UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSE MORENO RANGEL	§	
	§	
Petitioner,	§	Civil Action No. 4:25-cv-5270
	§	
v.	§	
	§	
KRISTI NOEM, et at.,	§	
	§	
Respondents.	§	
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PETITIONER'S RESPONSE IN OPPOSITION TO GOVERNMENT'S MOTION TO DISMISS, IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGEMENT

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The Petitioner files the foregoing Response to the Government's Motion for Summary Judgement (Dkt. 6) and states the following:

I. NATURE OF PROCEEDINGS

Petitioner Jose Moreno Rangel, through counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2241, challenging the legality of his continued detention by Immigration and Customs Enforcement ("ICE"). Petitioner is in the physical custody of Respondents at the Montgomery Processing Center in Conroe, Texas. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that Petitioner is subject to mandatory detention. Petitioner is charged with, *inter alia*, having entered

the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Consistent with a new DHS policy issued on July 8, 2025, all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to wit., those who entered the United States without admission or inspection. Under this policy the Petitioner is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are therefore ineligible to be released on bond. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as being inadmissible for having entered the United States without inspection. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice

applying § 1226(a) to people like Petitioner. Accordingly, Petitioner seeks a writ of habeas corpus requiring that she be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

II. STANDARD OF REVIEW

A. Rule 56

Under Rule 56, summary judgment may be granted if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When assessing whether a dispute to any material fact exists, the court should consider all of the evidence in the record and draw all reasonable inferences in favor of the nonmoving party. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007).

B. Rule 12(b)(1)

Federal courts are "courts of limited jurisdiction, having 'only the authority endowed by the Constitution and that conferred by Congress.'" *Halmekangas v. State Farm Fire & Cas. Co.,* 603 F.3d 290, 292 (5th Cir. 2010). "'A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.'" *Smith v. Reg'l Transit Auth.*, 756 F.3d 340, 347 (5th Cir. 2014) (*quoting Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005)).

III. FACTS

Petitioner entered the United States without inspection from Mexico. Petitioner was previously in removal proceedings, which were later dismissed. (Dkt 1-1 and 1-3). During the course of the first removal proceedings, he was granted a bond from an immigration judge under 1226. (Dkt 1-2).

In October of 2025, the Petitioner was taken into immigration custody and issued a Notice to Appear "NTA" pursuant to an ICE detainer after being arrested for interfering with public duties. He was charged with removability under 212(a)(6)(A)(i) of the Immigration and Nationality Act, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General and 212(a)(7)(A)(i)(I) as an immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the act... (Dkt. 1-1 NTA).

Per *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) an IJ is unable to consider a bond for the Petitioner. Any bond application at this point would be deemed futile as IJ's are bound by *Yarjure Hurtado*. The Petitioner currently remains in detention with her removal proceedings continuing in custody. Without relief from this Court the Petitioner will remain in custody for months or even years while her case is processed.

IV. ARGUMENT

First and foremost, the suit brought by the Petitioner for *Writ of Habeas Corpus* challenges his continued detention and inability to be granted bond. Detention is not a requirement of deportation, and there is no section of the Immigration of Nationality Act, corresponding regulations, or case law that prescribes this. The instant writ is a challenge to the Petitioner's continued physical custody and sweeping new rule, under *Yajrue Hurtado*, that strips most noncitizens who entered without inspection of the right to seek bond from an IJ, regardless of how long they have been residing in the country and where they were apprehended by immigration authorities. Under *Yajure Hurtado*, only noncitizens who have been "admitted," retain bond eligibility. 8 U.S.C 1101(a)(13)(A); *Yajure Hurtado,* 29 I&N Dec. at 218, 223. Federal District courts that have recently analyzed which statute covers noncitizens who previously entered without inspection have consistently found that *8 U.S.C § 1226*, not *8 U.S.C § 1225(b)*, authorizes their detention. In so finding, courts have relied on the record evidence and factual circumstances in a noncitizen's immigration proceedings, the text of both provisions, the statutory context and structure, the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the legislative history of 8 U.S.C. § 1225. After careful review, numerous Federal District Courts have disagreed with the Government's new interpretation and subsequently granted relief to habeas

petitioners. It is in this light the Petitioner seeks relief.

A. There is no administrative remedy to exhaust prior to filing the Petition

This Court has jurisdiction to review habeas petitions filed by immigration detainees who assert that they are "in custody in violation of the Constitution or laws or treaties of the United States." *28 U.S.C. § 2241(c)(3).* The Government contends that Petitioner's challenge to his detention is premature because a bond must be sought, and if denied, an appeal to the BIA must be undertaken *first*. (Dkt. 6 at 6-8). The Government, however, cites no authority making a bond application or bond appeal mandatory prior to the filing of a Habeas Petition.

In the absence of a statutory requirement of exhaustion of administrative remedies, however, the jurisprudential doctrine of exhaustion controls. *See McKart v. United States*, 395 U.S. 185, 193-94 (1969) (discussing "judicial application of the exhaustion doctrine in cases where the statutory requirement of exclusivity [of an agency's jurisdiction] is not so explicit"). The jurisprudential exhaustion doctrine is not jurisdictional in nature. *See Information Resources, Inc. v. United States*, 950 F.2d 1122, 1126 (5th Cir. 1992) (observing that courts have greater discretion in applying the judicially created exhaustion doctrine than the statutory exhaustion requirement because the latter is jurisdictional); C*entral States S.E. & S.W. Areas Pension Fund v. T.I.M.E.-DC, Inc.*, 826 F.2d 320, 326 (5th Cir. 1987) (noting the distinction between exhaustion of administrative remedies as "a statutorily mandated

jurisdictional prerequisite" and "the 'prudential,' judicial doctrine requiring such exhaustion"); *Ainsworth Aristocrat Int'l Pty. Ltd. v. Tourism Co.*, 818 F.2d 1034, 1039 & n. 26 (1st Cir.1987) (observing that "the requirement that a plaintiff exhaust its administrative remedies is not a strict jurisdictional requirement" unless "the plaintiff's cause of action is provided by a statute that also establishes a scheme of administrative remedies and requires that the plaintiff exhaust these remedies before seeking judicial relief"); *I.A.M. Nat'l Pension Fund Benefit Plan C v. Stockton TRI Indus.*, 727 F.2d 1204, 1208 (D.C. Cir. 1984) ("Only when Congress states in clear, unequivocal terms that the judiciary is barred from hearing an action until the administrative agency has come to a decision ... has the Supreme Court held that exhaustion is a jurisdictional prerequisite." (footnote omitted)); *Holloway v. Gunnell*, 685 F.2d 150, 152 n. 2 (5th Cir. 1982) (concluding that exhaustion of administrative remedies in a Bivens-type action was not a jurisdictional prerequisite, but rather a defense subject to waiver like any other).

The jurisprudential exhaustion doctrine is a "long settled rule of judicial administration [which mandates] that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938). The doctrine serves (1) to avoid premature interruption of the administrative process; (2) to let the agency develop the necessary factual background upon which decisions

should be based; (3) to permit the agency to exercise its discretion or apply its expertise; (4) to improve the efficiency of the administrative process; (5) to conserve scarce judicial resources, since the complaining party may be successful in vindicating rights in the administrative process and the courts may never have to intervene; (6) to give the agency a chance to discover and correct its own errors; and (7) to avoid the possibility that "frequent and deliberate flouting of administrative processes could weaken the effectiveness of an agency by encouraging people to ignore its procedures." *Id.*

There are traditional circumstances in which courts have excused a claimant's failure to exhaust administrative remedies, including situations in which (1) the unexhausted administrative remedy would be plainly inadequate, (2) *the claimant has made a constitutional challenge that would remain standing after exhaustion of the administrative remedy,* (3) the adequacy of the administrative remedy is essentially coextensive with the merits of the claim (e.g., the claimant contends that the administrative process itself is unlawful), and (4) *exhaustion of administrative remedies would be futile because the administrative agency will clearly reject the claim.* *Taylor v. U.S. Treasury Dep't*, 127 F.3d 470 (5th Cir. 1997) *citing Patsy v. Florida Int'l Univ.*, 634 F.2d 900, 903 (5th Cir. 1981) (en banc).

While the exhaustion doctrine often serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency, there are

circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion. *McCarthy v. Madigan*, 503 U.S. 140, 145-46, 112 S.Ct. 1081, 117 L.Ed.2d 291 (1992). As relevant here, "a court may consider relaxing the [exhaustion requirement] when unreasonable or indefinite delay threatens unduly to prejudice the subsequent bringing of a judicial action." *Id.* "And, relatedly, if the situation is such that 'a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim,' exhaustion may be excused even though 'the administrative decision making schedule is otherwise reasonable and definite.'" *McCarthy*, 503 U.S. at 147, 112 S. Ct. at 1081. Irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of administrative remedies. *See Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021); *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986). ("[E]xhaustion might not be required if [the petitioner] were challenging her incarceration or the ongoing deprivation of some other liberty interest.").

The Petitioner in the instant matter will fall under exception (2) and (4). It is well settled that Constitutional claims may not be raised to an Immigration Court or the BIA therefore arguments related to constitutional claims are proper before a Federal District Court. *See Matter of C–*, 20 I&N Dec. 529, 532 (BIA 1992) ("it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations"). *See also 8 U.S.C. § 1103* (1988);

8 C.F.R. § 3.1 (1992); *Bagues-Valles v. INS*, 779 F.2d 483 (9th Cir. 1985); *Dastmalchi v. INS*, 660 F.2d 880 (3d Cir. 1981); *Matter of Cortez*, 16 I&N Dec. 289 (BIA 1977). It is also clear that an IJ and the BIA are bound by their decision in *Yajure Hurtado* and would find they have no jurisdiction to entertain a custody redetermination "bond" for the Petitioner.

Waiver of the exhaustion requirement is also warranted here because the Petitioner is likely to experience irreparable harm if she is unable to seek habeas relief until the Immigration Court first denies him custody redetermination "bond" and the BIA decides the appeal of the Immigration Judge's order denying his release on bond.[1] According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025). If the immigration judge were to deny jurisdiction and BIA were to act promptly, it would be unlikely to decide Petitioner's appeal before mid-Spring 2026, assuming processing at the same rate as last year's appeals. In any universe, Petitioner is likely to endure several additional months of detention that may be unlawful. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *See Bois v, March* , 801 F.2d 462, 468 (D.C. Cir 1986)

[1] There a no numbers on time to receive an initial bond hearing before the Immigration Court however anecdotally the Houston/Conroe/Livingston detention facilities provide an initial bond hearing within approximately 3 weeks after the filing of the request.

Finally, it is an odd position for the Government to assert that the Petitioner must exhaust a remedy in which they themselves claim there is no jurisdiction over. The position of the Government is that an immigration court has no jurisdiction to entertain a bond for a person in the Petitioner's position; however; they simultaneously argue that the Petitioner must still apply for a bond to exhaust remedies.

> Here, Petitioner has not exhausted his administrative remedies. He has not had a bond-determination hearing before an Immigration Judge since he was taken into custody. Thus, he has failed to begin, much less exhaust, the administrative remedies available to her.... (Dkt. 6 at 7).
>
> Petitioner's habeas petition should be denied because he falls under the plain language of the mandatory detention provisions in 8 U.S.C. § 1225. (Dkt. 8 at 9).

This conflicting logic in the Government's own brief illustrates the discord between their position and the decades of immigration bond eligibility law and now over one hundred district courts who have ruled against them post-Hurtado, including the half dozen recent habeas grants in the Southern District of Texas with identical fact patterns.

B. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225

The initial question posed by the Petitioner's habeas petition is whether he is detained under Section 1225(b)(2), as the Government now contends, or was he subject to discretionary detention under Section 1226(a), as the government previously represented in the Petitioner's removal documents. (Dkt. 1-1, 1-2,)

Section 1226(a) "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," *Jennings,* 583 U.S. at 289, 138 S.Ct. 830, and it applies when a noncitizen is "arrested and detained" "[o]n a warrant issued by the Attorney General," 8 U.S.C. § 1226(a). That is precisely what occurred here.

Respondents, remarkably, fail to address the critical fact in this case that Respondents previously applied 1226 to the Petitioner when he was released on bond in 2017 (Dkt 1-1, 1-2), and now inexplicably, they maintain he is subject to 1225. Respondents, through their own actions in 2017, have essentially conceded that 1226 applies to this Petitioner. (Dkt 1-2) (emphasis added).

Moreover, Petitioner was transferred to ICE custody pursuant to an ICE detainer. An ICE detainer is *only* issued pursuant to 1226 and 1357 according to regulations that govern the Respondents' actions, in conjunction with the INA. 8 C.F.R. § 287.7 (a). Notably, an ICE detainer is *not* issued pursuant to 1225. *Id.*

Respondents filed supplemental authority (Dkt 7) citing *Cabanas v. Bondi*, 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025). Respectfully, Judge Eskridge erred in his reasoning. The most obvious flaw in the *Cabanas* decision is the disregard for the framework set forth in *Jennings*. *Jennings* addressed two factual scenarios: (1) an alien *seeking entry* into the U.S. where 1225(b) applies, and (2) "aliens already in" in the U.S. where 1226 applies. *Id.* at 297 and 303. *Cabanas*

seemingly ignores the Supreme Court's binding precedent. Additionally, Judge Eskridge did acknowledge, as the Respondents did, that there are several district courts that agree with the Petitioner's reasoning. Yet he states that each court must make their own independent assessment until the Fifth Circuit takes up this issue. However, there is one key issue with that logic because the Supreme Court, which trumps the Fifth Circuit, has already ruled on the application of 1225 and 1226. Respectfully, this Court, and all other district courts, are simply bound by the interpretation set forth in *Jennings*.

Petitioner's current detention violates the plain language of the Immigration and Nationality Act, as section 1225(b)(2)(A) does not apply to individuals, like the Petitioner, who previously entered and are now residing in the United States. It is true that under *Matter of Yajure Hurtado,* immigration judges have no authority to consider bond request for individuals who entered the United States without admission. 29 I&N Dec. 216. This statutory section, however, does not apply to the Petitioner, who was already living in the United States for the last several years. As such, it is section 1226(a) that applies to the Petitioner and therefore allows for her release on conditional parole or bond. It is section 1226(a), not 1225(b)(2)(A) that *explicitly* applies to individuals charged as being inadmissible for having entered the United States without inspection.

The Government disagrees, contending that Petitioner's current detention is

governed by Section 1225(b)(2). That statute "authorizes the Government to detain certain aliens seeking admission into the country." *Jennings*, 583 U.S. at 289, 138 S.Ct. 830. If an immigration officer "determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," Section 1225(b)(2) requires that the noncitizen be detained for removal proceedings under Section 1229a. *See* 8 U.S.C. § 1225(b)(2)(A). Thus, the question is whether Section 1225(b)(2) mandates the detention of a noncitizen, like the Petitioner, who has been released into the United States and then arrested pursuant to Section 1226, is in the midst of standard removal proceedings, and is otherwise subject to Section 1226(a)'s discretionary detention framework. For the reasons explained by numerous District Courts throughout the United States, including most recently the Southern District of Texas, the answer to that question is a resounding *no*.[2] *See Rivera-Henriquez v. Tate, 4:25-*

[2] A non-exhaustive list of District Courts that have disagreed with the Governments position: **First Circuit:** *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in Yajure Hurtado), *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025), *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025), *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025), *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025), *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025), *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); **Second Circuit:** *Lopez Benitez v. Francis,* 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025), *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); **Fourth Circuit:** *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); **Fifth Circuit:** *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); **Sixth Circuit:** *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in Yajure Hurtado) *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); **Eighth Circuit:** *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025) *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025), *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025), *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025), *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025), *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025), *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025), *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); **Ninth Circuit:** *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing Yajure Hurtado) *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025), *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in Yajure Hurtado renders requiring prudential exhaustion futile), *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025) *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025), *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025), *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *Rodriguez Vazquez v.*

CV-045436, (S.D. Tex. Sep. 26, 2025); Buenrostro Mendez v. Bondi, 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025); Covarrubias v. Vergara, 5:25- cv-112 (S.D. Tex. Oct. 8, 2025); *Platas Arcos v. Noem, 4:25-cv-04599 (S.D. Tex. Oct. 8, 2025); Ortega-Aguirre v. Noem, 4:25-cv-04332 (S.D. Tex. Oct. 10, 2025); Baltazar v. Vasquez*, 25-cv-175 (S.D. Tex. Oct. 14, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. Oct. 15, 2025); *Fuentes v. Lyons et al.*, 5:25-cv-00153 (S.D. Tex. Oct. 16, 2025); *Ascencio-Merino v. Dickey*, 4:25-cv-00490 (S.D. Tex. Oct. 21, 2025); *Aslamov v Warden Bryan Uhls*, 4:25-cv-04299 (S.D. Tex. Oct. 22, 2025); *Mejia Juarez v. Bondi, 4:25-cv-03937, (S.D. Tex. Oct. 27, 2025); De La Caridad Mendez Velazquez v. Noem et al.*, 4:25-cv-04527 (S.D. Tex. Oct. 30, 2025), *Torres-Rodriguez v Noem et al.*, 4:25-cv-05036 (S.D. Tex. Nov. 3, 2025).

Further, the plain text of Section 1226(a)—which provides that, following a noncitizen's arrest on a "warrant," the Attorney General "may" detain the noncitizen, "may" release him on bond, or "may" release him on conditional parole, 8 U.S.C. §§ 1226(a)(1)-(2)—indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant. *See Jennings,* 583 U.S. at 300, 138 S.Ct. 830 ("'the word "may" implies discretion,'" whereas "'the word "shall" usually connotes a requirement'" (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171, 136 S.Ct. 1969, 195 L.Ed.2d 334

Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

(2016))). While Section 1226(a) expressly carves out certain "criminal" noncitizens from its discretionary framework, it does not similarly carve out noncitizens who would be subject to mandatory detention under Section 1225(b)(2). *See 8 U.S.C. § 1226(a)* ("Except as provided in subsection (c), the Attorney General may"). "That express exception to Section 1226(a)'s discretionary framework "implies that there are no other circumstances under which" detention is mandated for noncitizens, like the Petitioner, who are subject to Section 1226(a). *Jennings*, 583 U.S. at 300, 138 S.Ct. 830 (*citing* A. Scalia & B. Garner, Reading Law 107 (2012)). Interpreting Section 1225(b)(2) to mandate Petitioner's detention in these circumstances would contravene Congress's intent that Section 1226(a)'s discretionary detention framework apply to all noncitizens arrested on a warrant except those subject to Section 1226(c)'s carve out. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400, 130 S.Ct. 1431, 176 L.Ed.2d 311 (2010) ("that Congress has created specific exceptions" to the applicability of a statute or rule "proves" that the statute or rule generally applies absent those exceptions).

The Government's interpretation of Section 1225(b)(2) would also render a provision of Section 1226(c)(1)(E)—which was added to Section 1226 in 2025 by the Laken Riley Act—superfluous. Under Section 1226(c)(1)(E), a noncitizen is subject to mandatory detention if he (i) is inadmissible because she is present in the United States without being admitted or paroled, *8 U.S.C. § 1182(a)(6)(A)*, lacks

requisite documentation, *8 U.S.C. § 1182(a)(7),* or sought to fraudulently obtain requisite documentation or admission, *8 U.S.C. § 1182(a)(6)(C)* (the "inadmissibility criterion"); "and" (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the "criminal conduct criterion"). *8 U.S.C. §§ 1226(c)(1)(E)(i)-(ii).* Thus, a noncitizen arrested by immigration officers is subject to mandatory detention only where both the inadmissibility criterion and the criminal conduct criterion are satisfied.

Interpreting Section 1225(b)(2) to apply to noncitizens who are arrested on a warrant while residing in the United States, as the government does, would render Section 1226(c)(1)(E)'s criminal conduct criterion superfluous for noncitizens who are inadmissible because they are present in the United States without being admitted or paroled. *See 8 U.S.C. § 1182(a)(6)(A).* Such noncitizens are, of course, unlikely to prove to an examining immigration officer that they are "clearly and beyond a doubt entitled to be admitted." *Id.* § 1125(b)(2)(A). This is the case with the Petitioner: he was charged under Section 1182(a)(6)(A). (*Dkt. 1-1*). If the government were correct that such noncitizens are subject to mandatory detention under Section 1225(b)(2) as applicants for admission, there would have been no need for Congress to specify in Section 1226(c)(1)(E) that such citizens are subject to mandatory detention when they are present in the United States without being admitted or paroled and when they satisfy the separate criminal conduct criterion.

Such an interpretation, which would nullify the criminal conduct provision of a statute Congress enacted this very year, must be rejected. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

The Court should therefore conclude that the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested while residing in the United States. *See Jennings*, 583 U.S. at 302-03, 138 S.Ct. 830 (Section "1226 applies to aliens already present in the United States" and "authorizes detention only '[o]n a warrant issued' by the Attorney General leading to the alien's arrest" (quoting 8 U.S.C. § 1226(a))).

The Government, despite years of case law and voluminous recent District Court decisions to the contrary, resists this conclusion. In the Government's view, Section 1225(b)(2), which applies only to applicants for admission, is a "specific" provision compared to Section 1226, which it describes as "the 'default' detention authority." *Jennings*, 583 U.S. at 288, 138 S.Ct. 830. This argument is premised on a mischaracterization of the Supreme Court's opinion in *Jennings*. *Jennings* did not, as the government suggests, describe Section 1226 as the "default" detention authority in federal immigration law. *Id.* at 288-89, 138 S.Ct. 830. It instead

explained that in circumstances where Section 1226 applies, "Section 1226(a) sets out the default rule"—that is, discretionary detention—to which Section 1226(c)'s mandatory detention requirement is the exception. *Id.* Section 1225(b)(2) is not "more specific" than Section 1226(a); these provisions simply apply in different circumstances. Section 1225(b)(2) governs the detention of applicants for admission who are "seeking admission" to the United States, whereas Section 1226(a) governs the detention of noncitizens who are arrested "[o]n a warrant" while present in the United States. 8 U.S.C. §§ 1225(b)(2)(A), 1226(a); *see Jennings*, 583 U.S. at 289, 302-03, 138 S.Ct. 830. Because the Petitioner was arrested while residing in the United States, he is subject to Section 1226(a)'s discretionary detention framework.

V. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Court deny Government's Motion to Dismiss and in the Alternative Motion for Summary Judgment and Grant the Petitioner's Habeas Petition finding that the Petitioner has exhausted all remedies, is not subject to mandatory detention under 8 U.S.C. 1225(b) and is entitled to release or in the alternative granted a bond hearing.

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CERTIFICATE OF SERVICE

I certify that on November 19, 2025, the foregoing document was filed with the Court through the Court CM/ECF system on all parties and counsel registered with the Court CM/ECF.

Dated this 19th day of November 2025.

/s/ Naimeh Salem
Naimeh Salem, Esq