UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:25-cv-25099-DPG

OSMAN OMAR TORRES HUETE,
Petitioner,

v.

PAM BONDI et al.
Respondents.
_____/

PETITIONER'S TRAVERSE (REPLY)
TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW The petitioner, **OSMAN OMAR TORRES HUETE**, by and through undersigned counsel, pursuant to the Court's Order to Show Cause (ECF No. 8), and within the seven (7) day period permitted by the Court, files this Traverse (Reply) to Respondent's Response (ECF No. 15-16) filed on Nov. 19-20, 2025, and in support states:

INTRODUCTION

Contrarily to the Respondents arguments, Petitioner's habeas petition under 28 U.S.C. § 2241 challenges solely the lawfulness of his ongoing immigration detention—not the discretionary decision to commence, adjudicate, or execute any removal order. Specifically, Petitioner contends that (1) ICE's re-detention violated a prior Immigration Judge's (IJ) 2018 release order under 8 U.S.C. § 1226(a), and (2) the Board of Immigration Appeals' (BIA) September 5, 2025, precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which categorically denies individualized bond hearings to noncitizens present without

admission (including those who entered without inspection like Petitioner), deprives him of due process under the Fifth Amendment by imposing indefinite mandatory detention without any opportunity for custody redetermination. These claims are collateral to any removal proceedings and raise pure constitutional and statutory questions squarely within this Court's habeas jurisdiction. Critically, 8 U.S.C. § 1252(g) does not strip jurisdiction here, even though *Matter of Yajure Hurtado* has sparked nationwide habeas litigation challenging its constitutionality. To the contrary, the heavy litigation of *Hurtado* in federal courts underscores that § 1252(g) preserves review of such detention-specific claims. Petitioner's detention involves constitution and statutory questions.

I. BACKGROUND

Petitioner entered the United States on or about January 1, 2014. Petitioner first encountered with DHS/CBP occurred on or about January 3, 2016, about 2 years after his entry. On May 1, 2018, Petitioner submitted his asylum application to DHS/USCIS (ECF No. 1, Exh. G). However, on May 22, 2018, DHS issued a Warrant for Arrest of Alien (Form I-200), and on May 23, 2018, DHS/ERO took Petitioner into custody—Exh. A, DHS Form I-200. Petitioner was living in the State of Florida for about 4 years when he first was detained by DHS. In 2018, Petitioner filed a motion for a custody redetermination and the immigration judge granted bond finding the Petitioner was not a danger to the community or flight risk. Ever since, there has been no changed circumstances, criminal arrest, or breaching of the conditions imposed by the Immigration Judge's Order as Petitioner strictly complied with the immigration laws under the 8 C.F.R. § 208 (Statute for asylum eligibility & requirements) and INA §208 (8 U.S.C. §1158) (Regulations for filing Form I-589 with USCIS). (ECF No. 1, Exh. B-I). Petitioner had pending application for relief and numerous approved work permit petitions by DHS since 2018, he never received any notice demanding his appearance before DHS due to a bond cancellation, hence it

was unknown to him that ERO unilaterally cancelled Petitioner's bond. (ECF No. 16 at ¶15). In summer 2025, DHS abruptly changed its long-standing interpretation of U.S. immigration law. Under the new policy announced on July 8, 2025, DHS declared that **any non-citizen who is present in the United States without having being formally admitted or paroled** (ie. most people who entered without inspections years ago and have been living here) must now be treated as an "applicant for admission" and subjected to **mandatory detention** under 8 U.S.C.§ 1225(b) with **no right to a bond hearing**.

On Sept. 5, 2025, the Board of Immigration Appeals (BIA) stripped the immigration judges' authority over [a] bond request because alien who are present in the United States without admission are applicants for admission. Post-*Hurtado*, numerous district courts across the nation has decided otherwise, and had granted habeas corpus. *Matter of Hurtado, 29 I&N Dec. at 220.* DHS re-arrest the Petitioner, and failed to place him on removal proceedings.

On Oct. 30, 2025, Petitioner submitted his formal Request for Release (ECF No. 1, Exh. J) which was denied on Nov. 1, 2025. Petitioner was held in civil immigration custody for 21 days without NTA. DHS had not issued or served any NTA upon the petitioner, not until after the petitioner filed this habeas. (ECF 15, Exh. 4). DHS issued a NTA and purportedly served the Petitioner on Nov. 6, 2025. Said issued NTA charges the petitioner under INA §212(a)(6)(A)(i)—an alien present in the United States who has not been admitted or paroled.

Despite the 2018 IJ Order releasing the Petitioner from custody which is the basis of this action, Respondents has contested the habeas, affirming that the Sept. 5, 2025 *Matter of Hurtado* strips the Petitioner's right to apply for bond redetermination, placing him under the **mandatory detention /no-bond** rule in 8 U.S.C.§ 1225(b)(2)(A). To date and by virtue of a greatly litigated law involving constitutional rights, the Petitioner continued detention without a bond hearing and custody determination (bond proceedings) under 8 U.S.C.§ 1226(a).

REPLY ARGUMENT

Petitioner's claims fit precisely within this "pure detention" carve-out. He does not contest the Attorney General's discretion to initiate removal (which occurred only after this petition was filed) or to execute any final order (none exists). Instead, he attacks the collateral lawfulness of his custody: ICE's defiance of a binding Immigration Judge release order and the blanket elimination of bond hearings under *Matter of Hurtado*. These are not "arising from" the enumerated actions but from the independent statutory framework governing detention under § 1226(a). The Respondents' 2025 policy of treating all such people as 8 U.S.C.§ 1225(b) mandatory detainees with no bond rights has been rejected by overwhelming majority of courts.

I. PETITION SHOULD NOT BE DISMISSED FOR LACK OF JURISDICTION BECAUSE 8 U.S.C. § 1252(G) DOES NOT BAR HABEAS REVIEW OF UNLAWFUL DETENTION

§ 1252(g) does not bar federal courts from entertaining constitutional or statutory challenges to the fact or conditions of immigration detention itself. In their brief, Respondents argue that 8 U.S.C. §1252(g), § 1252(b)(9), and/or § 1252(a)(5) "unambiguously strip" this Court of jurisdiction to consider Petitioner's claims. (ECF 17 at 4-9). The Eleventh Circuit published opinions have repeatedly held or strongly indicated that civil immigration detention challenges (habeas petitions, conditions-of-confinement claims, bond-related due-process claims, etc.) are not barred by 8 U.S.C. § 1252(g) — the provision that strips jurisdiction over claims "arising from" the Attorney General's decision to "***commence proceedings, adjudicate cases, or execute removal orders***." (emphasis added) *Reno v. Am.-Arab Anti-Discrimination Comm.* (AADC), 525 U.S. 471 (1999); see also *J.G.G. v. U.S. Att'y Gen.*, 996 F.3d 1334 (11th Cir. 2021), ("Section 1252(g) is narrowly construed and only eliminates jurisdiction over claims that directly challenge one of the three enumerated discretionary actions. It does not bar review of legal or constitutional challenges that are collateral to those actions").

Respondent's arguments fail for at least four independently sufficient reasons under binding Eleventh Circuit law:

a. Petitioner has never had a final order of removal that is being "executed."

This Court has jurisdiction because petitioner does not have or is challenging a final order of removal. At all times relevant to this petition, Petitioner has been held under the discretionary detention authority of 8 U.S.C. § 1226, not under the post-removal-order authority of 8 U.S.C. § 1231, inasmuch as the government did not issue the Notice to Appear until after this habeas proceeding was commenced. (ECF 17, Exh. D). Section 1252(g)'s reference to "execute removal orders" presupposes the existence of a removal order capable of execution. See 8 U.S.C. § 1231(a)(1)(B) (90-day removal period begins only when "the order of removal becomes administratively final"). The Eleventh Circuit has repeatedly held that detention of individuals who do not have administratively final removal orders falls entirely outside § 1252(g). *Green*, 659 F. App'x at 544.

b. Absent a removal order, this petition challenges the legality of detention itself—not any discretionary decision to execute removal.

This Court has jurisdiction because petitioner challenges the legality of this civil detention, not DHS's decision to commence proceedings. Binding Eleventh Circuit precedent draws a clear line: § 1252(g) is "narrowly construed" and only protects the Attorney General's discretionary decisions to commence proceedings, adjudicate cases, or execute removal orders. *Ali*, 936 F.3d at 1198; *Green*, 659 F. App'x at 544. A collateral attack on the lawfulness of detention—here, (a) violation of an IJ's 2018 release order (ECF 1, Exh. D) and (b) denial of any

bond or custody redetermination hearing in contravention of due process[1]—is not a challenge to a discretionary execution decision.

c. The 2018 IJ release order remains binding until lawfully revoked.

This Court has jurisdiction because the government's decision to continue detaining the petitioner-alien in violation of the 2018 immigration judge's release order is not a discretionary decision covered by § 1252(g). *Ali*, 936 F.3d at 1197-98.

An immigration judge acting under § 1226 authority ordered Petitioner released in 2018. ICE never appealed that order, and the order has never been vacated. ICE's re-detention violated due process under the Fifth Amendment, as it deprived petitioner of a protected liberty interest (freedom from detention post-bond) without notice, an opportunity to be heard, or a bond redetermination hearing before an immigration judge. Immigration detention, though civil and non-punitive still triggers due process scrutiny because it severely burdens liberty. Thus, the challenge of unlawfulness civil detention claim is cognizable in habeas and is not barred by § 1252(g).

d. § 1252(g) Does Not Strip This Court's Jurisdiction Over Petitioner's Pure Detention Challenge, Despite the BIA's Precedential Decision in *Matter of Yajure Hurtado*

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[1] See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (holding that immigration judges lack jurisdiction under INA § 235(b)(2)(A) to conduct bond hearings or redetermine custody for noncitizens present in the United States without admission, even if long-term residents or detained via warrant, thereby subjecting them to mandatory detention during removal proceedings and effectively stripping IJs of discretionary bond authority previously exercised for decades). See also https://www.justice.gov/eoir/media/1413311/dl?inline

Section 1252 merely precludes this District Court of jurisdiction over challenges to the removal order's execution or its merits, not pure detention claims. The Eleventh Circuit has repeatedly held that constitutional challenges to detention procedures are reviewable notwithstanding § 1252(g). See *Ali*, 936 F.3d at 1198. *Jennings v. Rodriguez,* 583 U.S. 281, 294–95 (2018) (explicitly distinguishing detention statutes (§§ 1225, 1226, 1231) from removal proceedings and noting that habeas remains available to challenge detention). *Matter of Hurtado* is a BIA rule that eliminates any individualized bond hearing for an entire class of detainees like the petitioner and it raises serious Fifth Amendment due-process concerns that are squarely within this Court's habeas jurisdiction.

Far from insulating *Hurtado* from review, § 1252(g)'s narrow scope ensures that constitutional challenges to the BIA's categorical denial of bond hearings remain cognizable in habeas. *Matter of Yajure Hurtado* held that noncitizens present without admission—defined broadly to include anyone who entered without inspection, regardless of time in the U.S. or subsequent equities like temporary protected status—are "applicants for admission" under 8 U.S.C. § 1225(b)(2)(A), stripping IJs of authority to conduct any bond hearings or custody redeterminations. 29 I. & N. Dec. at 220–25. This rule mandates indefinite detention for an entire class of detainees (potentially millions, including Petitioner) pending removal proceedings, without regard to flight risk, danger, or humanitarian factors.

Such a regime raises grave Fifth Amendment due-process concerns, as it contravenes the Supreme Court's mandate for "meaningful process" before prolonged civil detention, *Zadvydas v. Davis*, 533 U.S. 678, 684 (2001), and the individualized hearings required under *Jennings*, 583 U.S. at 300–01 (remanding for bond-hearing procedures).

Moreover, *Hurtado's* nationwide impact has already triggered "heavy litigation" via habeas corpus, confirming that federal courts retain jurisdiction to police its constitutionality.

Since its issuance, detainees in multiple circuits have successfully invoked § 2241 to challenge *Hurtado*-mandated detentions as due-process violations, with district courts denying § 1252(g) motions and ordering bond hearings. This wave of habeas actions demonstrates that § 1252(g) does not (and cannot) shield BIA rules eliminating procedural protections in detention. To hold otherwise would eviscerate habeas for the very claims Congress preserved because *Habeas Corpus* serves as an important 'safety valve' to safeguard constitutional rights against erosions in immigration enforcement. INS v. St. Cyr, 533 U.S. 289, 314 (2001)." Thus, this Honorable Court retains jurisdiction under Section 1252 (g)'s limits.

II. PETITIONER DID NOT FAIL TO EXHAUST ADMINISTRATIVE REMEDIES

No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden,* 785 F. 3d 467, 474 (CA11 2015)," and because "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz v. United States,* 248 F. 3d 1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).

Further, "[b]ecause the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame v. U. S. Att'y Gen.,* 796 Fed. Appx. 993, 1006 (CA11 2020); accord *Haitian Refugee Ctr., Inc. v. Nelson,* 872 F. 2d 1555, 1561 (CA11 1989), aff'd sub nom. *McNary v. Haitian Refugee Ctr.,* Inc., 498 U. S. 479 (1991) (exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS).

The remedy sought under the APA is to set aside the unlawful agency action (the re-detention decision) and order the petitioner released again under the original bond conditions, or at a minimum order a new bond hearing before an IJ.

The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush,* 553 U. S. 723, 783 (2008). And with respect to the petitioner's APA claim, an agency's failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).

III. PETITIONER IS DETAINED UNDER 8 U.S.C. §1226(a), NOT §1225(b)

Respondent argued that "Petitioner is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for release on bond." (ECF 17 at 15). Petitioner and dozens of circuit courts across the nation disagrees. This case presents a fundamental question of statutory interpretation and constitutional fairness: whether an individual who has effected an entry into the United States and resided here for a substantial period may be subjected to mandatory detention under 8 U.S.C. § 1225(b), based solely on the legal fiction that they are an "applicant for admission." The respondents contend that the deeming clause in 8 U.S.C. § 1225(a)(1) applies to all noncitizens present in the United States without admission or parole, regardless of how long they have resided in the country or whether they have effected an entry. This interpretation is not only inconsistent with the statutory structure of the Immigration and Nationality Act (INA), but it also undermines constitutional protections and renders large portions of the INA incoherent.

Respondents argue that "*while the Petitioner may have been detained under INA 236 in 2018, legal developments and ongoing evolution of law... have led [the government] to the conclusion that INA 235(b)(2) is the appropriate detention authority, and the one that applies now.*" However, Respondent cannot retroactively recharacterize a 2018 detention that was expressly adjudicated and released on bond under INA § 236(a) as falling under the mandatory-

detention provisions of INA § 235(b)(2) without new facts or a lawful termination of the original bond proceedings, because such unilateral redesignation violates due process and the finality of the Immigration Judge's 2018 bond order. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Furthermore, the new DHS policy "*as applies now*" violates the plain language of the Immigration and Nationality Act....Despite the new DHS policy's assertions to the contrary, 8 U.S.C. § 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 bond or conditional parole. Section 1226(a) expressly applies to people who, like Petitioner, are charged as removable for having entered the United States without inspection and being present without admission. Respondents' new legal interpretation set forth in the policy is contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner who are present within the United States. Respondents' new policy and the resulting ongoing detention of Petitioner without a bond hearing is depriving Petitioner of statutory and constitutional rights and unquestionably constitutes irreparable injury. As relief, Petition seeks an order enjoining Respondents from continuing to detain him unless Petitioner is provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days.

a. <u>Petitioner Is Likely to Prevail on His Claim That He is Detained under 8 U.S.C. § 1226 and not §1225</u>

8 U.S.C.§ 1226(a) "authorizes the Government to detain certain aliens already inside the country pending the outcome of removal proceedings. *Jennings v. Rodriguez,* 583 US 281, 289 (2018). And it applies when an alien is "arrested and detained"… "on a warrant issued by the Attorney General" *Id. See also* 8 U.S.C. § 1226(a). This by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.

Section 1226(a) also permits the Attorney General to release those aliens on bond, "[e]xcept as provided in subsection (c) of this section." *Jennings supra*, at 303. As noted, § 1226(a) applies to aliens already present in the United States *Id.*

In looking at the plain language and statutory scheme of section 1226(a), following an alien's arrest and detention "[o]n a warrant" and pending the completion of removal proceedings, section 1226(a) provides that the Attorney General 1) "may continue to detain the arrested alien"; 2) "may release the alien on parole"; or, 3) "may release the alien on…conditional parole". 8 USC 1226(a). The thrice-used permissive word "may" indicates Congress' intent to establish a discretionary, rather than mandatory detention framework for aliens arrested on a warrant. *See Jennings, supra* at 300 ("the word may…implies discretion, whereas the word 'shall' usually connotes requirement" (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016)).

The petitioner was first arrested and detained by DHS on a warrant on May 22, 2018, and later released upon grant of bond by an Immigration Judge. The re-arrest of the petitioner in 2025 does not change that he is subject to 1226(a) because 1226(b) states "The Attorney General at any time may …rearrest the alien under the original warrant, and detain the alien." Thus, the Respondent remains subject to the original Form I-200 under 8 U.S.C.§ 1226 and cannot be found to be subject to mandatory detention under 8 U.S.C. §1225.

b. <u>Petitioner Is Likely to Prevail on His Claim That the Immigration Court had Jurisdiction to hear his Bond Request</u>

i. *Matter of Yajure Hurtado* is arbitrary, capricious and contrary to prior BIA law

In deviating from past agency decisions, although not dispositive, Courts typically look askance at an agency's deviation from a prior decision even when the decision is unpublished. *See e.g. Baltimore Gas & Elec. Co. v. Heintz,* 760 F.2d, 1408, 1418-19, (CA 4 1985); *Davila-Bardales*

v. INS, 27 F.3d 1, 6 (CA 1 1994). In *Baltimore, supra,* it was found that when an agency fails to present a reasoned basis for departing from a previous decision, it may be deemed to have acted arbitrarily. 760 F.2d at 1419. When there are numerous decisions where the BIA has remanded because the immigration judge had not taken jurisdiction over custody redetermination based upon questions regarding whether the alien was subject to INA 235, the BIA has shown that remand is the normal course of action. **See Exhibit B, BIA Past Decisions.**

In the most recent case, which has turned the custody question on its ear, the BIA abruptly deviated from these decisions and there was no reasoned basis for that deviation. An agency may not change its policies, but rather that if the agency wishes to overrule or distinguish its precedents, it must explain why it has acted as it did. It follows from that general proposition that when an agency treats two similar transactions differently, an explanation for the agency's actions must be forthcoming. *Roadway Exp., Inc. v. N.L.R.B.,* 647 F.2d 415, 418–19 (1981); *Contractors Transp. Corp. v. United States*, 537 F.2d 1160, 1162 (1976).

The petitioner is being held due to an arbitrary and capricious BIA decision which contravenes both Congressional intent and Circuit law interpretations.

ii. *Matter of Yajure Hurtado* Violates Congressional Intent re: 8 U.S.C.§§ 1225 and 1226

It is well-known that if the construction posited by the agency is inconsistent with the policy embodied in the statute, then the agency's construction must be rejected in favor of one more reasonable. *California v. Watt,* 668 F.2d 1290, 1302–03 (D.C.Cir.1981) (per curiam); *United Food & Commercial Workers Int'l Union Local No. 576 v. N.L.R.B.,* 675 F.2d 346, 351 (D.C.Cir.1982). *Baltimore Gas & Elec. Co. v. Heintz,* 760 F.2d 1408, 1414 (4th Cir. 1985).

The section of code the constitutes the Immigration and Nationality Law's (INA)'s statutory structure makes clear that 8 U.S.C. § 1226 also reaches individuals who have not been

admitted and have entered without inspection. Section 1226(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 1226(a), including noncitizens subject to certain grounds of inadmissibility. Moreover, Congress recently added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted, expressly including those who are inadmissible under 8 U.S.C. § 1182(a)(6)(A), or (7)--that is, persons who entered without being admitted. If § 1226(a) did not apply to inadmissible noncitizens, then the carve out in § 1226(c) that refers to inadmissibility and Congress' most recent amendments would all be surplusage.

The statutory history also supports a limited reading of § 1225(b)'s reach. When Congress amended §1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b).

Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, a federal habeas court should independently interpret the meaning and scope of § 235(b) using the traditional tools of statutory construction and not rely upon the agency, despite the agency's sudden deviation from its own long-standing interpretations of §§ 1225 and 1226.

iii. *Matter of Yajure Hurtado* contravenes Circuit Law

In *Matter of Yajure Hurtado*, the Board of Immigration Appeals (BIA) held that the Immigration Judge was correct in determining that the Court did not have jurisdiction over a respondent detained under INA §235(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025). There are two key groups defined in *Yajure Hurtado* that are ineligible for a bond hearing:

(a) persons arriving in the United States placed in expedited removal proceedings under Section 235(b)(1) and (b) those arriving in and seeking admission into the United States who are placed directly into proceedings under INA § 240. *Id.* at 218.

Yajure Hurtado attempts to define the second group as including those not actually "requesting permission to enter the United States in the ordinary sense" as "nevertheless deemed to be 'seeking admission' under the immigration laws'. *Id.* However, it is important to remember the key words "arriving in and seeking admission".

Moreover, to be accurate in the determination of the terms thrown around in the above cases, the INA and regulations are the reigning definitions. Pursuant to 8 U.S.C. § 1101(a)(4) an "applicant for admission" is defined as "application for admission to the United States and not to the application for the issuance of an immigrant or nonimmigrant visa." This is also supported by the case law in the 5th Circuit under *Marques v. Lynch*, 834 F.3d 549, 555 (5th Cir. 2016), ("Section 1182(a)(7) is applicable only when an *alien is making an application for admission*, which the INA defines as "the application for admission into the United States...."")(emphasis added.) Additionally, there is guidance also in the 11th Circuit under *Ortiz-Bouchet v. U.S. Attorney General*, 714 F.3d 1353 (11th Cir. 2013). There, the court held that 8 U.S.C. § 1182(a)(7)(A)(i)(I) applies only to individuals who are "applicants for admission" *at the time they seek entry* into the United States. Similarly, here, the petitioners in *Ortiz-Bouchet* were already present in the United States when they sought adjustment of status. The court emphasized that they were not seeking entry and therefore could not be treated as applicants for admission. *Id.* at 1356.

Additionally, Applicant for Admission is an event and not a permanent status. The *Ortiz-Bouchet* court's reasoning did not turn on the procedural posture of adjustment of status but on the fact of entry. The phrase "post-entry" appears repeatedly in the opinion and is central to the court's holding. *Id.* The court further held that the definition of "admission" in 8 U.S.C. § 1182(h) is

unambiguous and "does not encompass a post-entry adjustment of status." Id. (citing *Lanier v. U.S. Att'y Gen.*, 631 F.3d 1363, 1366 (11th Cir. 2011)).

Section § 1225(a)(3) provides that "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." This provision, which follows immediately after the deeming clause in § 235(a)(1), confirms that "application for admission" is treated as an event — not a status.

The statute does not say that all those who are "deemed" applicants for admission shall be inspected. It refers to those who are actually seeking admission — those who know they are applying. This language presumes a conscious, affirmative act. It is consistent with the definition in § 101(a)(4), which defines "application for admission" as the act of applying to enter the United States, not a continuing legal condition imposed by the government. Thus, in the provision respondents have adopted to erase the distinction between unlawful entrants and applicants for admission, their reading fails by producing absurd results and several nullities – all in the same provision.

Indeed, the INA resumes its use of "application for admission" as an event immediately after the procedural fiction in § 1225(a)(1). This confirms that the fiction is limited and transitional — a patch to bridge the exclusion/deportation dichotomy — not a permanent reclassification. To interpret "applicant for admission" as a status that attaches indefinitely to any noncitizen present without admission would render § 235(a)(3) meaningless and the term itself constitutionally unsound. Sections 1225(a) and 1225(b) are two separate and distinct issues of law.

Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, "[e]xcept as

provided in subsection (c) of this section." *Jennings v. Rodriguez*, 138 S.Ct. 830, 846, 583 U.S. 281, 303 (U.S., 2018) As noted, especially § 1226 applies to aliens already present in the United States. *Jennings v. Rodriguez*, 138 S.Ct. 830, 846, 583 U.S. 281, 303 (U.S., 2018).

c. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Emergency Injunctive Relief.

Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. V. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

Petitioner currently is suffering or will suffer irreparable harm resulting from his indefinite and unlawful detention. As detailed earlier, respondents have detained the petitioner in a prison-like environment for over a month when most of the time of detention was without legal basis. These actions have caused, and are causing, irreparable harm in the form of mental anguish, forced detention and loss of freedom, loss of employment and wages, possible homelessness since he has not been able to pay rent, loss of and this all for detention that has lasted weeks without any civil immigration charges pending—until the filing of this action.

Absent injunctive relief, respondents will continue to detain the petitioner and should not be rewarded for their last-minute attempt to cure by placing the petitioner back into proceedings for the third time on November 6, 2025. Petitioner was granted a bond on a finding of jurisdiction, no danger to the community and no flight risk, however, the respondents will continue to attempt to force a new policy that will not only keep him detained but will result in more congestion in the detained dockets which will prolong detention while petitioner and others await their hearings and will result in severe violations of due process in their proceedings. We are already seeing this. For

these reasons, Petitioner has demonstrated irreparable harm.

d. <u>The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.</u>

The final two factors for an injunctive relief—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009); Here, the petitioner faces weighty hardships, namely the deprivation of his statutory, and constitutional rights to a bond hearing, deprivation of his liberty for months without legal basis for detention, denial of choice of any needed medical care, separation from his family, limited opportunity to fight his removal to his country from which he has filed an asylum application where he may face persecution.

Respondents, by contrast, face no hardship. There are little or no administrative costs associated with release if the court grants the injunction. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Moreover, the respondents "cannot suffer harm from an injunction that merely ends an unlawful practice . . . ." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

PRAYER FOR RELIEF

Respondents' arguments newly-presented to this Court are without merits. This Court has jurisdiction over the Petitioner's habeas because **(1)** § 1252(g) does not bar federal courts from entertaining constitutional or statutory challenges to the fact or conditions of immigration detention itself, **(2)** § 2241 itself does not impose an exhaustion requirement when the petitioner has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process, and (3) Petitioner's civil detention authority falls under the normal discretionary-detention statute, 8 U.S.C. § 1226(a), which requires an individualized bond hearing before an immigration judge (unless § 1226(c) criminal grounds separately apply).

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Consolidate the Petitioner's motion with the merits of the habeas. Fec. R. Civ. Proc. 65(a)

(c) Grant Petitioner's Writ of Habeas Corpus (ECF No. 1).

(d) Order the Respondents to release the petitioner from custody under the same conditions determined by the Immigration Judge in 2018, to a public place by no later than December 5, 2025, at 10am;

(e) Order Respondents to notify petitioner's counsel of the exact time of Petitioner's release as soon as practicable and no less than two (2) hours before his release.

(f) In the alternative, Order Respondents provide a bond redetermination hearing within five days;

(g) Order the parties to file a joint status report no later than December 10, 2025, confirming that Petitioner has been release, and

(h) Grant any other and further relief that the Court deems just and proper.

Dated: November 26, 2025

s/ Regilucia Smith
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CERTIFICATE OF SERVICE

I, Regilucia Smith, hereby that I electronically filed the foregoing documents with the Clerk of the Court using CM/ECF.

Dated: November 26, 2025

s/ Regilucia Smith
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