UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

**NELSON ISAIAS RIVAS ALONSO**

Petitioner,

Case No. 25-cv-1660

v.

**SAM OLSON**, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General; **U.S. DEPARTMENT OF HOMELAND SECURITY; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;** and **SCOTT SMITH,** Jail Administrator of Dodge County Jail,

Respondents.

## PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitoner Nelson Isaias Rivas Alonso entered this country in 2013, at age 17. (ECF No. 1, ¶ 42). Shortly after, ICE took him into custody, identified him as an unaccompanied minor (UAC), and transferred him to the Office of Refugee Resettlement (ORR) pursuant to the Trafficking Victims Protection and Reauthorization Act ("TVPRA"), 8 U.S.C. § 1232. (ECF No. 1, ¶ 43, 47). ORR then sent the petitioner to live in the home of a family member (ECF No. 1, ¶ 48). Mr.

Rivas Alonso has lived in the United States ever since. He has established a business, purchased a home, and started a family. His wife and child are U.S. citizens. (ECF No. 1, ¶ 65). He has no criminal record apart from traffic violations. (ECF No. 1, ¶ 57). He was arrested and detained in the summer of 2025. He attended a hearing before an immigration judge, who found that he was not a danger to the community and was not a flight risk. (ECF No. 1, ¶ 61). The immigration judge indicated that but for current case law from the board of immigration appeals, he would have granted petitioner bond between $3000 and $5000. (ECF No. 1, ¶62). Respondents do not dispute any of these facts.

Instead, Respondents' oppose Mr. Rivas Alonso's habeas petition on the basis of legal arguments that have now been rejected with overwhelming consistency by U.S. District Courts in the Seventh Circuit and across the country. For the reasons set forth in Mr. Rivas Alonso's Petition for Writ of Habeas Corpus (ECF No. 1) and those set forth below, this Court should join the chorus of District courts rejecting Respondents' arguments and grant Petitioner the habeas relief he seeks.

## I. PETITIONER'S CASE IS GOVERNED BY § 1226(a).

As set forth in the Petition, Mr. Rivas Alonso remains in detention without the opportunity for bond because Respondents have upended a decades-old understanding of the Immigration and Naturalization Act (INA). Specifically, Respondents have taken the position that people arrested by ICE after living for years in the United States are "seeking admission" for purposes of the INA and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). (ECF No 1,

¶ 33). In taking this position, Respondents reversed a years-old agency practice of detaining such individuals under 8 U.S.C. § 1226(a) and providing such individuals bond hearings unless their criminal history rendered them ineligible. (ECF No 1, ¶¶ 25, 31, 34). Federal district courts across the country have rejected Respondents' reinterpretation of these statutes. (ECF No. 1, ¶ 25). Respondents in their brief attempt a defense of their position, but their arguments have already been heard and rejected by courts across the country.

**a. The overwhelming majority of courts across the country and in the Seventh Circuit have rejected Respondents' interpretation of the immigration and nationalization act.**

Respondents assert that the "pendulum of federal courts have begun to swing in [their] favor" on the interpretation of §§ 1225(b); they cite five district court cases in support of this assertion. ECF No. 14 at 9. Only one of these cases—*Cirrus Rojas v. Olson,* Case No. 25-cv-1437-bhl, 2025 U.S.Dist. LEXIS 213983 (E.D. Wis. Oct 30, 2025)—is from a district court in the Seventh Circuit. And *Rojas* is the lone exception, vastly outweighed by the number of cases from district courts in the Seventh Circuit that have rejected Respondents interpretation and found § 1226(a) applicable to those in Petitioners position. *Guaita Quinapanta v. Bondi,* No. 25-cv-795-wmc, 2025 U.S. Dist. LEXIS 223351, at *18, fn. 8 (W.D. Wis. Nov. 12, 2025). *See also Leon v. Forestal,* 1:25-cv-1774, 2025 U.S. Dist. LEXIS 185527, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Alejandro v. Olson,* No. 1:25-cv-2027, 2025 U.S. Dist. LEXIS 201543, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025*); Ochoa Ochoa v. Noem,* No. 25-cv-10865, 2025 2938779, 2025 U.S. Dist. LEXIS 186629*;* H.G.V.U. v.

Smith, No. 25-cv-10931, 2025 U.S. Dist. LEXIS 205993, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Padilla v. Noem,* No. 25-cv-12462, 2025 U.S. Dist. LEXIS 207945, 2025 WL 2977742 (N.D. Ill. Oct. 22, 2025); *Patel v. Crowley,* No. 25-cv-11180, 2025 U.S. Dist. LEXIS 209958, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025); *Sanchez v. Olson,* No. 25-cv-12453, 2025 U.S. Dist. LEXIS 211062, 2025 WL 3004580 (N.D. Ill. Oct. 27, 2025); *Ramirez Valverde v. Olson,* No. 25-cv-1502, 2025 U.S. Dist. LEXIS 213128 (E.D. Wis. Oct. 29, 2025); *Kamalpreet Singh v. Pamela Bondi U.S. Att'y,* No. 1:25-cv-2101, 2025 U.S. Dist. LEXIS 214082, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025); *Valencia v. Noem,* No. 25-cv-12829, 2025 U.S. Dist. LEXIS 215007, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Flores v. Olson,* No. 25-cv-12916, 2025 U.S. Dist. LEXIS 215939, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025)

Respondents present a statutory interpretation argument that closely tracks the analysis of the *Cirrus Rojas* court. (ECF No. 14 at *6-8). *Compare Cirrus Rojas,* 2025 U.S.Dist. LEXIS 213983 at *21-23. They point to U.S.C. § 1225(a)(1) and assert that "under [its] plain terms, all unadmitted foreign nationals in the United States are applicants for admission,' regardless of extraneous factors such as proximity to the border, length of time present, or subjective intent to apply for admission." (ECF No 14 at *7). However, as numerous district courts have held, the court must consider § 1225 in context and apply traditional rules of statutory interpretation. *POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 112, 134 S. Ct. 2228, 189 L. Ed. 2d 141 (2014), *cited in Guaita Quinapanta,* 2025 US Dist. LEXIS 223351 at *10. In ascertaining a statute's plain meaning, a court "must look to the

particular statutory language at issue, as well as the language and design [*11] of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S. Ct. 1811, 100 L. Ed. 2d 313 (1988). Further, unless words are otherwise defined, they "will be interpreted as taking their ordinary, contemporary, common meaning." *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227, 134 S. Ct. 870, 187 L. Ed. 2d 729 (2014) (citation omitted). And while courts need not defer to an agency's interpretation of the law it is directed to enforce where a statute is ambiguous, they may refer to "interpretations of those responsible for implementing the particular statutes" when exercising their independent judgment as to the meaning of statutory provisions. Applying these principles, courts across the country have rejected arguments like those made by Respondents and ordered bond hearings for noncitizens who, like petitioner, were apprehended in the United States years after entering. These courts have concluded that "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" support its application to noncitizens in petitioner's position. *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S. Dist. LEXIS 201967, (S.D. Tex. Oct. 7, 2025) (citations omitted); Vazquez v. Bostock, No. 3:25-cv-5240, 2025 U.S. Dist. LEXIS 193611, at *1 n.3 (W.D. Wash. Sept. 30, 2025) (collecting cases and noting that "[e]very district court to address" the issue "has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice"); *Guaita Quinapanta* 2025 U.S. Dist. LEXIS 223351, at *16-17.

**b. Petitioner's right to a bond hearing under § 1226(a) is reinforced by the fact that he entered the country as an unaccompanied minor following the procedures of the TVPRA.**

Respondents correctly note that Petitioner was apprehended upon entry and insinuate without explanation that this fact somehow affects his right to a bond hearing under § 1226(a). (ECF No. 14 at *2). As noted in his petition, Petitioner entered the country as an unaccompanied minor ("UAC"). (ECF No. 1 at *42). Congress has established a different legal framework for the care and custody of "unaccompanied alien children" — defined as children under age eighteen, who have no lawful immigration status in the United States and no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2). Except in certain exceptional circumstances, unaccompanied minors apprehended by immigration officials are transferred to the custody of HHS. 8 U.S.C. § 1232(b)(3). ORR, an office within a division of HHS, is thereafter responsible for, among other things, "coordinating and implementing the care and placement" of such children. 6 U.S.C. § 279(a)-(b)(1)(A). Congress has established that these children "shall be promptly placed in the least restrictive setting that is in the best interest of the child" and that "[i]n making such placements, the Secretary [of HHS] may consider danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). Petitioner was released into the country pursuant to this process. (ECF No. 3-1 at *3).

Every District court to consider the question has determined that an individual released into the country pursuant to the UAC procedures set forth in § 1232 is not subject to mandatory detention under § 1225. *See Salvador v. Bondi*, No. 2:25-cv-07946-MRA-MAA, 2025 U.S. Dist. LEXIS 211770, at *20 (C.D. Cal. Sep. 2, 2025); *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO (HC), 2025 U.S. Dist. LEXIS 183995, at *9 (E.D. Cal. Sep. 18, 2025); *Torres v. Wamsley*, No. C25-5772 TSZ, 2025 U.S. Dist. LEXIS 199538, at *10-11 (W.D. Wash. Oct. 8, 2025); *Domingo v. Castro*, No. 1:25-cv-00979-DHU-GJF, 2025 U.S. Dist. LEXIS 206534, at *4, 10 (D.N.M. Oct. 15, 2025); *Godinez-Lopez v. Ladwig*, No. 2:25-cv-02962-SHL-atc, 2025 U.S. Dist. LEXIS 215076, at *2, 13 (W.D. Tenn. Oct. 31, 2025); *Martinez v. Hyde,* Civil Action No. 25-11909-BEM, 2025 U.S. Dist. LEXIS 222450, at *15 (D. Mass. Nov. 12, 2025).

## II. PETITIONER IS ENTITLED TO HABEAS RELIEF BECAUSE HIS CONTINUED DETENTION VIOLATES THE DUE PROCESS CLAUSE.

Petitioner is also entitled to habeas relief on the alternative ground that his continued detention without an individualized bond hearing deprives him of liberty without due process of law, in violation of the Due Process Clause of the Fifth Amendment.

### a. The *Mathews* factors weigh in favor of Petitioner's release.

Noncitizens like Petitioner "who have established connections in this country have due process rights in deportation proceedings." *Thuraissigiam*, 591 U.S. at 107; see also *Demore v. Kim*, 538 U.S. 510, 523 (2003) ("It is well established that

the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). Indeed, "[c]ourts in this circuit and across the country regularly grant habeas relief to alien detainees whose mandatory detention without bond pending removal is unconstitutional as applied to them." *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019).

In evaluating a procedural due process claim brought by a noncitizen detainee, courts within the Seventh Circuit apply the balancing test of Mathews v. Eldridge, 424 U.S. 319, 335(1976). See *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999); *Ruderman v. Kolitwenzew*, 459 F. Supp. 3d 1121, 1132 (C.D. Ill. 2020). Under Mathews, the Court weighs: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Ultimately, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Each of these factors weighs in Petitioner's favor.

First, Petitioner has a significant private interest in remaining free from detention. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due

Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has been living in the United States since 2013. He lives with his wife and child, has built ties within his community, and operates a small business. His continued detention at Dodge County Jail alongside those who have been accused or convicted of serious crimes is an extreme incursion on his liberty interest in remaining at home pending the outcome of his removal proceedings. Every hour he is detained is frightening and harms his mental well-being.

Second, the risk of an erroneous deprivation in this case is exceedingly high. Civil immigration detention, which is "nonpunitive in purpose and effect[,]" is ordinarily justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690. An immigration judge has already made findings that Petitioner is neither a flight risk nor a danger to the community. (ECF No. 1, ¶ 61). Respondents do not dispute the immigration judge's findings. It is therefore virtually certain that the deprivation of Petitioner's liberty is in error.

Third, the government's interest in detaining petitioner is low. *Rodriguez*, 2025 WL 2855193, at *7. In immigration court, custody hearings are routine and impose a "minimal" cost. *Id.* The government's interest is further diminished where a person does not have a criminal record. *Id.*

**b. Respondents rely on due process case law that is not applicable to this case.**

Respondents argue that petitioner is not entitled to the protections of the Due Process Clause, asserting that petitioner is an applicant for admission to the United

States and has only those rights regarding admission that Congress has provided by statute. ECF No. 14 at 10 (citing *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020)). Respondents cite various cases in support of this argument, but their argument is unpersuasive.

First, it fails to appreciate the distinction between persons already located inside the United States, like petitioner, and persons attempting to enter the United States, like the petitioner in *Thuraissigiam*. "It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001) (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784, 70 S. Ct. 936, 94 L. Ed. 1255 (1950)). "But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id*

Second, respondents' argument misconstrues the nature of the challenge that petitioner brings in this case, which is a challenge to his detention. *Thuraissigiam* held that a petitioner who was stopped at the border did not have any due process rights *regarding admission into* the United States. *Thuraissigiam*, 591 U.S. at 107. However, petitioner challenges his continuing unreasonable detention; he does not challenge any determination

regarding his admissibility. Other cases that the Respondents cite repeat this error. *See London v. Plasencia,* 459 U.S. 21, 32 (1982)(no due process rights as to admission or exclusion from the country); *United States ex. rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)(limited due process rights with respect to exclusion); *Licea-Gomez v. Pilliod,* 193 F.Supp. 577, 580 (N.D.Ill. 1960)(same). None of these cases bears on the interest at stake in this case. The Due Process Clause protects petitioner, a person inside the United States, from unlawful detention. *See Zadvydas,* 533 U.S. at 693.

Respondents also cite a series of cases in which courts have rejected due process challenges to mandatory detention under § 1226(c) of certain criminal noncitizen detainees who concede their removability. (ECF No. 14 at *11-12). *See Demore,* 538 U.S. at 528 (mandatory detention of a "criminal alien who has conceded that he is deportable, for the limited period of [the detainee's] removal proceedings" does not violate due process because such detention "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings"); *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999)("A criminal alien who insists on postponing the inevitable has no constitutional right to remain at large during the ensuing delay, and the United States has a powerful interest in maintaining the detention in order to ensure that removal actually occurs.").

These holdings do not extend to mandatory detention of *noncriminal* detainees with live defenses to removal. Unlike *Demore* and *Parra,* this case

involves a noncitizen who has not been found guilty of any crime, had been found to be a flight risk, and who is pursuing legitimate defenses to removal. The concerns over flight and criminal recidivism that motivated Congress to enact § 1226(c) are not present here. Notably, one district court has already distinguished *Demore* on this basis when holding that the Laken Riley Act amendments to § 1226(c)—which require mandatory detention of those who are merely *accused* of theft and other offenses—violate procedural due process. *See Doe v. Moniz,* Civil Action No. 1:25-cv-12094-IT, 2025 U.S. Dist. LEXIS 173360, at *2 (D. Mass. Sep. 5, 2025)). In the present case, Petitioner has not even been accused of any crime and does not have a criminal record. Due process therefore requires that he be provided with an individualized bond hearing before being deprived of his liberty interest in remaining in his community pending resolution of his removal proceedings.

## III. CONCLUSION

For the reasons stated, Petitioner is in custody in violation of federal law (the INA) and the Constitution (the Due Process Clause of the Fifth Amendment). Petitioner respectfully requests that the Court grant his petition for a writ of habeas corpus and order that Respondents release Petitioner from detention without any additional conditions or restraints upon payment of the bond of $3000 as indicated by the immigration judge, together with any other relief the Court deems proper.

Dated this 18 day of November, 2025.

Respectfully submitted,

*/s/ Elisabeth Lambert*
Elisabeth Lambert
State Bar No. 1114507
WISCONSIN EDUCATION LAW AND POLICY HUB, LLC.
845 N. 11th St.
Milwaukee, WI 53233
Phone: (414)232-6504
Email: elisabeth@wisconsinELPH.org

*Gabriela Parra*
State Bar No. 1093819
LAYDE & PARRA, SC
PO Box 1226 Milwaukee, WI 53201
Phone: (414) 488-1200
Email: gabriela@laydeimmigration.com