

**IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

FILIBERTO LAGUNAS ALTAMIRANO)

Petitioner,)

vs.)

Case No. 3:25-CV-712-DJH

JEFF TINDALL, Oldham County Jailer)

KRISTI NOEM, Secretary of the)

Hon. David J. Hale

U.S. District Judge

United States Department of Homeland Security,)

and SAMUEL OLSON, Field Office Director,)

Chicago Filed Office, Immigration and)

Customs Enforcement, PAMELA BONDI, U.S.)

Attorney General)

Respondents.)

**REPLY MEMORANDUM IN SUPPORT OF HABEAS CORPUS AND IN OPPOSITION
TO RESPONDENTS' MOTION TO DISMISS**

I. INTRODUCTION

Mr. Altamirano Lagunas, who entered the United States without inspection as a child and has resided here for three decades, challenges his mandatory detention during the pendency of removal proceedings as unlawful. This challenge arises out of a new policy which significantly alters the plain and long-standing interpretation of Respondents' detention authority during the pendency of removal proceedings under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a). More specifically, the Department of Homeland Security ("DHS") through Immigration and Customs Enforcement ("ICE") has taken the position that noncitizens such as Mr. Altamirano Lagunas who are present in the United States without inspection and generally eligible to seek release on bond under Section 1226(a) are now covered by Section 1225(b)(2)(A) and, thus, subject to mandatory detention. DHS-ICE adopted this new policy by

issuing an internal memorandum on July 8, 2025.¹ The U.S. Attorney General adopted this new policy through the Board of Immigration Appeals' publication of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which erroneously holds that immigration judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission. Immigration judges are bound by *Matter of Yajure Hurtado* and, thus, are now precluded from considering Mr. Altamirano Lagunas for bond under 8 U.S.C. § 1226(a). The consequences flowing from this unlawful policy are grave; mandatory detention for thousands of noncitizens like Mr. Altamirano Lagunas who have resided in the United States for decades and have deep family ties in this country. As noted in Mr. Altamirano Lagunas's *Habeas Corpus* Petition, Dkt. 1, the overwhelming majority district courts which have considered this new mandatory detention framework under *Matter of Yajure Hurtado*, have rejected it as unpersuasive because it ignores: (1) the plain language of Section 1225; (2) the interaction between Sections 1225 and 1226 (3) recently enacted statutory provisions; and (4) the long-standing application of the statute.²

In an attempt to defend their unlawful policy, Respondents first argue that this court should constrict its jurisdiction under the habeas corpus statute, 28 U.S.C. §2241, by mischaracterizing Mr. Altamirano Lagunas's challenge as one relating to a final order of

¹The DHS-ICE Policy Memorandum can be found at <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited Oct. 16, 2025).

²A spreadsheet detailing the over 200 district court cases which support Petitioner's decision can be found at <https://ailassoc.sharepoint.com/:x/s/legalteam/ETbJeNF7whFKjedlZi4f-L0BLqBvPhDAf5Fan6xh3q9ItA?rttime=2XHmhFkT3kg> (last visited Nov. 16, 2025).

removal. Second, Respondents argue that Mr. Altamirano Lagunas is properly detained under Section 1225(b)(2)(A) by mischaracterizing him as a recently “arriving” noncitizen “seeking admissions,” which is patently inaccurate and contradicted by Respondent’s own charging document. Lastly, Respondents argue that Mr. Altamirano Lagunas is not entitled to Due Process despite having been present and within the jurisdiction of the United States for three decades. However, Respondents’ arguments are meritless as further discussed below.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner entered the United States without inspection in 1995, when he was approximately 5 years old, and has resided here ever since. Petitioner grew up in Illinois and completed his schooling in the local high school. Three of Petitioner’s brothers are citizens of the United States and both of his parents are Lawful permanent Residents of the United States.

On August 12, 2025, Petitioner was detained by Respondents in Elgin, Illinois near his home as he began his commute to work. DHS-ICE detained Petitioner pursuant to a post-arrest Administrative Warrant, which cites to the Respondents’ detention authority under Section 236(a) of the INA, 8 U.S.C. § 1226(a). *See* Administrative Warrant, attached hereto as Exhibit A. That same day, post-arrest, DHS-ICE issued a Notice to Appear (“NTA”) charging Mr. Altamirano Lagunas as a noncitizen “present in the United States who has not been admitted or paroled.” *See* NTA, attached hereto as Exhibit “B.” Because the Warrant and that NTA were both prepared post-arrest, Mr. Altamirano Lagunas’ arrest is unlawful under the *Castanon Nava* Settlement.³

³In *Nava v. Dep’t of Homeland Sec.*, No. 18-CV-3757, 2025 WL 2842146, at *1 (N.D. Ill. Oct. 7, 2025), the court held that the regulations implementing DHS’s arrest authority under 8 U.S.C. § 1226 require DHS to issue a Notice to Appear either before or concurrently with the

Mr. Altamirano Lagunas requested a bond hearing pursuant to the framework of Section 1226(a). On September 8, 2025, the Immigration Judge denied bond claiming lack of jurisdiction under *Matter of Yajure Hurtado*. See IJ's Bond Order, attached hereto as Exhibit "C"

On October 2, 2025, in removal proceedings, the Immigration Judge entered the following orders: (1) pre-terminated one of Petitioner's application for relief, namely Asylum and Withholding of Removal; (2) denied one form of discretionary relief, namely Cancellation of Removal; and (3) granted post-conclusion Voluntary Departure⁴. See IJ's Orders reflecting the issuance of an oral decision, attached hereto as Exhibit "D." Petitioner's appeal of the Immigration Judge's decision remains pending before the Board of Immigration Appeals.

III. ARGUMENT

A. This Court Has Jurisdiction Over Mr. Altamirano Lagunas' *Habeas Corpus* Action.

This court has jurisdiction to consider the issuance of a writ of habeas corpus in this case pursuant to 28 U.S.C. §2241. Section 2241 states that "district courts" may grant writs of habeas

Form I-200 warrant when making a warrant-based arrest. 8 C.F.R. §§236.1(b) and 1236.1(b). Absent the NTA, the administrative warrant is an invalid basis for arrest, rendering the arrest warrantless. DHS unlawfully arrested Mr. Altamirano Lagunas without valid warrant or NTA. On October 19, 2025, Mr. Altamirano Lagunas, through undersigned counsel, filed a claim for release under the *Castanon Nava* Settlement through the appropriate online portal. Upon information and belief, Mr. Altamirano Lagunas is within the class of individuals being considered for release pursuant to Judge Cummings recent ruling.

⁴Undersigned counsel is representing Mr. Altamirano Lagunas in his immigration proceedings after his prior immigration attorney was terminated and withdrew from the case. For the sake of clarity of the procedural history, the undersigned notes that the exhibit motion filed by the government at Dkt. 12-2 was withdrawn by Mr. Altamirano Lagunas. Moreover, in her subsequent oral decision, the immigration judge exercised favorable discretion granting Mr. Altamirano Lagunas post-conclusion relief noting that his 2020 misdemeanor offense for driving under the influence was an isolated incident.

corpus within their respective jurisdictions to a person who “is in custody under or by color of the authority of the United States” or “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §2241(a),(c)(1)-(3). The only expressed exception relates to a noncitizen who is determined to be an “enemy combatant”, which is not applicable here.⁵ Moreover, Article 1 of the Constitution mandates that the “[p]rivilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it”, which underscores the importance of federal courts continued duty to exercise jurisdiction over habeas corpus petitions. U.S. Const. art. I, § 9, cl. 2. Accordingly, Congress has granted this court with jurisdiction to consider Mr. Altamirano Lagunas’s habeas petition because he is currently detained under the color of authority of the United States and in violation of our laws and Constitution. Under constitutional mandate, that jurisdiction may not be suspended under current circumstances and, thus, this Court has an obligation to exercise the jurisdiction it has been given by law.

Respondents erroneously argue that this Court should constrict its *habeas corpus* jurisdiction by looking at 8 U.S.C. §1252, which grants circuit courts exclusive jurisdiction to review final orders of removal. Section 1252 states, in relevant part:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the *decision or action by the Attorney General to commence*

⁵Under the canon of statutory interpretation *expressio unius est exclusio alterius* which means “[t]he expression of one thing implies the exclusion of others”, noncitizen enemy combatants provide the only jurisdictional exception to habeas corpus relief. A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (Scalia & Garner).

proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. §1252(g)(emphasis added).⁶ This provision's scope is limited to the three named actions—commencement of proceedings, adjudication of cases, and execution of removal orders. *See also Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999); *Sharif ex rel. Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002). To state the obvious, Mr. Altamirano Lagunas is not challenging the fact that removal proceedings were commenced against him, how his removal case was adjudicated, or the execution of a final order of removal. Indeed, Mr. Altamirano Lagunas is not subject to a final order of removal. Through this petition, Mr. Altamirano Lagunas is only challenging his unlawful detention by DHS-ICE which falls squarely within the scope of Section 2241. Moreover, bond and removal proceedings are separate and apart from one another before the immigration courts. 8 C.F.R. § 1003.19(d)(stating that bond proceedings are “separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.”); *see also Al-Siddiqui v. Achim*, 531 F.3d 490, 494-5 (7th Cir 2008)(finding that “the regulations separate bond and removal proceedings”).

Respondents also point to Section 1252(b)(9) which states that challenges to “proceeding[s] brought to remove an alien from the United States. . . shall be available only in judicial review of a final order.” 8. U.S.C. 1252(b)(9). The Supreme Court has held, however, that “§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which

⁶The powers of the Attorney General are delegated to the immigration courts and the Board of Immigration Appeals.

removability will be determined.” See *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020); see also *Gonzalez v. U.S. Immig. and Cust. Enft*, 975 F.3d 788, 810 (9th Cir. 2020) (“Section 1252(b)(9) is also not a bar to jurisdiction ... because claims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process.”).

Lastly, Respondents point to Section 1252(a)(2)(B)(ii) which covers certain matters not subject to judicial review including determinations made “in the discretion of the Attorney General or the Secretary of Homeland Security.” 8 U.S.C. § 1252(a)(2)(B). However, this provision does not expressly cover Section 1225 and 1226 and, thus, it is inapplicable to Mr. Altamirano Lagunas’s case. Moreover, it is well settled that provisions barring judicial review of discretionary determinations do not preclude a challenge of the “statutory framework that permits the alien's detention without bail” or “the Government's detention authority under the statutory framework as a whole.” *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing to *Demore v. Kim*, 537 U.S. 510, 516 (2003)).

Because Mr. Altamirano Lagunas challenges the extent to which Respondents’ new mandatory detention policy is authorized under the INA, none of the aforementioned provisions bar this Court’s jurisdiction under the *habeas corpus* statute.

B. Mr. Altamirano Lagunas is Entitled to a Writ of Habeas Corpus Because Respondents Have Unlawfully Altered Their Detention Authority Under the INA.

i. Plain Meaning of 8 U.S.C. §§1225 and 1226

Mr. Altamirano Lagunas challenges the misapplication of 8 U.S.C. § 1225(b)(2)(A)(covering arriving noncitizens seeking admissions) and § 1226(a)(covering the

apprehension, detention and release of all other noncitizens) to him, which results in his unlawful mandatory detention. Statutory interpretation must begin with the text of the statute. *See Consumer Fin. Prot. Bureau v. Townstone Fin., Inc.*, 107 F.4th 768, 776 (7th Cir. 2024)(“We begin with the text of the statute.”). The relevant statutory provision must be considered in context of the statutory framework as a whole. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997)(“The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”).

Looking at the statutory framework of Section 1225, its title indicates that it covers “inspection by immigration officers,” and “expedited removal of inadmissible *arriving* aliens.” 8 U.S.C. § 1225 (emphasis added). Paragraph (b)(1) of that Section sets forth the procedure for inspection of noncitizens who may be subject to expedited removal including “an alien ... who is arriving in the United States,” and other “certain other aliens” designated by the Attorney General “who [have] not been admitted or paroled into the United States” and “who [have] not affirmatively shown ... that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1); *See Jennings*, 583 U.S. at 297 (finding that the INA provides for mandatory detention of certain categories of noncitizens “seeking entry into the United States” under 8 U.S.C. § 1225(b)). In *Jennings*, the Supreme Court explained that this mandatory scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is inadmissible.” *Jennings*, 583 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released

except “for urgent humanitarian reasons or significant public benefit” under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300. Parole “into the United States,” under 8 U.S.C. § 1182(d)(5)(A), permits an “arriving” non-citizen to physically enter the country, subject to a reservation of rights by DHS that it may continue to treat the non-citizen “as if stopped at the border.” *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215, 73 S.Ct. 625, 97 L.Ed. 956 (1953)).

Section 1225(b)(2)(A), states:

(2) *Inspection of other aliens*

(A) *In general*

Subject to subparagraphs (B) and (C), in the case of an alien who is an *applicant for admission*, if the *examining immigration officer* determines that an *alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C.A. § 1225(b)(2)(A)(emphasis added). “By its plain text, § 1225(b)(2) thus applies where several conditions are met: (1) an ‘examining immigration officer’ in the context of ‘inspection’ (2) determines that an individual is an ‘applicant for admission’ who is (3) ‘seeking admission.’” *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *12 (D. Nev. Sept. 17, 2025). It is important to understand the legal meaning of the terminology used in Section 1225(b)(2)(A). Section 1225(a)(1) defines “aliens treated as applicants for admission” for purposes of “inspection” under this Section as follows:

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

8 U.S.C.A. § 1225(a)(1)(West). In turn, “inspection” is defined as noncitizens “who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C.A. § 1225(a)(3)(West). The term “admission” is defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). “Entry” is understood to mean “a crossing into the territorial limits of the United States.” *Matter of Ching and Chen*, 19 I&N Dec. 203, 205 (BIA 1984) (citing *Matter of Pierre*, 14 I & N Dec. 467, 468 (BIA 1973)). However, “an immigrant submits an ‘application for admission’ at a distinct point in time” and “stretching the phrase” to continue “potentially for years or decades” “would push the statutory text beyond its breaking point.” *U.S. v. Gambino-Ruiz*, 91 F.4th 981, 988-89 (9th Cir. 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922-26 (9th Cir. 2020) (en banc)). Accordingly, Section 1225(b)(2)(A) plainly proscribes mandatory detention solely for recently arrived noncitizens who are *actively* “seeking admission” in the context of an “inspection” before an “examining immigration officer”. See e.g., *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); see also *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 at *7 (S.D.N.Y. Aug. 13, 2025). This is consistent with Supreme Court precedent interpreting Section 1225(b) and finding it “applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Jennings*, 583 U.S. at 297. Thus, Section 1225 is split into two categories. Section 1225(b)(1) provides for mandatory detention of noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or port of entry.

Respondents' argument that Mr. Altamirano Lagunas is properly detained under Section 1225 because he is currently "seeking admissions" is meritless. *See* Govt's Res. at 15. In essence, Respondents are asking this Court to impermissibly ignore several statutory requirements such as that Mr. Altamirano Lagunas be "seeking admissions" and that the application be in the context of an "inspection" before an "examining immigration officer" as well as the tense of the statutory terminology. As previously explained, Mr. Altamirano Lagunas is not actively seeking admissions because he has already been here for three decades. Contrary to what the government argues, the fact that Mr. Altamirano Lagunas is not accepting removal and has expressed fear of harm in Mexico, does not mean he is "seeking admissions" at inspection. There is simply no legal support for this proposition.

The Government's argument heavily relies on the framework for "arriving" noncitizens. It is undisputed that Mr. Altamirano Lagunas is not an "arriving" noncitizen but rather one "who is present" in the United States. *See* Exh. B *supra*. This distinction is important because Section 1225 does apply to "arriving" noncitizens. An "arriving alien means an applicant for admission coming or attempting to come into the United States." 8 C.F.R. § 1.2; *see also* 8 C.F.R. §1001.1(q). In other words, an "arriving alien" is an "applicant" who is also doing something: "coming or attempting to come into the United States." *Id.* This mirrors the text of section 1225(b)(2)(A), which applies where an individual is an "applicant" who is also doing something: "seeking admission." "The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit." *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020). Here, Mr. Altamirano Lagunas, who has undisputedly been present in the United States for three decades, is not within those limits. As the Supreme Court has found,

the INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301.

This plain reading of Section 1225(b)(2)(A) is consistent the Supreme Court's decision in *Jennings* as well as over 200 district court decisions across the county including multiple in this district. This district has held that "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already. . . This is supported by the text of the statute itself, which is focused on inspections for noncitizens when they arrive via 'crewman' or as 'stowaways' . . This limited, and more specific methods of entry suggest that Section of 1225 is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States." *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025)(internal citations omitted); *see also Patel v. Tindall*, 2025 WL 2823607, at *2-4 (W.D. Ky. Oct. 3, 2025); *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763, at *3 (W.D. Ky. Oct. 27, 2025); *Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772, at *6 (W.D. Ky. Oct. 27, 2025).

Most importantly, this Court has already decided this issue concluding as follows:

Section 1225's title refers to 'arriving aliens,' which 'strongly indicates that the statute governs the entrance of noncitizens to the United States.' This reference reinforces the text of § 1225. For example, '[t]he statute ... explicitly addresses its effect on 'stowaways' and 'crewm[e]n,' words that suggest arrival at a border or port of entry.' Moreover, § 1225(b)(2)(A) permits inspection of 'applicant[s] for admission' who are 'seeking admission' if they are not 'clearly and beyond a doubt entitled to be admitted'. The phrase 'seeking admission,' though not defined in the statute, 'implies action—something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.' And not all applicants for admission are automatically seeking admission. For example, a petitioner like Alonso may be an applicant for admission

because he did not lawfully enter the country following inspection and authorization by an immigration officer. But it does not follow that he is ‘seeking’ admission given that he has been in the United States for more than a decade.

Alonso v. Tindall, No. 3:25-CV-652-DJH, 2025 WL 3083920, at *4 (W.D. Ky. Nov. 4, 2025)(internal citations omitted). Respondents do not offer anything different to warrant a departure from this Court’s well reasoned decision. While a handful of courts have ruled differently, hundreds of decisions support this court’s analysis in *Alonso*.

In contrast to Section 1225(b)(2)(A), Section 1226(a) covers generally the apprehension, detention, and release of noncitizens present in the United States. Section 1226(a) states as follows:

(a) Arrest, detention, and release

On a warrant issued by the Attorney General⁷, an alien *may be arrested and detained* pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--
(1) may continue to detain the arrested alien; and
(2) *may release* the alien on--
(A) *bond* of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
(B) conditional parole. . .

8 U.S.C.A. § 1226(a) (West) (emphasis added). Under this framework, DHS-ICE may arrest and detain a noncitizen present in the United States. However, if DHS-ICE determines that a noncitizen should remain detained, that determination may be reviewed by an immigration judge who, in turn, may release a noncitizen on bond or conditional parole. At a bond hearing, the immigration judge considers whether the noncitizen presents a danger to the community or a

⁷This particular provision now refers to DHS.

flight risk. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 50 (BIA 2006).

Section 1226(c) “carves out a statutory category” of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain “enumerated ... criminal offenses [or] terrorist activities.” *Jennings*, 583 U.S. at 289 (citing §1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of “inadmissible” noncitizens who are present in the United States without admission. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently confirmed this understanding of Section 1226. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) (“When Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”); *see also, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) (“inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)’s discretionary detention framework”). Section 1226(c) carves out a very specific exception to Section 1226(a) mandating detention for unadmitted noncitizens only when they have committed certain crimes. Thus, Section 1226(c) supports the general applicability of 1226(a) for inadmissible or unadmitted noncitizens who are encountered in the interior of the country.

ii. The Laken Riley Amendments Should Not Be Rendered Superfluous.

Under the recently enacted Laken Riley Act, 8 U.S.C. § 1226(c)(1)(E), requires mandatory detention for noncitizens 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. 8 U.S.C. § 1226(c)(1)(E). The Laken Riley amendments otherwise continue to authorize discretionary release determinations of noncitizens charged with being inadmissible who do not fall into those enumerated exceptions. Respondents' new policy would render the Laken Riley amendments meaningless because there would be no need to make an exception for mandatory detention of noncitizens present without inspection who have been arrested, charged with, or convicted of certain crimes if all noncitizens who are present without inspection were subject to mandatory detention under Section 1225(b)(2)(A). Rendering related statutory provisions meaningless is an impermissible way to interpret the INA. "[O]ne part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together." Thomas M. Cooley, *A Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union* 58 (1868).

iii. Legislative History and Longstanding Practice.

Legislative history supports congressional intent to treat noncitizen "present" in the United States differently from recently "arriving" ones. 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 an immigration judge or other hearing officer, while those stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994) (authorizing detention of noncitizens "arriving at ports of the United States"). Congress clarified that the IIRIRA 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.” *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.). Congress has consistently maintained 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. Compare 8 U.S.C. § 1225(b) (1994 ed.), with 8 U.S.C § 1225(b)(1)-(2). These amendments were designed to address the perceived problem of noncitizens arriving in the U.S. *See* H.R. Rep. No. 104-469, p. 1, at 157-58, 228-29.

In distinguishing between noncitizens arriving versus noncitizens residing in the U.S., Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving. *Id.* at pt. 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)); *see also Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001)(holding that the Due Process Clause under the Fifth Amendment to the United States Constitution applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”).

Since its enactment, Respondents interpreted 8 U.S.C. §1226(a) as applying to noncitizens present in the United States without inspection or admission such as Mr. Altamirano Lagunas. This resulted in the U.S. Attorney General through the Executive Office for Immigration Review drafting of new regulations explaining that, in general, people who entered

the country without inspection were not considered detained under Section 1225 and that they were instead detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals recognized that “for years Immigration Judges have conducted [§ 1226(a)] bond hearings for [noncitizens] who entered the United States without inspection.” *Id.* at 216 n.6. “[T]he longstanding practice of the government’—like any other interpretive aid—‘can inform [a court’s] determination of what the law is.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024) (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014)). Respondents’ longstanding practice of treating noncitizens such as Mr. Altamirano Lagunas as detained under Section 1226(a) rather than 1225(b)(2)(A) is probative of the statute’s true application.

Mr. Altamirano Lagunas asks this court to find that he is not subject mandatory detention under Section 1225(b)(2)(A) but, rather, eligible for release pursuant to Section 1226(a).

C. Petitioner’s Mandatory Detention Violates the Due Process Clause of the 5th Amendment.

Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). To determine whether civil detention violates a noncitizen’s Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: 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.” 424 U.S. at 335.

As to the first *Mathews* factor, “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner has been detained for over 3 months in conditions that are indistinguishable from criminal incarceration. This detention prevents him from seeing his family, from going to work to support himself, and deprives him of any privacy and freedom of movement.

As to the second *Mathews* factor, the Government’s current procedure, unlawfully subjecting Petitioner to mandatory detention under Section 1225(b)(2), creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement. The alternative procedure of a bond under Section 1226(a) can ameliorate this risk.

As to the third *Mathews* factor, the Government’s interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b)(2) – that people like Petitioner who have resided in the United States for decades are now subject to mandatory detention – flies in the face of the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of federal courts across the nation. Any government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge would consider Petitioner’s individualized facts and circumstances to determine whether he is a danger to the community or a flight risk.

Lastly, the Government’s reliance on *Thuraissigiam* is misplaced because that case dealt with an “arriving” noncitizen who did not have the same due process rights as Mr. Altamirano

Lagunas. *Thuraissigiam*, 591 U.S. at 107(explaining that “[w]hile aliens who have established connections in this country have due process rights in deportation proceedings, [but] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause. [Petitioner]. . . was apprehended just 25 yards from the border).

D. This Court May and Should Order Petitioner’s Immediate Release.

Several courts in this district including this one have ordered the immediate release of unlawfully detained noncitizens with a subsequent bond hearing before a neutral Immigration Judge. *Orellana*, at *6. Courts in other districts have come to the same conclusion. For example, in *Alejandro v. Olson et al*, 25 CV 020270-JPH-MKK, Judge Hanlon ordered Petitioner’s immediate release given that Respondents did not argue Petitioner was a danger to the community or a flight risk. *See* Judge Hanlon’s 25 CV 02027 Order, attached hereto as Exhibit “E.” Other courts have ordered an individualized bond hearing in which the Government bears the burden of proof. In so doing, the courts have underscored that “[a]lthough noncitizens typically bear the burden of proof at bond hearings before EOIR [Immigration Judges], *see* 8 C.F.R. § 236.1(c)(8), shifting the burden reflects the concern that a noncitizen ‘should not have to share the risk of error equally’ in the context of a due process violation and his ‘loss of liberty.’” *Ochoa Ochoa v. Noem et al*, 25 C 10865 at *17-18. (citing to *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020).

IV. CONCLUSION

A plain reading of the statutory framework, recent amendments, legislative history and longstanding agency practice demonstrate that Respondents’ new mandatory detention policy violates the INA and the Due Process Clause of the 5th Amendment to the Constitution. For

these reasons, Mr. Altamirano Lagunas asks this Court to grant his Petition for Writ of Habeas Corpus and order his release or, alternatively, an individualized bond hearing.

Dated: Aurora, Illinois
November 17, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Western District of Kentucky by using the CM/ECF system. All parties to this case are registered CM/ECF users and will be served through the CM/ECF system.

Dated: November 17, 2025
Aurora, Illinois

Respectfully submitted,

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