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9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Jose Juan Perez Rodriguez

No. 2:25-cv-03921-JJT--ESW

12 Petitioner,

13 Kristi Noem, Secretary of Homeland
14 Security; Pamela Bondi, U.S. Attorney
15 General; Todd M. Lyons, Acting Director of
16 Immigration and Customs Enforcement; John
17 E. Cantu, ICE Arizona Field Office Director;
18 Luis Rosa, Warden of Florence Processing
19 Center,

Petitioner's Reply to the Respondents'
Response to Petitioner for Writ of Habeas
Corpus

20 Respondents.

21 In their response, the Respondents acknowledge that this Court has previously rejected its arguments
22 concerning the applicability of 8 U.S.C. § 1225(b)(2). *See* ECF No. 6 at 8 (citing *Cerritos Echevarria*
23 *v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025)). Nonetheless,
24 they argue that the Court should deny the Petitioner's writ of habeas corpus based on their erroneous claim
25 that the Petitioner is an "applicant for admission," and therefore, the 1225(b)(2)(A) requires mandatory
26 detention without an individualized bond hearing. This argument fails and the Court should grant the
27 Petitioner's writ of habeas corpus petition and order the relief requested by the Petitioner.

I. Brief Background Facts and Procedural Summary

The facts of this case are fully provided in the Petitioner's Verified Petition for Writ of Habeas Corpus.
See ECF No. 1. He fully adopts those facts in this reply. Notably, in their response, the Respondents concede
the following critical facts:

- 1 1. Petitioner was arrested by ICE on June 10, 2023.
- 2 2. DHS issued a notice to appear (NTA) “placing the Petitioner into removal proceedings under
3 section 212(a)(6)(A)(i) of the Immigration and Nationality Act.”
- 4 3. On July 7, 2023, the Petitioner was ordered released on his own recognizance.
- 5 4. On August 25, 2025, the Petitioner was rearrested by ICE.

6 ECF No. 6-1. In other words, there is no dispute that the Respondents previously released the Petitioner on
7 his own recognizance after determining he was not a danger nor a flight risk. *Saravia v. Sessions*, 280 F.
8 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
9 2018) (“Release reflects a determination by the government that the noncitizen is not a danger to the
10 community or a flight risk.”). Since the Petitioner’s release, there has been no material change in
11 circumstances that would justify revoking his release. Indeed, “[t]he law requires a change in relevant facts,
12 not just a change in [the government’s] attitude.” *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC),
2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (quoting *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL
1707737, at *3 n.6 (S.D.N.Y. June 18, 2025)).

13 After the Petitioner had been in unlawful detention for two months, he filed his writ of habeas corpus and
14 motion for a temporary restraining order/preliminary injunction. *See* ECF No. 1 and 3. On November 5, 2025,
15 the Respondents filed their response, *see* ECF No. 6, and this reply now follows.

16 **II. Argument**

17 **A. The Respondents’ construction of the detention statutes run contrary to the provisions’ plain 18 language, their legislative history, and decades of prior practice.**

19 **1. Petitioner is entitled to a custody hearing under § 1226(a)(2) and is not subject to mandatory 20 detention under § 1225(b)(2)(A).**

21 The Petitioner has a clear right to a custody hearing before an IJ under 8 U.S.C. § 1226(a)(2), which
22 authorizes the IJ to grant release to noncitizens who are detained pending the outcome of removal
23 proceedings. The plain language of § 1226(a) and its legislative history all support the Petitioner’s position.
8 U.S.C. § 1226(a) provides, in pertinent part, as follows:

24 (a) Arrest, detention, and release

25 On a warrant issued by the Attorney General, an alien may be arrested and detained
26 pending a decision on whether the alien is to be removed from the United
States. Except as provided in subsection (c) and pending such decision, the Attorney
General—

- 27 (1) may continue to detain the arrested alien; and
- (2) may release the alien on—

1 (A) bond of at least \$1,500 with security approved by, and containing conditions
2 prescribed by, the Attorney General; or
3 (B) conditional parole . . .

4 This statute clearly applies to the Petitioner’s case.

5 Critically, the Respondents do not disagree that § 1226(a) provides authority to release the Petitioner.
6 Rather, they argue that § 1226(a) only provides “general authority” to release noncitizens while § 1225(b)(2)
7 provides specific authority for mandatory detention. *See* ECF No. 6 at 5. However, § 1226(a) is far from a
8 “general authority,” but instead specifically applies to “an alien” arrested “on a warrant” who is “detained
9 pending a decision on whether the alien is to be removed from the United States.” Section 1226(a) is a specific
10 statute that is separate and apart from § 1225(b)(2)(A), which only applies to noncitizens arriving at the
11 border or a port of entry and “seeking admission” at that time. As the Supreme Court has stated, § 1226(a)
12 “authorizes the Government to detain certain aliens *already in the country* pending outcome of removal
13 proceedings” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). Furthermore,
14 Petitioner’s arrest on a warrant and subsequent release in 2023 was under § 1226, not § 1225(b)(2)(A). *See*
15 ECF No. 1-1 at 6 (“You have been arrested and placed in removal proceedings. In accordance with section
16 [1226] . . . you are being released on your own recognizance.”). Thus, even if there is overlapping detention
17 authority, the Respondents clearly used their authority under § 1226 to arrest and release the Petitioner. They
18 cannot change that authority after the arrest was made.

19 The plain language of § 1225(b)(2)(A) indicates that it applies only to individuals who are “seeking
20 admission into the United States,” a phrase that implies a present, affirmative act. *See Belsai D.S. v. Bondi*,
21 No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947, at *11 (D. Minn. Oct. 1, 2025) (“One who is ‘seeking
22 admission’ is presently attempting to gain admission into the United States.” (citations omitted)). The
23 Respondents’ attempt to equate “seeking admission” with being an “applicant for admission” is unavailing.
24 *See* ECF No. 6 at 6. As multiple courts have explained, this interpretation contravenes basic canons of
25 statutory construction—namely, that different terms within a statute are presumed to have different meanings,
26 and that no word should be rendered superfluous. Section 1225(b)(2)(A) expressly requires that a noncitizen
27 be both an “applicant for admission” and “seeking admission.” Reading these terms as synonymous would
nullify the latter phrase entirely. *See, e.g., Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH, 2025 WL
2371588, at *6 (S.D.N.Y. Aug. 8, 2025); *Jimenez v. Berlin*, --- F. Supp. 3d ---, 2025 WL 2639390, at *10 (D.
Mass. Sept. 8, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *7 (D.

1 Mass. Oct. 3, 2025). As such, the plain text of the statute supports the Petitioner’s position that he is detained
2 under § 1226(a) and is entitled to release on bond.

3 Respondents rely on *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) in which the BIA
4 determined that “many people who are not actually requesting permission to enter the United States in the
5 ordinary sense are nevertheless deemed to be ‘seeking admission’ under the laws.” ECF No. at 6. However,
6 this discussion was in the context of a noncitizen applying for adjustment of status seeking admission as an
7 lawful permanent resident. Further, as several courts have observed, “*Matter of Lemus-Losa* explicitly
8 distinguishes ‘applicant for admission’ from ‘seeking admission’.” See, e.g., *Mosqueda v. Noem*, No. 5:25-
9 CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-
10 05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (“[I]n some cases such an alien will have
11 reentered the United States unlawfully, thereby making himself ‘an applicant for admission’ by operation of
12 law, while *seeking admission* though adjustment of status.”) (quoting *Lemus-Losa*).

13 Respondents also rely on *Florida v. United States*, 660 F.Supp.3d. 1239 (N.D. Fla. 2023), which
14 considered the distinct issue of whether DHS has discretion to detain or release noncitizens apprehended at
15 the border under either § 1225(b) or § 1226(a). However, the decision in Florida supports the Petitioner’s
16 arguments:

17 In fact, as the Attorney General has explained, “section [1225] (under which detention is
18 mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled
19 only if they apply to different classes of aliens.” *Matter of M-S-*, 27 I. & N. Dec. 509, 516
20 (Att’y Gen. 2019); see also *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir.
21 2007) (holding that an alien who was apprehended within the interior of the United States
22 necessarily must have been paroled under § 1226(a) ... because he was not apprehended at
23 the border as a § 1225 arriving alien ...).

24 *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (quoting
25 *Florida*, 660 F.Supp.3d at 1275).

26 Finally, the Respondents argue that the Court should not follow *Echavarría* claiming that the Court’s
27 analysis failed to consider 8 U.S.C. § 1225(a)(3). Defendants argue that section 1225(a)(3), titled
“Inspection,” shows that “an alien may be “seeking admission” either by being an ‘applicant for admission,’
or in some different way.” ECF No. 6 at 9. However, as with their interpretation of section 1225(b)(2), this
reading merges distinct groups of noncitizens. In the same case the Respondents point to, the BIA has
explained that someone can “seek admission” without being in the United States—for example, by applying
for a visa abroad. See *Lemus-Losa*, 25 I. & N. Dec. at 741. By contrast, an “applicant for admission” must be
physically present or at the border. See § 1225(a)(1). Therefore, section 1225(a)(3) applies to two categories:

1 (1) noncitizens in or arriving at the United States (“applicants for admission”) and (2) those seeking entry
2 from abroad. *See, e.g.*, 8 U.S.C. § 1225a(a); 19 U.S.C. § 1629(a). This difference shows that Congress
3 deliberately used distinct language to describe distinct groups. *See Rodriguez*, 2025 WL 2782499, at *20
4 (citation omitted). Giving each phrase its own meaning accords with congressional intent rather than reading
5 any term out of the statute. *Id.*

6 The Respondents provide the Court with four decisions that they claim ruled in their favor, none of
7 which are binding. However, the bulk of district court decisions overwhelmingly support the Petitioner. *See,*
8 *e.g., Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v.*
9 *Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez*
10 *Benitez*, 2025 WL 2371588, at *8–9; *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D.
11 Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-
12 02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No.
13 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No.
14 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero*, 2025 WL
15 2403827; *Samb v. Joyce*, No. 1:25-cv-06373-DEH, 2025 WL 2398831 (S.D.N.Y. Aug. 12, 2025); *Ramirez*
16 *Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v.*
17 *Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-
18 01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-
19 ECT-DJF, --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No.
20 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, No. 8:25-
21 cv-00494-JFB-RCC, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Vasquez Garcia v. Noem*, No. 3:25-cv-
22 02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-
23 cv-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Jimenez*, 2025 WL 2639390, at
24 *5; *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich. Sept. 9,
25 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez*
26 *Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salazar v. Dedos*, No.
27 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Chogllo Chafra v. Scott*, No. 2:25-
cv-00437-SDN, 2025 WL 2688541 (D. Me. Sep. 21, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL
2732923 (N.D. Cal. Sep. 25, 2025); *Savane v. Francis*, No. 1:25-CV-6666-GHW, 2025 WL 2774452
(S.D.N.Y. Sept. 28, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D.
Neb. Aug. 4, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 (D. Neb. Aug.

1 14, 2025); *Hernandez Marcelo*, 2025 WL 2741230; *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025
2 WL 2676082 (D. Nev. Sept. 17, 2025); *Barrera v. Tindall*, No. 3:25-CV-541, 2025 WL 2690565, at *5
3 (W.D. Ky. Sept. 19, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D.
4 Va. Sep. 29, 2025); *Silva v. Larose*, No. 25-cv-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sep. 29,
5 2025); *Chang Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579 (D. Me. Sep. 29,
6 2025); *Belsai D.S.*, 2025 WL 2802947; *Guerrero Orellana*, 2025 WL 2809996, at 9; *Buenrostro-Mendez v.*
7 *Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubias v. Vergara*, No. 5:25-
8 CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Sanchez-Alvarez v. Noem et al.*, No. 1:25-CV-1090,
9 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480
10 (N.D. Ill. Oct. 21, 2025); *Betancourt Soto v. Soto et al.*, No. 25-CV-16200, 2025 WL 2976572
11 (D.N.J. Oct. 22, 2025); *Arce-Cervera v. Kristi Noem, et al.*, No. 2:25-CV-01895-RFB-NJK, 2025 WL
12 3017866 (D. Nev. Oct. 28, 2025); *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262
13 (W.D. Tex. Oct. 30, 2025).

14 Tellingly, the Respondents have no response to the Petitioner's point that the passage of the Laken
15 Riley Act (LRA) demonstrates that Congress did not intend for § 1225(b)(2)(A) to apply to all noncitizens
16 who entered without inspection. Section 1226(c) requires mandatory detention for specifically enumerated
17 categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are
18 inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or
19 because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D). In January 2025,
20 Congress enacted the LRA, which expanded this list by adding § 1226(c)(1)(E), which requires detention of
21 individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged
22 with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in
23 death or serious bodily injury. Pub. L. No. 119-1, 139 Stat. 3. The LRA would not have been necessary if all
24 noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2). Thus,
25 the Respondents' construction runs contrary to the statutes' plain language and Congressional intent as
26 manifested in the recent passage of the LRA.

27 The Respondents nonetheless argue that "Congress did not intend to treat individuals who unlawfully
enter the United States better than those who appear at a port of entry." ECF No. 6 at 7. Relying on *Torres v.*
Barr, 976 F.3d 918, 928 (9th Cir. 2020), they contend that Congress enacted IIRIRA to "correct an anomaly
whereby immigrants who were attempting to lawfully enter the United States were in a worse position than
persons who had crossed the border unlawfully." *Id.* Yet, there is no anomaly in treating a recent arrival

1 differently from one who, like the Petitioner, has resided in the United States for over a decade, has substantial
2 family ties in this country, and holds a clear path toward legalization. Congress did not act unreasonably by
3 allowing IJs to consider these very different classes of nonimmigrants differently—allowing bond for those
4 with demonstrable equities but not for new arrivals.¹

5 The critical distinction is between individuals who are inside the United States and those who are not.
6 *See Romero*, 2025 WL 2403827, at *12. As the Supreme Court explained, “once an alien enters the country,
7 the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States,
8 including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533
9 U.S. at 693. It is therefore appropriate to interpret the detention statutes with that constitutional backdrop in
10 mind. *See Romero*, 2025 WL 2403827, at *12 (quoting *Hewitt v. United States*, 605 U.S. —, 145 S. Ct.
11 2165, 2173 (2025)). Under that framework, Respondents’ interpretation not only conflicts with statutory text,
12 it violates due process of law.

13 Before IIRIRA’s passage, noncitizens who entered the country without inspection were subject to
14 discretionary release from detention. *See Guerrero Orellana*, 2025 WL 2809996, at *9. A congressional
15 report issued during IIRIRA’s passage confirms that the revised § 1226(a) “restates the current provisions ...
16 regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not
17 lawfully in the United States.” *Id.* (citing H.R. Rep. No. 104-828, at 210 (1996) and H.R. Rep. No. 104-469,
18 pt. I, at 229 (1996)). Thus, rather than eliminating bond eligibility for individuals who entered without
19 inspection, Congress reaffirmed the Attorney General’s longstanding authority to arrest and release such
20 individuals under § 1226(a). *Id.*

21 Although the BIA reached a contrary conclusion in *Yajure Hurtado*, that decision conflicts with the
22 unambiguous language of § 1226(a) and § 1225(b)(2)(A), which plainly allow for Petitioner’s bond
23 eligibility. 29 I&N Dec. at 216. Even if the statute were ambiguous, the BIA’s interpretation in *Yajure*
24 *Hurtado* is not entitled to *Chevron* deference pursuant to the Supreme Court’s decision in *Loper Bright*
25 *Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def.*
26 *Council, Inc.*, 467 U.S. 837 (1984)). In *Loper Bright*, the Supreme Court held that “Courts must exercise
27 their independent judgment in deciding whether an agency has acted within its statutory authority” while
28 according only “due respect” to an agency’s interpretation. *Id.* at 413, 370. The amount of “respect” owed to

¹ Furthermore, neither the congressional intent underlying IIRIRA nor the Ninth Circuit’s decision in *Torres* control the legal standards governing a noncitizen’s detention pending the outcome of proceedings. *See Hernandez Marcelo*, 2025 WL 2741230, at *8. In fact, *Torres* itself acknowledged that Congress would be expected to “make it plain” if it intended such a sweeping change to long-standing detention authority. *Id.*

1 an agency’s interpretation depends on “the thoroughness evident in its consideration, the validity of its
2 reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to
3 persuade, if lacking power to control.” *Skidmore v. Swift*, 323 U.S. 134, 140 (1944). The BIA’s current
4 position is inconsistent with earlier pronouncements, decades of prior practice, and the reasoning adopted by
5 multiple federal district courts. For nearly thirty years, immigration judges, noncitizens’ counsel, and
6 attorneys for DHS uniformly understood § 1226(a) to confer bond eligibility on noncitizens who entered
7 without inspection. Even the Executive Branch has recognized this. During oral argument in *Biden v. Texas*,
8 the Solicitor General explained that “DHS’s long-standing interpretation has been that 1226(a) applies to
9 those who have crossed the border between ports of entry and are shortly thereafter apprehended.” *Choglo*
10 *Chafila*, 2025 WL 2688541, at *8 (quoting Tr. of Oral Argument at 44:24–45:20, *Biden v. Texas*, 597 U.S.
11 785 (2022) (No. 21-954)); *see also* *Martinez*, 2025 WL 2084238, at *4 n.9. Likewise, the Supreme Court in
12 *Jennings* stated that “§ 1226 applies to aliens already present in the United States” and “permits the Attorney
13 General to release those aliens on bond.” 583 U.S. at 303. Accordingly, the BIA’s interpretation should not
14 be granted any deference and given little respect

15 **2. The Respondents waived their response to the Petitioner’s claim that *Yajure* is a new rule that**
16 **has impermissible retroactive effect by failing to brief the issue.**

17 Even if the Court determines that the Respondents’ construction of the statutes is correct, it is a new
18 administrative rule, which cannot apply retroactively. Notably, the Respondents made no response to this
19 claim raised by the Petitioner in her habeas petition. In *Monteon-Camargo v. Barr*, the Fifth Circuit found
20 that where the BIA announces a “new rule of general applicability” which “drastically change[s] the
21 landscape,” retroactive application would “contravene[] basic presumptions about our legislative system”
22 and should in that case be disfavored unless the government can demonstrate that the advantages of
23 retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter*
24 *of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)). Applying *Yajure Hurtado* to individuals like
25 Petitioner, who entered the United States without inspection years before the BIA’s decision, would be
26 impermissibly retroactive. The BIA’s decision contradicts decades of statutory practice and administrative
27 precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing.
Retroactively applying *Yajure Hurtado* would strip these long-established rights and impose a new disability
by rendering them ineligible for bond, contrary to settled expectations. *See Landgraf v. Usi Film Prods.*, 511
U.S. 244, 265 (1994) (“As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate

1 that individuals should have an opportunity to know what the law is and to conform their conduct accordingly;
2 settled expectations should not be lightly disrupted.”).

3 **3. The Respondents waived filing a response to the Petitioner’s claim that they failed to follow
4 their own regulations by failing to brief the issue.**

5 The Respondents also have no response to the Petitioner’s claim that their refusal to follow their own
6 regulations constitutes a violation of the *Accardi* doctrine. In his petition, the Petitioner alleged that in 1997,
7 following the enactment of IIRIRA, EOIR and the then-INS jointly issued interim regulations stating that
8 individuals who entered without inspection—although applicants for admission—would nonetheless be
9 eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323. These regulations, which remain
10 binding, have long been implemented through 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Such protection is
11 not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F.
12 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen
13 is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security
14 grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 514 (2003). Yet, in this case, Respondents are
15 detaining Petitioner under § 1225(b)(2) without bond, based on *Matter of Yajure Hurtado*, which directly
16 contradicts the agency’s own published interpretation. Government agencies are required to follow their own
17 regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*,
18 420 F.2d 809, 811 (4th Cir. 1969) (“An agency of the government must scrupulously observe rules,
19 regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts
20 will strike it down.”). A violation of this doctrine can also rise to the level of a constitutional due process
21 violation, particularly when liberty is at stake. *See, e.g., Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137,
22 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

23 **B. Petitioner’s detention violates his right to due process under the Fifth Amendment.**

24 The government may not deprive a person of life, liberty, or property without due process of law.
25 U.S. Const. Amend. V. “[T]he Due Process clause applies to all ‘persons’ within the United States, including
26 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.
27 “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—
lies at the heart of the liberty [the Due Process Clause] protects.” *Id.* at 690. The Petitioner has a weighty
liberty interest as his freedom even if the “government wields significant discretion.” *Rosado*, 2025 WL
2337099, at *11. The Respondent’s decision to hold the Petitioner without access to a bond hearing violates
the Petitioner’s right to procedural due process of law.

1 “To determine whether a civil detention violates a detainee’s due process rights, courts apply the
2 three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 [(1976)].” *Martinez v. Noem*, No. 5:25-CV-
3 1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The *Mathews* factors are: (1) “the private
4 interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest
5 through the procedures used, and the probable value, if any, of additional or substitute procedural
6 safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and
7 administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424
8 U.S. at 335.

9 The private “interest in being free from physical detention is ‘the most elemental of liberty
10 interests.’” *Martinez*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Since
11 the Respondents unreasonably claim that the Petitioner is subject to mandatory detention under their new
12 interpretation of 8 U.S.C. § 1225(b)(2), they may claim he has no legitimate liberty right. However,
13 presuming the vast majority of district courts ruling on this issue are wrong, and the Petitioner is subject to
14 mandatory detention, the “Respondents fail to contend with the liberty interests created by the fact that the
15 Petitioner[] in this case [was] [previously] released . . . prior to the manifestation of this
16 interpretation.” *Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC, 2025 WL 2691828, at *10 (W.D. Tex. Sept.
17 22, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8 (W.D. Tex.
18 Oct. 21, 2025). Since the Petitioner has been in the U.S. for approximately 40 years, was previously released
19 by the Respondents from custody, the Petitioner possesses a cognizable interest in his freedom from detention
20 and DHS must demonstrate material changed circumstances which now render the Petitioner a danger or a
21 flight risk. *See, e.g., Lopez-Arevelo*, 2025 WL 2691828, at *11; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969
22 (N.D. Cal. 2019); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) (“Once a noncitizen
23 has been released, the law prohibits federal agents from rearresting him merely because he is subject to
24 removal proceedings. Rather, the federal agents must be able to present evidence of materially changed
25 circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is
26 now subject to a final order of removal.”).

27 The second *Mathews* factor considers whether the “challenged procedure creates a risk of erroneous
deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate
these risks.” *Martinez*, 2025 WL 2598379, at *3 (quoting *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187
(D. Minn. 2025)); *Hernandez-Fernandez*, 2025 WL 2975923, at *9. Here, the IJ is deprived of jurisdiction
to consider the Petitioner’s bond application based on *Yajure-Hurtado*. As such, there was no review of

1 whether the Respondents are justified in redetaining the Petitioner nor can there be such review. There is a
2 high risk, therefore, that his liberty is being erroneously deprived. This is especially true when considering
3 the Respondents' prior decision to release him on his own recognizance.

4 On the third *Mathews* factor relating to Government interests, the Respondents have an interest in
5 ensuring that the Petitioner appears for his hearings and is not a danger to his community. However, its prior
6 decision to release him is indicative of a governmental determination that the Petitioner is neither dangerous
7 nor a flight risk. Moreover, the Government's interest in mandatory detention runs contrary to Congressional
8 intent which plainly allows for bond eligibility under 8 U.S.C. § 1226(a). The *Mathews* factors all weigh in
9 favor of the Petitioner. The Court should order the Respondents to cease detaining the Petitioner without an
10 individualized bond hearing where DHS bears the burden to demonstrate by clear and convincing evidence
11 that the Petitioner's detention is justified, and order the Respondents hold the hearing without delay. *See,*
12 *e.g., Salazar, 2025 WL 2676729, at *7; Erazo Rojas, 2025 WL 3038262, at *4* (holding that "when ordering
a bond hearing as a habeas remedy" the burden shifts to the Government to demonstrate continued detention
is justified).

13 **III. Conclusion**

14 For the foregoing reasons, the Court should grant the Petitioner's Writ of Habeas Corpus and order
15 his immediate release, or alternatively, ordering Respondents to provide him a bond hearing under 8 U.S.C.
16 § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify his redetention by
17 demonstrating, by clear and convincing evidence, materially changed circumstances rendering Petitioner a
danger to the community or a flight risk.

18 Respectfully submitted,

19
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