**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03275-GPG-KAS

DANIEL ORTIZ ROSALES,

Plaintiff-Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GAUDIAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

Defendants-Respondents.

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**PETITIONER-PLAINTIFF'S REPLY TO RESPONDENTS-DEFENDANTS' CONSOLIDATED RESPONSE (ECF 21)**

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This Court should join the chorus of federal courts across the country to grant *habeas* relief to Plaintiff-Petitioner ("Plaintiff") finding Defendants-Respondents' ("Defendants") new interpretation of the Immigration and Nationality Act (INA)'s detention provisions illegal.

## I. Introduction

Before Plaintiff filed this case, federal courts overwhelmingly agreed that Defendants' policy of excluding people who entered without inspection from bond is unlawful. ECF 8, n. 1. The emphatic judicial consensus rejecting Defendants' position continues with recent decisions from this district, *Artola Aruaz v. Baltazar, et al.*, 1:25-cv-03260-CNS (D. Colo. Oct. 31, 2025), ECF 16; *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025), ECF 21, and around the country.[1] This includes the Western District of Washington's recent grant of summary judgement to a

[1] *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025); *Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct. 17, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025) *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025); *Buestan v. Chu*, No. 25-16034 (MEF), 2025 WL 2972252 (D. N.J. Oct. 21, 2025); *Maldonado v. Baker*, No. 25-3084-TDC (D. Md. Oct. 21, 2025); *Gonzalez Martinez v. Noem*, EP-25-cv- 430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120 2025, WL 2977650 (D. Colo. Oct. 22, 2025); *Lopez Lopez v. Soto*, 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Castellanos Lopez v. Warden* Otay Mesa Det. Ctr., 25-cv-2527, 2025 WL 3005346 (S.D. Cal. Oct. 27, 2025); *Ramirez Valverde v. Olson*, 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025); *L.A.E. v. WAMSLEY*, 3:25-CV-01975, 2025 WL 3037856 (D. Or. Oct. 30, 2025); *Rosales Ponce v. Olson*, 25-cv-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *J.A.M. v. Streeval*, 25-cv-342, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *Flores v. Olson*, 25-cv-12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *Hernandez-Alonso v. Tindall*, 3:25-CV-652-DJH, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Reyes Arizmendi v. Noem*, 25-cv-13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025).

class of incarcerated noncitizens presenting the same arguments Plaintiff does here. *Rodriguez Vazquez v. Bostock*, 3:25-cv-05240, ---F.Supp.3d.---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). Defendants' Response ignores these decisions and presses the same arguments courts routinely reject. Plaintiff is likely to succeed on the merits of his petition, and this Court should join the "tsunami" of decisions finding Defendants' position unlawful and grant Plaintiff relief. *Roa*, 2025 WL 2732923, at *1 (citation omitted).

## II. Defendants' Position Violates the Statute.

Defendants' response mischaracterizes *Jennings'* analysis of the relevant statutes. ECF 21 p. 4-5. *Jennings* begins with a discussion of our "*Nation's borders and ports of entry*, where the Government must determine whether a [noncitizen] *seeking to enter* the country is admissible." *Jennings*, 583 U.S. at 287 (emphasis added).[2] The Court notes that §§ 1225(a) and 1225(b) are relevant for this determination. *Id.* 287–88. It concludes that the latter is for noncitizens who "shall be detained for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted *into the country*." *Id.* at 288 (emphasis added and cleaned up) (citing § 1225(b)(2)).

The Court then transitions to discuss that "*once inside the United States*, [noncitizens] do not have an absolute right to remain here[,]" *id.* (emphasis added), concluding that "U.S. immigration law authorizes the Government to detain certain [noncitizens] *already in the country* . . . under § 1226(a) and (c)." *Id.* at 289 (emphasis added). Defendants' response arguing otherwise is wrong.

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[2] Judge Sweeney's emphasis of the "seeking admission" requirement is consistent with the Supreme Court's discussion of §1225's breadth. *Garcia Cortes v. Noem,* 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025), at *3.

Finally, Defendants' fail to distinguish Plaintiff's claim from Judge Sweeney's decision in *Garcia Cortes*. ECF 21, pp. 11–12. There, like here, Defendants rest their erroneous position on the definition of applicant for admission. *Compare Garcia Cortes*, 2025 WL 2652880, at 2 ("At bottom, Respondents contend that Petitioner falls squarely within the ambit of section 1225(b)(2)(A) . . .given he is an applicant for admission") *with* ECF 21, p. 8, 12–13 (claiming Plaintiff is an "applicant for admission"). While not factually on all fours, *Garcia Cortes* correctly interprets §§ 1226 and 1225, noting, *inter alia*, that "three conditions must be satisfied" for the latter to apply. *Garcia Cortes*, 2025 WL 2652880, at *3 (citations omitted). One of those conditions is that the noncitizen be "seeking admission." *Id.* (citing § 1225(b)(2)(A)). There, as here, "Respondents do not contend with § 1225(b)(2)(A)'s 'seeking admission' requirement" and similarly ignore that Plaintiff "has resided in this country for years . . . ." *Id.* (citations omitted). Defendants' also fail to distinguish this case from the two decisions from this Court granting petitions with the exact same legal question. *Moya Pineda v. Baltasar et al.,* 1:25-cv-02955 (D. Colorado Oct. 20, 2025); *Hernandez Vazquez v. Baltasar et al.*, 1:25-cv-03049-GPG-TPO (D. Colo. Oct. 23, 2025). In other words, the Government provided no persuasive reason for this Court to deviate from its prior holdings in favor of Plaintiff's position.

In addition to mischaracterizing *Jennings'* analysis of the relevant statutes, Defendants avoid canons of statutory construction and the chorus of decisions against them. Defendants' interpretation of § 1225 makes large parts of the code meaningless and "fails to take account of the entirety of the statutory scheme." *Echevarria v. Bondi, CV-25-03252*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), at *9. "In ascertaining the plain meaning of a statute, the court must look to the particular statutory language at issue, as

well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted).

A statute's title is "especially valuable where it reinforces what the text's nouns and verbs independently suggest." *Yates v. U.S.*, 574 U.S. 528, 552 (2015) (Alito, J., concurring). The title of § 1225 includes "arriving" "indicat[ing] that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, 3:25-cv-541-RGJ, 2025 WL 2690565, at *4 (W.D.Ky Sept. 19, 2025) (citation omitted). The remaining text, focused on crewman or stowaways, further "reinforces the interpretation that [§] 1225 is much more limited in scope than the [government] asserts." *Id.* Defendants' improper reading relies on the broad definition of "application for admission" at § 1225(a)(1). ECF 21 at pp. 3-6, 8. This definition, however, does not control for § 1225(b)(2), which does not apply to *all* applicants for admission, but only those actively "seeking admission" at the border. *See* 8 U.S.C. § 1225. *See also* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996) (purpose of § 1225 regarding noncitizens arriving at the border).

Contrary to Defendants' claim, § 1225(b)(1)(A)(iii)(II) does not support their reading. That section concerning mandatory detention of noncitizens in the interior subject to expedited removal supports Plaintiff's position under the *expressio unius est exclusio alterius* doctrine. "[W]here Congress includes particular language in one section of a statute but omits it in another section …, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. U.S.*, 464 U.S. 16, 23 (1983). Congress' explicit language to limit mandatory detention to noncitizens who have been in the U.S. for *less than two years* when Defendants jail them in the interior shows Congress knew when to apply § 1225 mandatory detention to people

ICE jails inside the United States. *Id.* It chose not to for people like Plaintiff who have resided here for decades. *Id.*

Also contrary to Defendants' assertion, acknowledging § 1225(b)(2)(A)'s limited application to noncitizens *arriving* to the U.S. does not incorrectly restrict its breadth.

> [Section] 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) (which are the grounds that put an arriving noncitizen on the track for expedited removal). The statute governing inadmissibility lists ten grounds for inadmissibility, many of which have distinct sub-grounds. *See* 8 U.S.C. § 1182(a)(1)-(10). There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1).

*Salcedo Aceros v. Kaiser*, 25-cv-3637503, 2025 WL 2637503, at *11 (N.D. Cal. Sept. 12, 2025). That also includes lawful permanent residents "seeking admission" who fall within the six categories of 8 U.S.C. § 1101(a)(13)(C)(i)–(vi). Section 1225(b)(2) plays many roles, but detaining Plaintiff without bond is not one.

Defendants' argument that § 1225(b)(2)(A) is more specific than § 1226 and any redundancy between §§ 1225(b)(2)(A) and 1226(c)(1)(E) does not render the latter superfluous misses the mark. Defendants ignore that "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect," *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995), and "[i]f § 1225(b)(2) already mandated detention of any [noncitizen] who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." *Barrera*, 2025 WL 2690565, *4 (cleaned up). Congress' recent enactment of the Laken Riley Act's (LRA) new detention provisions would be utterly meaningless under Defendants' interpretation.

Under Plaintiff's interpretation, however, there is no redundancy because the LRA's amendment to § 1226(c)(1) was designed to address a set of people to whom §

1225 does not apply. *Lopez-Campos v. Raycraft*, --- F.Supp.3d ----, No. 2:25-cv-12486, 2025 WL 2496379, *8 (E.D. Mich. Aug. 29, 2025) (If "Congress had intended for [§] 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently" enacted new mandatory detention provisions); *Cordero Pelico*, 2025 WL 2822876, at *14 (finding "no need to" pass the LRA if Defendants' § 1225(b)(2) interpretation were correct); *Lopez Benitez*, 2025 WL 2371588, at *4 (finding that §§ 1225(b)(2) & 1226 are "mutually exclusive"). Defendants also ignore that while limited redundancy may occur, it is a "cardinal rule of statutory interpretation that no provision should be construed to be *entirely* redundant," as Defendants attempt to do here. *Kungys v. U.S.*, 485 U.S. 759, 778 (1988) (emphasis added).

In sum, Defendants' interpretation of the statute is wrong. Countless district courts across the country, including this one, the Supreme Court, and canons of statutory construction support Plaintiff's bond eligibility.

### III. IIRIRA's Intent to Edit the Distinction between "Entry" and "Admission" is Irrelevant to Plaintiff's Bond Eligibility.

The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") substituted "admission" for "entry" to address the distinction between noncitizens who "effected an 'entry' into the U.S. [and] were subject to deportation proceedings, while those who had not made an 'entry' were subject to 'more summary' exclusion proceedings." *Salcedo Aceros*, 2025 WL 2637503, at *11. As Defendants concede, however, "IIRIRA was intended to replace *certain aspects* of the current 'entry doctrine[,]'" not all of it. ECF 21, p. 16 (emphasis added, citing H.R. Rep. No. 104-469, pt. 1, at 225 (1995)). "In making these changes, Congress did not fully disrupt the old system, including the system of detention and release" on bond:

> In fact, according to the legislative record, 'Section [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a [noncitizen] who is not lawfully in the United States.' ... Congress' concern about adjusting the law in some respects to reduce inequities in the removal process did not mean Congress intended to entirely up-end the existing detention regime by subjecting all inadmissible noncitizens to mandatory detention, a seismic shift in the established policy and practice of allowing discretionary release under Section 1226a – the scope of which Congress did not alter.

*Salcedo Aceros*, 2025 WL 2637503, *12 (quoting H.R. Rep. 104-469, 229). The pre-IIRIRA distinction continues elsewhere as well. *E.g.*, Pub. L. No. 105-100, § 203(a)(11), 111 Stat. 2160, 2197-98 (1997) (permitting relief from removal for people from certain countries who were "not apprehended after December 19, 1990, *at the time of entry*") (emphasis added); 8 § C.F.R. § 240.61(a)(1) (same). The Supreme Court agrees. *Dep't of Homeland Sec'y v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (discussing how those "who have established connections in this country" have greater due process rights than those who are jailed "at the threshold of entry").

Defendants' reliance on *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) to argue the contrary is unavailing. ECF 21, p. 16. "*Torres* . . . did not cite § 1226 or mention the concept of detention or bond hearings. Additionally, Ninth Circuit cases decided after *Torres* reiterate, consistent with *Jennings* and *Nielsen*, that [noncitizens] who are 'present' in the United States are, as a general rule, entitled to a bond hearing under § 1226(a)." *Echevarria*, 2025 WL 2821282, at *9. Indeed, District Courts throughout the Ninth Circuit continue to rule in favor of Plaintiff's position here. *E.g.*, *Rodriguez Vazquez*, 2025 WL 2782499 (summary judgment in Western District of Washington); *Hinestroza v. Kaiser*, 25-cv-07559-JD, 2025 WL 2606983, at *2 (N.D. Cal. Sept. 9, 2025) (noting the "tsunami"

of cases in the Northern District of California finding Defendants' position unlawful); *See* ECF 8, n.1; *see also* n. 1, *supra*

Similarly unhelpful is Defendants' use of *Thuraissigiam*. ECF 21, p. 17. "The legal and factual context in *Thuraissigiam* . . . are different from those presented here." *Eliseo Jose Alejandro*, 2025 WL 2896348, at *5. The Supreme Court itself states that

> [w]hile [noncitizens] who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for a [noncitizen's] lawful entry into this country and that, as a result, a [noncitizen] at the threshold of initial entry cannot claim any greater rights under the Due Process Clause. Respondent attempted to enter the country illegally and was apprehended just 25 yards from the border. He therefore has no entitlement to procedural rights other than those afforded by statute.

*Thuraissigiam*, 591 U.S. at 107. In other words, *Thuraissigiam* supports Plaintiff bond eligibility. Plaintiff has resided in the United States for years and Defendants jailed him in the interior of the United States. Plaintiff is eligible for bond.

## IV. The Binding Regulations—in Place for Decades—Align with the Statute Authorizing Plaintiff Bond.

The implementing regulations further support Plaintiff: § 1225(b)(2)(A) applies to noncitizens arriving in the United States. 8 C.F.R. § 235.3(c)(1) (§1225(b) applies to "any *arriving* [noncitizen] who appears to the inspection officer to be inadmissible") (emphasis added). "The regulation thus contemplates that 'applicants *seeking admission*' are a subset of applicants 'roughly interchangeable' with 'arriving [noncitizens].'" *Salcedo*, 2025 WL 2637503, at *10 (quoting *Martinez v. Hyde*, --- F.Supp.3d ----, No. 25-11613, 2025 WL 2084238, *6 (D. Mass. July 24, 2025), emphasis in original). *See also* 8 C.F.R. § 1.2 (defining "arriving [noncitizen]" as applicant for admission "coming or attempting to come into the [U.S.] at a port-of-entry"). This is consistent with EOIR's statement promulgating

the regulations, which have not been amended since: "[i]nadmissible [noncitizens], … have available to them bond redetermination hearings …, while arriving [noncitizens] do not." *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). *Compare* 8 C.F.R. § 1003.19(h)(2) *with* Procedures for the Detention and Release of Criminal Aliens, 63 Fed. Reg. 27441, 27448 (May 18, 1998). Indeed, the current regulations do not restrict jurisdiction for noncitizens who entered without inspection that ICE jails in the interior. 8 C.F.R. § 1003.19(h)(2). The regulations do, however, explicitly strip IJ's of jurisdiction to review bond requests by "*arriving* [noncitizens]", further supporting Plaintiff's position. 8 C.F.R. § 1003.19(h)(2)(B) (emphasis added).

Defendants' argument that the agency's interpretation should be given minimal weight because it did not include robust analysis is incorrect. After the IIRIRA's passage, then-Attorney General Janet Reno proposed a rule that all "[i]nadmissible [noncitizens] in removal proceedings" be ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, General Reno deleted that proposed provision and replaced it with one applying only to "[a]rriving [noncitizens], as described in § 1.1(q) of this chapter." 62 Fed. Reg. 10312, 10361 (March 6, 1997). As she explained, "[t]he effect of this change is that inadmissible [noncitizens], … have available to them bond hearings …, while arriving [noncitizens] do not." *Id.* at 10323. Defendants' response, ECF 21, p. 18, that the agency did not comprehensively consider its decision to permit bond hearings for noncitizens who entered without inspection is wrong and repudiated by the agency's own rulemaking history.

## V. Plaintiff's Relief is Not Disfavored.

Even if certain injunctions must meet heightened standards after *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008),[3] Plaintiff's relief is not disfavored. Plaintiff does not seek a "disfavored" injunction even under pre-*Winter* caselaw – he seeks to preserve the *status quo* from "the last uncontested period." *Evans v. Fogarty*, 44 Fed. Appx. 924, 928 (10th Cir. 2002). Defendants "misunderstand the legal distinction between injunctions that disturb the status quo and those that do not," *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1260 (10th Cir. 2005), as *status quo* is the "last peaceable uncontested status between the parties before the dispute developed," not the status between the parties when litigation begins. *Id.* at 1260. Detaining Plaintiff under § 1225(b)(2) departs from decades-long practice. *See* ECF 8, pp. 2-3. Plaintiff could have sought bond during the previous *thirty years* – that is the *status quo* he seeks to preserve.

Similarly, the injunction does not mandate new action – it stops Defendants from depriving Plaintiff of the bond hearing he is entitled to absent Defendants' illegal action. Regardless, Plaintiff satisfies even a heightened standard: he makes a strong showing of likelihood of success on the merits and that the balance of harms tilts to him.

## VI. Plaintiff's Continued Detention is an Irreparable Harm and the Remaining Equities Favor Plaintiff.

Defendants assert that if detention during a pending habeas matter is irreparable harm, then most habeas petitioners are entitled to such relief. ECF 21, p. 22. That should be so when people *are being held unlawfully*, like Plaintiff. Plaintiff's injury is profound

[3] The Supreme Court set out the familiar four-element test for preliminary relief in *Winter* – with no other requirements. 555 U.S. at 20. The Tenth Circuit now acknowledges the *Winter* test is exhaustive. *Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016). Thus, *Winter* rejects this Circuit's old "disfavored" injunction framework.

and strikes at the heart the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The loss at issue here is actual, certain, and indeed, the greatest loss Plaintiff could suffer short of life: lost liberty. Not a single day of freedom can ever be returned once unlawfully taken, requiring preliminary relief. *See* ECF 8, p. 13.

An injunction will not prevent Defendants from "carrying out their statutory obligations" (ECF 21, p. 23) because the government is acting *contrary to* its statutory obligations. Here, relief does not prevent the government from "effectuating statutes enacted by representatives of its people," *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025), because Congress, the "representatives of its people," "enacted" a statute – § 1226(a) – that requires the opposite of what the government is doing. Congress said as much. *See* ECF 8, p. 4 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996)). As § 1225 provides no legal authority to detain Plaintiff, the Court is merely "enjoining what [is] likely unlawful [action] promulgated by the executive branch to encroach on congressional legislative power" and thus "serv[ing] the public interest." *Albuquerque v. Barr*, 515 F.Supp.3d 1163, 1181 (D. N.M. 2021). If agency action is *ultra vires* – like here – an injunction does not (and cannot) harm the government. *Bayou Lawn & Landscape Servs. v. Sec'y of Labor*, 713 F.3d 1080, 1085 (11th Cir. 2013). "There is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters v. Newby*, 838 F.3d 1, 78 (D.C. Cir. 2016).

**VII. Incarceration under the Circumstances Violates Due Process.**

Under these circumstances "detention without a bond hearing amounts to a due process violation." *Garcia Cortes*, 2025 WL 2652880, at *4. While Plaintiff does not contest that detention is sometimes permissible during removal proceedings, *Demore v.*

*Kim*, 538 U.S. 510, 531 (2003), the basis for detention must be constitutionally sound and rooted in statutory authority. Here, Defendants' strip Plaintiff of the most significant liberty interest there is, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), and do so without statutory authority, Section II–IV, *supra*; ECF 8, pp. 6–15. The likelihood of erroneous deprivation is overwhelming considering Defendants' misapplication of the statutory scheme. *See Id.*; *See also* ECF 8 n. 1; n. 1, *supra*. Finally, the Government "has no interest in the detention without bond of someone against whom no criminal charges are pending and who is an active member in his community." *Garcia Cortes*, 2025 WL 2652880, at *4 (citation omitted). Plaintiffs due process rights are violated each day he is jailed without process under Defendants' unlawful interpretation of the statute.

## VIII. Conclusion

The Court should order Defendants to immediately release Plaintiff or, in the alternative, provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days.

Dated: November 10, 2025.

Respectfully submitted,

*s/ Daniel Herrera*
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**CERTIFICATE OF SERVICE**

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

/s/ Daniel Herrera
Daniel Herrera