UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

NOEL ISAI SAMAYOA,
A# [redacted]

Petitioner,

vs.

ADAM SMITH, *in his official capacity as Jailer of Christian County Jail*; and
SAM OLSON, *Field Office Director for ICE Chicago Field Office*, and
TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and
KRISTI NOEM, *Secretary of Homeland Security*; and
PAMELA BONDI, *U.S. Attorney General.*

Respondents.

CASE NO.: 5:25-CV-190-BB

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

AND COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This Petition challenges the ongoing and unlawful detention of Petitioner, Noel Isaí Samayoa (Petitioner), A# [redacted] by U.S. Immigration and Customs Enforcement (ICE) at the Christian County Detention Center, Kentucky. Petitioner is neither a flight risk nor a danger to the community. *See* Exhibit 1 (ICE Locator).
2. Petitioner's continued detention by ICE is unlawful and unconstitutional. The government's recent policy shift—reclassifying noncitizens who entered without inspection as "arriving aliens" subject to mandatory detention under 8 U.S.C. §

1225(b)—contradicts the statute, decades of established statutory interpretation, agency regulations and practice, and binding precedent. Petitioner, apprehended in the interior years after entry, is entitled to discretionary bond hearings under 8 U.S.C. § 1226(a), not mandatory detention without judicial review. *See* Exhibit 2 current list of over 150 district courts from around the country agreeing with Petitioner, all rejecting Respondent's position. Since habeas relief is individualized and cannot be brought as a class action, each case has to be litigated separately.

3. Despite being apprehended within the interior of the United States long after arrival rather than at the border, Petitioner is now deemed ineligible for bond due to his entry without inspection. This stems from a controversial policy shift by ICE in July 2025, which aligns with a recent Board of Immigration Appeals (BIA) decision. This decision disrupts decades of established legal precedent by introducing a novel interpretation of the Immigration and Nationality Act (INA). This interpretation, which contradicts both the statute's clear language and constitutional principles, reclassifies all noncitizens who entered without inspection, including the Petitioner, as "arriving aliens" or "applicants for admission." Consequently, they are subject to mandatory detention under 8 U.S.C. § 1225(b), rendering them ineligible for bond hearings by immigration judges.
4. While § 1225 mandates detention without bond for noncitizens apprehended at the border as "seeking admission," it does not apply to those like the Petitioner, who were detained within the United States long after arrival here. Therefore, the Petitioner seeks a declaratory judgment from this Court affirming that his detention should be under 8 U.S.C. § 1226(a). The Petitioner requests an order for his release

within 48 hours unless the government can demonstrate, by clear and convincing evidence, that he poses a danger to the community or is a flight risk. Alternatively, the Petitioner seeks an order for a discretionary bond hearing under § 1226(a) before an Immigration Judge within 7 days, where the government must prove by clear and convincing evidence that he is a danger to the community or a flight risk. Additionally, the Petitioner requests that Respondents be prohibited from re-detaining him unless they can meet the same evidentiary standard.

5. Respondents' actions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution by depriving Petitioner of liberty without individualized assessment or a meaningful opportunity to be heard before a neutral decisionmaker. The agencies' interpretation also contravenes the INA and its implementing regulations, the Administrative Procedure Act (APA), and the *Accardi* doctrine, which obligates administrative agencies to follow their own rules, procedures, and instructions. Numerous federal courts have rejected the government's novel reading of the detention statutes, reaffirming that interior apprehensions are governed by § 1226(a) and entitled to bond review.
6. Petitioner seeks immediate habeas, declaratory, and injunctive relief, ordering Respondents to be directed to immediately release Petitioner from custody. A detailed statement of facts and procedural history follows, supporting Petitioner's claims for relief.

II. JURISDICTION

7. This Court has jurisdiction under several legal provisions, including 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus, and 28 U.S.C. § 1331, which provides for federal question jurisdiction. Jurisdiction over habeas claims is conferred by 28 U.S.C. § 2241, while non-habeas claims for declaratory and injunctive relief arise under 28 U.S.C. § 1331, the APA, and the Declaratory Judgment Act.

8. Additionally, jurisdiction is supported by Article I, § 9, cl. 2 of the Constitution, known as the Suspension Clause, and Article III, Section 2, which addresses the Court's authority to hear constitutional issues raised by the Petitioner. The Petitioner seeks immediate judicial intervention to address ongoing violations of constitutional rights by the Respondents. This action is grounded in the United States Constitution, the Immigration & Nationality Act of 1952, as amended (INA), 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C. § 551 *et seq.* Furthermore, the Court may also exercise jurisdiction under 28 U.S.C. § 1331, as the action arises under federal law, and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. The Court has authority to issue a declaratory judgement and to grant temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure (FRCP), as well as 28 U.S.C. §§ 2201-2202. Additionally, the Court can utilize the All Writs Act and its inherent equitable powers to provide such relief. Furthermore, the Court has the authority to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

10. This Court possesses federal question jurisdiction under the APA to "hold unlawful and set aside agency action" deemed "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as outlined in 5 U.S.C. § 706(2)(A). In the absence of a specific statutory review process, APA review of final agency actions can proceed through "any applicable form of legal action," which includes actions for declaratory judgments, writs of prohibitory or mandatory injunction, or habeas corpus, in a court of competent jurisdiction, as specified in 5 U.S.C. § 703.
11. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.
12. The U.S. Supreme Court has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. Even though the government may detain individuals during removal proceedings, *Denmore v. Kim*, 538 U.S. 510, (2003), (although that case involved detention under §1226(c) of certain criminal aliens) there are limitations to this power of the executive branch. Limitations like the Due Process Clause restrict the Government's power to detain noncitizens. It is well settled that individuals in deportation proceedings are entitled to due process of law under the Fifth Amendment. *Reno v. Flores*, 507 U.S. 292, 306, (1993). Courts must review

immigration procedures and ensure that they comport with the Constitution.

13. Federal courts have retained the statutory authority to grant writs of habeas corpus since enactment of the Judiciary Act of 1789. In *Felker v. Turpin*, 518 U.S. 651 (1996), the Supreme Court declined to find a repeal of § 2241 by implication as to its original habeas corpus jurisdiction. See also *Boumediene v. Bush,* 553 U.S. 723 (2008). In addition to the Supreme Court in many cases, all Circuit Courts of Appeals have recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law.

14. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process, arbitrary and capricious agency action, violations of the *Accardi* doctrine, and other injuries without notice or opportunity to be heard. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

15. Petitioner's claims challenge only his civil immigration detention and the procedures used to prolong it—not the merits of removability or any final order of removal—and therefore fall outside 8 U.S.C. § 1252(b)(9)'s channeling provision. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (detention challenges are not "questions of law or fact arising from" removal proceedings). Consistent with

that framing, any injunctive relief sought here is strictly as-applied to Petitioner—for example, directing Petitioner's release under § 1226(a) or barring application of § 1225 as to Petitioner —and does not "enjoin or restrain the operation" of any statute within § 1252(f)(1)'s bar. In any event, § 1252(f)(1) permits individualized, as-applied relief for a single noncitizen, even while prohibiting class-wide injunctions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49 (2022).

16. Section 1252(f)(1) does not bar the individualized injunctive relief sought here. That provision limits lower courts' authority to "enjoin or restrain the operation" of the INA's detention and removal provisions on a class-wide or programmatic basis but expressly preserves injunctive relief "with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–50 (2022). Petitioner seeks only as-applied relief tailored to Petitioner —e.g., directing Petitioner's release under § 1226(a) or precluding DHS from enforcing the "arriving alien" definition of § 1225 toward Petitioner. That relief neither halts the general operation of any INA provision nor provides class-wide relief and thus falls squarely within § 1252(f)(1)'s carve-out.

17. Section 1252(g) is likewise inapplicable. It is a "narrow" jurisdictional bar that applies only to three discrete decisions or actions: "to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge any such decision. Petitioner challenges ongoing civil detention and DHS's use of an unlawful interpretation to nullify the plain language of the INA and its

regulations as applicable to these agencies. Such detention-related claims and challenges to custody procedures fall outside § 1252(g). *See id.* at 482–83; cf. *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018) (§ 1252(b)(9) does not channel detention claims).

18. To prevent ouster of this Court's habeas jurisdiction, the Court should, pursuant to 28 U.S.C. § 1651(a) (All Writs Act) and 28 U.S.C. § 2241, issue an immediate limited order prohibiting Respondents from transferring Petitioner outside the court's District or otherwise changing Petitioner's immediate custodian without prior leave of Court while this action is pending. Such relief is necessary in aid of jurisdiction because habeas is governed by the district-of-confinement/immediate-custodian rule, and transfer can frustrate effective review. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Ex parte Endo*, 323 U.S. 283, 307 (1944); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966).

III. VENUE

19. Venue is proper in the United States District Court for the Western District of Kentucky because Petitioner is currently detained at the Christian County Detention Center in Hopkinsville, Kentucky, under the custody of the Department of Homeland Security (DHS). Respondent Adam Smith, as the Jailer of Christian County Detention Center, is the Petitioner's immediate custodian and Respondents exercise authority over Petitioner's custody in this jurisdiction, as supported by *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Habeas petitions generally are filed in the district court with jurisdiction over the filer's place of custody, also known

as the district of confinement, pursuant to 28 U.S.C. § 2241. Additionally, with respect to Petitioner's non-habeas claims seeking prospective declaratory and injunctive relief against federal officials (agencies and officers of the United States) sued in their official capacities, venue is proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to these claims, including the initial arrest and continued detention of Petitioner and the enforcement of the mandatory detention agency interpretation, occurred in this District. Furthermore, the Respondents are officers of United States agencies, the Petitioner resides within this District, and there is no real property involved in this action.

IV. PARTIES

20. Petitioner, Noel Isaí Samayoa, is a 39-year-old citizen of Guatemala who has resided in the United States since November 2002, having entered through the southern border through Arizona without inspection more than twenty-three (23) years ago. He lives in Bensenville, Illinois, with his partner and their two U.S. citizen children, ages 15 and 13. He is currently detained in Kentucky following his arrest on October 14, 2025, while leaving for work.

21. Respondent Adam Smith is the Jailer of Christian County Jail in Hopkinsville, Kentucky. As such, Respondent Adam Smith is responsible for the operation of the Detention Center where Petitioner is detained and is the immediate custodian who is currently holding Petitioner in physical custody. Because ICE contracts with private and county-operated detention facilities to house immigration detainees, Respondent Adam Smith has immediate physical custody of the Petitioner and is

sued in his official capacity.

22. Respondent Sam Olson is the Chicago Field Office Director (FOD) for ICE. As such, Respondent Olson is responsible for the oversight of ICE operations at the Christian County Jail. Respondent Olson is being sued in his official capacity. He is the head of the ICE office that unlawfully arrested Petitioner, and such arrest took place under his direction and supervision. He is the immediate *legal* custodian of Petitioner.

23. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). As such, Respondent Lyons is responsible for the oversight of ICE operations and the head of the federal agency responsible for all immigration enforcement in the United States. Respondent Lyons is being sued in his official capacity.

24. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). As Secretary of DHS, Secretary Noem is the cabinet-level official responsible for the general administration and enforcement of the immigration laws of the United States. Respondent Secretary Noem is being sued in her official capacity.

25. Respondent Pamela Bondi is the Attorney General of the United States and is sued in her official capacity since U.S. government agencies are Respondents in this complaint. Furthermore, the Immigration Judges who decide removal cases and applications for bond and relief from removal do so as her designees at the Executive Office for Immigration Review (EOIR).

26. Petitioner names certain federal officials in their official capacities solely to preserve alternative, non-habeas avenues for prospective relief—such as as-applied declaratory and injunctive orders under 28 U.S.C. § 1331, the APA's waiver of sovereign immunity, 5 U.S.C. § 702, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651—necessary to enjoin enforcement of DHS regulations and their interpretation as applied to Petitioner, ensure compliance with DHS/EOIR custody regulations, prevent transfer or removal of Petitioner, and effectuate any release the Court orders at the agency level where policy and implementation authority reside. See, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Dugan v. Rank*, 372 U.S. 609 (1963).

27. Petitioner acknowledges that under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), the proper respondent to the habeas claim is the immediate custodian, and Petitioner does not rely on these officials as "habeas respondents." Petitioner names federal officials in their official capacities solely to ensure the Court can issue effective relief on non-habeas claims, consistent with *Rumsfeld v. Padilla*. To the extent the Court deems them improper Respondents on the habeas count, Petitioner respectfully requests that any dismissal be limited to that claim and without prejudice to their continued status as Respondents on the non-core claims, such as declaratory judgement and injunctive relief, so that effective, agency-directed relief can issue to the officials with authority to implement it.

VI. STATEMENT OF FACTS AND PROCEDURAL HISTORY

28. Petitioner, Noel Isaí Samayoa-Calderón (A#[redacted], is a 39-year-old citizen of Guatemala who has resided in the United States since approximately November 2002, having entered through the southern border without inspection near Sonora, Mexico, into Arizona, more than twenty-two (22) years ago. He has established strong family and community ties after living in the country for over two decades.

29. Petitioner resides in Bensenville, Illinois, with his long-term partner and their two U.S.-citizen children, ages 15 and 13. He has worked steadily to support his family and has no criminal history other than a single minor traffic violation for driving without a license nearly eighteen years ago, which was resolved in court. He is regarded as a person of good moral character and an active member of his local church community.

30. On October 14, 2025, Petitioner was arrested by Immigration and Customs Enforcement (ICE) officers in Bensenville, Illinois, as he was leaving for work. Following his apprehension, ICE transferred him to immigration custody, and he is currently detained at the Christian County Detention Center in Hopkinsville, Kentucky, under the custody of the Department of Homeland Security (DHS). *See* Exhibit 1, ICE inmate locator.

31. ICE initiated removal proceedings against Petitioner by filing a Notice to Appear (NTA) with the immigration court. Petitioner's Master Calendar Hearing is scheduled for November 10, 2025, at 9:30 a.m. before Immigration Judge Brandon J. Josephsen at 410 W 7th Street, Hopkinsville, KY 42240. *See* Exhibit 3 (EOIR Automated Case Information System).

32. Petitioner was arrested in the interior of the United States approximately nineteen (19) years after entry and is therefore improperly detained under 8 U.S.C. § 1226(a), ICE having not issued a warrant for his arrest. Had they issued a warrant, his arrest under 8 U.S.C. § 1226(a), which provides for discretionary bond or release on recognizance, may have been proper. Nevertheless, Respondents have classified him as an "arriving alien" and detained him under 8 U.S.C. § 1225(b)(2)—rendering him ineligible for bond under their new, unlawful policy.

33. Pursuant to 8 U.S.C. § 1357(a)(2), immigration officers may arrest and briefly detain noncitizens believed to be in violation of immigration laws, but such detention may last no more than forty-eight (48) hours—excluding weekends and holidays—unless a warrant is issued and removal proceedings are formally initiated. In Petitioner's case, ICE failed to issue a warrant or commence proceedings within that period. Petitioner has been continuously detained by ICE since October 14, 2025, upon information and belief was done more than 48 hours after his arrest. As this Petition is filed on October 31, 2025, Petitioner has been held well beyond the maximum 48-hour statutory period permitted by law.

34. Additionally, the 48-hour rule is often associated with the requirement for a prompt probable cause determination following a warrantless arrest, as established in the Supreme Court case *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). This case, while not specific to immigration, generally requires that individuals arrested without a warrant must be provided a probable cause hearing within 48 hours to comply with the Fourth Amendment.

35. Petitioner's continued detention, now exceeding two weeks, is based solely on

ICE's erroneous classification of him as an "arriving alien" or "applicant for admission", subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner was apprehended in the interior of the United States more than three decades after entry, and therefore his detention should be governed by 8 U.S.C. § 1226(a), which allows for discretionary release on bond or recognizance.

36. Because all Respondents continue to treat Petitioner as detained under § 1225(b), any request for bond redetermination before an Immigration Judge would be futile, as the Immigration Court has already disclaimed jurisdiction over such requests. Accordingly, habeas relief is the only available and effective remedy to secure Petitioner's release or a lawful custody hearing.

37. Petitioner is neither a danger nor a flight risk. He has lived in the same community for decades, raised a family of U.S. citizens, and has maintained steady employment. Less-restrictive alternatives remain available and adequate such as release on recognizance or posting a low bond.

38. Prolonged detention under these circumstances imposes unnecessary hardship on Petitioner and his family, depriving his U.S.-citizen children of their father's financial and emotional support, and violating Petitioner's right to due process and freedom from arbitrary detention.

39. Upon information and belief, as of the time of filing of this Writ of Habeas, Petitioner remains confined the Christian County Detention Center in Hopkinsville, Kentucky, solely because of ICE's invocation of its new interpretation that Petitioner is an "arriving alien" or "applicant for admission" and is therefore subject to mandatory detention. Even Petitioner were to file for a bond redetermination

with the immigration judge, they would deny it pursuant to *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). Accordingly, it would be futile for Petitioner to request a bond for release from an Immigration Judge. Due to the binding nature of *Matter of Yajure Hurtado*, all immigration courts known to counsel are denying bond requests for similarly situated noncitizens, making habeas the only effective remedy. Similarly, even in cases an Immigration Judge would grant bond, ICE would appeal it which would leave Petitioner incarcerated through the appeal, which would take months and end up dismissed based on *Yajure Hurtado.*

V. EXHAUSTION OF REMEDIES

40. **No statutory exhaustion requirement applies to habeas cases,** and the recent interpretations by DHS and EOIR have effectively closed all administrative avenues for securing release for noncitizens, like Petitioner, who entered the U.S. without inspection. ICE's internal policy from July 2025, coupled with the EOIR's Board of Immigration Appeals (BIA) precedent, mandates that immigration judges deny bond to the Petitioner and similarly situated noncitizens, rendering any further administrative steps futile. An administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it as noted in *Gibson v. Berryhill*, 411 U. S. 564, 575, n. 14 (1973). Requiring Petitioner to seek reconsideration with ICE or a bond hearing with an immigration judge "would be to demand a futile act" as no relief would be granted while Petitioner languishes in detention, as highlighted in *Houghton v. Shafer*,

392 U.S. 639, 640 (1968). Moreover, even if any remedies were available, the habeas statute does not require Petitioner to exhaust them.

41. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of ICE's actions and ICE's and EOIR's current interpretations of the mandatory detention provisions. Administrative hearings cannot address the constitutional claims at issue, rendering further proceedings ineffective. Moreover, where ICE seeks to quickly remove noncitizens like Petitioner even to third countries, without due process, particularly under the current administration's policies, underscores the inadequacy of administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (futility exception to exhaustion applies where administrative remedies are inadequate or unavailable). Thus, pursuing such remedies would be an exercise in futility, as they fail to provide any meaningful opportunity to address the constitutional violations at hand.

42. Petitioner has exhausted his administrative remedies to the extent required by law, and Petitioner's only remedy is by way of this judicial action.

VI. LEGAL AND STATUTORY BACKGROUND

A. Noncitizens Are Entitled to Due Process

43. The principle that noncitizens present in the United States must be afforded due process is deeply rooted in our legal history for hundreds of years. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fourteenth Amendment applies to all persons within the territorial jurisdiction of the United States, regardless of race, color, or nationality); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Fifth Amendment . . . protects every person within the jurisdiction of the United States from deprivation

of life, liberty, or property without due process of law . . . [i]ncluding those whose presence in this country is unlawful, involuntary, or transitory[.]") (citation omitted)).

44. These landmark Supreme Court cases affirm that due process protections apply to all persons within the U.S., regardless of their immigration status. These foundational principles are not merely historical artifacts but are vital, living tenets that must guide current immigration practices. The Court has consistently recognized that noncitizens facing deportation are entitled to due process under the Fifth Amendment, as seen in *Landon v. Plasencia*, 459 U.S. 21 (1982) (noncitizens facing deportation are entitled to due process under the Fifth Amendment, which includes a full and fair hearing and notice of that hearing); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent).

B. <u>The Erosion of Well-Established Immigration Law In 2025</u>

45. The specific type of liberty deprivation suffered by Petitioner is not unique in 2025. Indeed, the recent, dramatic expansion of civil immigration detention powers by the U.S. government, has quietly eroded over 70 years of immigration law history. This expansion has occurred not through explicit legislative change but via broad agency interpretations, leading to a normalization of widespread, unreviewable detention of noncitizens. Tens of thousands of noncitiznes are now subject to automatic, non-reviewable loss of liberty, contravening our immigration laws, Supreme Court precedents, and the U.S. Constitution. The vast majority of ICE

detainees are non-criminals, like Petitioner[1]. Many others have minor criminal backgrounds.

46. Traditionally, procedural safeguards such as individualized bond hearings and judicial review have served as critical checks against arbitrary detention. Immigration detention decisions involved two procedural layers: an initial custody determination by ICE (or CBP for noncitizens confronted at the border), followed by a custody redetermination (bond hearing) before an Immigration Judge (IJ), with appellate review by the BIA. **Detention was permitted only upon finding of flight risk or danger to the community**, and noncitizens had the right to challenge their detention before an IJ and seek release on their own recognizance or a bond. With the exception of significant criminal history or extremely negative immigration history, the vast majority of noncitizens in the country were not detained, including those in removal proceedings, who were either released on their own recognizance or ordered to post a bond (most under $5,000), in order to appease DHS that they will show up for their removal hearings. In most cases, ICE attorneys did not object to bond grants and if the IJ ordered a bond, few appeals were being filed. Most noncitizens show up for their hearings, as they want to plead their case and obtain relief from removal and permanent status in the United States.

47. In the initial months of the second Trump administration, ICE abruptly shifted its enforcement strategy, initiating widespread arrests of noncitizens without any individualized assessment of flight risk or danger to the community. These

[1] According to the Transactional Records Access Clearinghouse, 71.5% of detainees have no criminal conviction as of September 21, 2025. Immigration Detention Quick Facts, available at: https://tracreports.org/immigration/quickfacts/

detentions were not incidental; they were executed in a targeted and systematic fashion, often in highly visible public spaces—including churches, schools, during their appearance for ICE reporting and even immigration court hearings where noncitizens appeared for scheduled proceedings. This approach enabled ICE to detain large groups of individuals en masse, apparently to satisfy newly imposed detention quotas. Notably, ICE disregarded less restrictive and more cost-effective alternatives for ensuring appearance at immigration hearings, such as reporting requirements and electronic ankle monitoring. While an ankle monitor costs the agency approximately $5 to $40 per day, detention costs soar to roughly $1,000 per day for each individual. This policy not only imposes a substantial financial burden on the government, but also results in unnecessary and punitive deprivation of liberty for noncitizens who pose no threat to public safety or risk of absconding.

48. While detention of noncitizens is within the purview of the agency, according to 8 C.F.R. 236.1, a noncitizen who is detained is able to appeal their detention to an IJ and request a bond. Many bonds were still being granted by Immigration Judges around the country, notwithstanding ICE's detention, however that has drastically changed in the last two months. Recent administrative expansions have systematically stripped noncitizens of their fundamental rights to challenge detention, thereby undermining the very fabric of due process protections. In July 2025, ICE has issued a memo to all its employees by stealth, without public disclosure, and without public comment and notice period. *See* Exhibit 4. The exhibit was obtained through the American Immigration Lawyers Association website. According to the new ICE "interpretation", any person who entered

without inspection, like Petitioner, is now subject to mandatory detention without bond.

49. If Respondents' interpretation of § 1225 were truly grounded in the plain language and longstanding application of the statute—such that every noncitizen who entered without inspection is categorically subject to mandatory detention—there would have been no need for ICE to issue a stealth, unpublished memo in July 2025, nor to bypass the established regulatory process, including notice-and-comment rulemaking under the APA. The fact that ICE chose to implement this sweeping policy shift through an internal, non-public directive, rather than through transparent rulemaking or publication in the Federal Register, strongly suggests that the agency itself recognized this was a controversial reinterpretation, not a faithful application of existing law. For decades, both agency practice and BIA precedent consistently treated interior apprehensions of long-term residents as subject to discretionary bond under § 1226(a), not mandatory detention under § 1225(b).

50. The abrupt change in July 2025—implemented without public notice, opportunity for comment, or regulatory justification—undermines Respondents' claim that their reading is compelled by statute. If the law were as clear as Respondents now assert, ICE would have had no reason to conceal its policy shift or avoid the procedural safeguards of the NPRM process. Instead, the agency's actions reflect an attempt to circumvent both statutory requirements and public accountability, further supporting Petitioner's argument that the new interpretation is not only unlawful, but also procedurally and substantively deficient under the APA and the Accardi doctrine.

51. Then two EOIR cases supporting the same statutory interpretation followed. The first case that was a published decision by the BIA, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), held that an applicant for admission arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings, is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b). This case is inapplicable to Petitioner because it deals with the detention of an "applicant for admission" who is arrested while arriving in the United States. The case is relevant to individuals who are at the border or a port of entry and are seeking admission into the country. It does not apply to those who have already entered the United States and are apprehended within its interior. The second published decision from the BIA, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), significantly expanded the agency's mandatory detention interpretation to include all noncitizens who enter without inspection, denying them bond hearings under section 236(a) of the INA. The above-mentioned ICE memo, coupled with this decision, which will be discussed below, prevents Petitioner's release and violates Petitioner's Due Process rights.

52. *Matter of Yajure Hurtado* reclassified all Entrants Without Inspection (EWIs) as "arriving aliens" and denied bond eligibility, overturning decades of precedent and agency guidance that had consistently applied § 1226(a) to interior apprehensions. The sudden change not only contradicts the statutory structure and legislative history, but also renders the separate inadmissibility charges superfluous, demonstrating that Congress never intended § 1225 to govern long-term residents apprehended far from any inspection point. The prior BIA decisions and

longstanding EOIR guidance—consistently granted bond to such individuals, confirming that the government's new position is a radical departure from decades of established law and practice. See, for example, *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

C. Immigration Detention Legal Framework

53. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge has to determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

54. Detention is authorized for "certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and § 1226(c)." See *Jennings v. Rodriguez*, 584 U.S. 281, 289 (2018). The INA provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary relief under § 1226(a) has been described as the "default" provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), "except as provided in subsection (c)" (which refers to certain criminal aliens), the Attorney General "may release the alien on" "bond" … or "conditional parole." *Id.*

55. Discretionary detention under 8 U.S.C. § 1226(a) applies equally to noncitizens who entered legally with a visa or for those who entered without inspection, like the Petitioner. This provision grants the Attorney General the authority to arrest and detain any noncitizen pending a decision on their removal from the United States. **The statute explicitly allows for the detention of noncitizens regardless of their**

manner of entry, as it does not distinguish between those who entered with inspection and those who did not. The discretionary nature of § 1226(a) is further supported by case law, such as *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), which emphasizes that the use of the word "may" in the statute implies discretion rather than a mandate. Additionally, the Ninth Circuit in *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022), recognized that § 1226(a) provides extensive procedural protections, including bond hearings, **to all noncitizens detained under this provision, irrespective of their entry status.** This interpretation ensures that all noncitizens, whether they entered legally or without inspection, are subject to the same discretionary detention framework under § 1226(a).

56. Other than certain criminal aliens, mandatory detention is authorized for "certain aliens ***seeking admission*** into the country under §§ 1225(b)(1) and 1225(b)(2)," [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be "applicants for admission" may be subject to mandatory detention under two separate subsections. Applicants for admission include someone who is:

> "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." § 1225(a)(1)

57. Under §§1225(b)(1), if someone is determined to be an "arriving alien", they may be subject to removal and mandatory detention (if they have not been physically present in the United States continuously for a two-year period immediately prior.)

Regulations define an "arriving alien" as:

> "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."
>
> 8 C.F.R. § 1.2.

58. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of "applicant for admission" specifically when "the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title," i.e. for traditional removal proceedings [emphasis added].

59. An "arriving alien" or an applicant for admission "seeking admission" may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a "parole bond" – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

60. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE's initial custody determination before the IJ (a "custody review hearing"), who has the authority to modify ICE's custody determination and set bond in a case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount or deny bond completely. 8 C.F.R. §§ 1003.19, 1236.1(d).

61. Custody review hearings and bond determinations are distinct from the hearings on the merits of the removal case, as outlined in 8 C.F.R. § 1003.19(d). Even if a noncitizen is granted bond by the IJ, they are still required to appear in immigration court for the IJ to assess their removability and consider any claims for relief from removal. During a custody review hearing, once the IJ establishes jurisdiction over the bond, the focus is solely on determining whether the detainee poses a danger to the community or is a flight risk. The regulation ensures that the focus of custody and bond hearings is on the immediate question of detention, rather than the broader issues of removability or eligibility for relief. Bond can only be granted if the IJ concludes that the detainee has met their burden of proving they are neither a danger nor a flight risk, as established in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
62. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
63. 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). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
64. 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 pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); *see* also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

65. For decades, Respondents have consistently provided discretionary bond hearings and custody review hearings under § 1226(a) to individuals encountered within the interior of the United States, meaning those who are neither at a point of entry nor actively seeking admission. There are far too many authorities to name in support, some will be named in the following sections as controlling authority to rebut the government's application of § 1225, but for example see the following: *Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157 PHX DLR (CDB), 2025 WL 2349133, at *10 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)," citing *Loper Bright Enter. V. Raimondo*, 603 U.S. 369, 386 (2024).

66. The Supreme Court has only recognized two legitimate objectives of immigration detention: **preventing danger to the community or preventing flight prior to removal**. *See Jennings,* 583 U.S. 281 at 300–01; *Demore v. Kim,* 538 U.S. 510, 523 (2003).

67. Due to due process concerns regarding the deprivation of liberty in civil contexts, most circuit courts addressing immigration detention issues for individuals not subject to a final order of removal have determined that the government bears the burden of proving that such individuals are a flight risk or a danger. The Ninth Circuit has ruled that noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that they are a flight risk or will be a danger to the community," as seen in *Diaz v. Garland,* 53 F.4th 1189, 1196 (9th Cir. 2022), where the court emphasized that they have a right to contest their custody before an IJ, **at which time the government bears the burden to prove that detention is justified**. The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a noncitizen is a danger to the community or a flight risk to deny bond. Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released if the government cannot meet its burden of proving they are a danger or flight risk.

D. <u>New ICE Memo Reinterpreting 8 U.S.C. § 1225(b)(2)</u>

68. On July 8, 2025, ICE issued new interim guidance that significantly broadens the interpretation of 8 U.S.C. § 1225(b)(2). This guidance, detailed in the ICE memorandum titled "Interim Guidance Regarding Detention Authority for Applications for Admission," (*See* Exhibit 4), addresses the detention of

"applicants for admission" as defined by § 1225(a)(1). The Department of Homeland Security (DHS) has declared that, "Effective immediately, it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)]." *Id.* This policy represents a significant departure from previous interpretations and practices concerning the treatment of noncitizens, aligning them with the historical treatment of "arriving aliens." Importantly, this memorandum was not made public or subjected to the notice and comment process required by the APA, but was instead issued by stealth without public disclosure. The exhibit was obtained through the American Immigration Lawyers Association website.

69. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that "[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C.§ 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

70. Moreover, ICE maintains that "DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position." *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of "correct" paperwork is nonetheless permissible. *Id.* ("Accordingly, ERO and HIS are not required to 'correct' the release paperwork by

issuing INA § 212(d)(5) parole paperwork.")

E. Recent BIA Decision Matter of Yajure Hurtado

71. On September 5, 2025, the BIA, which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of §1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that the respondent, who entered without inspection years previously, was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

72. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that ***all*** applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. ***Id.*** at 220.

73. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

74. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the

current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled 'Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,' 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'")

75. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229. **Yajure Hurtado holds that there is no jurisdiction for the immigration judges to even have a hearing whether the person is eligible for a bond or not. The BIA decision is binding on all immigration judges nationwide.**

76. Respondents' new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 ("It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.")

77. Many noncitizens in Petitioner's situation who are non-criminals are now being detained for months (and possibly years) without the opportunity to be released on recognizance or bonds. See Exhibit 5 "Under Trump Policy, Bonds for Immigrants Facing Deportation Are Vanishing".

78. Harsh detention conditions for weeks and possibly months with hardened criminals, with the current immigration system case backlog (estimated at a few million cases) that could take years to resolve, results in mental health issues suffered by detained noncitizens like Petitioners. Unfortunately, they are becoming more common as non-criminals like him are put in prolonged detention by ICE. *See* Exhibit 6, New York Times article "People Are Losing Hope Inside ICE Detention Centers".

79. It would be futile for Petitioner to seek a bond hearing before an Immigration Judge because, under current immigration court practice and the binding effect of *Matter of Yajure Hurtado*, immigration judges lack jurisdiction to grant bond to individuals classified as "arriving aliens"—including those who entered without inspection. As demonstrated by the Attorney Declaration (Exhibit 7) and a redacted decision in a similar case (Exhibit 8), immigration courts across the country consistently deny bond requests in these circumstances for lack of jurisdiction. Any such application by Petitioner would certainly be denied, resulting only in further unnecessary detention and additional legal expenses, without any prospect of meaningful relief. Under these circumstances, requiring Petitioner to pursue a bond hearing before an immigration judge would serve no practical purpose and would merely prolong his unlawful detention, contrary to the interests of justice and judicial economy.

80. With immigration cases backlogs reaching almost 3.5 million, and many cases taking months or years to resolve, Petitioner's detention is unreasonable and unconstitutional.[2] Even assuming Respondents could conduct a quick removal hearing and get an order of removal against Petitioner in the next several months,

[2] See https://tracreports.org/phptools/immigration/backlog/

if Petitioner exercises the appellate rights to the BIA, their backlog is estimated in over 5 years as they have a considerable amount of cases and only 28 BIA members. This is not even including an appeal to a circuit court in a Petition for Review, which Petitioner could pursue even if the BIA denies his appeal several years down the road. Throughout all this time any removal order, once entered, would not be final.

F. Recent Federal Court Cases Rejecting DHS' and EOIR's New Interpretation

81. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. Exhibit 2.

82. Subsequently, noncitizens who entered without inspection had only one choice to secure their release: by filing habeas petitions. Court after court all over the country that has dealt with this issue rejected ICE and EOIR's new interpretation and has adopted the same reading of the INA's detention authorities for individuals who entered without inspection as authorized by 8 U.S.C. § 1226(a), not under § 1225(b)(2).

83. Similar court cases known to undersigned counsel that have dealt with the same issue are as follows. Although this is certainly not an exhaustive list, just illustrative of the overwhelming authority around the country that Petitioner's detention under § 1225(b)(2) is unjustified and unlawful: *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas petition granted and immediate release ordered within one

business day); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (**Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody**); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025), (petitioner entered without inspection more than 30 years ago, detained pursuant to 1225, **court found 1226(a) applied based on statutory language; PI granted and court ordered release**); *Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), entered without inspection in 2001, arrested in 2025 under 1225(b); **the 24 year period petitioner resided in the U.S. made the plain language of 1225(b) was inapplicable to him, at the time of arrest an immigration officer was not "examining" him and he was not "seeking" admission; Based on *Jennings* and *Nielsen*, statutory scheme of 1226(a) applies**); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (entered without inspection over 20 years ago; detained July 2025; **court help petitioner held pursuant to 1226(a) not as the government contends 1225(b)(2); Yajure Hurtado renders requiring prudential exhaustion futile;** PI granted and release ordered on IJ bond); *Rodriguez Vazquez v. Bostock,* 2025 WL 2782499 (W.D. Wash Sept. 30, 2025) (**court granted summary judgement** on behalf of a class of people without lawful status held in Tacoma who entered without inspection and not apprehended upon arrival, court held plain text of **1226(a) applies rather than 1225(b) and issues a detailed statutory analysis**); *Guzman Alfaro v. Wamsley, 2025 WL 2822113* (W.D. Wash. Oct. 2, 2025) (court granted similar relief as a class member of *Rodriguez Vasquez; Garcia Cortes v.*

Noem, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (**Court held 1226(a) and not 1225(b)(2) authorizes detention; procedural due process violated under Mathews, habeas granted**); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5-6 (E.D. Mich. Aug. 29, 2025) (granting petition for writ of habeas corpus ordering immediate release or bond hearing, where, for 30 years, **courts have applied section 1226(a) to noncitizens like the petitioner who was already in the United States but facing removal, rejecting the government's argument that section 1225 applied so no bond hearing was required**; *Mena Torres v. Wamsley*, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025) (Petitioner arrived without inspection in 2016, DEA encountered him in an unrelated search warrant and detained him under 1225(b)(2), court found that detention governed by 1226(a); *Jimenez v. FCI Berlin*, Warden, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) (detained under § 1226, and continued detention without a bond hearing before an IJ is unlawful); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (granting a TRO for a native Ukraine citizen, who entered the U.S. without being inspected by an immigration officer and applied for asylum, because her due process rights were violated without a bond hearing pursuant to section 1225(a)); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4-5 (E.D. Mich. Sept. 9, 2025) (granting petition for writ of habeas corpus for petitioner for government's failure to conduct a bond hearing pursuant to section 1226(a), rejecting the government's argument that section 1225 applied because petitioner did not enter lawfully so was still "seeking admission", where the petitioner had been living in the United States since 2005 and the amendment to

section 1226 via the Laken Riley Act would have been redundant were section 1225 to apply); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910, at *4 n.5, *8 (E.D. Cal. Sept. 23, 2025) (holding that petitioner was likely to succeed under the merits that he was not subject to section 1225 and was wrongfully denied a bond hearing pursuant to section 1226(a), stating "[t]he Court is not bound by Matter of Yajure Hurtado's interpretation of sections 1225 and 1226[,]" and may look to the "longstanding practice of government" and "the BIA's interpretations of the INA for guidance, but [it] must not defer to the agency.") (citations omitted); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094-RGE-WPK, 2025 WL 2741230, at *7-8 (S.D. Iowa Sept. 10, 2025) (refusing to apply BIA's *Yajure Hurtado* decision finding that all applicants for admission are necessarily "seeking admission" for purposes of warranting application of section 1225, because "the legislative history and congressional intent of the Immigration and Nationality Act do not support mandatory detention for all noncitizens present in the United States" as further supported by the "weight of caselaw");

84. See Exhibit 2 attachment containing over 150(!) recent district court cases from around the country and authorities continue to reaffirm that noncitizens apprehended in the interior are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b)(2) and that Respondents' interpretation is unlawful.

85. As the *Lopez Benitez* Court poignantly articulated: "This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then

proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years." *Lopez Benitez v. Francis*, —— F.Supp.3d at ——, 2025 WL 2371588, at *7.

86. "Moreover, Respondents' novel position would expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application. If, as Respondents contend, anyone who has entered the country unlawfully, regardless of how long they have resided here, is subject to mandatory detention under § 1225(b)(2)(A), see Conf. Tr. 19:9-20:4, then it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply. Perhaps it might still apply to a subset of noncitizens who are lawfully admitted (e.g., on a visa of some sort), and who then remain present unlawfully. But there is no indication that Congress intended § 1226 to be limited only to visa overstays. And there is nothing in the history or application of § 1226 to even remotely suggest that it was intended to have such a narrow reach." *Id.* at *8.

87. Undersigned counsel has recently won a TRO for a client in similar and nearly identical circumstances to Petitioner's. *See Jose Alejandro v. Forestal*, Case 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. In. October 11, 2025). In that decision, Judge Hanlon explains why the statutory scheme and recent immigration law changes do not support Respondents' interpretation and why would requesting a bond before an immigration judge under these circumstances would be futile:

> "Respondents next argue that this matter is not ripe for judicial review because Mr. Alejandro does not know if or how long he will be detained during the pendency of his removal proceedings. Dkt. 11 at 7. Mr. Alejandro responds that regardless of whether a request for bond has been considered, this case is ripe for decision because he is being unlawfully held under 8 U.S.C. § 1225(b)(2)(A). *See* dkt. 17 at 8. Mr. Alejandro is correct that, regardless of the procedural posture of his removal proceedings, the gravamen of his petition is that he is being held contrary to law under 8 U.S.C. § 1225(b)(2)(A). Respondents all but concede the point in their response by acknowledging that Mr. Alejandro will not be given a bond hearing because § 1225 does not provide for it. Dkt. 11 at 7, 14-17. And Petitioner was in fact denied a bond hearing on October 8. Dkt. 16. So, it is clear from the record that, absent judicially ordered relief, Mr. Alejandro faces ongoing *mandatory* detention pursuant to § 1225."

88. *See* also Exhibit 7 attorney Declaration which supports the same conclusion in Petitioner's case that asking for a bond would be futile as he has been detained pursuant to § 1225. See also Exhibit 8 copy of a bond order in similar circumstances of a client who entered without inspection and the IJ found no jurisdiction for bond as an "arriving alien" under *Yajure Hurtado*.

89. Courts all over the country have consistently rejected the new interpretation by DHS and EOIR, as it contradicts the INA. These courts have clarified that the plain language of the statutory provisions indicates that § 1226(a), rather than § 1225(b), governs the detention of individuals like the Petitioner who entered without

inspection. The challenge lies in the fact that habeas relief is granted on an individual basis, not on a class-wide scale, necessitating that courts tailor their findings to the specific circumstances of each person applying for a writ of habeas corpus.

VII. STATUTORY FRAMEWORK OF THE INA

Section 1225 Is Titled "Inspection"

Section 1225 is titled "Inspection of applicants for admission" and is designed to govern the process of inspecting individuals at the border or port of entry. It is not intended to apply to noncitizens who entered unlawfully years ago and have since established residence in the interior. Congress provided a separate detention regime under § 1226(a) for noncitizens apprehended in the interior, which allows for individualized bond hearings and discretionary release. To collapse these regimes and subject all interior apprehensions to mandatory detention under § 1225(b) would render § 1226(a) superfluous and contradict decades of agency and judicial practice.

The Supreme Court has repeatedly recognized that the title of a statute and the heading of a section are "tools available for the resolution of a doubt about the meaning of a statute" and can provide important cues about congressional intent, especially where the operative text is ambiguous or subject to competing interpretations. See *Yates v. United States*, 574 U.S. 528, 539–40 (2015); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998); *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528–29 (1947). The heading of INA § 1225—"**Inspection of applicants for admission**"—signals that Congress intended this section to govern the process of inspecting individuals who are seeking entry into the United States **at a designated**

inspection point, such as a border crossing or port of entry, not those who entered years ago and are apprehended in the interior. As the Supreme Court explained in *Yates*, statutory headings are not controlling, but they "supply cues" that Congress did not intend the operative provisions to sweep more broadly than their context suggests. If Congress had intended § 1225 to apply to all noncitizens present in the United States without admission, regardless of where or when they were apprehended, it would have chosen a more expansive heading and provided a clearer indication of that intent in the statutory text. Instead, the heading confines the scope of § 1225 to the inspection process at the threshold of entry, supporting the longstanding interpretation that its mandatory detention provisions are relevant only for aliens caught at an inspection point, not for long-term residents apprehended in the interior.

8 U.S.C. § 1101's Definition of "Admission"

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" has long been 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)).

The phrase "seeking admission," accordingly, means that a noncitizen must be actively "seeking" "lawful entry." See *Lopez Benitez*, 2025 WL 2371588, at *7.

> "'[S]eeking admission' implies action–something that is **currently occurring**, and in this instance, would most logically occur at the border upon inspection." (emphasis added)

Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

As the Court held in another case in which undersigned counsel represented a similarly situated client:

> "Here, Mr. Alejandro is not actively "seeking" "lawful entry" because he entered the United States over 20 years ago... Respondents also argue, however, that he is now seeking admission "because he has not agreed to depart, [and] he has not yet conceded his removability or allowed his removal proceedings to play out." Dkt. 11 at 16. But Respondents do not explain how Mr. Alejandro's inaction—not agreeing to depart; not conceding removability—shows that he is "seeking admission."

Jose Alejandro v. Olson, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025).

Petitioner is not "seeking an admission" or "seeking lawful entry" because he cannot. The INA bars him from seeking lawful entry because he entered illegally and accrued unlawful presence of over one year. Therefore, he is ineligible to adjust his status in the U.S. or obtain a visa to enter. If he leaves the U.S. he will be subject to a 10-year reentry bar. 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Petitioner intends to seek relief from removal called "Cancellation of removal for non-permanent residents." 8 U.S.C. § 1229b(b). An applicant for cancellation of removal cannot be considered as "seeking an admission" or "seeking lawful entry" because the legal framework and purpose of cancellation of removal are distinct from those of admission or entry into the United States. Cancellation of removal is a form of relief from removal available to certain noncitizens who are already present in the United States and are facing removal proceedings. It is not a mechanism for entering the country or adjusting one's status to that of a lawful entrant.

8 U.S.C. § 1101's Definition of "Application for Admission"

The statutory definition in 8 U.S.C. § 1101(a)(4) makes clear that the term "application for admission" refers **specifically to the act of seeking entry into the United States at a physical border or port of entry, and not to the process of applying for an immigrant or nonimmigrant visa abroad**. The statute 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." This language underscores that Congress intended "applicant for admission" to mean individuals who are at the threshold of entry, **actively seeking to be inspected and admitted by immigration authorities.** It does not encompass those who entered the country unlawfully years ago and have since established residence in the interior. To interpret § 1225 as applying to long-term residents apprehended far from any inspection point would disregard the plain meaning of "application for admission" as defined by Congress, collapse the statutory distinction between border and interior cases, and extend mandatory detention far beyond its intended scope (almost any noncitizen would be subject to mandatory detention other than a small percentage of people who entered on visas and overstayed). The statutory text thus supports the longstanding practice that only those physically present at or near the border, or otherwise in the process of seeking entry, are "applicants for admission" under § 1225—not individuals who entered without inspection long ago and are now subject to removal proceedings in the interior

The term "arriving alien" is defined by Respondents' own regulation as "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" (8 C.F.R. § 1.2). The use of the present participle "arriving" and the phrase "coming or attempting to come" make clear that the statutory and regulatory focus is on the alien's status **at the time of entry or attempted entry**—not on individuals who have already entered and established residence in the United States.

The statute repeatedly uses the present tense—"arriving," "seeking admission"—to describe the class of individuals subject to its provisions. This is consistent with the longstanding principle that the "entry fiction" applies only at the border or port of entry, and that once an individual has entered the United States and established presence, they are no longer "arriving" or "seeking admission" in the present sense.

The recent attempt to reclassify long-term residents as "arriving aliens" ignores the plain, present-progressive meaning of the term and the statutory context in which it appears. In sum, "arriving alien" is a present-progressive term that applies to those who are in the process of seeking admission at the border or port of entry, not to individuals who entered the United States years ago and have since established residence in the interior. To interpret it otherwise would distort both the ordinary meaning of the language and the statutory structure Congress enacted.

"Application for Admission" Is a Discrete, Temporal Event—

Not a Continuous Status

The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), held unequivocally that the phrase "application for admission" **refers to a discrete event:**

an actual attempt to physically enter the United States, not a continuous or indefinite status that persists after entry. The court explained that "**application for admission" is not a status that attaches to a person indefinitely, but rather describes a specific moment in time when an individual presents themselves at a border or port of entry and seeks to be admitted**. The phrase "at the time of application for admission" imposes a temporal requirement, **referring to a single point in time, not a continuous period** (*Torres*, 976 F.3d at 926).

Torres further clarified that while 8 U.S.C. § 1225(a)(1) may "deem" certain noncitizens present in the United States without admission as "applicants for admission" **for procedural purposes, this legal fiction does not transform their status for substantive grounds of inadmissibility or mandatory detention**. The court distinguished between being "deemed" an applicant for admission for the purpose of placing someone in removal proceedings, and actually being an applicant for admission for the purposes of applying the substantive grounds of inadmissibility and mandatory detention under § 1225(b) (*Torres*, 976 F.3d at 928).

The Fifth Circuit in *Marques v. Lynch*, 834 F.3d 549 (5th Cir. 2016), reached a similar conclusion, holding that provisions like 8 U.S.C. § 1182(a)(7) apply only to **applicants for admission who are seeking to enter the country, not to those already present in the United States seeking post-entry adjustment of status**. The court reasoned that the statutory scheme distinguishes between those at the border seeking entry and those who have already entered, and that the grounds of inadmissibility and related detention provisions are not meant to apply retroactively to long-term residents apprehended in the interior (*Marques*, 834 F.3d at 553–54; cited in *Torres*, 976 F.3d at

927). Petitioner, who has lived in the United States for a substantial period and was apprehended far from any border or inspection point, cannot be considered an "applicant for admission" in the substantive sense required by § 1225(b). The government's reliance on the "deemed" language of § 1225(a)(1) ignores the temporal and contextual limitations recognized by the Ninth and Fifth Circuits. Petitioner's detention must be governed by § 1226(a), which provides for discretionary bond hearings, not by the mandatory detention provisions of § 1225(b).

8 U.S.C. § 1225(b)(2)(A)

It is clear from the plain language of 8 U.S.C. § 1225(b)(2)(A) that it applies to people in the process of entering the country:

> "Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, **if the examining immigration officer determines than 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."

At no point in time, other than at the border, airport or other port of entry into the country are there immigration officers examining admissions.

STATUTORY STRUCTURE OF § 1226

Section 1226 is titled "**Apprehension and detention of aliens.**" (plain language argument)

Congress's intent in enacting 8 U.S.C. § 1226(a) was to provide for discretionary detention of noncitizens during removal proceedings, not to impose mandatory detention on all such individuals. Section 1226(a) expressly authorizes the Attorney General to detain or release an arrested noncitizen on bond or conditional parole, reflecting a deliberate legislative choice to allow individualized custody determinations based on flight risk or danger to the community. Therefore, **for**

noncitizens subject to § 1226(a), the presumption is that they should not be detained.

In sharp contrast, § 1226(c) mandates **mandatory detention** only for a narrowly defined subset of noncitizens—those with **certain criminal convictions or security concerns**—demonstrating that Congress knew how to require mandatory detention when it so intended. If Congress had wanted all noncitizens subject to § 1226(a) (including those who entered without inspection) to be mandatorily detained, it would have written § 1226(a) in the same unequivocal terms as § 1226(c). The existence of § 1226(a)'s discretionary framework, and the careful limitation of mandatory detention to specific categories in § 1226(c), make clear that Congress did not intend for all noncitizens apprehended in the interior, including EWIs, to be subject to mandatory detention by default. To read § 1226(a) otherwise would render its discretionary provisions—and the entire structure of individualized bond hearings—superfluous, contrary to basic principles of statutory interpretation and the longstanding practice recognized by courts and agencies alike.

It is therefore both logical and constitutionally sound for the government to bear the burden of proof in demonstrating that a noncitizen detained under 8 U.S.C. § 1226(a) is a flight risk or danger to the community. Section 1226(a) establishes a discretionary detention framework, expressly authorizing release on bond or conditional parole unless the government can show that continued detention is necessary. This structure reflects Congress's intent to protect the fundamental liberty interests at stake in civil immigration detention, which, unlike criminal incarceration, is not punitive and must be justified by legitimate government interests. Placing the

burden on the government ensures that detention is not the default (as it has become with this Administration), but rather an **exception** justified by specific, individualized findings. This allocation of burden is consistent with due process principles, which require the government to justify any deprivation of liberty, and aligns with longstanding practice in both immigration and other civil detention contexts. If the government could detain by default and require the noncitizen to prove a negative, the statutory promise of individualized review and the presumption of liberty would be rendered meaningless. Thus, requiring the government to prove flight risk or dangerousness under § 1226(a) is essential to safeguard due process and effectuate the statute's purpose of individualized, non-punitive detention determinations.

The 11th Circuit has not yet addressed this question specifically in relation to noncitizens detained pursuant to § 1226(a), however, the circuits who have addressed it, all stated that the **government bears the burden to prove that detention is warranted**, i.e., that the noncitizen is either a danger to the community or a flight risk. No circuit court known to undersigned counsel put the burden on the noncitizen to prove that he or she is not a flight risk or a danger. The Ninth Circuit has ruled that noncitizens detained under § 1226(a) are "entitled to release on bond unless the government establishes that they are a flight risk or will be a danger to the community," as seen in *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022), where the court emphasized that they have a right to contest their custody before an immigration judge, at which time the government bears the burden to prove that detention is justified (both require clear and convincing evidence). The Second Circuit in *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020), also held that the government must prove a

noncitizen is a danger to the community or a flight risk to deny bond under § 1226(a) (both require clear and convincing evidence). Furthermore, the First Circuit in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), stated that a noncitizen must be released under § 1226(a) if the government cannot meet its burden of proving they are a danger or flight risk (the only difference is the standard: clear and convincing evidence for dangerousness or preponderance of the evidence for flight risk determinations). In any event, the government has not claimed that Petitioner is a danger nor a flight risk, let alone proved it. Their only contention is that Petitioner is subject to mandatory detention because he is an "arriving alien" or "applicant for admission."

Structure and Amendments of 8 U.S.C. § 1226(c) and the Laken Riley Act Affirm Petitioner's Position

There is no delineation in the INA between noncitizens who arrived on a visa or noncitizens without inspection (EWI) in terms of eligibility for release. They are treated the same in § 1226. If, as Respondents argue, every noncitizen who EWI'd is always an "applicant for admission" subject to mandatory detention under § 1225(b), then the entire structure of § 1226(a) and (c) would be rendered largely superfluous for a vast class of noncitizens—those who entered without inspection but have been living in the interior for years. This is not how Congress has historically structured the INA, nor is it consistent with decades of agency and judicial practice.

8 U.S.C. § 1226(c): Targeted Mandatory Detention for Criminals

Section 1226(c) specifically mandates detention for noncitizens who are removable or inadmissible on certain criminal or national security grounds. The statute is detailed and precise, listing the categories of offenses and the circumstances under which

mandatory detention applies. Congress's decision to enumerate these categories and to require mandatory detention **only for this subset of noncitizens** demonstrates a deliberate legislative choice: **If all EWIs were already subject to mandatory detention under § 1225(b), there would be no need for § 1226(c) to exist as a separate, carefully crafted provision.** The existence of § 1226(c) presupposes that there are noncitizens in removal proceedings who are not subject to mandatory detention—i.e., those who are not "arriving aliens" or "applicants for admission" under § 1225(b), but who are EWIs may be subject to mandatory detention if they fall within the criminal or security categories of § 1226(c).

Laken Riley Amendments Expanded Not Duplicated Detention

The Laken Riley Act, enacted in 2025, amended § 1226(c) to further expand the categories of noncitizens subject to mandatory detention, including certain additional criminal offenses and public safety risks. The legislative history and statutory text make clear that Congress intended to **expand** the reach of mandatory detention for specific, **high-priority categories**—not to restate or duplicate a rule that, under Respondents' theory, would already apply to all EWIs.

If Respondents' interpretation were correct, the Laken Riley Act's amendments to § 1226(c) would be unnecessary and redundant. Congress would not have needed to specify new categories of mandatory detention if all EWIs were already mandatorily detained under § 1225(b). The careful drafting and expansion of § 1226(c) by Congress, including the Laken Riley Act amendments, only make sense if there is a significant population of noncitizens in removal proceedings who are not otherwise subject to mandatory detention—i.e., those detained under § 1226(a), including many EWIs apprehended in the interior.

Avoiding Surplusage and Giving Effect to All Provisions

The Supreme Court has repeatedly held that statutes must be interpreted to give effect to all provisions and to avoid rendering any part superfluous or redundant. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute."). **If every EWI is always an "applicant for admission" subject to § 1225(b) mandatory detention, then the entire framework of § 1226(a) and (c) for noncitizens apprehended in the interior would be largely meaningless for a vast class of cases.**

The government's reading would collapse the careful distinctions Congress drew between different categories of noncitizens (such as criminal noncitizens subject to mandatory detention under § 1226(c)), their procedural rights, and the availability of bond or release.

8 U.S.C. § 1182(a)(6) and § 1182(a)(7) Would Be Rendered Superfluous

The statutory distinction between 8 U.S.C. § 1225 and § 1226 is also underscored by the separate grounds of inadmissibility set forth in 8 U.S.C. § 1182(a)(6) (entry without inspection) and § 1182(a)(7) (lack of valid documentation). If all noncitizens who entered without inspection ("EWIs") were truly "arriving aliens" subject to § 1225, there would be no need for the INA to maintain different inadmissibility charges for those seeking entry at a port of entry versus those apprehended in the interior. The existence of these distinct statutory grounds reflects Congress's intent to treat border cases and interior apprehensions differently in removal proceedings. For decades, the Board of Immigration Appeals (BIA) and agency practice recognized this distinction: noncitizens apprehended in the interior after years of residence—regardless of their

manner of entry—were routinely charged under § 1182(a)(6)(A)(i) and afforded bond hearings under § 1226(a), with immigration judges empowered to grant release if the individual was not a danger or flight risk. This practice persisted until the abrupt policy shift in July–September 2025

UNTENABLE CONSEQUENCES FROM RESPONDENTS' ACTIONS

Even if § 1225(b) were applicable, under the government's interpretation it would follow that all noncitizens would be detained for years without bond

Even if § 1225(b) were applicable, the government's interpretation that it mandates indefinite detention without any individualized bond hearing raises serious constitutional due process concerns. The Supreme Court in *Jennings* addressed the statutory interpretation of § 1225(b) and § 1226(a), clarifying that § 1225(b) mandates detention for certain "applicants for admission." However, *Jennings* did not address the constitutional limits on such mandatory detention, particularly when it becomes prolonged.

The Supreme Court in *Denmore v. Kim* held that due process requires an individualized bond hearing for aliens detained for a prolonged period under § 1226(c). 538 U.S. 510 (2003). While it specifically addressed § 1226(c) which involves mandatory detention of criminal aliens (which is not alleged against Mrs. Rojano Gonzalez), its underlying principle—that prolonged detention without individualized review violates due process—is equally applicable to detention under § 1225(b). There are several district court decisions from around the country releasing noncitizens who have been detained under § 1225(b) for prolonged periods. The Fifth Amendment's Due Process Clause protects all persons within the United States, including noncitizens, from arbitrary governmental action. Prolonged detention, especially for an individual

deemed neither a flight risk nor a danger, without a meaningful opportunity for release, constitutes such arbitrary action.

Even if the government's position were correct—that noncitizens who entered without inspection long ago are "arriving aliens"—the result would be that such individuals could be detained for years without any possibility of bond. Given the current immigration court backlog, which numbers in the millions of cases[3], it is simply not feasible for all such cases to be resolved quickly. Removal proceedings, followed by appeals to the Board of Immigration Appeals (BIA), and potentially Petitions for Review in the federal circuit courts, routinely take several years to reach finality, even for detained clients. This problem is only exacerbated by the recent reduction of approximately 20% of immigration judges nationwide[4] and the fact that there are only 28 BIA members to handle immigration appeals. Under the government's theory, countless long-term residents in the country would face mandatory, unreviewable detention for the entire duration of these protracted proceedings—an outcome that is both unworkable as a matter of statutory interpretation and constitutionally suspect given the fundamental liberty interests at stake. This is especially true as the vast majority of these detained noncitizens are non-criminals[5] (over 71% based on tracreports.org).

[3] https://tracreports.org/phptools/immigration/backlog/
[4] https://www.npr.org/2025/09/23/nx-s1-5550915/trump-immigration-judges
[5] Over 71% of current detainees have no criminal convictions and many others have minor convictions https://tracreports.org/immigration/quickfacts/detention.html#detention_numatd

VIII. LEGAL FRAMEWORK FOR THE RELIEF SOUGHT

A. Habeas Jurisdiction

90. Habeas corpus relief extends to a person "in custody under or by color of the authority of the United States" if the person can show she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(1), (c)(3); *I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). *See* also *Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1352 (11th Cir. 2008) (holding a petitioner's claims are proper under 28 U.S.C. section 2241 if they concern the continuation or execution of confinement). The U.S. Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), (citing U.S. Const., Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (addressing post final-removal order detention under § 1231). *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018) (addressing § 1226 detention, which is more applicable to this instant case as Petitioner does not have a final order of removal).

91. "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), that "[t]he court shall ... dispose of [] as law and justice require," 28 U.S.C. § 2243. "[T]he court's role was most extensive in cases of pretrial and noncriminal detention." *Boumediene v. Bush*, 553 U.S. 723, 779– 80 (2008) (citations omitted). "[W]hen the judicial power to issue habeas corpus properly is invoked the judicial officer must have adequate authority to make a determination in light of the relevant law and facts and to formulate and issue appropriate orders for relief, including, if necessary, an order directing the prisoner's release." Id. at

787. The Petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

92. Even if Petitioner were to be released prior to this Court granting relief, "in custody" would still be satisfied because significant restraints short of jail, which include removal proceedings and the continuous threat of re-detention, satisfy § 2241. See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

93. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

94. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000).

B. <u>The Administrative Procedure Act (APA)</u>

95. The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. The APA sets minimum standards for final agency action.

96. Final agency actions are those (1) that "mark the consummation of the agency's decisionmaking process" and (2) "by which rights or obligations have been

determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

97. ICE's "Interim Guidance Regarding Detention Authority for Applications for Admission" constitutes a final agency action, making it subject to this Court's review in the Petitioner's case. Under this new interpretation, the agency asserts that the Petitioner is subject to mandatory detention without bond. This guidance represents the culmination of ICE's decision-making process concerning the Petitioner's custody and is an unlawful interpretation of the INA, contrary to its plain language.

98. Likewise, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is a final agency action subject to this Court's review in Petitioner's case.

99. Both the ICE memo referenced herein and *Matter of Yajure Hurtado* led ICE to detain Petitioner in violation of due process rights under the Constitution, statutes, and regulations.

C. The *Accardi* Doctrine Requires Agencies to Follow Internal Rules

100. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

101. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See *Morton v. Ruiz*, 415 U.S. 199, 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

VIII. CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgement

Summary of Claim of Petitioner's First Claim for Relief: *Petitioner seeks a declaratory judgment that Petitioner is not an "applicant for admission" or "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b), and that Petitioner's detention is governed solely by 8 U.S.C. § 1226(a), which provides for discretionary bond hearings. This claim is grounded in the statutory text, longstanding agency practice, and recent federal court decisions rejecting the government's contrary interpretation.*

102. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

103. Petitioner requests a declaration from this Court that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2). Petitioner further requests a

declaration that Petitioner's current detention by Respondents, if justified at all, is governed solely by 8 U.S.C. § 1226(a).

COUNT TWO

Statutory Violation of the Immigration and Nationality Act:

No-Bond Detention in Violation of 8 U.S.C. § 1226(a) and Unlawful Detention Under Improper Statutory Classification (INA §§ 1225 vs. 1226)

Summary of Claim of Petitioner's Second Claim for Relief: *Petitioner challenges the no-bond detention as a violation of the INA, specifically 8 U.S.C. § 1226(a), which entitles Petitioner to a bond hearing before an immigration judge. The government's application of § 1225(b) to Petitioner is contrary to the statute and decades of agency and judicial practice.*

104. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

105. Since Petitioner is not an applicant for admission "seeking admission" or an "arriving alien" subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), Petitioner is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

106. 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), or § 1231 (which is not the case with Petitioner).

107. Respondents' actions, as detailed herein, infringe upon the Petitioner's statutory right to a bond redetermination hearing before an immigration judge. Additionally, the Respondents' application of § 1225(b)(2) to the Petitioner unlawfully enforces continued detention, contravening both the Immigration and Nationality Act (INA) and the Petitioner's constitutional rights, which will be further addressed below.

108. Petitioner's continued detention under § 1225(b)(2) is therefore unauthorized by statute, contrary to longstanding agency practice, and in violation of the INA and APA.

109. Even if the Petitioner were to have a bond hearing before an immigration judge, the judge would likely deny bond based on the same unlawful and novel statutory interpretation outlined in the *Matter of Yajure Hurtado*, as previously discussed. Consequently, even if such a hearing were granted, Respondents would still infringe upon Petitioner's constitutional rights to a full and fair hearing (as immigration judges are no longer neutral arbitrators), thereby violating his lawful right to bond consideration.

COUNT THREE

Violation of the Bond Regulations

Summary of Claim of Petitioner's Third Claim for Relief: *Petitioner alleges that Respondents' refusal to provide a bond hearing violates binding agency regulations, including 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which require that*

noncitizens apprehended ***in the interior*** *be eligible for bond and custody review under § 1226(a).*

110. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

111. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service (now DHS) issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] **who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.**" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

112. Nonetheless, pursuant to the afore-mentioned ICE memo from July 2025 upending DHS' policy and similarly *Matter of Yajure Hurtado* upending EOIR policy to apply § 1225(b)(2) to individual like Petitioner instead of § 1226 and deny bond.

113. The application of § 1225(b)(2) to Petitioner unlawfully mandates these agencies to continually detain Petitioner and violates these agencies own regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FOUR

Violation of the Fifth Amendment of the U.S. Constitution

Substantive Due Process

Summary of Claim of Petitioner's Fourth Claim for Relief: *Petitioner asserts that the continued detention without a bond hearing violates substantive due process under the Fifth Amendment, as recognized by the Supreme Court in Zadvydas v. Davis and Jennings v. Rodriguez. The government may detain only to prevent flight or danger, and Petitioner's detention serves no such purpose.*

114. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

115. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

116. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONT. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This vital liberty interest is at stake when an individual is subject to detention by the federal government.

117. Under the civil-detention framework set out in *Zadvydas* and its progeny, the Government may deprive a non-citizen of physical liberty only when the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in

relation to, that purpose. Nonpunitive purpose such as preventing danger or flight and may not be excessive in relation to that purpose. See *Jennings*, 583 U.S. at 300–01; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

118. Immigration detention is civil, not criminal, in nature, and therefore cannot be punitive. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. Petitioner's detention therefore does not bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal.

119. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of a long period of time. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution and has a fundamental liberty interest in freedom from physical restraint.

120. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of various rights and liberty interest without due process of law.

121. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner without bond, Petitioner's detention violates substantive due process under the Fifth Amendment to the U.S. Constitution. Continued confinement therefore bears no reasonable, non-punitive relationship to any legitimate aim and is unconstitutionally arbitrary under *Zadvydas*.

COUNT FIVE

Violation of the Fifth Amendment of the U.S. Constitution

Summary of Claim of Petitioner's Fifth Claim for Relief: *Petitioner contends that the detention as an "arriving alien" without individualized process violates procedural due process under the Fifth Amendment. The Supreme Court and Eleventh Circuit have repeatedly held that civil detention must be accompanied by meaningful process and individualized findings. See Mathews v. Eldridge*

122. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

123. The Fifth Amendment forbids deprivation of liberty without notice and a meaningful opportunity to be heard before a **neutral** decision-maker. The Supreme Court and several circuit courts of appeal have repeatedly affirmed that procedural due process applies to all persons within the United States, including noncitizens, and that civil detention must be accompanied by robust procedural safeguards.

124. In addition to being ultra vires, the novel interpretation of DHS and EOIR of Petitioner's detention under § 1225(b)(2) violates the due process rights of noncitizens like Petitioner by subjecting them to continued mandatory detention solely on the basis of these agencies' wrongful interpretations, without any individualized assessment of flight risk or danger. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment.

125. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, Respondents are now permitted prolonged detention based on agency *interpretation* rather than judicial determination and legal basis. As a result, noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives, without any statutory, regulatory or constitutional justification. This scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

126. The Supreme Court states in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976): "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Noncitizens are entitled to due process protections in removal proceedings, including notice and a hearing. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Due process applies to all persons within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

127. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to *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." *Mathews*, 424 U.S. at 335.

128. Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test to Petitioner's case:

a. Petitioner's liberty interest is paramount; the risk of erroneous deprivation is extreme considering that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), is not a flight risk, and does not pose a danger to the community. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The right to be free of detention of indefinite duration pending a bail determination, is "without question, a weighty one." *Landon v. Plasencia*, 459 U.S. at 34, 103 S.Ct. 321. Petitioner is being held at a county jail in the same conditions as criminal inmates, unable to work and is far from his family. At minimum, the government must come forward with concrete, case-specific reasons that outweigh Petitioner's substantial liberty interest in continued release.

b. The risk of erroneous deprivation of liberty is significant due to the absence of an independent adjudicator, as highlighted in *Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955). This risk is exacerbated by the coordinated actions of both DHS and EOIR, which operate under a unified approach that effectively denies bond to noncitizens in Petitioner's situation, thereby unilaterally depriving them of their liberty.

ICE is acting as both the prosecutor as well as the adjudicator. ICE can

effectuate long detention periods for Petitioner and others in his situation just because they now interpret Petitioner as being subject to mandatory detention as an "arriving alien" and immigration judges at EOIR are prevented from considering bonds under the same circumstances.

c. Lastly, the interest of the government in being able to invoke the challenged ICE memorandum and novel interpretation and EOIR's *Matter of Yajure Hurtado* is minimal. This is primarily because the interpretation is not supported by the plain reading of the INA, which clearly delineates the circumstances under which noncitizens are subject to mandatory detention. The interpretation also conflicts with existing DHS and EOIR regulations that have historically distinguished between arriving aliens and those apprehended in the interior, providing the latter with the opportunity for bond hearings under 8 U.S.C. § 1226(a). When the government ignores law (and agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the law and their regulations reduces fiscal and administrative burdens on the government. Furthermore, the government's interest is further diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural

safeguards intended to prevent erroneous deprivation of liberty.

In conclusion, all three *Mathews* factors favor Petitioner's position. The novel DHS and EOIR interpretations violate Petitioner's procedural due process rights under the Fifth Amendment. Collateral harms from detention—including separation from Petitioner's family and friends and Petitioner's ability to maintain employment—further underscore the weight of the private interest and the risk of erroneous deprivation. These are collateral consequences of continued confinement that amplify the ongoing liberty deprivation, are not compensable by money damages, and therefore weigh heavily in the *Mathews* balance and the equitable analysis, without expanding the scope of relief requested.

COUNT SIX

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)

Contrary to Law and Constitutional Rights

***Summary of Claim of Petitioner's Sixth Claim for Relief**: Petitioner alleges that the July 2025 ICE memorandum and the BIA's decision in Yajure Hurtado constitute final agency actions that are not in accordance with law and are contrary to constitutional rights, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B).*

129. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

130. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

131. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, any law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

132. The July 2025 ICE memorandum and the EOIR's decision in *Yajure Hurtado* represent a significant and unauthorized expansion of § 1225(b)(2), categorizing individuals who entered the United States without inspection years ago as perpetual "applicants for admission." This expansion constitutes a violation of the APA. The ICE memorandum was issued in stealth, without public notice or opportunity for comment, in direct contravention of the APA's requirements for transparency and public participation in rulemaking.

133. Furthermore, while *Yajure Hurtado* was a published decision by the EOIR, it conflicts with the plain language of the INA and existing EOIR regulations. The decision appears to have been strategically published by the BIA to constrain immigration judges nationwide, effectively preventing them from granting bond to affected individuals, thereby undermining the procedural fairness guaranteed by the INA and the APA. Up until its publication, immigration judges were granting bonds to individuals who entered without inspection. *See*, e.g., *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

134. These actions were contrary to the agencies' constitutional power under the Fifth Amendment's Due Process Clause, as explained above. These recent changes were not in accordance with the plain language of the INA and implementing regulations governing who is an "applicant for admission" or an "arriving alien", as cited and

discussed in the Statutory Framework section above.

135. DHS acted contrary to law. *See also Accardi* v. Shaughnessy, 347 U.S. 260, 268 (1954) (agency must follow its own regulations) (a separate claim to relief under *Accardi* is forthcoming below). These novel interpretations should be held unlawful and set aside because it was contrary to the agency's constitutional power and not in accordance with the INA and implementing regulations.

136. By issuing this ICE memo and publishing *Yajure Hurtado*, this regulation, the agencies have exceeded the authority delegated to them by Congress, effectively rewriting the statutory scheme to permit DHS to prolong detention without judicial determination or individualized findings for almost anyone present in the U.S. without an immigration judge review. This regulatory overreach undermines the statutory guarantee of prompt review and release and is inconsistent with the principles of separation of powers and the nondelegation doctrine.

137. "Agency actions beyond delegated authority, are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). Similarly, agency regulations that conflict with statutory text or structure must be invalidated.

138. Because these agencies' interpretations effectively transform a discretionary detention for people who are flight risks or a danger to mandatory detention to all without the possibility for release on bond, and as they directly contravene the plain language of the INA and its regulations, these decisions must be invalidated by this

Court.

139. Petitioner's detention, premised solely on this ultra vires interpretation is "not in accordance with law," "in excess of statutory jurisdiction," and "arbitrary [and] capricious" under 5 U.S.C. § 706(2), entitling Petitioner to immediate release.

COUNT SEVEN

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)

Arbitrary and Capricious

Summary of Claim of Petitioner's Seventh Claim for Relief: *Petitioner asserts that Respondents' actions are arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), because they depart from established law and practice without reasoned explanation, fail to consider reliance interests, and ignore less-restrictive alternatives.*

140. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

141. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

142. Respondents' revocation of Petitioner's order of supervision was arbitrary and capricious because it violated statute, regulation, and the Constitution, as described above.

143. An agency decision that "runs counter to the evidence before the agency" is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

144. Petitioner's detention, beyond being unlawful and ultra vires, also "failed to

consider important aspects of the problem". Petitioner's detention is arbitrary and capricious and in excess of statutory authority because DHS: (1) failed to consider Petitioner's reliance interests; (2) failed to consider less-restrictive alternatives to detention; (3) failed to explain a reasoned basis for departing from its prior re determination; and (4) failed to comply with various regulations. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020) (reliance interests). *See* also *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) (requirement of reasoned decisionmaking).

145. For these and other reasons, Respondents' actions leading to Petitioner's detention and his continued detention was arbitrary and capricious and should be held unlawful and set aside.

COUNT EIGHT

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)

In Excess of Statutory Authority

Summary of Claim of Petitioner's Eighth Claim for Relief: *Petitioner claims that Respondents acted in excess of statutory authority by detaining Petitioner under § 1225(b) when only § 1226(a) applies, in violation of 5 U.S.C. § 706(2)(C).*

146. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

147. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

148. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

149. Respondents' actions in publishing the ICE memo and *Yajure Hurtado* were in excess of statutory authority and should be held unlawful and set aside. Petitioner's mandatory detention pursuant to these actions violated the APA.

COUNT NINE

Ultra Vires Action

Summary of Claim of Petitioner's Ninth Claim for Relief: *Petitioner seeks to set aside Respondents' actions as ultra vires, as there is no statutory or constitutional authority for Petitioner's continued detention under the circumstances presented.*

150. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

151. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner under these circumstances.

152. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

COUNT TEN

Violation of the *Accardi* Doctrine

Summary of Claim of Petitioner's Tenth Claim for Relief: *Petitioner alleges that Respondents violated the Accardi doctrine by failing to follow their own regulations and procedures, as required by Accardi and its progeny.*

153. Petitioner realleges and incorporates by reference all paragraphs above as if fully

set forth here.

154. The *Accardi* doctrine mandates that federal agencies must adhere to their own established regulations and policies. This principle ensures that agency actions are consistent, fair, and predictable, thereby safeguarding individual rights. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

155. "[The ambit of the Accardi doctrine] is not limited to rules attaining the status of formal regulations." *Montilla v. Immigr. & Naturalization Serv.*, 926 F. 2d 162, 167 (2d Cir. 1991). Agency rules, whether codified or issued through internal guidance, are binding where they implicate important substantive and procedural rights. *See*, e.g., *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 521, 538 (1970) (*Accardi* applies most forcefully where agency rules are "intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion"); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018) (ICE bound by internal directive intended to protect noncitizens' procedural rights). Where these criteria are satisfied, the reviewing court must invalidate agency action or policy violating the agency's own rules.

156. The recent policy shifts by ICE and EOIR, as outlined in ICE's July 2025 memorandum and EOIR's *Yajure Hurtado* decision, violate the *Accardi* doctrine by failing to adhere to established agency regulations and procedures. The *Accardi* doctrine mandates that federal agencies must follow their own rules and

regulations, particularly when these rules are designed to protect individual rights.

157. By reclassifying individuals who entered without inspection apprehended in the interior of the United States as "applicants for admission" or as "arriving aliens" subject to mandatory detention under § 1225(b)(2), ICE and EOIR have disregarded the procedural safeguards and discretionary bond provisions outlined in § 1226(a). ICE's and EOIR's reclassification policy effectively nullifies § 1226(a)'s statutory provision by subjecting all noncitizens to mandatory detention, regardless of their actual circumstances. This interpretation is contrary to the plain language of the INA and disrupts decades of settled law, which recognized the distinct legal status and rights of noncitizens apprehended in the interior. This departure from established regulations and legal standards not only contravenes the statutory framework of the INA but also undermines the procedural rights and protections intended to ensure fair and consistent treatment of noncitizens, warranting immediate judicial intervention.

158. The issuance of the ICE memorandum without public notice or comment further exemplifies a breach of procedural norms, as it was implemented in a manner that bypassed the transparency and accountability required by the APA. Consequently, these actions represent an arbitrary and capricious exercise of agency power, infringing upon the rights of noncitizens and violating the principles enshrined in the *Accardi* doctrine.

159. The policy's blanket application denies noncitizens the due process rights afforded under the Fifth Amendment, which guarantees fair procedures before depriving individuals of their liberty. By eliminating bond eligibility, ICE's policy strips

noncitizens of the opportunity to meaningfully contest their detention. This issue is further exacerbated by EOIR's decision in *Yajure Hurtado*, which entrenches this denial of due process by reclassifying noncitizens who entered without inspection as "arriving aliens," thereby subjecting them to mandatory detention without the possibility of bond from immigration judges. Together, these agency actions undermine the statutory and constitutional protections afforded to noncitizens, and therefore, this Court should declare these actions unlawful and set them aside.

COUNT ELEVEN

Detention Violation 8 U.S.C. § 1357(a)(2) – Unlawful Detention Beyond 48 Hours

***Summary of Claim of Petitioner's Eleventh Claim for Relief**: Petitioner asserts that Respondents have violated 8 U.S.C. § 1357(a)(2) by detaining him for more than 48 hours without the issuance of a warrant or the initiation of removal proceedings. Petitioner has been held under an ICE detainer since October 14, 2025, and as of today, remains in custody in excess of the statutory limit.*

160. Petitioner realleges and incorporates by reference all paragraphs above as if fully set forth here.

161. 8 U.S.C. § 1357(a)(2) authorizes ICE to arrest and detain noncitizens believed to be in violation of immigration laws, but expressly limits such detention to "not more than 48 hours" (excluding weekends and holidays), unless a warrant is issued or removal proceedings are commenced.

162. Petitioner was placed under an ICE detainer and taken into custody on October 14, 2025. As of the filing of this Petition, Petitioner has been detained for more than

two weeks without the issuance of a warrant and with Master's Calendar hearing scheduled for November 10th, 2025. Petitioner's continued confinement therefore far exceeds the statutory forty-eight (48)-hour limit for warrantless detention set forth in 8 U.S.C. § 1357(a)(2) and constitutes an unlawful and prolonged deprivation of liberty.

163. No emergency or extraordinary circumstance has been identified to justify continued detention beyond the statutory limit.

164. Respondents' continued detention of Petitioner violates 8 U.S.C. § 1357(a)(2) and entitles Petitioner to immediate release or other appropriate relief.

165. Upon information and belief, no warrant was issued for Petitioner's arrest, and removal proceedings were not initiated until more than 48 jpirs after his detention began. No emergency or extraordinary circumstance has been identified to justify such prolonged confinement beyond the statutory limit prescribed by law. Respondents' continued detention of Petitioner, long after the forty-eight (48)-hour period permitted by 8 U.S.C. § 1357(a)(2) and without timely judicial review, is therefore unlawful. Petitioner is entitled to immediate release or such other appropriate relief as this Court deems just and proper under federal law.

IX. REMEDIES

THE APPROPRIATE REMEDY FOR PETITIONER'S UNLAWFUL DETENTION IS IMMEDIATE RELEASE

Even though some cases cited in the Exhibit of the favorable Federal Court cases granted bond hearings to noncitizens who won TROs, PIs and habeas relief, some of those case (including the *Jose Alejandro* case) granted straight release relief to

petitioners. In addition, there are several important reasons that include new developments since those cases were decided that warrant a different relief now in this case.

Bond Hearing Will Require More Detention Time

If the Court orders a bond hearing before an immigration judge, it will take several more days or weeks to schedule a bond hearing, at an additional costs to Petitioner, while she remains detained, in a situation where Respondents have not even alleged, yet alone proven, that he is a danger or flight risk. Respondents have not produced a single shred of evidence why he should not be released.

Bond Hearing Cannot Cure Unlawful Arrest

Petitioner's arrest and continued detention are unlawful from the outset because she was not arrested pursuant to a warrant under 8 U.S.C. § 1226, as required for interior apprehensions, but was instead detained as a purported "applicant for admission" under § 1225(b)—a provision that, by its terms and longstanding practice, applies only to individuals encountered at the border or a port of entry, not to long-term residents apprehended in the interior. This is not a mere technicality; it is a fundamental statutory violation.

In analogous contexts, such as an unlawful arrest without probable cause or a search conducted without a warrant, courts have consistently held that the only effective remedy is suppression of evidence or outright release from custody. The government cannot retroactively cure an unlawful deprivation of liberty by later manufacturing a post hoc justification or issuing a belated warrant.

The same principle applies here: if ICE were to issue a warrant now, or attempt to reclassify the basis for detention after the fact, it would not remedy the original statutory violation as they arrested Petitioner under 8 U.S.C. § 1225(b)(2). Therefore, the only appropriate remedy for an arrest and detention made under the wrong statutory authority is immediate and unconditional release. Allowing the government to "fix" its error after the fact would undermine statutory and constitutional protections, incentivize unlawful government conduct, and deprive individuals of meaningful remedies for violations of their liberty interests.

Bond Hearing With An Immigration Judge Will Be Biased

The Supreme Court has long held that once an individual has entered the United States—regardless of the legality of that entry—they are entitled to the full panoply of due process protections before being deprived of liberty, including a fair hearing and individualized assessment by a neutral decisionmaker. See *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953). These protections are not mere formalities; they are fundamental constitutional guarantees that ensure the government cannot arbitrarily detain individuals without meaningful process and an impartial adjudicator.

Recent developments have gravely undermined the neutrality and independence of the immigration court system. Widespread reports and credible evidence indicate that, following mass firings and administrative reshuffling, many immigration judges now operate under the threat of removal or discipline if they grant relief to noncitizens, including bond or release, and they basically do what DHS asks them to. See Exhibit 7, Attorney Declaration. This climate of fear and institutional pressure has eroded the

essential independence of immigration judges, transforming them from neutral arbiters into functionaries who may feel compelled to deny relief to avoid professional jeopardy. The result is a system where noncitizens cannot be assured of a fair and impartial hearing on their liberty—a core requirement of due process. There is no proper oversight over the immigration judges and as a result, if an immigration judge denies bond, Petitioner will continue to be detained for months or years while her bond appeal is pending with the BIA.

Even If An Immigration Judge Grants Bond – ICE Will Appeal and Continue Detention

Even in the rare circumstances these days where Immigration Judges are granting bonds, DHS is appealing all bond grants to the Board of Immigration Appeals and uses an ultra vires automatic stay regulation to keep people detained for months without cause or due process. What used to be a process used very sparingly (in undersigned counsel's 26 years of practice was never used by DHS on any one of her clients), is now an automatic process used by DHS every time an immigration judge grants bond. See Exhibit 8. The regulation is clearly ultra vires and unconstitutional, as determined by dozens of courts around the country, including two decisions in undersigned counsel's cases. For brevity, see the following cases and the reasons and analysis in these decisions: *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind., Sep. 22, 2025) and *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind., Oct. 8, 2025).

Only Bond Hearing In Federal Court Would Be Proper

Given these circumstances, if the Court determines that a bond hearing is warranted, Petitioner respectfully requests that it be conducted in federal court, before

an Article III judge. Federal judges are insulated from political and administrative pressures and are well-versed in the requirements of due process, the standards for bond, and the constitutional imperative of neutrality. Only a truly independent judicial officer can ensure that Petitioner receives the fair, individualized assessment that the Constitution demands. Anything less would risk compounding the due process violations already at issue and would fail to provide the meaningful hearing required by *Landon*, *Kwong Hai Chew*, and the Fifth Amendment itself. The Court should therefore retain jurisdiction over any bond hearing to guarantee the integrity and fairness of the process. See Exhibit 8.

If Court Grants Bond Hearing – Ensure Burdens Are Met

166. Should the Court grant a bond hearing, since there is no 6th Circuit caselaw on who carries the burden of proof, the Court should follow the 3 circuit courts who have decided the issue and determine that the government must prove, by clear and convincing evidence, that Petitioner is not a flight risk or danger and order so with very detailed instructions for Respondents to follow. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 853–56 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). The reason for that is the Congress's assumption was that for non-criminal noncitizens who are detained pursuant to § 1226(a) the default is release, not detention (in contrast to § 1226(c) that deals with mandatory detention for criminal aliens).

IX. CONCLUSION

The continued detention of Petitioner violates due process rights. But for intervention by this Court, Petitioner has no means of release from ICE custody. Petitioner faces ongoing and irreparable harm as a result of unlawful detention, including deprivation of liberty, loss of employment, and separation from family. These injuries cannot be remedied by monetary damages and will continue absent immediate judicial intervention. The balance of equities and the public interest strongly favor expedited consideration and equitable relief, including immediate release or a prompt bond hearing. Without such relief, Petitioner will continue to suffer irreparable harm, and the constitutional and statutory violations at issue will persist.

XI. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm:

(1) Assume jurisdiction over this matter under 28 U.S.C. §§ 2241 and 1331 and the Suspension Clause;

(2) Issue an Order to Show Cause, ordering Respondents to justify why this writ should not be granted to Petitioner and the basis of Petitioner's detention in fact and law, **within the 3 days authorized by the statute**;

(3) Enjoin Petitioner's transfer outside this District and removal from the United States, and prohibit any change of Petitioner's immediate custodian, without prior leave of Court while this action is pending,

pursuant to 28 U.S.C. §§ 1651(a) and 2241;

(4) Declare that Petitioner is not an "applicant for admission "1225(b), seeking admission" or an "arriving alien" and that Petitioner's detention is unlawful;

(5) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);

(6) Declare that Respondents' actions, as set forth herein, and Petitioner's continued detention violate the Due Process Clause of the Fifth Amendment, the INA and its implementing regulations, the Administrative Procedure Act, and the *Accardi* doctrine;

(7) Grant Petitioner a Writ of Habeas Corpus and order Respondents to immediately release Petitioner from custody, or, in the alternative, order Respondents to conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 2 days, where the government bears the burden to prove, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community;

(8) Enjoin Respondents from re-detaining Petitioner in the future pursuant to 8 U.S.C. § 1225;

(9) Award Petitioner reasonable attorney's fees and costs;

(10) Waive or set a nominal security under Fed. R. Civ. P. 65(c); and

(11) Grant such other and further relief as this Court deems just, proper or equitable under the circumstances.

Respectfully Submitted,

This 3rd day of November, 2025.

/s/ Rania A. Attum
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

This 3rd day of November, 2025.

Karen Weinstock

Karen Weinstock
Pro Hac Vice Admission Filed Herewith
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