UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

MYNOR DUARTE ALARCON **(A No. [redacted]** Petitioner, v. **PAMELA BONDI, et al.** Respondents.	**Case No. 8:25-cv-3605-JRR**

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Before the Court is Mynor Duarte Alarcon's habeas corpus petition in which he alleges that the Respondents are unlawfully detaining him under 8 U.S.C. § 1225(b)(2). The Respondents have moved to dismiss the Petition for lack of jurisdiction under 8 U.S.C. § 1252, but their jurisdictional arguments have been consistently rejected as contrary to the pertinent statutory language as well as Supreme Court precedent interpreting that language. Nothing about this case warrants a different conclusion as to the incorrectness of the Respondents' position.

Further, as we will show, the Respondents' arguments regarding the merits of their position fare no better. District courts throughout the United States (including this District) have rejected the same arguments the Respondents press here. Those arguments have not been strengthened through repetition, so the Court should reject them in this case as well.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Mr. Duarte Alarcon entered the United States on April 27, 1998. He had no interaction with immigration authorities until November 2, 2025, when they arrested him while he was driving his brother's truck in Silver Spring, Maryland. During the intervening twenty-seven years, Mr. Duarte Alarcon has built a life in the United States and contributed to his community and to the United States more broadly.

Mr. Duarte Alarcon is a partner at M & J landscaping, a firm that he founded under a different name approximately twenty years ago. He employs ten people and pays approximately $200,000 in taxes each year. He is the sole breadwinner for his wife and three United States children who are ages, 11, 14, and 20. Mr. Duarte Alarcon is an active member in St. Martin of Tours Catholic Church in Gaithersburg.

In conjunction with their November 2 arrest of Mr. Duarte Alarcon, immigration officers served him with several documents. One of these documents is a Notice of Custody Determination. *See* Exhibit A. That document informs Mr. Duarte Alarcon that immigration officers intend to detain him until the completion of his removal proceedings. The document also informs Mr. Duarte Alarcon that the Department of Homeland Security is acting "under authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations." *Id.*

Immigration officers also served Mr. Duarte Alarcon with a Notice to Appear ("NTA") in the Hyattsville, Maryland, Immigration Court to defend against charges under 8 U.S.C. §§ 1182(a)(6)(A)(i) (noncitizen present in the United States without having been admitted or paroled or who entered at a time and place other than as designated by the Attorney General), and 1182(a)(7)(A)(i)(I) (applicant for admission without valid entry documents). *See* Exhibit B.

In the NTA, immigration officers explicitly declined to charge Mr. Duarte Alarcon as an arriving alien. Instead, they charged him as "an alien present in the United States who has not been admitted or paroled." *Id.*

The backdrop of this habeas corpus petition is the September 5, 2025, Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision asserts that immigration judges lack jurisdiction to hold bond hearings for foreign nationals who, like Mr. Duarte Alarcon, are present in the United Staes without admission. *See id.* at 220.[1] Consistent with *Yajure Hurtado*, on November 6, 2025, an immigration judge sitting in the Hyattsville, Maryland, Immigration Court, denied Mr. Duarte Alarcon's request for bond because "the Court finds that it lacks jurisdiction to redetermine custody under *Matter of Ya[]Jure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The immigration judge stated that "but for the jurisdictional limitation, it would have found the Respondent eligible for release on a $10,000 bond. Based on the record, community ties, and potential for relief of Cancellation of Removal for non-LPR the court finds Respondent would not be a danger to the community or flight risk." Exhibit C.

ARGUMENT

When they arrested him on November 2, 2025, immigration officers served Mr. Duarte Alarcon with a Notice of Custody Determination. *See* Exhibit A. The document informs Mr. Duarte Alarcon that the Department of Homeland Security is acting "under authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal

[1] It bears noting that the Board issued *Yajure Hurtado* just two months after the Department of Homeland Security, through its Acting Director of U.S. Immigration and Customs Enforcement, "revisited" the Executive Branche's decades-old position that 8 U.S.C. § 1226(a) applies to foreign nationals who have crossed the border and are apprehended in the interior of the United States. *See Martinez v. Hyde*, 2025 LEXIS 141724, at * 11-12 (D. Mass. Jul. 24, 2025).

Regulations." *Id.* Just eleven days later, the Respondents stated that Mr. Duarte Alarcon is "subject to detention under 8 U.S.C. § 1225(b)(2)(A)." *See* PACER electronic docket, *Duarte Alarcon v. Bondi*, et al., No. 8:25-cv-3605, docket entry 18, p. 13. It is not clear when the Respondents' changed their minds regarding their authority to detain Mr. Duarte Alarcon. Nor is it clear how the purported statutory transition from § 1226 to § 1225 occurred. Regardless, they had it right the first time – to the extent it is appropriate to detain an individual who (i) has been in the United States for 27 years, (ii) has no criminal record, (iii) employs ten people, (iv) supports his wife and three children, and (v) participates with his Church, that authority is set forth in 8 U.S.C. § 1226(a). The Court should grant Mr. Duarte Alarcon's petition for a writ of habeas corpus because the Respondents' detention of him under 8 U.S.C. § 1225(b)(2)(A) is unlawful.

I. THE COURT HAS JURISDICTION TO HEAR MR. DUARTE ALARCON'S CHALLENGE TO HIS UNLAWFUL DETENTION

"[A] trial court should dismiss under Rule 12(b)(1) only when the jurisdictional allegations are 'clearly . . . immaterial, made solely for the purpose of obtaining jurisdiction or where such a claim is wholly unsubstantial and frivolous.'" *Kerns v. United States*, 585 F.3d 187, 193 (4th Cir. 2009)) (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946)). "To defeat a motion to dismiss under Rule 12(b)(6), the complaint must allege enough facts to state a plausible claim for relief." *Gen. Conf. of Seventh-Day Adventists v. Horton*, 787 F. Supp. 3d 99, 124 (D. Md. 2025) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The Respondents assert that the Court lacks jurisdiction under three distinct subsections of 8 U.S.C. § 1252. *See* Pet. Mem. at 5. Section 1252 governs judicial review of orders of removal. Here, and as the Respondents correctly note, Mr. Duarte Alarcon is challenging the Respondents' custodial determination and the authority under which they purport to act. *See* Pet. Mem. at 5. He is not challenging a removal order – indeed, no

such order has issued against him. Thus, the Respondents' jurisdictional arguments under 8 U.S.C. § 1252 are irrelevant. Mr. Duarte Alarcon nevertheless addresses them for the sake of completeness.

A. No Jurisdictional Bar to this Action Exists under 8 U.S.C. § 1252(e)(3).

The Respondents first assert that 8 U.S.C. § 1252(e)(3) "deprives this court of jurisdiction, including habeas corpus jurisdiction over Petitioner's challenge to his detention under § 1225(b)." Pet. Mem. at 5. That's wrong. "[A]lthough much of section 1252 'limits and channels judicial relief directly into the federal appellate courts or habeas corpus proceedings,' subsection (e)(3) expressly 'provide[s] in the expedited removal context for more traditional judicial review of 'challenges on validity of the system.'" *Grace v. Barr*, 965 F.3d 883, 891 (D.C. Cir. 2020) (quoting *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020)). In other words, § 1252(e)(3) is not a jurisdictional bar – it is a jurisdictional grant that "preserves judicial authority over challenges to the underlying [agency] policies . . ." so long as the policy implements § 1225(b). *Grace*, 965 F.3d at 893-894 (citation omitted).

As the Respondents acknowledge, they decided to charge Mr. Duarte Alarcon in conventional, *i.e.* § 1229a, removal proceedings. *See* Pet. Mem. at 2. To be sure, Mr. Duarte Alarcon is not challenging any aspect of the expedited removal system. In short, 8 U.S.C. § 1252(e)(3) has no bearing on this case. The Court should deny the Respondents' dismissal motion to the extent that it relies on this inapplicable statutory provision that, in any event, acts as a jurisdictional grant rather than a jurisdictional bar.

B. No Jurisdictional Bar to this Action Exists under 8 U.S.C. § 1252(g).

The Respondents next argue that 8 U.S.C. § 1252(g) deprives this Court of jurisdiction to hear Mr. Duarte Alarcon's habeas corpus petition. *See* Resp. Mem. at 6-7. Their second

argument fares no better than their first because it is contrary to *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999), and a bevy of United States district court opinions, including opinions from this judicial district, that have rejected this it.

The scope of § 1252(g) has been settled for over twenty-five years. "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *American-Arab Anti-Discrimination Comm.*, 525 U.S. at 482 (emphasis in original). Despite this, the Respondents argue that the decision to "detain an alien pending such removal proceedings squarely falls within this jurisdictional bar." Pet. Mem. at 6. Not so. In fact, "[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *American-Arab Anti-Discrimination Comm.*, 525 U.S. at 482.

What's more, this Court rejected the Respondents' identical argument in *Leal-Hernandez v. Noem*, 2025 U.S. Dist. LEXIS 165015, at * 13-14 (D. Md. Aug. 24, 2025). There, as here, the Petitioner did not challenge the decisions to commence proceedings, adjudicate cases, or execute removal orders, but instead challenged only his continued custody. *See id.* at *14. And to be sure, *Leal-Hernandez* is no outlier on this issue. *See, e.g., Velasquez v. Noem*, 2025 U.S. Dist. LEXIS 210601, at *4 (D. Md. Oct. 27, 2025); *Maldonado de Leon v. Baker*, 2025 U.S. Dist. LEXIS 207581, at *(D. Md. Oct. 21, 2025).[2] In sum, and "[i]n accordance with Supreme Court

[2] *Tazu v. Att'y Gen. of the U.S.*, 975 F.3d 292 (3d Cir. 2020) provides no support for the Respondents' argument that § 1252(g) bars Mr. Duarte Alarcon's habeas corpus challenge to his continued detention under § 1225(b)(2). *Compare* Pet. Mem. at 6. *Tazu* involved a foreign national who "filed a habeas corpus petition, asking the District Court to stop the Attorney General from executing his valid removal order while he trie[d] to reopen his removal proceedings and to get a Provisional Unlawful Presence Waiver." *Id.* at 294. No removal order has issued in this case.

precedent and the plain language of the text, § 1252(g) does not bar this court's authority to consider this action." *Leal-Hernandez*, 2025 U.S. Dist. LEXIS 165015, at *14.

C. No Jurisdictional Bar to this Action Exists under 8 U.S.C. § 1252(b)(9).

Under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States . . . shall be available only in judicial review of a final order under this section." Here, however, Mr. Duarte Alarcon is not challenging the Respondents' decision to place him in removal proceedings; rather, he challenges his continued detention without a bond hearing. In this respect, he is on the same footing as the petitioner in *Maldonado*. Further, and as the Respondents' own regulations make clear, "a determination 'regarding custody or bond' in immigration proceedings is 'separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.'" *Maldonado*, 2025 U.S. Dist. LEXIST, at *7-8. As in *Maldonado*, "§ 1252(b)(9) does not bar this Court's review of [Duarte Alarcon's] request for release from detention or a bond hearing." *Id.*

Additionally, "[t]o the extent that Respondents suggest that [Mr. Duarte Alarcon's] challenge to his ongoing detention pursuant to § 1225(b) raises a question of law and fact 'arising from' an action or proceeding to remove him from the United State, 8 U.S.C. § 1252(b)(9), such an overinclusive interpretation has been effectively rejected by the United States Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018)." *Maldonado*, 2025 U.S. Dist. LEXIS 207581, at *9. The court in *Maldonado* explains why this is so:

> In *Jennings*, when a class of detained noncitizens filed a habeas petition seeking bond hearings after they had been held in immigration detention for more than six months, a majority of the justices concluded that § 1252(b)(9) did not bar review of the claim, with the plurality opinion concluding that even though the legal questions relating to detention may not have been presented in the absence of removal actions against the class members, to find that they necessarily "arise

> from" the decision to remove a noncitizen would he to adopt an "expansive interpretation of § 1252(b)(9)" that "would lead to staggering results." *Jennings*, 138 S. Ct. at 840 (plurality opinion); *see also id.* at 876 (Breyer, J., dissenting) (finding that § 1252(b)(9) did not bar the claim because the challenge was to detention, not a removal order). In particular, if § 1252(b)(9) were interpreted in "this extreme way," it would lead to the "absurd" result that a claim of prolonged detention would be "effectively unreviewable," because by the time a final order of removal could be reviewed, "the allegedly excessive detention would have already taken place" and, alternatively, if no such order was ultimately entered, the detainee would be deprived of "any meaningful chance for judicial review." *Id.* at 840 (plurality opinion).

Id. at *8-9. "Because this case concerns a custody determination, the Court . . . has jurisdiction to review" Mr. Duarte Alarcon's habeas corpus petition. *Velasquez*, 2025 U.S. Dist. LEXIS, at *4 (citation omitted); *see Leal-Hernandez*, 2025 U.S. Dist. LEXIS 165015, at *14-16 & n.8. In short, the court has jurisdiction to adjudicate Mr. Duarte Alarcon's petition for a writ of habeas corpus, so it should deny Respondents' motion to dismiss.

II. Mr. Duarte Alarcon's Detention is Not Governed by 8 U.S.C. § 1225(b)(2)(A)

The Respondents' theory that Mr. Duarte Alarcon is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), *see* Pet. Mem. at 13, stems from their recent reinterpretation of the Immigration and Nationality Act's detention provisions at 8 U.S.C. §§ 1225(b) and 1226(a). This reinterpretation has only been the official policy of the Department of Homeland Security ("DHS") . . . since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had revisited its legal position." *Martinez v. Hyde*, 2025 U.S. Dist. LEXIS 141724, at *12 (D. Mass. Jul. 24, 2025) (internal quotation omitted). And it appears that it has only been the official policy of the Justice Department's Executive Officer for Immigration Review since its (coincidental) adoption of this reinterpretation of the law on September 5, 2025. *See Mater of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There are numerous reasons why the Court should reject the

Respondents' "novel interpretation of decades-old immigration detention statutes which, as several district courts throughout the country have found, is contrary to DHS's implementing regulations and published guidance, the decisions of its immigration judges (until very recently), longstanding practice in U.S. immigration law, the Supreme Court's interpretation of the statutory scheme, and traditional tools of statutory construction." *Haustra MBA Teyim v. Perry*, 2025 U.S. Dist. LEXIS 207464, at *5 (E.D. Va. Oct. 15, 2025) (citations omitted).

First, the Respondents' treatment of Mr. Duarte Alarcon warrants rejection of their claim out-of-hand. Less than three weeks ago, on November 2, 2025, the Respondents' agents provided Mr. Duarte Alarcon with a Notice of Custody Determination. *See* Exhibit A. That Notice informs Mr. Duarte Alarcon that his detention was "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act and party 236 of title 8, Code of Federal Regulations." *Id.* In short, the Respondents' agents understand what the Respondents themselves do not – their detention authority in this case arises under § 1226(a) (entitling Mr. Duarte Alarcon to a bond hearing) and not under § 1252(b)(2)(A) (subjecting him to mandatory detention). *See* Exhibit C. The Respondents' past treatment of Mr. Duarte Alarcon "unequivocally demonstrates that he is detained pursuant to § 1226(a)." *Hasan v. Crawford*, 202 LEXIS 184734, at *18 (E.D. Va. Sept. 19, 2025).

Even setting aside the Respondents' helter-skelter approach to their detention authority, their claim that Mr. Duarte Alarcon is subject to mandatory detention under § 1225(b)(2)(A), and their argument that he is an applicant for admission, is simply incorrect. To begin with, the plain language of § 1225(b)(2)(A) makes clear that its applicability is limited to foreign nationals who are "seeking admission" to the United States. *See id.* When immigration officers arrested Mr. Duarte Alarcon, he had not taken any steps to apply for admission. *See Velasquez*, 20025 U.S.

Dist. LEXIS, 210601, at *14-15. In fact, immigration officers arrested Mr. Duarte Alarcon while he was driving in Silver Spring on a Sunday morning. He therefore "cannot be deemed to have been 'seeking admission' at the time of his detention." *Maldonado*, 2025 U.S. Dist. LEXIS 207581, at *19. Section 1225(b)(2)(A)'s plain language defeats the Respondents' argument that Mr. Duarte Alarcon is properly detained under that provision.

There is more. The Respondents' attempt to bring Mr. Duarte Alarcon within the scope of § 1225(b)(2) is contrary to the Supreme Court's opinion in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In *Jennings*, the Supreme Court instructed that 8 U.S.C. § 1225(b) "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. Section 1226, on the other hand, applies to aliens already present in the United States." *Id.* at 303. "Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.* "Section 1226(a) also permits the Attorney General to release those aliens on bond . . ." *Id.*

Mr. Duarte Alarcon has been in the United States since 1997. By any measure, he is "already present in the United States." *Jennings*, 583 U.S. at 303. Under these circumstances, *Jennings* instructs that he is entitled to a bond hearing under 8 U.S.C. § 1226(a). The Court should reject the Respondents' reinterpretation of §§ 1225(b)(2)(A) and 1226(a) because it is contrary to *Jennings*.

As we have shown, Mr. Duarte Alarcon's detention under § 1225(b)(2)(A) violates that statute's plain language and the Supreme Court's opinion in *Jennings*. But those are not the only deficiencies in the Respondents' new theory of detention. Mr. Duarte Alarcon's detention under § 1225(b)(2)(A) is also contrary to other rules of statutory interpretation. For example, it is

understood 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 . . . ." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (internal quotations omitted)). The Respondents' theory of § 1225(b) — that the provision applies to all persons who have not been admitted into the United States — would render provisions of § 1226 superfluous. *See Velasquez*, 2025 U.S. Dist. LEXIS at *13; *Quispe-Ardiles v. Noem*, 2025 U.S. Dist. LEXIS 194069, at *16 (E.D. Va. Sept. 30, 2025). For instance, a recent amendment to § 1226 in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), "now codified at 8 U.S.C. § 1226(c)(1)(E), mandates detention for noncitizens who are inadmissible under certain inadmissibility grounds who have been charged with or convicted of certain crimes." *Velasquez*, 2025 U.S. Dist. LEXIS, at *13 (citing 8 U.S.C. §§ 1226(c)(1)(E)(i)-(ii)). This amendment would be "redundant if § 1225(b)(2) authorized their detention as well." *Id.* at *13-14 (quoting *Pizarro Reyes v. Raycrafi*, 2025 U.S. Dist. LEXIS 175767at *15-16 (E.D. Mich. Sept. 9, 2025)). Other district courts have arrived at the same conclusion. *See, e.g.*, *Quispe-Ardiles*, 2025 U.S. Dist. LEXIS 194069, at *16; *Hasan*, 2025 LEXIS 184734, at *22-23 (same). "If § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless." *Id.* "In sum, the . . . respondents' interpretation is presumptively wrong, particularly given that §§ 1225 and 1226 were enacted as part of the same statutory scheme." *Hasan*, 2025 U.S. Dist. LEXIS 184734, at *23.[3]

[3] To support their position, the Respondents attach an unpublished slip opinion from a District Judge sitting in the Abilene (Texas) Division of the United States District Court for the Northern District of Texas. *See* Pet. Mem. Exh. 1; PACER electronic docket, *Garibay-Robledo v. Noem et al.*, No. 1:25-cv-177, docket entry 9. The Respondents do not appear to rely upon it in their memo. This is likely because that case is distinguishable from Mr. Duarte Alarcon's case. First, the procedural posture was one of an application for a Temporary Restraining Order so the Court was not addressing the merits of the claim. *See id.* at 1, 10. Second, the District Judge acknowledged that at least four of his colleagues in the Southern District of Texas arrived at the

The Respondents make much of the Board's decision in *Matter of Yajure Hurtado*, *see* Pet. Mem. at 15-16, but the deficiencies in that decision are manifest. Perhaps most obvious is the fact that *Yajure Hurtado* is wholly inconsistent with an August 4, 2025, Attorney General Order adopting the Board's decision in *Matter of Akhmedov* "as precedent in all proceedings involving the same issue or issues." *Matter of Akhmedov*, 29 I. & N. Dec. 166 n.1 (BIA 2025). In *Akhmedov*, the Board considered the Department of Homeland Security's appeal of an Immigration Judge's grant of bond to a foreign national arrested in the interior of the United States. *See* 29 I. & N. Dec. at 166, 168. The Board's decision - as adopted by the Attorney General – could hardly be clearer: "The respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2018)." *Id.* at 166. Just like the foreign national in *Akhmedov*, Mr. Duarte Alarcon was arrested by immigration officers in the interior of the United States.

The Attorney General's determinations and rulings on all questions of law pertaining to the INA bind the Executive Branch. *See* 8 U.S.C. § 1103(a)(1). Further, under pertinent regulation, "[t]he Board shall be governed by the provisions and limitations prescribed by applicable law, regulations, and procedures, and by decisions of the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act)." 8 C.F.R. § 1003.1(d)(1)(i). Despite this clear authority, approximately one month after the Attorney General adopted *Akhmedov* as precedent, the Board issued its decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In *Yajure Hurtado*, the Board determined that a foreign national who has not been admitted to the United States is not

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opposition conclusion. *See id.* at 7. From the Respondents' perspective, the best that can be said about the *Garibay-Robledo* order is that, even assuming it were in the same procedural posture, it would be an outlier.

entitled to a bond hearing and is detained under 8 U.S.C. § 1225(b)(2)(A). *See id.* at 220. *Yajure Hurtado* cannot be reconciled with the Attorney General's decision in *Akhmedov* where she determined that 8 U.S.C. § 1226(a) governs foreign nationals who enter the United States unlawfully and who immigration officers later encounter. [4] *See Akhmedov*, 29 I. & N. Dec. at 166. 51. At bottom, *Yajure Hurtado* is simply neither "persuasive nor binding." *Velasquez*, 2025 U.S. Dist. LEXIS, at *15-16; *see Loper Bright Enters. V. Raimondo*, 603 U.S. 394, 413 (2024).

In sum, the Respondents' recent reinterpretation of 8 U.S.C §§ 1225(b)(2) and that the statue authorizes their detention of Mr. Duarte Alarcon is incorrect. The Court should grant the Petition, and order Mr. Duarte Alarcon's immediate release because he is not properly detained under 8 U.S.C. § 1252(b)(2). Alternatively, the Court should issue declaratory relief that Mr. Duarte Alarcon's detention is governed by § 1226(a) and order the respondents to release him on the bond that the Immigration Judge stated she would have set but for *Yajure Hurtado*. *See* Exhibit C.

III. Mr. Duarte Alarcon's Detention Violates the Fifth Amendment's Due Process Clause

Nowhere in their thirty-page Response to Amended Petition and Motion to Dismiss do the Respondents address Mr. Duarte Alarcon's claims that they are violating his due process rights. Not only is this telling, it also constitutes a waiver of any defense they may have wished

[4] *Yajure Hurtado* is also inconsistent with an Attorney General opinion from 2003. *In Bond Proceeding of Undocumented Aliens Seeking to Enter the United States Illegally*, the Attorney General considered the case of a Haitian citizen who entered the United States illegally aboard a vessel and who immigration officials arrested after he attempted to evade them. 27 Op. O.L.C. 1, 1 (A.G. 2003), available at https://www.justice.gov/file/145786-0/dl (last accessed, Nov. 20, 2025). After immigration officials charged the Haitian citizen under 8 U.S.C. § 1182(a)(6)(A)(i), he sought asylum and applied for bond. *See Bond Proceedings*, 27 Op. O.L.C. at 1. When assessing the Haitian citizen's request for bond, the Attorney General stated, "[t]he law governing the detention or release of aliens such as respondent (i.e., aliens arrested and detained pending a decision on removal) is set forth in section 236(a) of the INA." *Id.* at 3.

to raise against that claim. *See, e.g., United States v. Hudson*, 673 F.3d 263, 268 (4th Cir. 2012) (recognizing that argument not raised by criminal defendant in opening brief is "properly considered waived.").

Waiver aside, it is plain that the Respondents are violating Mr. Duarte Alarcon's Fifth Amendment rights to due process. It is settled that the Fifth Amendment's Due Process Clause applies to all "persons" within the United States. *See Matthews v. Diaz*, 426 U.S. 67, 77 (1976). The term "persons" includes foreign nationals such as Mr. Duarte Alarcon. *See id.* It is equally well settled that freedom from confinement is a core liberty interest and violation of that liberty interest raises a colorable substantive due process claim. S*ee, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)); *Reno v. Flores*, 507 U.S. 292, 301 (1993) (collecting cases); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (bodily freedom is the "most elemental of liberty interests").

As we have shown, Mr. Duarte Alarcon's detention is governed by 8 U.S.C. § 1226(a). Mr. Duarte Alarcon "is therefore entitled to the procedural protections due under that statute, including the opportunity to have a bond hearing before an immigration judge." *Maldonado*, 2025 U.S. Dist. LEXIS at * 24 (citing 8 C.F.R. §§ 236.1(d), 1003.19, 1236.1(d)). "The Supreme Court has recognized that a federal agency's failure to comply with its own regulations generally renders the associated agency action unlawful." *Maldonado*, 2025 U.S. Dist. LEXIS, at * 24 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). Further, as in *Maldonado*, "[t]here can be little dispute that regulations such as 8 C.F.R. § 236.1(d), , 8 C.F.R. § 1003.19, and 8 C.F.R. § 1236.1(d), which allow a noncitizen detained under § 1226(a) to request and receive review of an initial custody determination at a bond hearing before an immigration judge, are designed to provide due process to noncitizens in [Mr. Duarte Alarcon's]

position." *Id.* at *26. In short, Mr. Duarte Alarcon's continued detention absent a bond hearing pursuant to § 1226(a) constitutes a violation of his due process rights under the *Accardi* doctrine." *Id.*

In addition to the *Accardi* doctrine, more than a century of Supreme Court precedent instructs that the Fifth Amendment entitles foreign nationals to procedural due process. *See Reno*, 507 U.S. at 306 (citing *The Japanese Immigrant Case*, 189 U.S. 86, (1903)). The Respondents' refusal to provide any process whatsoever contravenes this precedent interpreting the Due Process Clause as applying to foreign nationals such as Mr. Duarte Alarcon. *See, e.g., Matthews v. Eldridge,* 424 U.S. 319, 335 (1976).

"To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the three-part test articulated in *Matthews v. Eldridge*, 424 U.S. 319 (1976)." *Quispe-Ardiles*, 2025 U.S. Dist. LEXIS 194069, at * 22. "Under that test, courts must weigh (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.'" *Id.* (quoting *Matthews*, 424 U.S. at 335).

Mr. Duarte Alarcon invokes "'the most elemental of liberty interests'; '[t]he interest in being free from physical detention.'" *Quispe-Ardiles*, 2025 U.S. Dist. LEXIS 194069, at *17 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (alterations in original). To be sure, the Respondents' refusal to provide any process whatsoever creates significant risk that Mr. Duarte Alarcon will be deprived of that interest.

The Government's interest in implementing its novel reinterpretation of 8 U.S.C.

§ 1225(b)(2)(A) is minimal. This new "approach attempts to upend decades of immigration practice." *Hasan*, 2025 U.S. Dist. LEXIS 184734, at *24. "Indeed, mandatory detention for all applicants has only been the official policy of the Department of Homeland Security ("DHS") . . . since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had "revisited its legal position. . . ." *Martinez*, 2025 U.S. Dist. LEXIS 141724, at *12. In contrast, the resumed application of decades of agency practice will satisfy the Government's interest in enforcement of the immigration laws.

There is another reason why the government's interest in detaining Mr. Duarte Alarcon without a hearing is low. In immigration court, custody hearings are routine and impose a "minimal" cost. *See Doe v. Becerra*, 2025 U.S. Dist. LEXIS 37929 (E.D. Cal. Mar. 3, 2025). Further, immigration detention is civil, not punitive, and may only be used to prevent danger to the community or to ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In sum, in Mr. Duarte Alarcon's case, all three *Matthews* factors weigh heavily in favor of holding that the Respondents' refusal to provide him any process whatsoever violates his right to procedural due process. The Court should grant the Petition for this reason as well.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition for a Writ of Habeas Corpus, and order Duarte Alarcon's immediate release based on his improper detention under 8 U.S.C. § 1252(b)(2). Alternatively, the Court should order the Respondents to release Mr. Duarte Alarcon upon his satisfaction of the bond the Immigration Judge would have set but for the Board's *Yajure Hurtado* decision. *See* Exhibit C; 8 U.S.C. § 1226(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 20, 2025, I electronically filed the foregoing document and that it is available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Raymond O. Griffith
Raymond O. Griffith, Esq.