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

ANGEL AUGUSTO ROMERO LOPEZ, *Petitioner*, v. KRISTI NOEM, Secretary of Homeland, Security et al., *Respondents.*	)	Civil Action No. 2:25-cv-16890

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

For nearly three decades, Respondents recognized without controversy that an individual like Petitioner, who was detained in the interior of the United States for immigration removal proceedings years after entering, was properly detained pursuant to 8 U.S.C. § 1226(a) – and thus entitled to a bond hearing before an immigration judge. Now, suddenly, Respondents consider Petitioner to be an applicant for admission "seeking admission" to the United States pursuant to 8 U.S.C. § 1225(b)(2) – and therefore subject to mandatory detention without bond. Respondents' recent legal interpretation has been rejected by a considerable number

of District Courts, including by other jurists in this District.[1] [2] This Court should reject Respondents' unlawful re-interpretation as well.

FACTS AND PROCEDURAL HISTORY

Petitioner is a citizen of Honduras. Pet. ¶ 34, ECF No. 1. He entered the United States without inspection between ports of entry in 2003, and was not encountered by immigration officers nor issued a Notice to Appear ("NTA") at that time. *Id.* Fifteen years after his entry, Petitioner was apprehended by immigration officers on April 4, 2018, and issued an NTA, commencing removal proceedings. Pet. ¶ 36; *see* ECF No. 1-1 ICE Notice to Appear. Petitioner was released from custody. *See* ECF

[1] *See Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *and De Fatima Lomeu v. Soto*, 2025 WL 2981296 (D.N.J. Oct. 23, 2025).

[2] *See also, e.g.*, *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); *Hernandez Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

No. 5-1, ICE Form I-213 at 4 ("Immigration History: A# 208-111-448. 04/24/2018 – Arrested by USBP for illegal entry. Notice to Appear Released, Proceedings Terminated.") As relief, Petitioner applied for asylum and cancellation of removal. *See* ECF No. 1-2, Asylum application receipt, *and* ECF No. 1-3, Cancellation of Removal (EOIR 42B) filing fee receipt. These removal proceedings were subsequently terminated. *See* Form I-213 at 4.

Seven years later (and twenty-two years after his entry) on September 29, 2025, Petitioner encountered immigration officials following a traffic stop. Pet. ¶ 37; Answer, ECF No. 5, at 5. He was arrested by ICE agents and subsequently placed in immigration detention. *Id.* ICE issued a second NTA, commencing a new round of removal proceedings against Petitioner. *Id.*, *see also* ECF No. 5-1.

Respondents now consider that the Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216; s*ee* Ans. 1. Accordingly, it would be futile for Petitioner to request bond from an Immigration Judge. Petitioner filed the instant petition for a writ of habeas corpus on October 24, 2025 (ECF No. 1), along with an order to show cause (ECF No. 2). That same day, the Court directed the Respondents to answer within three days, and for Petitioner to reply within 5 days of their answer. ECF No. 3. Respondents answered the petition on October 27, 2025. ECF No. 5. Petitioner herein timely replies.

ARGUMENT

I. PETITIONER WAS PREVIOUSLY RELEASED PURSUANT TO 8 U.S.C. § 1226(a) AND RESPONDENTS DO NOT RESCIND, CORRECT, OR AMEND THAT DETERMINATION.

Petitioner was already apprehended and released under 8 U.S.C. § 1226(a), a determination that ICE has not corrected or amended, which compels the same authority to be applied to Petitioner today. As Respondents have outlined, if someone is subject to detention under 8 U.S.C. § 1225(b), the only form of release that is authorized is a parole pursuant to 8 U.S.C. § 1182(d)(5). Ans. 3; *see also* Pet. ¶ 17. While Respondents have evidenced that Petitioner was apprehended in 2018 and released by ICE, they do not allege or provide documentation that Petitioner was paroled. *See* I-213 at 4 ("Immigration History"). The only remaining basis for the far more common "release on recognizance" is ICE's authority under 8 U.S.C. § 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018); *see e.g. De Fatima Lomeu*, 2025 WL 2981296, at *1 (a release on recognizance is pursuant to INA § 236 [8 U.S.C. § 1226]).

This District recently decided a similar matter and held that a petitioner who was previously detained and released under § 1226(a) remained subject to that same detention authority. "Courts have given great weight to the manner in which DHS treated the petitioner in determining which detention statute applies." *Zumba*, 2025 WL 2753496, at *9 (citing *Lopez Benitez*, 2025 WL 2371588); *see also Quispe-*

Ardiles v. Noem, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *6 (E.D. Va. Sept. 30, 2025) (same).

Now, twenty-years after entry and seven years after Petitioner's initial apprehension, ICE has commenced new removal proceedings and argues that Petitioner is in fact subject to mandatory detention under 8 U.S.C. § 1225(b)(2) as an applicant for admission. ICE does not correct or amend their prior authority to detain or release Petitioner in 2018. Per the July 2025 ICE memo announcing their new policy, they need not bother. Pet. ¶ 23. However, this is more than a question of correcting old paperwork. ICE previously determined that their authority to detain was discretionary, necessarily so, because they released Petitioner from custody absent a parole.

Today, ICE would treat Petitioner as if he is still standing at the border during his initial entry twenty-two years ago. But Petitioner is not. Because "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission and those who are within the Unites States after an entry, *irrespective of its legality,"* this Court should not subject Petitioner to less process now than he was afforded during his previous immigration apprehension in 2018. *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added). *See also Quispe Ardiles*, 2025 WL 2783800, at *13, citing *Hasan*, 2025 WL 2682255, at *8 ("Given this precedent, it is 'doubtful that Congress intended § 1225(b)(2) to

apply' to individuals like Mr. Quispe-Ardiles who were detained after being present in the U.S. for several years, who had not committed any crimes, and who had attended every required meeting with immigration officials."). This Court should decline to adopt Respondents erroneous interpretation of § 1225(b)(2).

II. PETITIONER IS SUBJECT TO DETENTION UNDER 8 U.S.C. § 1226(a) AUTHORITY.

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

Respondents do not dispute that Respondents' new interpretation of 8 U.S.C. § 1225(b)(2) renders portions of 1226(c) surplusage. Pet. ¶¶ 50-51; Ans. *generally*. Respondents do not dispute that 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. Pet. ¶¶ 52-56; Ans. *generally*. Respondents only challenge Petitioner's argument that Respondents' new interpretation of 8 U.S.C. § 1225(b)(2), the mandatory detention statute, ignores key statutory language, namely the requirement that the individual be "seeking admission" at the time they are subjected to detention. Pet. ¶¶ 45-49; Ans. 9-12.

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

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.

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." Separately, the Immigration and Nationality Act 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 argue that Petitioner is subject to mandatory

detention because Petitioner is an applicant for admission and all applicants for admission present in the U.S. are necessarily "seeking admission." Ans. at 9.

However, the textual requirement 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 argue that "[b]y simply being in the U.S. without being admitted, Petitioner is in fact actively seeking admission into the U.S." Ans. at 9. But this argument 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.

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 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.

Respondents argue a different definition of "seeking admission" applies, citing *Matter of Lemus*. Ans. 9. However, *Lemus* is a nonbinding BIA decision that examined whether 8 U.S.C. § 1255(i) could waive unlawful presence as when triggered by a prior departure (the Board held it could not). 25 I. & N. Dec. 734, 742-744 (BIA 2012). To the extent *Lemus* touches on what constitutes "seeking admission" and purports to equate applicants for admission with "seeking admission," this Court owes little deference to the agency's reasoning and should decline to extend that interpretation for the reasons stated above. *Loper Bright Enters. v.*

Raimondo, U.S. 369, 412 (2024).

Respondents argue that "seeking admission" does not modify or limit the broader category of "applicants for admission." Ans. 9-10. Respondents reason that because an individual could be "seeking admission" to the United States either domestically or abroad, and therefore "applicants for admission" is the limiting clause that "avoids the conclusion that the subjection would apply to those abroad; say in an embassy." Ans. 10. This reasoning defies basic logic. ICE is a subagency of the U.S. Department of Homeland Security, with domestic authority to enforce U.S. immigration laws. The supposition that Congress would have crafted this mandatory detention statute to avoid confusion at embassies has no legal basis whatsoever, nor to Respondents cite any authority for this rationale. Respondents' reasoning arrives at the same place that it starts – that all applicants for admission are necessarily seeking admission. Ans. 11. Thus, Respondents' interpretation necessarily reads the "seeking admission" requirement out of the statute.

The parties agree that until 5 months ago, § 1225(b)(2) applied primarily to individuals at or near the U.S. border. Because "seeking admission" requires also seeking *entry* into the United States, the clearest reading of this statute 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. As explained in *Zumba*, § 1225(b)(2) "plainly contemplates present affirmative conduct by 1) a noncitizen who is "seeking admission" and 2) and an inspecting immigration official who must determine whether that individual is entitled to admission to the United States." 2025 WL 2753496, at *8; *see also Martinez v. Hyde*, -- F.Supp.3d --, 2025 WL 2084238, at *2 (D. Mass. Jul. 24, 2025) (same).

Respondents' other cited authority is not persuasive. Respondents mistakenly rely on *Pipa-Aquise v. Bondi*, 2025 WL 2490657 (EDVA Aug. 5, 2025) to argue that Petitioner is an applicant for admission and his detention is mandatory. Ans. 7. However, *Pipa-Arquise* concerned an individual who had been paroled into the United States – there is no such assertion by Respondents in this case. *Id.* at *1. For this, Respondents also cite *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025). Ans. 7. However, the reasoning in *Pena* overlooked an essential element of § 1225(b)(2) detention – that the applicant is "seeking admission" – and has been declined to be followed by subsequent district court decisions considering this issue. *Id., see e.g. Rodriguez v. Bostok*, -- F. Supp 3d. --, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). Respondents note that the Board has issued a precedential decision adopting ICE's policy re-interpreting § 1225(b)(2) in *Matter of Yajure Hurtado*. Ans. 7. "Notably, this Court need not defer to the September 5, 2025 BIA decision, *Matter of Yajure Hurtado*, and its newly-minted interpretation of § 1225(b)(2)(A)." *Zumba*,

2025 WL 2753496, at *9, citing *Loper Bright*, 603 U.S. at 400-01.

Moreover, Respondents' reasoning appears to go further, reading an additional requirement into 8 U.S.C. § 1226(a). Ans. 11 ("In other words, [§ 1226(a)] applies to any noncitizen who was admitted but then something happened that made them deportable under § 8 U.S.C. § 1227(a)."). Unfortunately, § 1226(a) provides no such requirement that one be "lawfully admitted", but simply that on a warrant "*an alien* may be arrested and detained pending a decision on whether the alien is to be removed from the United States," [emphasis added]. This is what *Jennings* described as a the "default rule" for detention in the interior of the United States. 603 U.S. at 488. Notably, that warrant may be issued prior to or after apprehension. 8 C.F.R. § 287.3(d). Just as basic cannons of statutory interpretation require each word of a statute be given interpretative effect, so to are courts prohibited from reading in additional words by interpretation. *Ambulance Ass'n of Pennsylvania v. Highmark, Inc.*, 464 F. App'x 63, 67 (3d Cir. 2012), citing *Commonwealth v. Rieck Inv. Corp.,* 419 Pa. 52, 213 A.2d 277, 282 (1965) ("Yet it is not for the courts to add, by interpretation, to a statute, a requirement which the legislature did not see fit to include.") This Court should decline to apply Respondents' torturous reading of § 1225(b)(2) and § 1226(a) to the instant petition.

B. Petition is present and is not "seeking admission."

Petitioner was apprehended in 2018, fifteen years after his first entry; Respondents then issued an NTA and released him from custody. Pet. ¶ 36; Form I-213 at 4. Petitioner sought relief from the removal in the form of asylum (8 U.S.C. § 1158(a)(1)) and cancellation of removal (8 U.S.C. § 1229b(b)(1)(A)). Pet. ¶ 36. These removal proceedings were subsequently terminated. Form I-213 at 4. Even if Respondents could made out a case that Petitioner was seeking admission in the years between his entry and initial apprehension (which Petitioner does not concede), Respondents' argument would fail following the termination of those initial removal proceedings.

In the interim years since his entry, Petitioner has developed significant ties to the community, as demonstrated first and foremost by his family. Pet. ¶ 40. Petitioner's eligibility for relief under cancellation of removal turns on these familial ties and requires at least 10 years of continuous physical presence. 8 U.S.C. § 1229b(b)(1)(A). Notably, neither cancellation of removal nor asylum require that Petitioner effectuate an "entry" in order to be statutorily eligible. *Id., see also* 8 U.S.C. § 1158(a)(1)). While an admission requires "a lawful entry," none of the relief that Petitioner seeks requires an entry of any kind. Accordingly, Respondents' argument that Petitioner is necessarily seeking admission because he is present in the United States must fail.

III. RESPONDENTS' DEPRIVATION OF BOND HEARINGS FOR PETITIONER VIOLATES CONSTITUTIONAL DUE PROCESS.

In response to Petitioner's due process argument (Pet. ¶¶ 60-67), Respondents argue that because Petitioner is "applicant for admission" he is subject to mandatory detention and receives only the process the statute affords him. Ans. 13-14. For the reasons stated above, and in the Petition, Petitioner is not subject to mandatory detention under § 1225(b)(2). Citing *Pena,* Respondents reason that "applicants for admission are entitled only to those rights and protections that Congress set forth by statute." 2025 WL 2108913, at *2, citing *Thursaissigiam*, 591 U.S. at 140. However, *Thursaissigiam* was a matter that concerned the rights of arriving aliens, who are unquestionably subject to mandatory detention pursuant to § 1225(b)(1), which Respondents do not allege against Petitioner here.

The other cases cited by Respondents are unpersuasive as they raise challenges to prolonged detention, which Petitioner does not allege here. Rather, as Petitioner is unlawfully detained because he is denied access to a bond hearing. The District of New Jersey in *Zumba* provides a more persuasive analysis on point. 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).

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. 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.*

In the end, Respondents do not dispute that if Petitioner is subject to § 1226(a) detention, he is entitled to a bond hearing before an Immigration Judge under the statute and regulations. Ans. 15. This is the process that Petitioner is due and all that he seeks before this Court.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus should issue. This Court should declare that Petitioner is properly detained by Respondents (if at all) pursuant to 8 U.S.C. § 1226(a), and should order Respondents to provide Petitioner with a bond hearing in front of an Immigration Judge within 15 days.

Respectfully submitted,

Date: November 3, 2025

/s/Stephanie E. Gibbs

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

Date: November 3, 2025

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