IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SEBASTIAN WILDER FLORES ROSALES, PETITIONER, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd Lyons, Acting Director of ICE; Pamela BONDI, U.S. Attorney General; Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Warden of ERO El Paso Camp East Montana, RESPONDENTS.	Case No. 3:25-cv-512 PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241, BY A PERSON SUBJECT TO UNLAWFUL DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, Sebastian Wilder Flores Rosales, is a native of Peru who last entered the United States when he was brought here as a minor in May or June 2003. He has not left the country since. Mr. Rosales has no criminal history and is a "dreamer" or "DACA kid" in every sense. Though he does not have a spouse or children of his own, Mr. Rosales serves as a financial provider for his sibling and parents. Mr. Rosales, like his family, actually resides in New York. Currently, however, Mr. Rosales is being detained in El Paso where he was arrested at the airport while on a domestic work trip. He has been and, without this Court's intervention, will continue to be detained in ICE custody without a bond hearing.

2. Almost thirty years ago Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, colloquially referred to as IIRIRA. In the nearly three decades since its passage, non-citizens who were found within the United States who had not been admitted or inspected by an immigration officer (colloquially referred to as "EWI") who were placed into removal proceedings were entitled to a bond hearing before a neutral immigration judge (IJ). And, provided they were not subject to "mandatory detention" because they were described in either 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h), such non-citizens were granted bond by IJs across the United States once it was determined they were neither a flight nor safety risk. Simply put, the fact that non-citizens were not subject to mandatory detention during removal proceedings on the basis of being EWI alone, was and still is, just that—a fact.

3. In January 2025, Congress—fully cognizant of this fact—passed the Laken Riley Act ("LRA") to expand the class of non-citizens present in the country without having been admitted who were subject to mandatory detention under § 1226(c). Specifically, the LRA made non-citizens who were present in the country without admission *and* had been charged with, arrested for, or convicted of burglary, theft, larceny, shoplifting, or assaulting a police officer, among those subject to mandatory detention under § 1226(c). To be clear, the only noncitizens who the LRA is applicable to are those who fall within the definition of an "applicant for admission" as by 8 U.S.C. § 1225(a)(1) and have been arrested, charged with, or convicted of, one the listed offenses. The LRA epitomized Congressional legislation which was unequivocally aimed at making a class of noncitizens subject to mandatory detention (i.e. not entitled to a bond hearing before an IJ)

who were not subject to mandatory detention under the INA as it stood for nearly three decades.

4. After decades of non-citizens who were AFA being granted bonds and the passage of the LRA, on July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected the well-established understanding of the statutory framework, reversed decades of practice, and rendered the LRA completely meaningless.[1] The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[2] claims that all non-citizen AFAs are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The Board of Immigration Appeals (BIA) issued a decision in *Matter of Hurtado*, 29 I & N Dec. 216 (BIA Sept. 5, 2025) rubberstamping this new policy on September 5, 2025. The BIA's decision in *Matter of Hurtado*, however, ignores countless long-standing cannons of statutory construction, agency practice for nearly three decades, and the due process clauses of the U.S. Constitution.

5. Recent weeks have seen numerous district courts granting habeas petitions filed by noncitizens being unlawfully detained by ICE without being provided the bond hearing proscribed by 8 U.S.C. § 1226(a) based on the seemingly unanimous rejection of the government's novel interpretation of 8 U.S.C. § 1225(b)(2)(A).[3] Whether it be based

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[1] Available at https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[2] *Id.*

[3] *See e.g., Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025);*Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-

on statutory interpretation of the relevant statutes or the U.S. Constitution, district court decisions have flooded in over the past few weeks soundly rejecting the government's position and ordering the government to immediately release or provide bond hearings to the noncitizen habeas petitioners.[4]

6. Mr. Rosales files this position seeking the Court's immediate intervention to ensure Petitioner does not continue to be unlawfully detained by the government based on a new novel theory that belies decades of contradictory agency action and interpretation, ignores all of the most basic cannons of statutory construction, and is nothing more than a

MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025);*Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025)(agreeing on substantive claim but oddly not ordering any real relief in this decision);*Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et. al.*, No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025).

[4] *Compare Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025) (holding the government's new position violated the due process clause of the U.S. constitution and ordering the government to either release the petitioner or provide a prompt bond hearing without finding it necessary to reach the statutory interpretation arguments); *see also Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) (gathering recent cases to support its conclusions that "[t]he government's proposed interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice").

thinly veiled attempt to increase the pace of removal orders through a concerted effort to deprive noncitizens of the due process guaranteed by the Constitution and INA.

JURISDICTION

7. This case arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 500-596, 701-706.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

9. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et. seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States, Respondents and Petitioner reside in this District, Petitioner is detained in this District at ERO El Paso Camp East Montana, and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.[5]

HABEAS CORPUS PURPOSE AND REQUIREMENTS

[5] (Ex. 1 ICE Detainee Locator.)

11. The writ of habeas corpus is "available to every individual detained within the United States."[6] "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody."[7] "Historically, 'the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.'"[8] "A district court's habeas jurisdiction," therefore, "includes challenges to immigration-related detention."[9]

12. Pursuant to 28 U.S.C. § 2243, a court may grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith."[10] If an order to show cause is issued, respondents should generally be required to file a return "within *three* days unless for good cause additional time . . . is allowed."[11]

PARTIES

13. Petitioner, Sebastian Wilder Flores Rosales, is a native of Peru who last entered the United States when he was brought here as a minor in May or June 2003. He has not left the country since. Mr. Rosales has no criminal history and is a "dreamer" or "DACA kid." Currently, however, Mr. Rosales is being detained by ICE in El Paso where

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[6] *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2).

[7] *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

[8] *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001)).

[9] *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) and *Demore v. Kim*, 538 U.S. 510, 517 (2003)).

[10] 28 U.S.C. § 2243.

[11] *Id.* (emphasis added).

he was arrested at the airport while on a domestic work trip. He has been and, without this Court's intervention, will continue to be detained in ICE custody without a bond hearing. Based on DHS' novel new interpretation and the BIA's decision in in *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a bond hearing will not take place even if requested; rather, the IJ will issue an order stating some form of the phrase "the BIA's decision in *Hurtado* is what I am required to follow, so I do not have jurisdiction to give you a bond." This, to be clear, will be the result based on the government's new position—not because he is a flight risk, danger, or described in § 1226(c)--but because he entered the United States without inspection. Nothing more.

14. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

15. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

16. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

17. Respondent Todd Lyons is Acting Director and Senior Official Performing the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to removal procedures and the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

18. Respondent Mary de Anda-Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Mrs. de Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

19. Respondent Warden of the ERO El Paso Camp East Montana, is who has immediate physical custody of Petitioner. Warden is sued in their official capacity.

STATEMENT OF FACTS

20. Mr. Rosales is a native of Peru who last entered the United States when he was brought here as a minor in May or June 2003. He has not left the country since. Mr. Rosales has no criminal history and is a "dreamer" or "DACA kid" in every sense. While his DACA status lapsed on July 6, 2025, a New York attorney is currently working on renewing it.

21. Though he does not have a spouse or children of his own, Mr. Rosales serves as a financial provider for his sibling and parents. Mr. Rosales, like his family, actually resides in New York and is a valued member of his community. Indeed, Mr. Rosales has made significant contributions to his community in New York, where, among other things,

he is involved with the Nomads, a Bronx-based running group that promotes health through weekly organized runs. He also serves as a District Leader for the group.

22. Currently, however, Mr. Rosales is being detained in El Paso where he was arrested at the airport while on a domestic work trip. Mr. Rosales was detained by ICE at the airport in El Paso while on a domestic trip for work. After detaining Mr. Rosales, ICE did not set a bond. Meanwhile, any request by Mr. Rosales for a bond hearing before an IJ is futile as it will be denied based solely on the government's new (incorrect) claim that all EWI noncitizens are subject to mandatory detention for the duration of removal proceedings. This claim, based on the government's recent novel interpretation of a nearly thirty year old statute, has been consistently rejected by Article III courts in the past couple of months.

23. Mr. Rosales now seeks this Court's intervention to enjoin ICE from continuing to unlawfully detain him in violation of the INA and U.S. constitution.

LEGAL FRAMEWORK

I. Overview of Relevant Constitutional Principles.

24. Congress may expand the protections granted by the Constitution through statute, but it cannot legislate away fundamental constitutional guarantees. The Fourth Amendment's protection against unreasonable seizures applies to all persons within the territory of the United States, including noncitizens. Immigration officials may not detain individuals encountered in the interior indefinitely or without probable cause; the Fourth Amendment simply does not permit it.

25. "Longstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"[12] The law in this area is not grey. Rather, for decades, it has been "clearly established . . .that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."[13] The clarity of the law in this area is bolstered by the fact that the statutory provisions used for arrests within the interior of the United States, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357, "[c]ourts have consistently held" "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause."[14] The "robust consensus of cases [and] persuasive authority" in this area makes it "beyond debate that an immigration officer . . .would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status.

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[12] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York*, 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

[13] *Id* at 215.

[14] *Id.* at 216-17 (citing *Au Yi Lau*, 445 F.2d at 222; *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

26. Likewise, the constitution's due process clause protections must be afforded to all those living in the U.S. before being deprived of their liberty. The Supreme Court has explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

> The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. 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. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.[15]

27. In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the community.[16] Where no such justification exists detention without due process is unconstitutional.[17]

28. At the nation's borders, however, the constitution's protections are lowered, even nonexistent for those who are not in the U.S. (including those who are at the border still under the legal fiction of parole). The history of the INA, the constitution's protections as well as the lowered protections at or near the border, are reflected in the INA's statutory scheme.

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[15] *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

[16] *Id.*

[17] *Id.*

II. The INA specifically defines "Application for Admission," " Admission," and "Admitted"

29. IIRIRA removed the definition of "entry" in the INA and replaced it with the terms "admission" and "admitted," which are defined at 8 U.S.C. § 1101(a)(13)(A), stating: The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien *into the United States* after inspection and authorization by an immigration officer." Meanwhile, the related term "application for admission" (also added by IIRIRA) defined at 8 U.S.C. § 1101(a)(4), provides: "The term 'application for admission' has reference to the application for admission *into the United States* and not to the application for the issuance of an immigrant or nonimmigrant visa."[18]

30. These definitions, both of which specifically use the phrase "into the United States," leave no doubt that Congress intended that admission cannot happen anywhere other than when at the proverbial door asking to come in.

31. Everyday thousands of foreign nationals arrive at United States Ports of Entry (POEs)[19] seeking entry.[20] In 2022 for example, DHS granted approximately 97 million admissions into the U.S., with an estimated 45 million of those admissions being nonimmigrants who were issued an I-94.[21] The majority of these individuals present

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[18] 8 U.S.C. § 1101(a)(4) (emphasis added).

[19] The term "POE" is used throughout this brief as a short hand reference to any time or place designated by the attorney general for the admission of aliens.

[20] (*See* Ex. 2 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.)

[21] (*Id.*)

facially valid non-immigrant visas, such as B-1/B-2 visitor, F-1 student, or H-1B temporary worker visas.[22]

32. Upon arrival, all aliens knocking at the door, regardless of their documentation, are legally deemed an "applicant for admission" pursuant to INA § 1225(a)(1). This foundational statute, which governs the inspection procedures at all POEs, as well as along and in close proximity to the border, defines an "applicant for admission" as either "[1] An alien present in the United States who has not been admitted or [2] who arrives in the United States..."[23]

33. This provision thus establishes the statutory framework for processing every alien who presents themselves for inspection. Meanwhile, the inspection process mandated by INA § 1225 functions as a critical sorting mechanism, resulting in one of three primary outcomes at POEs.

a. First, an inspecting officer may determine that the alien possesses valid, unexpired documents and is admissible, thereby admitting them into the United States.

b. Second, if the officer determines the alien is inadmissible either for seeking entry through fraud or material misrepresentation (INA § 1182(a)(6)(C)) or for lacking valid entry documents (INA § 1182(a)(7)), the alien will be subject to expedited removal (ER) pursuant to 8 U.S.C. § 1225(b)(1). Significantly, there are

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[22] (*Id.*)

[23] 8 U.S.C. § 1225(a)(1).

many grounds of inadmissibility,[24] but only aliens determined to be inadmissible under § 1182(a)(6)(C) or § 1182(a)(7) may be processed for ER.[25] In the second scenario, the alien is subject to expedited removal under INA § 1225(b)(1)(A). At airports and seaports, this authority is most commonly invoked not for lack of documents, but for alleged fraud or willful misrepresentation under § 1182(a)(6)(C).

i. For example, an inspecting officer may conclude that an alien arriving with a validly issued B-2 visitor visa is misrepresenting their nonimmigrant intent and secretly plans to remain permanently. Following questioning and potentially a sworn statement, the officer issues a Form I-860, a summary order of removal. Critically, this expedited removal order is immediate and final: the alien receives no hearing before an Immigration Judge, no appeal, and none of the procedural rights afforded in formal removal proceedings.[26] While such aliens may claim a fear of return, triggering a separate review process, that distinct process itself does not shed light on the issues presented in this matter.[27]

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[24] *See generally* 8 U.S.C. § 1182(a).

[25] § 1225(b)(1)(A)(1).

[26] § 1225(b)(1)(C).

[27] It is, nonetheless, important to point out that Congress was careful to unambiguously state its intent that aliens placed in this fear review process through § 1225(b)(2)(B)(iii)(I), explicitly titled "Mandatory detention" proscribes exactly that: "Any alien subject to procedures under this clause shall be detained pending a final determination of credible fear of persecution, and, if found not to have such a fear, until removed. The fact that Congress went out of its way to specifically mandate detention for those in this process but never sought to provide a similarly worded provision accompanying § 1225(b)(2)(A) is consistent with both Petitioner's interpretation under the statutory terms and the plain language interpretation employed by many.

ii. Significantly, once an alien is issued an ER order, the alien's subsequent removal (as well as any incidental detention) is under the custody and detention authority proscribed by 8 U.S.C. § 1231. The goal is for such removal at a POE, however, is for it to occur immediately either by return to the contiguous territory the alien arrived from or on the carrier/vessel they arrived on if by sea or land.

c. The third category encompasses all "other aliens" specified in § 1225(b)(2)(A). These are applicants whom the inspecting officer does not find clearly admissible, yet who are not inadmissible under the two specific grounds authorizing expedited removal.[28] This category applies to the multitude of other inadmissibility grounds detailed in INA § 1182(a)(proscribing grounds of inadmissibility, including criminal, health related, being a potential public charge, prior unlawful presence, etc.).

i. Every one of the grounds of inadmissibility—except one (EWI)—may be applicable at the POEs and result in a referral to § 1229a proceedings. For instance, if an inspecting officer at an airport encounters a LPR with a conviction that potentially renders them inadmissible under the criminal grounds at § 1182(a)(2), that officer lacks the authority to issue an expedited removal order.[29] Instead, the officer's sole recourse under the statute is to

[28] § 1225(b)(2)(A)

[29] *See id.* (proscribing its application only to those applicants for admission found inadmissible pursuant to § 1182(a)(6)(C) or § 1182(a)(7)).

refer the alien for full removal proceedings before an Immigration Judge pursuant to § 1229a, where the alien will have the opportunity to be heard and contest the charges.[30]

ii. As this statutory framework demonstrates, the procedures detailed in § 1225 are designed for, and overwhelmingly applied at, the nation's ports of entry. This conclusion is further bolstered by the absence of a warrant requirement in § 1225 which is consistent with the border exceptions to the Fourth Amendment.

III. Past the Border: Parole, Inadmissibility, and Removability

34. The "other aliens" who are referred by the "examining immigration officer" for removal proceedings under 8 U.S.C. § 229a, under the current system, are often "paroled" into the United States under 8 U.S.C. § 1182(d)(5). Parole in this manner acts to a create a legal fiction whereby the alien's status is frozen as if they were still at the border as "an arriving alien" seeking admission into the United States.[31] Though arriving aliens who are paroled are physically present, the Supreme Court explained why this legal fiction permits them to be treated as those excluded and outside of the country's physical boundaries in terms of constitutional protections, explaining:

> Aliens seeking entry from contiguous lands obviously can be turned back at the border without more. While the Government might keep entrants by sea aboard the vessel pending determination of their admissibility, resulting hardships to

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[30] Id.

[31] *See* § 1182(d)(5)(proscribing that parole under this provision does not act as an "admission"); *see also* 8 C.F.R. § 1.2 ("An arriving alien remains an arriving alien even if paroled pursuant to [118]2(d)(5) of the Act . .. ").

> the alien and inconvenience to the carrier persuaded Congress to adopt a more generous course. By statute it authorized, in cases such as this, aliens' temporary removal from ship to shore. But such temporary harborage, an act of legislative grace, bestows no additional rights. Congress meticulously specified that such shelter ashore 'shall not be considered a landing' nor relieve the vessel of the duty to transport back the alien if ultimately excluded.[12] And this Court has long considered such temporary arrangements as not affecting an alien's status; he is treated as if stopped at the border.

35. Once paroled, the ground of inadmissibility under 8 U.S.C. § 1182(a) that led to the alien being referred for § 1229a proceedings will serve as the "charge of removal" on the Notice to Appear issued pursuant to 8 U.S.C. § 1229. For example, an alien who is believed to be inadmissible pursuant to 8 U.S.C. § 1182(a)(2)(A)(I), as the result of a conviction for an offense alleged to be a crime involving moral turpitude (CIMT), will be charged as "removable" on the NTA under that ground of inadmissibility.

36. Meanwhile, aliens who are admitted to the United States at a POE after inspection by an immigration officer, are aliens who have been admitted to the United States. An admission, including a procedural admission, is significant in a number of ways. The two most relevant to this issue are: (1) Once admitted, (assuming no departure) they can only be placed in removal proceedings under the grounds of removal listed in 8 U.S.C. § 1227; and (2) aliens who have been admitted may adjust their status in the United States under 8 U.S.C. § 1255(a) whereas aliens who present without having been admitted cannot.

a. The grounds of inadmissibility and removability do not parallel each other. For example, convictions for an aggravated felony as defined by 8 U.S.C. § 1101(a)(43) will render an alien who has been admitted, removable under 8 U.S.C. § 1227(a)(2)(A)(iii), but is not a ground of inadmissibility under § 1182(a). Another

example are those aliens who have a single conviction for simple possession of marijuana (personal use less than 30 grams). Such a conviction will render an alien inadmissible under 8 U.S.C. § 1182(a)(2)(A)(II), but will not render the alien removable under 8 U.S.C. § 1227(a)(2)(B).

37. Aliens who entered the U.S. without inspection more than two years prior to being encountered, known as EWI aliens, are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), and are charged as such on the NTA.

38. The NTA in removal proceedings recognizes the distinction between each of these classes, and therefore, has 3 boxes at the top to make it easy for IJs and attorneys to know things such as who has the burden and who is eligible for bond. A screenshot of these boxes from a NTA can be seen below:

☐ You are an arriving alien.
☒ You are an alien present in the United States who has not been admitted or paroled.
☐ You have been admitted to the United States, but are removable for the reasons stated below.

39. EWI aliens, like visa overstays, student visa violators, and LPRs who commit offenses that make them removable, who are not "arriving aliens" may be encountered and placed in removal proceedings in a variety of ways. Though mailing a "NTA" is one way to place them in proceedings, more often then not, ICE will arrest the alien and process them for § 1229a removal proceedings. These arrests or *Terry* stop are subject to the Fourth Amendment (as discussed above).

40. To this end, 8 U.S.C. § 1226(a) applies to noncitizens already in the Country and authorizes the arrest and detention of noncitizens, pursuant to a warrant for the purpose

of removal proceedings under 8 U.S.C. § 1229a.[32] In accordance with the Fourth Amendment and operational realities, 8 U.S.C. § 1357, provides certain officers with the authority to make an arrest under circumstances which parallel established exceptions to the Fourth Amendment's warrant requirement, but such arrests must be followed by the issuance of a warrant by an official who has been given such authority[33]

41. Individuals who are encountered in the interior and placed in removal proceedings have always—including post-IIRIRA—been entitled to a bond hearing before a neutral IJ at the outset of their detention, unless they are subject to "mandatory detention" because they are described in either 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h).[34]

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[32] *See id.* at *3; *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025) ("In *Jennings*, the Court explained that § 1225(b) governs 'aliens seeking admission into the country' whereas § 1226(a) governs 'aliens already in the country' who are subject to removal proceedings.")(quoting *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

[33] The first two paragraphs of 8 U.S.C. §1357(a), titled "Powers without warrant" expressly provide:

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant— (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States; (2) to arrest *any alien who in his presence or view is entering or attempting to enter the United States* in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States

U.S.C. § 1357(a)(1)-(2)(emphasis added).

[34] 8 U.S.C. § 1226(a) and (c); 8 C.F.R. §§ 1003.19(a), 1236.1(d; *see also Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025) ("Once a noncitizen is within the United States, '[§] 1226 generally governs the process of arresting and detaining [these noncitizens] pending their removal.'")(quoting *Jennings*, 583 U.S. at 288).

42. The detention provisions of § 1226 were amended ed as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,[35] and were most recently amended earlier this year by the Laken Riley Act.[36] As amended by the LRA,

43. Prior to the enactment of the IIRIRA, noncitizens arrested in the interior and charged with entering the U.S. without inspection were entitled to a custody hearing before" a neutral adjudicator, "while those stopped at the border were only entitled to release on parole.[37] When the detention provisions were amendedby IIRIRA Congress clarified "the amendment of § 1226(a) simply "restate[d]" the detention authority previously found at § 1252(a) "to arrest, detain, and release on bond a[ ] [noncitizen] who is not lawfully in the United States."[38] Meanwhile, the amendments did not disturb "the existing mandatory detention scheme for noncitizens arriving in the U.S. without a clear right to admission and expanded the scope of that detention scheme to include certain recently arrived noncitizens."[39] These amendments and the statutory scheme simply "reflected [Congress'] understanding of longstanding due process precedent that

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[35] Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a).

[36] Pub. L. No.119-1, 139 Stat. 3 (2025).

[37] *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (citing 8 U.S.C. § 1252(a) (1994) (authorizing detention of noncitizens "arriving at ports of the United States")).

[38] *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996) and H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.).

[39] Id.

recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving."[40]

44. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a).[41]

45. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible.[42]

46. For decades, (i.e. since IIRIRA was passed in 1996) two indisputable facts coexisted in immigration proceedings throughout the country: (1) Immigration Judges have been granting bond to noncitizens who were "EWI" (i.e. inadmissible under 8 U.S.C. § 1182(a)(6)(A)), and 2) All individuals who are EWI are considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1). Indeed, one of the most trusted law treatises, *Kurzban*'s, has long explained:

> Although a person who enters EWI is considered an applicant for admission under [8 U.S.C. § 1225(a)(1)] and inadmissible under [8 U.S.C. § 1182(a)(6)(A)(i)], because they are not apprehended at the border, they do not

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[40] *Id.* (citing H.R. Rep. No. 104-469, p. 1, at 163-66 (recognizing the "constitutional liberty interest[s]" of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing *Knauff v. Shaughnessy*, 338 U.S 537 (1950)).

[41] *See id.* ("The EOIR's regulations drafted following the enactment of the IIRIRA explained this distinction.") (citing Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection).

[42] *Id.* ("[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond.").

> fall within the definition of "arriving aliens" under 8 C.F.R. §§ 1.2, 1001.1(q). Therefore, an IJ is not precluded from conducting a bond hearing.[43]

47. Simply put, being an applicant for admission has never been understood to subject someone to mandatory detention.[44] The regulations go on to make clear that Immigration Judges do not have jurisdiction to grant bond to a discrete subset of "applicants for admission" known as "arriving aliens."[45] In other words, the promulgating regulations were careful to except "arriving aliens," (ALL of whom are "applicants for admission"), from the bond jurisdiction given to Immigration Judges.[46]

48. In January 2025, Congress passed the Laken Riley Act in which added a new subparagraph to the mandatory detention provisions of § 1226(c). This statute, as amended by the LRA to add subparagraph (E) (in its entirety), now provides:

> **(c) Detention of criminal aliens (1) Custody** The Attorney General shall take into custody any alien who-- **(A)** is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title, **(B)** is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, **(C)** is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[1] to a term of imprisonment of at least 1 year, **(D)** is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, or **(E)(i)** is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and **(ii)** is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or

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[43] Kurzban, Chapter 3, Admission and Removal, M-3, p. 235 (2018-19) 16th Ed.

[44] See n. 25, supra.

[45] 8 C.F.R. § 1003.19(h)(2)(i)(B).

[46] (*Id.*)

> assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.[47]

49. It is important to point out that the LRA's amendment does not apply to anyone who is removable under 8 U.S.C. § 1227 (i.e. those who entered the United States legally after inspection by an immigration officer). The same is true for subparagraph (c)(1)(A) and the first clause of (c)(1)(D). Put another way, the LRA's amendments at § 1226(c)(1)(E), along with subparagraphs (A) and (D), are only applicable to noncitizens who fall within the definition of "applicants for admission" found in 8 U.S.C. § 1225(a)(1).[48]

50. The amendments made by the LRA were specific to proscribe mandatory detention of noncitizens who meet both the status requirement of subclause (i) (inadmissibility for EWI, fraud, or lack of documents; aka "applicants for admission") *and* the conduct requirement of subclause (ii) (a criminal charge, arrest, or conviction for a specified offense).[49] After signing the LRA into law, the president touted its importance,

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[47] 8 U.S.C. § 1226(c)(1)(E).

[48] Id.

[49] *Id.*; *see also Vazquez v. Feeley, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *5* ("1226(c)(1)(E) (enacted by the Laken Riley Act) requires mandatory detention for people who were charged as being (1) inadmissible under § 1182(a)(6)(A)(i) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the U.S.) *and* who (2) have been arrested, charged with, or convicted of certain crimes not relevant here.").

stating: "It's a landmark law that we are doing today, it will save countless innocent American lives."[50]

51. Prior to IIRIRA, IJs generally had authority to issue a bond to any alien placed in deportation proceedings; conversely, the IJ could not issue a bond to anyone in exclusion proceedings. Post IIRIRA, the implementing regulations and agency action for decades, reflected these historical practices which aligned with the U.S. constitution's protections (which wax and wane depending on one's distance to the border). This included making clear that the IJ, who once lacked greater discretion to grant bonds to any aliens in deportation proceedings, lacks jurisdiction over the aliens described in 8 C.F.R. § 1003.19(h)(2)(ii)in proceedings:

> (A) Aliens in exclusion proceedings; (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act; (C) Aliens described in section 237(a)(4) of the Act; (D) Aliens in removal proceedings subject to section 236(c)(1) of the Act . . .; and (E) Aliens in deportation proceedings subject to section 242(a)(2) of the Act.

52. Each of the aliens described in subparagraphs (A) and (B) fall within the definition of applicants for admission. Though the IJs jurisdiction over those aliens was not expressly limited over "arriving aliens" by § 1226(c), consistent with past agency practices and the legal fiction of parole freezing their status and rights at the border, the implementing regulations clarified IJs continued to lack jurisdiction over arriving aliens.

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[50] After signing the LRA into law, the president touted its importance, stating: "It's a landmark law that we are doing today, it will save countless innocent American lives. https://www.npr.org/2025/01/29/g-s1-45275/trump-laken-riley-act.

53. Notably, the statutory and regulatory provisions subjecting certain aliens to mandatory detention throughout removal proceedings all reflect either flight risk or danger concerns by Congress that warranted detention throughout removal proceedings. As a result, for nearly three decades, IJs were holding bond hearings for aliens, like Petitioner, who were encountered in the interior as EWI years after entering and were not described in § 1226(c) or § 1003.19(h)(2)(i).

54. To be clear, the fact that every EWI who was not described in § 1226(c) or § 1003.19(h)(2)(i) was entitled to a bond hearing before an IJ, did not in any way translate to every such person being granted a bond. Rather, the bond hearing allowed both parties to submit evidence of their positions on flight risk and danger. At the conclusion of which the IJ would issue a decision either granting or denying bond based on those two longstanding traditional constitutional justifications for depriving someone of their liberty: flight risk and danger.

IV. DHS in Conjunction with the Immigration Court Take New Position Interpreting 8 U.S.C. § 1225(b)(2)(A) to Subject Every EWI NonCitizen to Mandatory Detention (i.e. Bond Hearings No Longer Provided for EWIs).

55. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.[51]

[51] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

56. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[52] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy ICE announced applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.[53]

57. On September 5, 2025, the BIA issued a decision in *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which acted as a rubberstamp to the new DHS interpretation taken in "conjunction with" the immigration courts.[54] The decision claimed to simply be interpreting the "plain language" of 8 U.S.C. § 1225(b)(2)(A) which states,

> [I]n the case of a[ ] [noncitizen] who is an applicant for admission, if the examining immigration officer determines that a[ ] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title.[55]

58. The BIA's reasoning per *Hurtado* is that the plain language above means every "applicant for admission . . . shall be detained for" removal proceedings.[56] But as several district courts have already pointed out:

> the government's "interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225

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[52] *Id.*

[53] *Id.*

[54] *Matter of Hurtado*, 29 I&N Dec. 216.

[55] § 1225(b)(2)(A) (emphasis added).

[56] *Hurtado*, 29 I&N Dec. at 219.

and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.[57]

V. The Statutory and Regulatory Framework of the Entire Act Demonstrates the Government's New Position is Simply Untenable Under Any One of Many Cannons of Statutory Construction

59. The government's new position hinges on a simplistic and overbroad reading of INA § 235(a)(1), which deems any unadmitted alien an "applicant for admission."[58] From this, the government leaps to the conclusion that all such aliens are subject to mandatory detention under § 235(b).[59] This interpretation ignores the careful distinctions drawn throughout the INA and its implementing regulations.

60. As an initial matter, the *Hurtado* ironically claims to read the plain language of § 1225(b)(2)(A), but as many courts have pointed out the BIA only reaches its conclusion by omitting "plain language" contradicting its interpretation. Specifically, to be subject to

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[57] *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) ; *see also*, *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, — F.Supp.3d —, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, — F.Supp.3d —, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, — F.Supp.3d —, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025).

[58] *See Hurtado*, 29 I&N Dec. at 216-220.

[59] *Id.*

§ 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted."[60] The second element of Sec. 1225(b)(2)(A)—which requires that he be ***seeking admission***—is not met in the case of EWI noncitizens who are found miles away from the land border and years after their entry.

61. As explained above, Congress left no room to dispute that one must be at a designated POE asking to enter after inspection by an immigration officer. Accordingly, noncitizens like Petitioner cannot be said to be *seeking admission* when arrested and detained in the interior years after entering. Rather, consistent with pre-IIRIRA detention provisions and decades of agency action, § 1225(b)(2) only implicates noncitizens who are "*seeking admission*" into the United States.[61]

62. The government's position not only asks the Court to ignore the definitions given to "admission" in the INA, as well as the decisions from the Fifth Circuit and nearly every other circuit, making it clear that those definitions—requiring a very specific event at the threshold of the country—must be applied where they appear throughout the INA.

63. To ignore the defined terms as well as the plain language in which they are used, which limits the application of 8 U.S.C. § 1225(b)(2) to noncitizens seeking admission into the United States, is to not give effect to the meaning of words and to make

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[60] 8 U.S.C. § 1225(b)(2)(A); *see also Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

[61] Id.

the words included in the statute superfluous.[62] It would violate the most basic of interpretive canons, which is that "'[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ....'"[63]

64. The statutory use of the present and present progressive tenses—"is an applicant for admission" "seeking admission"—excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States.[64] Throughout the country district courts have agreed with this plain reading, which gives effect to the meaning of each word, holding that 8 § 1225(b)(2)(A) must be read to apply only to noncitizens who are apprehended while seeking to enter the country, and that noncitizens already residing in the United States, including those who are charged with inadmissibility, continue to fall under the discretionary detention scheme in § 1226.[65]

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[62] *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009).

[63] . *Id.* (citing *Hibbs v. Winn,* 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp.181–186 (rev. 6th ed.2000)).

[64] *See Martinez v. Hyde,* 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *accord Lopez Benitez v. Francis*, 2025 WL 2371588, at *6–7 (S.D.N.Y. Aug. 13, 2025). *See also United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in 8 U.S.C. Sec. 1225 (1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

[65] *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 779 F. Supp. 3d 1239, 1256–59 (W.D. Wash. 2025) (granting preliminary injunction prohibiting I.J.s from denying bond to individuals apprehended in the interior based on INA § 1225(b)(2)); *see also Gomes v. Hyde*, 2025 WL 1869299 at *6-7 (D. Mass. July 7, 2025) (relying on statutory structure and Laken Riley

65. Further support for the overwhelming conclusion reached by courts can be found in the various statutes proscribing various arrest and detention authorities depending on the circumstances.[66]

A. 8 U.S.C § 1225: Inspection, Arrest, and Detention of Aliens at the Ports of Entry and Near the Border

66. As its title, ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearings"), suggests and as discussed in detail above, 8 U.S.C § 1225, proscribes the statutory authority by which immigration officers may inspect, arrest, and detain aliens seeking admission to the United States. To this end, it provides the procedures for admitting or referring for removal proceedings, the 1,000s of aliens who arrive at POEs everyday. It also proscribes the procedures for expedited removal of aliens who are encountered at or near the border and inadmissible under § 1182(a)(6)(C) or § 1182(a)(7). Simply put, while not explicitly limited to the arrest of aliens made at a designated port of entry or in close proximity to the border, 8 U.S.C § 1225, is most often used in this setting and does not require a warrant.

Act amendments to § 1226 to find that recent entrant re-detained on a warrant was not subject to § 1225(b)(2)); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6–8 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025); *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *8–10 (D. Ariz. Aug. 11, 2025); *Aguilar Maldonado v. Olson*, 2025 WL 2374411, at *11–13 (D. Minn. Aug. 15, 2025); *accord Castillo Lachapel v. Joyce*, 2025 WL 1685576, at *2 (S.D.N.Y. June 16, 2025) (parties agreed that a person who had entered without inspection and was arrested in the interior was detained under § 1226(a)).

[66] The authority given by these statutes has been properly delegated by the Secretary of Homeland Security pursuant to the power granted to her by 8 C.F.R. § 2.1.

67. Indeed, this is further bolstered by the absence of a warrant requirement in § 1225 which is in line with the longstanding principle that the search and seizure of persons at our country's borders is not subject to the Fourth Amendment's warrant requirement.[67]

VI. The bond and detention provisions rendered superflous by the government's new interpretation

68. For decades, noncitizens in removal proceedings found in the U.S. who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) were able to request a bond hearing and obtain a bond from an IJ.[68]

69. An illustration of the provisions in § 1226(c) and 1003.19(h)(2)(i) that are rendered superfluous under the government's new (incorrect) interpretation seeking to apply § 1225(b)(2)(A) to all EWIs can be seen below:

> **(c) Detention of criminal aliens (1) Custody** The Attorney General shall take into custody any alien who-- ~~(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,~~ **(B)** is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, **(C)** is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[1] to a term of imprisonment of at least 1 year, **(D)** is ~~inadmissible under section 1182(a)(3)(B)~~ of this title or deportable under section 1227(a)(4)(B) of this title, or ~~(E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and (ii)~~ is charged with, is arrested

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[67] *See United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .") (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine" exempting border searches and seizures from the Fourth Amendment's warrant requirement. "It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border.").

[68] *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3-4 ("Until DHS and DOJ adopted the policy described below, the longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to noncitizens like Petitioner, who entered the U.S. without inspection and were apprehended while residing in the U.S.").

~~for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.~~[69]

8 C.F.R. § 1003.19(h)(2)(i): ~~(A) Aliens in exclusion proceedings; (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act;~~ (C) Aliens described in section 237(a)(4) of the Act; (D) Aliens in removal proceedings subject to section 236(c)(1) of the Act . . .; and (E) Aliens in deportation proceedings subject to section 242(a)(2) of the Act.

70. One need not look any further than 8 C.F.R. § 1003.19(h)(2) (iii)(B) to see that the statutory and regulatory scheme was always intended to give Immigration Judges jurisdiction to grant bond to most noncitizens falling under the definition of "applicant for admission." This is demonstrated by the fact that the regulations governing an Immigration Judge's bond jurisdiction explicitly strip the Judge of authority over "arriving aliens" which are a subset of noncitizens who fall under the definition of "applicants for admission."[70] Specifically, 8 C.F.R. § 1.2 defines an arriving alien as:

> Arriving alien *means 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. An arriving alien remains an arriving alien even if paroled pursuant to section [§ 1182(d)(5)] of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the

[69] 8 U.S.C. § 1226(c)(1)(E).

[70] 8 C.F.R. § 1003.19(h)(2)(iii)(B).

> United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section [1225(b)(1)(A)(i)] of the Act.[71]

71. If, as the government now contends, every noncitizen who is an "applicants for admission" is subject to mandatory detention for bond purposes, there would have been no need for a regulation stating immigration judges do not have jurisdiction to grant "arriving aliens" a bond. The regulations specific prohibition against bond for "arriving aliens" implicitly confirms that Immigration Judges *do* have jurisdiction over other categories of "applicants for admission," such as those like Petitioner, who were apprehended years after entry and deep in the nation's interior.[72] Petitioner is not an "arriving alien"; nor is he subject mandatory detention under § 1225. Rather, he is an alien arrested within the United States and detained under § 1226.

72. Recently, countless courts have repeatedly pointed out, under the government's new theory, the LRA is completely devoid of any meaning as every person described in § 1226(c)(1)(E)(i) was already subject to mandatory detention under the government's new interpretation of § 1225(b)(2)(A).[73] Congress, therefore, would have

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[71] 8 C.F.R. § 1.2 (emphasis added).

[72] *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (recognizing that "U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)") (emphasis added); *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) ("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . .years.")

[73] *See e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.").

enacted a statute that accomplished nothing. It is a foundational principle of statutory construction that courts must "give effect, if possible, to every clause and word of a statute,"[74] and must avoid interpretations that render statutory language superfluous.[75] The government's position violates this canon in the most profound way, effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted § 1226(c)(1)(E) precisely because being EWI or an "applicant for admission" alone *does not* trigger mandatory detention.[76]

VII. Reliance on *Jennings* is Misplaced at Best and Misleading at Worst.

73. In *Matter of Hurtado,* the BIA claims that the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) dictates this result. This claim, as one court put it, however, "is, to say the least, not without some doubt."[77] Contrary to the BIA's claims about *Jennings*, Article III courts have seemingly uniformly pointed out that *Jenning* actually said: ""U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain

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[74] *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

[75] See Marx v. Gen. Revenue Corp., 568 U.S. 371, 385 (2013).

[76] Another (of many) applicable cannons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled "Mandatory detention," explicitly states that noncitizens found *not* to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

[77] *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934, at *4–6 (D. Neb. Sept. 18, 2025).

certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)."[78]

VIII. Even if *Hurtado* were decided correctly (which it was not), it still would be unlawful to detain Petitioner under the new interpretation as it constitutes an expansion amounting to a new rule which cannot be applied retroactively under longstanding Supreme Court precedent.

74. The United States Constitution's Ex Post Facto Clause and the judicial presumption against statutory retroactivity form a bedrock principle of American jurisprudence. This principle is animated by what the Supreme Court has termed the "familiar considerations of fair notice, reasonable reliance, and settled expectations."[79] In the immigration context, where the stakes of deportation are immense, the Supreme Court has been particularly vigilant in guarding against the retroactive application of laws that alter the legal consequences of past actions.

75. In *INS v. St. Cyr*, the Supreme Court held that the repeal of a form of discretionary relief from deportation could not be applied retroactively to individuals who had pleaded guilty to criminal offenses at a time when that relief was available.[80] The Court emphasized that "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly."[81]

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[78] *Jennings*, 583 U.S. at 289 (emphasis added).

[79] *Vartelas v. Holder*, 566 U.S. 257, 266 (2012) (quoting *INS v. St. Cyr*, 533 U.S. 289, 323 (2001)).

[80] *St. Cyr*, 533 U.S. at 325.

[81] *Id.* at 321.

76. Similarly, in *Vartelas v. Holder*, the Court found that an amendment to the INA that broadened the definition of who is "seeking admission"—thereby subjecting certain returning lawful permanent residents to new grounds of inadmissibility—could not be applied to an individual whose conviction predated the statutory change.[82] The Court reasoned that to do so would "attach a new disability, in respect to transactions or considerations already past."[83]

77. This principle against retroactivity extends not only to statutory amendments but also to new judicial interpretations of existing law that dramatically shift the legal landscape. The United States Court of Appeals for the Fifth Circuit, in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), addressed the retroactive application of the BIA's decision in *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) which significantly expanded the scope of what constitutes a "crime involving moral turpitude" (CIMT). The Fifth Circuit held that applying this new, broader definition to conduct that occurred before the decision was issued would be impermissibly retroactive because it would upend the "settled expectations" of individuals concerning the immigration consequences of their actions.[84] The court conducted a balancing test, weighing the "ills of retroactivity against the disadvantages of prospectivity" and found that the frustration of the parties' expectations outweighed any benefit of retroactive application.[85]

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[82] 566 U.S. at 272.

[83] *Id.* at 266 (internal quotation marks omitted).

[84] *Id.* at 430-31.

[85] *Id.* (quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998)).

78. This consistent and robust body of case law establishes a clear rule: new statutory provisions or judicial interpretations that impose new, adverse immigration consequences for past conduct cannot be applied retroactively. Accordingly, even if the government's new interpretation were correct, its detention of Petitioner based on an Ex Post Facto rule change is nonetheless unlawful under the Constitution.

IX. Irreparable Harm

79. Continued unlawful detention is, by its very nature, an irreparable injury.[86] The Supreme Court has affirmed that "[f]reedom from imprisonment...lies at the heart of the liberty" protected by the Due Process Clause.[87] "Where, as here, the 'alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary'."[88]

80. Everyday Petitioner is detained in ICE custody in direct contravention of the statute and U.S. constitution he suffers irreparable harm. The complete sudden loss of one's freedom and liberty takes a significant toll on anyone in Petitioner's circumstances.

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[86] *Phan*, 2025 WL 1993735, at *5 ("Further, '[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

[87] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[88] *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

81. Irreparable harm (alarmingly) is also found in the alarming number of deaths in ICE custody recently. A few months ago, a 55-year old man from Vietnam, died in ICE custody.[89]

82. On May 14, 2025, in an oversight hearing before the House Appropriations Committee, Todd Lyons, acting director of Immigration and Customs Enforcement, testified that 9 people have died in ICE custody since January 20, 2025.[90] A month after this testimony, on June 23, 2025, a 49-year old Canadian citizen died in ICE custody.[91] Reports of overcrowding, individuals being detained at facilities that are meant for processing and not set up for detention beyond a few hours are increasing, and other inhumane detention practices continue to rise. Moreover, if ever there was an agency who had demonstrated it could not be trusted to abide by the law and treat individuals humanely, it has been ICE over the past few months. The risk of death, emotional trauma, and/or other irreparable harm coming to Petitioner is, tragically, all too real a possibility.

83. Meanwhile, there will be ZERO harm to Respondents if Petitioner is immediately released from ICE custody, or at a minimum, granted the bond hearing she is entitled to by statute.

84. There are no administrative remedies to exhaust that would not be futile. DHS and the immigration courts have repeatedly indicated that DHS' novel position is now

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[89] See Ex. 8

[90] This testimony can be found at the following link: https://www.youtube.com/watch?v=QvoURiaxBmA.

[91] The ICE press release on this death can be found at the following link: https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away

the formal position taken in a precedential decision by the BIA. Accordingly, IJs believe they are bound by the BIA's decision and will not grant bond to EWI noncitizens—no matter how long they've lived here and no matter how squeaky clean they have lived their lives in this Country.

X. Procedural Due Process Violation Under Mathews

85. Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner.[92] Petitioner received no such opportunity and/or no such opportunity is available through the immigration courts at this time as a result of DHS' position and *Hurtado*.

86. To determine whether government conduct violates procedural due process, the Court weighs three factors in *Mathews* for courts to weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures.[93]

A. Private Interest

87. Petitioner's private interest is the right to be free from government detention. Being free from physical detention by the government is at the core of due

[92] *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

[93] *Id.* at 335.

process protection, and "is the most elemental of liberty interests."[94] In our country, "liberty is the norm, and detention without trial "is the carefully limited exception."[95] Petitioner's interest in being free from government detention is magnified by the fact that he has a family of who loves and depends on him.

88. Further, detention at a remote detention center in Texas thousands of miles from his home and family makes it nearly impossible for his family to see him. While detained, Petitioner is unable to financially provide for his family members, who are now suffering financial difficulties.

89. Though Petitioner should have been able to reunite with his family and community in New York after a bond hearing before an IJ, such hearing is not available to him without federal court intervention.

90. The private interest here is fundamental: freedom from detention. It weighs heavily in the consideration of the *Mathews* factors.

B. Risk of Erroneous Deprivation

91. The second factor—the risk of erroneous deprivation of Mr. Rosales' liberty—is likewise substantial. The government's sudden about face in the way it interpreted § 1225(b)(2)(A) prevents Petitioner from having a bond hearing at all—much less a fair one. This is particularly true when there is significant evidence that this new position was reached by DHS, the "prosecuting agency" in conjunction with "EOIR" the

[94] *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

[95] *Id.*

agency that is supposed to be providing neutral adjudication of the noncitizens proceedings. "Such a rule [and process] is anomalous in our legal system," and it represents a basic conflict that has been disapproved of in this context and others.[96] When procedural protections are almost non-existent, it markedly increases the risk of erroneous deprivation of Petitioner's liberty interests.[97]

C. Government Interest

92. The government has no valid interest in depriving Petitioner of a bond hearing. The government's interest is supposed to be in upholding the Constitution and laws, both of which are plainly violated by its recent actions and continued unlawful detention of Petitioner. Depriving anyone of their liberty is a serious thing that should only be done as punishment or when necessary to prevent flight or danger to the community.

93. To balance liberty interests against interests in assuring appearance and safety, the INA explicitly provides bond hearings for noncitizens who are not described in § 1226(c) or 8 C.F.R. § 1003.19(h). The government, however, wants to detain everyone without any regard to whether they are a danger or a flight risk.[98] On balance, the private interests affected and the risk of erroneous deprivation under the current procedures greatly outweigh the government's interest in detaining anyone they want regardless of whether it

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[96] *Günaydın*, 2025 WL 1459154, at *8; *see also Marcello v. Bonds*, 349 U.S. 302, 305–06, 75 S. Ct. 757 (1955) (holding that officer adjudicating immigration case cannot undertake prosecutorial role in the same matter).

[97] *See Black v. Dir. Thomas Decker*, 103 F.4th 133, 152 (2d Cir. 2024).

[98] *Jacinto v. Trump*, 2025 WL 2402271, at *4 ("The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake.").

is necessary or lawful. Petitioner's arbitrary detention without a bond hearing by a neutral adjudicator violates Petitioner's substantive due process rights as guaranteed by the Fifth Amendment.

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF THE INA

94. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

95. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), § 1231, or 8 C.F.R. § 1003.19(h).

96. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates the INA as well as the U.S. Constitution.

COUNT II: VIOLATION OF DUE PROCESS

97. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

98. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from

government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects."[99]

99. Petitioner has a fundamental interest in liberty and being free from official restraint.

100. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process.

COUNT III: ICE'S VIOLATION OF ITS OWN REGULATIONS & STATUTORY VIOLATION

101. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

102. Petitioner's continued detention by Respondents without a bond hearing pursuant to the process set forth by 8 U.S.C. § 1226 or 8 C.F.R. § 1003.19 is unlawful as ICE and EOIR failed to adhere to the law and mandatory process. As here, "'where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute ... and [ICE] fails to adhere to it, the challenged [action] is invalid.'"[100] Petitioner's detention is unlawful and his immediate release is appropriate.

PRAYER FOR RELIEF

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[99] *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

[100] *Nguyen v. Hyde*, 2025 WL 1725791, at *5 (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); *see also Zadvydas*, 533 U.S. at 690 ("The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person ... of ... liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter and issue a writ of habeas corpus requiring that Respondents release Petitioner Immediately, or provide Petitioner with a bond hearing before a neutral IJ pursuant to 8 U.S.C. § 1226(a) within three days;

b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

c. Declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that EWI noncitizens encountered in the interior long after their entry who are placed in removal proceedings and are not described in § 1226(c) or 8 C.F.R. § 1003.19(h)(2), are entitled to a bond hearing before a neutral adjudicator;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"); and

e. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

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