risk or danger that cannot be mitigated by conditions, and requiring the IJ to consider alternatives to detention and Petitioner's substantial ties and equities, enjoining transfer, declaring violations, and awarding fees under 28 U.S.C. § 2412. Grant such other and further relief as the Court deems just and proper.

Dated: November 3, 2025

Respectfully Submitted,

/S/ Luis Angeles

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EXHIBIT

EXHIBIT A	**Yajure Hurtado MOTION TO RECONSIDER**	**1 - 33**

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

I represent Petitioner, TEJINDER SINGH, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS are true and correct to the best of my knowledge.

Dated: November 3, 2025

/s/Luis Angeles
Luis Angeles

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2025, I filed the foregoing REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS 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/Luis Angeles
Luis Angeles