UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Division

ANGEL AUGUSTO ROMERO LOPEZ,

c/o Murray Osorio PLLC
50 Park Pl, Mezzanine Fl.
Newark, NJ 07102

Petitioner,

v.

KRISTI NOEM, *Secretary of Homeland Security, U.S. Department of Homeland Security*
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

TODD LYONS, *Acting Director, U.S. Immigration and Customs Enforcement*,

JOHN TSOUKARIS, *Director, Newark ICE Field Office, U.S. Immigration and Customs Enforcement*,
500 12th St., SW
Washington, D.C. 20536

PAMELA BONDI, *Attorney General, U.S. Department of Justice*,
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

WARDEN, *Delaney Hall Detention Facility*
451 Doremus Ave,
Newark, NJ 07105

Respondents.

Civil Action No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner is a citizen of Honduras. Petitioner entered the United States without inspection in or around 2003 and was not encountered by immigration officials upon entry nor issued a Notice to Appear to commence removal proceedings. Rather, Petitioner's first and only contact with immigration officials was during his arrest and detention in September 2025, over twenty years since his first and only entry. Due to a new policy announced by ICE in July 2025, and a September 2025 Board of Immigration Appeals (BIA) decision that overturns decades of settled law, Respondents contend that Petitioner is detained under 8 U.S.C. § 1225(b). However, while § 1225 requires mandatory detention and does not allow release on bond, it only applies to noncitizens apprehended at the border as "arriving aliens" or applicants for admission "seeking admission." Petitioner therefore brings this action for a declaratory judgment from this Court that he is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a); and seeking an order that Respondents schedule him for a discretionary bond hearing pursuant to § 1226(a) before an Immigration Judge within 15 days.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

3. This Court also has federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

4. Venue lies in this District because Petitioner is currently detained within the territorial jurisdiction of this division of this District; and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

THE PARTIES

5. Petitioner Angel Augusto Romero Lopez is a citizen and native of Honduras and is currently detained by Respondents at Delaney Hall Detention Facility, located in Newark, NJ 07105, within the territorial jurisdiction of this Court.

6. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

7. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

8. Respondent John Tsoukaris is the Director of the Newark ICE ERO Field Office. He is the head of the ICE office is unlawfully detaining the Petitioner, and is the immediate legal custodian of the Petitioner.

9. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees.

10. Respondent Warden of the Delaney Detention Facility in Newark, NJ., is the immediate custodian who is currently holding Petitioner in physical custody. The Warden is sued in their official capacity.

11. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

12. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

13. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c)." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "'[e]xcept as provided in subsection (c) of this section,' the Attorney General 'may release' an alien detained under § 1226(a) 'on ...bond' or 'conditional parole.'" *Id.*

14. Alternatively, mandatory detention is authorized for "certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

> "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission."

§ 1225(a)(1).

15. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an "arriving alien," and if they have not been physically present in the United States continuously for a two-year period immediately prior. Regulations define an "arriving alien" as:

> "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport."

8 C.F.R. § 1.2.

16. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title," i.e. for traditional removal proceedings [emphasis added].

17. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

18. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

19. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

20. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR

(CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)." citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

21. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum "Interim Guidance Regarding Detention Authority for Applications for Admission."[1] This memo concerns the detention of "applicants for admission" as defined by § 1225(a)(1). "Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* ("For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.")

22. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C.

[1] Available at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited October 6, 2025).

§ 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.* `

23. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct" paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO and HIS are not required to 'correct' the release paperwork by issuing INA § 212(d)(5) parole paperwork.")

24. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

C. Recent BIA decision *Matter of Yajure Hurtado*

25. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

26. The BIA held that the respondent was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

27. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. *Id.* at 220.

28. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

29. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled 'Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,' 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'")

30. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

31. The BIA decision is binding on all immigration judges nationwide.

32. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.").

33. Dozens of U.S. District Courts have already rejected this novel interpretation. *See, e.g.*, *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *S.D.B.B. v. Johnson*, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept, 17, 2025); *Chogllo Chafla v. Scott*, Nos. 2:25-cv-00437-SDN, 2:25-cv-00438-SDN, 2:25-cv-00439-SDN, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Hernandez Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

FACTS

34. Petitioner is a citizen of Honduras. He entered the United States without inspection between ports of entry in 2003. He was not encountered by immigration officials nor issued a Notice to Appear upon entry.

35. Petitioner then made his way to the New Jersey area, where he established a life. He currently resides in Newark, New Jersey with his wife, a Legal Permanent Resident, and his son, a U.S. citizen.

36. Fifteen years after his entry, Petitioner was issued a Notice to appear, commencing removal proceedings on April 24, 2018. *See* Ex. 1, ICE Notice to Appear. As relief in these removal proceedings, Petitioner has applied for asylum and cancellation of removal. *See* Ex. 2, Asylum application receipt, *and* Ex. 3, Cancellation of Removal (EOIR 42B) filing fee receipt.

37. Twenty-two years after his entry, on September 29, 2025, Petitioner encountered immigration officials following a traffic stop. He was arrested by ICE agents and subsequently placed in immigration detention.

38. Petitioner is currently detained at the Delaney Hall Detention Facility in Newark, NJ within the territorial jurisdiction of this Court. *See* ICE Detainee Locator information (available at https://locator.ice.gov/ (last visited on October 24, 2025)):

Official Website of the Department of Homeland Security

U.S. Immigration and Customs Enforcement

Report Crimes: Email or Call 1-866-DHS-2-ICE

Home | Who We Are | What We Do | Newsroom | Information Library | Contact ICE

Search Results: 1

ANGEL AUGUSTO ROMERO

Country of Birth : Honduras
A-Number: [redacted]
Status : In ICE Custody
State: NJ
Current Detention Facility: DELANEY HALL DETENTION FACILITY
* Click on the Detention Facility name to obtain facility contact information

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ICE Detention Facilities
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39. Petitioner has pending removal proceedings and a Master Calendar Hearing set for November 4, 2025, and is not subject to a final order of removal. *See* EOIR Automated Case Information (available at https://acis.eoir.justice.gov/ (last visited on October 24, 2025)):

Automated Case Information

Name: ROMERO-LOPEZ, ANGEL AUGUSTO | A-Number: [redacted] | Docket Date: 10/3/2025

Next Hearing Information

Your upcoming **MASTER** hearing is on **November 4, 2025** at **9:00 AM**.
JUDGE
Chen, Shana W.
COURT ADDRESS
625 EVANS STREET
ELIZABETH, NJ 07201

Court Decision and Motion Information

This case is pending.

BIA Case Information

No appeal was received for this case.

Court Contact Information

If you require further information regarding your case, or wish to file additional documents, please contact the immigration court.
COURT ADDRESS
625 EVANS STREET ROOM 148A
ELIZABETH, NJ 07201
PHONE NUMBER
(908) 787-1355

40. Petitioner's detention has caused severe financial, medical, and emotional hardship for his family. Before Petitioner's detention, his income was the family's main source of support, for his household in New Jersey and for his father, stepmother and daughter in Honduras. His absence has left all of them in economic distress. His wife struggles to manage household expenses

alone, as her limited babysitting income is insufficient to cover their basic needs. Petitioner's nineteen-year-old son continues to reside with his stepmother, but his limited part-time earnings are not enough to sustain the family. Petitioner's wife suffers from asthma, arthritis, and blood sugar complications. Since Petitioner's detention, her asthma symptoms have intensified and she has developed red, blotchy skin flare-ups consistent with anxiety-related reactions. Petitioner's son has also been experiencing frequent headaches and vision issues that may indicate elevated blood pressure (a possibly a hereditary condition).

41. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *See Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to file a motion for release on bond. Exhaustion of administrative remedies would therefore be futile.

FIRST CLAIM FOR RELIEF:
Declaratory Judgment

42. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

43. Petitioner requests a declaration from this Court that he is not an applicant for admission "seeking admission" or "an arriving alien" subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2), and that his current detention by Respondents is proper, if at all, only under 8 U.S.C. § 1226(a).

44. For those individuals encountered in the interior of the United States, 8 U.S.C. § 1226(a) has been "the default rule" for discretionary detention of those "already present in the United States," during their removal proceedings. *Jennings,* 583 U.S. at 303. *See also Abreu v. Crawford,* 2025 WL 51475, at *3 (E.D. Va. Jan 8, 2025) ("There is a statutory distinction between noncitizens who are detained upon arrival into the United States and those who are detained after they have already entered the country, legally or otherwise.") Respondents' new interpretation of

Sections 1225(b)(2) is fundamentally flawed: it ignores key statutory language, renders whole sections of Section 1226(c) nugatory, and ignores decades of settled practice without good reason.

A. Respondents' new interpretation of 8 U.S.C. § 1225(b)(2), the mandatory detention statute, ignores key statutory language.

45. As opposed to 8 U.S.C. § 1226(a), 8 U.S.C. § 1225(b) governs detention at or near the borders of the United States. Section § 1225 applies to "applicants for admission" who are defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States ... shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Section 1225(b)(1) dictates the mandatory detention of a subset of "arriving aliens" who present for admission at ports of entry or pass credible fear interviews, neither of which is relevant here. "Section 1225(b)(2) applies to all other applicants for admission." *Jennings*, 583 U.S. at 287 (explaining that §1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)"). *See also Hasan*, 2025 WL 2682255, at *5.

46. Mandatory detention under 8 U.S.C. § 1225(b)(2) applies to an applicant for admission when "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." The statute defines "admission" as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). Respondents policy and interpretation requires that all applicants for admission present in the U.S. are necessarily "seeking admission."

47. However, the statutory text of "seeking admission" must do some work or it is rendered mere surplusage in the statute and interpreted out of meaning. *Corley v. United States*, 556 U.S. 303, 314 (2009). First, the statute defines an applicant for admission as an individual present who has not been admitted. Respondents would argue that by simply being in the U.S.

without being admitted is in fact to be actively seeking admission into the U.S., but this empties the statutory requirement of "seeking admission" of any meaning. All applicants for admission are already subject to § 1225(b)(2), therefore "seeking admission" must require something different.

48. The definition of an "admission" requires an entry, lawful means, and "inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). This means mandatory detention under § 1252(b)(2) is required for those applicants for admission who are "seeking [lawful entry of into the U.S. after inspection and authorization by an immigration officer] and not clearly entitled to be admitted." But for those individuals (like Petitioner) already present in the United States, they are not necessarily seeking *another* entry. Many are simply seeking lawful status, without transiting the border anew. Several lawful statuses available to individuals already present in the United States do not require an admission (or entry) as part of their eligibility requirements yet would still result in lawful status in the United States. *See, e.g.*, 8 U.S.C. § 1158(a)(1) ("Any alien who is physically present in the United States *or who arrives* in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum[.]"); 8 U.S.C. § 1229b(b)(1)(A) (cancellation of removal and adjustment of status for a noncitizen who "has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application"). These applications involve lawful means and an inspection and authorization by an immigration official, but do not require *entry*. So it must be possible under the statute to be an "applicant for admission" yet not necessarily "seeking admission" if they are already present in the United States. Moreover, "even if petitioner could be deemed "an applicant for admission," under § 1225(a)(1), as respondents claim, she does not meet the requirements of § 1225(b)(2),

because she was never "seeking entry" nor inspected by immigration officials." *Zumba v. Bondi*, 2025 WL 2753496 at *8.

49. Because "seeking admission" requires also seeking *entry* into the United States, this situates 8 U.S.C. § 1225(b)(2) back at the border (rather than the interior), as it has been understood to apply for decades. "As noted, § 1225(b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297.

B. Respondents' new interpretation of 8 U.S.C. § 1225(b)(2) would render surplusage other bases of detention under 8 U.S.C. § 1226(c).

50. Respondents' re-interpretation of 8 U.S.C. § 1225(b)(2) would not only void language in its own subsection but also render meaningless entire other bases for detention under 8 U.S.C. § 1226, including §§ 1226(c)(1)(A), (D), and (E). Because of this, Respondents' re-interpretation cannot be correct. "One of the most basic interpretive canons is that a statute should be construed so that effect is given to all its provisions, and no part will be inoperative or superfluous, void or insignificant." *Hasan*, 2025 WL 2682255, at *8, citing *Corley v. United States*, 556 U.S. 303, 314 (2009). "If an interpretation of one provision 'would render another provision superfluous, courts presume that interpretation is incorrect.'" *Id.*, citing *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). This presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386, (2013).

51. Section 1226(c) allows for detention of various classes of criminal aliens, including any alien who "(A) is inadmissible by reason of having committed any offense covered in section 1182 of this title." Or "(D) is inadmissible under section 1182(a)(3) of this title…" Or the most recently added sections pursuant to the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3

(2025); 8 U.S.C. § 1226(c)(1)(E). "The LRA amendments mandate detention for noncitizens charged as inadmissible under Sections 1182(a)(6)(A) (the inadmissibility ground for a noncitizen "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (the inadmissibility ground for misrepresentation), or 1182(a)(7) (the inadmissibility ground for lacking valid documentation) *and* if the noncitizen has been arrested for, charged with, or convicted of certain crimes. *Id.*" *Rodriguez*, 779 F. Supp. 3d at 1246. "This mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Hasan*, 2025 WL 2682255, at *8.

C. Decades of practice in applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the United States is evidence of the agency's prior view.

52. Lastly, the agency's decades of practice applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the United States remains a persuasive indicator as to the broader interpretation of the statutory detention scheme. "[A]s the Supreme Court explained in *Loper Bright*, cases dating back centuries have considered "the longstanding practice of government" as they would "any other interpretive aid." *Rodriguez*, 779 F. Supp. 3d at 1251, citing *Loper Bright*, 603 U.S. at 386; *see also Zumba*, 2025 WL 2753496, at *9 (same). At the time of the statutes' enactment, it was understood that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." *Rodriguez*, 779 F.Supp.3d at 1260-61, citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

53. Respondents' new position was announced for the first time on July 8, 2025, after decades of interpretation and implementation to the contrary. By the policy's own language, ICE

announced a sea-change for immigration detention. "Effective immediately, it is the position of DHS that such aliens are subject to detention under [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)]." *Id*. DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id*.

54. The Board's decision in *Yajure Hurtado* was its first to take the position that 8 U.S.C. § 1225(b)(2) applied to all individuals present without having been inspected and admitted. 29 I. & N. Dec. at 216. Indeed, in an unpublished decision just one year prior, the Board stated that it was "**unaware of any precedent** stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here." *Rodriguez*, 779 F. Supp. 3d at 1261.

55. Lastly, the LCA was enacted by Congress less than a year prior to the announcement of this new detention policy, when ICE was still applying § 1226(a) to individuals who had entered the United States without inspection. "Another 'customary interpretive tool' is the principle that '[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,' courts 'generally presume the new provision should be understood to work in harmony with what has come before.'" *Rodriguez*, 779 F.Supp.3d at 1259, citing *Monsalvo Velazquez v. Bondi*, 604 U.S. --, 145 S.Ct. 1232 (2025).

56. For these reasons, Respondents' interpretation of § 1225(b)(2) should be set aside, and Petitioner should be found eligible for a bond hearing under § 1226(a).

SECOND CLAIM FOR RELIEF:
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)

57. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

58. Respondent's policy states that only those admitted to the United States may be subject to discretionary detention. However, Respondents' July 2025 policy cites no statutory

authority for this assertion. Further, "§ 1226(a) does not include any language restricting its application to noncitizens who were admitted to the United States." *Zumba*, 2025 WL 2753496, at *8. Since Petitioner is not or "an arriving alien" (subject to 8 U.S.C. § 1225(b)(1)) or an applicant for admission "seeking admission" (subject to 8 U.S.C. 1225(b)(2)), and has no disqualifying criminal arrests or convictions (subject to 8 U.S.C. § 1226(c)), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

59. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a bond redetermination hearing in front of an immigration judge.

THIRD CLAIM FOR RELIEF:
Detention in Violation of Due Process

60. Petitioner re-alleges and incorporates by reference paragraphs 1-41.

61. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

62. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of several years. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and has a liberty interest in freedom from physical restraint.

63. The District of New Jersey recently addressed the question of whether the government violates due process by holding noncitizens subject to Section 1226(a) detention without the right to a bond hearing before an Immigration Judge, and found that it did. *Zumba*, 2025 WL 2753496, at *10. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*, citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

64. As the *Zumba* court explained, procedural due process claims are subject to the *Mathews* test, which balances the nature of the private interest involved, the risk of erroneous deprivation and the probative value of additional process, and the Government's interest. *Id.*, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976). On the first and second prongs, the *Zumba* court held "the first and second *Mathews* factors weigh heavily in petitioner's favor, as she has been deprived of her liberty, erroneously subjected to mandatory detention under § 1225 during her removal proceedings, and denied due process protections, including the right to seek bond." 2025 WL 2753496, at *10. *See also Chogllo Chafla,* 2025 WL 2688541, at *11 (explaining that "these types of factual determinations are properly decided by an Immigration Judge after a detention hearing, and only highlight the need for a hearing with properly allocated burdens to explore the risk, or lack thereof, that a noncitizen may pose to flight or dangerousness.") Indeed, since the purpose of immigration detention is to reduce flight risk and danger to the community, *see Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), it seems self-evident that a review hearing before an administrative law judge would reduce the risk of erroneously confining a noncitizen who in fact poses neither risk. *See also Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025) ("The purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people are ultimately detained.").

65. The *Zumba* court further held that the third factor favored the petitioner "as neither the government nor the public has a significant interest in detaining a long-term resident of the United States with no criminal history who is participating in cancellation of removal proceedings, which are civil in nature." *Id. See also Chogllo Chafla* 2025 WL 2688541, at *10 (the government

cannot have an interest in detention for detention's sake alone). The government cannot claim excessive burden when it is merely being asked to provide a procedure that it routinely provided in cases of this nature for decades without complaint. *Hyppolite*, 2025 WL 2829511, at *15 ("[U]ntil recently, the government has long provided noncitizens with bond hearings before detention pursuant to § 1226(a), and there is an established process for doing so that DHS can readily follow here. By contrast, the fiscal and administrative burdens of keeping Hyppolite — who the record suggests is not a flight risk nor a danger to the community — detained are extremely high.").

66. In the end, Respondents cannot dispute that if Petitioner is subject to Section 1226(a), he is entitled to an Immigration Judge bond hearing under the statute and regulations. Even taking at face value the statement of the Supreme Court in *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," it is clear that Congress intended Petitioner to have access bond pursuant to 8 U.S.C. § 1226(a); that is the process that Petitioner is due.

67. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of his rights without due process of law.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enters an order:

a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioners' detention in fact and in law, forthwith;

b) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;

c) Declare that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. § 1225(b);

d) Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights;

e) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);

f) Order that Respondents conduct bond hearings for Petitioner pursuant to 8 U.S.C. § 1226(a) within 15 days;

g) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;

h) Award Petitioner his costs of suit; and

i) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: October 24, 2025

/s/Stephanie E. Gibbs

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Division

ANGEL AUGUSTO ROMERO LOPEZ, *Petitioner*, v. KRISTI NOEM, *et al.* *Respondents.*	Civil Action No.

INDEX OF EXHIBITS

Ex. 1) ICE Notice to Appear.

Ex. 2) Asylum Receipt Notice.

Ex. 3) Cancellation of Removal (EOIR 42B) Filing Fee Notice.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, electronically filed the foregoing Petition for Writ of Habeas Corpus, with the Clerk of the Court by using the CM/ECF system. I further certify that a copy of this Petition for Writ of Habeas Corpus, and all attachments thereto, will be delivered via PACER to:

Civil Process Clerk
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970 Broad Street, 7th Floor
Newark, NJ 07102

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U.S. Department of Homeland Security
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Washington, DC 20528-0485

Pamela Bondi
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Newark, NJ 07105

Respectfully submitted,

Date: October 24, 2025

/s/Stephanie E. Gibbs

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