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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

VASQUEZ-SALAZAR *Petitioner*, v. BONDI, *et al.*, *Respondents.*	**HON. CLAIRE C. CECCHI, U.S.D.J.** **Civil Action No. 25-17195**

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

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I. INTRODUCTION

Petitioner, Deyvis Gamaliel Vasquez-Salazar respectfully submits this Reply in Support of his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and in Opposition to Respondents' Answer and Motion to Dismiss. This case is fundamentally about arbitrary detention, not—as Respondents mischaracterize—a challenge to removal proceedings or a request for a stay of removal.

Petitioner does not challenge whether he is an applicant for admission. He does not seek an automatic stay of removal. He does not argue that ICE acted unlawfully in initiating removal proceedings. Rather, Petitioner challenges his detention alone—specifically, the legality and constitutional propriety of his mandatory detention without a bond hearing under 8 U.S.C. § 1225(b)(2). Respondents' Answer fundamentally misapprehends the nature of Petitioner's habeas claim. This Court has jurisdiction to review whether Petitioner's detention violates the Constitution or laws of the United States, and the facts and law compel the conclusion that it does.

II. PRELIMINARY STATEMENT

Petitioner is a nineteen-year-old native and citizen of Guatemala who entered the United States as an unaccompanied minor at age sixteen, was released to family in New Jersey, and has resided lawfully in this country for over two years while complying with all immigration requirements. He was detained on October 20, 2025, without any criminal charges, while working at his job.

Despite decades of consistent practice distinguishing between noncitizens recently apprehended at the border and those already residing in the United States, Respondents now subject Petitioner to mandatory detention under § 1225(b)(2)—a statute traditionally applied

only to arriving aliens. This drastic policy shift, effectuated through the Board of Immigration Appeals' (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and a July 8, 2025 Department of Homeland Security (DHS) memo, treats all noncitizens present without admission—regardless of how long they have lived in the United States—as if they just arrived at the border.

This approach has been uniformly rejected by federal courts across the country. *See Contreras Maldonado*, slip op. at 6-7, (attached as Ex. A)(unpub.)(holding that "the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicate that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States"); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025).(Attached as Ex. F).

This case presents three core legal issues:

1. **Statutory**: Does § 1225(b)(2) authorize mandatory detention of a noncitizen who entered years ago, was released as a minor, established deep community ties, and poses no flight risk or danger?
2. **Constitutional**: Does prolonged mandatory detention without a bond hearing violate Petitioner's Fifth Amendment due process rights?
3. **Procedural**: Has Petitioner been properly placed in removal proceedings such that detention is even authorized?

The answer to all three questions is **no**. Accordingly, this Court should **deny Respondents' motion to dismiss**, grant Petitioner's habeas petition, and order his release or, at a minimum, a bond hearing.

III. STATEMENT OF FACTS

A. Petitioner's Immigration History and the Missing March 2023 NTA

1. Petitioner is a native and citizen of Guatemala who entered the United States on March 30, 2023, at or near El Paso, Texas, at age sixteen. Pet. ¶ 4.
2. As an unaccompanied minor, Petitioner was transferred to the custody of the Office of Refugee Resettlement ("ORR") within the Department of Health and Human Services, as required by the Trafficking Victims Protection Reauthorization Act ("TVPRA") and the Flores Settlement Agreement, and subsequently released to his uncle in New Jersey. Pet. Ex. Index ¶ 19-20; Pet. Ex. C.
3. Following his release, Petitioner resided continuously in Keansburg, New Jersey, attended school, and fully complied with all immigration requirements. Pet. Ex. Index ¶ 24-30; Pet. Ex. E.
4. The Form I-213 (Record of Deportable/Inadmissible Alien) submitted by Respondents explicitly references that a Notice to Appear was issued to Petitioner on March 31, 2023—one day after his entry into the United States. See Answer ***Ex. A*** at ¶ 31. However, Respondents have failed to produce any copy of this purported March 2023 NTA despite its relevance to the jurisdictional and detention issues before this Court.
5. Petitioner has never previously appeared before an immigration court, and it remains unclear whether the March 2023 NTA was ever properly served or whether it was defective under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), for failing to specify the time

and place of his removal hearing. The absence of any hearing notice or court appearance between March 2023 and August 2025 strongly suggests that the initial NTA—if it existed—did not contain the statutorily required information to vest the immigration court with jurisdiction.

6. Petitioner has established prima facie eligibility for Special Immigrant Juvenile (SIJ) status and is in the process of pursuing this legal remedy. Pet. Ex. Index ¶ 44; Pet. Ex. I.

B. The August 6, 2025, Notice to Appear and Petitioner's Arrest

7. More than two years after his entry, on August 6, 2025, Petitioner was issued a Notice to Appear ("NTA") that, for the first time, included complete information regarding his time, place, and date of entry, and scheduled him to appear before an immigration judge at 970 Broad Street, Rm 1200, Newark, NJ 07102 on July 9, 2026, at 9:00 A.M. for a master calendar hearing. Pet. Ex. B. This belated issuance appears to be an attempt by DHS to remedy defects in the purported 2023 NTA and properly initiate removal proceedings.

8. On October 20, 2025, ICE ERO Newark-Non-Detained officers arrested Petitioner at New Monmouth Diner (Middletown, NJ 07748). Answer at ¶ 31. Petitioner was not charged with any crimes. Answer at ¶ 32.

9. On October 28, 2025, Petitioner was issued a new hearing notice scheduling his appearance for November 10, 2025, at 9:00 A.M.—eight months earlier than the July 2026 date originally set in the August NTA. Pet. Ex. F; Pet. ¶ 32.

C. Petitioner's Conditions of Confinement

15. Petitioner is currently detained at the Delaney Hall Detention Facility in Newark, New Jersey—an adult detention facility. Pet. ¶ 3.

16. Unaccompanied minors are required by statute to be detained "in the least restrictive setting that is in the best interest of the child" under 8 U.S.C. § 1232(c)(2)(A). Answer (ECF No. 7) at 7.

17. Petitioner is now only nineteen years old—just three years older than when he entered the United States as an unaccompanied minor. During the intervening years, he resided with family, attended school, and fully complied with all immigration requirements. There have been no material changes to his circumstances that would justify his current detention. Pet. ¶¶ 5, 19.

18. Despite being only nineteen and having been released as a minor under ORR's "least restrictive setting" standard, Petitioner is now held in an adult detention facility under restrictive conditions that are not in his best interests and represent a stark departure from the treatment he received as an unaccompanied minor just two years prior.

IV. ARGUMENT

A. Respondents Mischaracterize the Nature of Petitioner's Habeas Claim

Respondents devote substantial effort to arguing that Petitioner cannot use habeas to seek "a stay of removal." Answer at 21. But Petitioner does not seek a stay of removal. Respondents' framing is designed to invoke the jurisdictional bar of 8 U.S.C. § 1252(g), which strips courts of jurisdiction over challenges to the "decision . . . to commence proceedings." *See* Answer at 15-16. However, this case is not about the initiation of removal proceedings. The facts underlying removal proceedings are not in dispute. Petitioner concedes to removability charges. Pet. (notes). Petitioner makes no claim that he should not be in removal proceedings. *Id.* The issue here is unlawful, arbitrary detention.

As this Court recently recognized in *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025): "[P]etitioner is not saying that ICE acted unlawfully for initiating removal proceedings. As petitioner conceded to removability charges the issue here is unlawful, arbitrary detention." *Id.* at *4 (emphasis added). Petitioner's claim falls squarely within this Court's habeas jurisdiction under 28 U.S.C. § 2241(c)(3) to hear claims that an immigration detainee is "in custody in violation of the Constitution or laws or treaties of the United States." *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003).

The Distinction Between Detention Challenges and Removal Challenges

District courts have jurisdiction under § 2241 to review the legality of detention, even if they lack jurisdiction to review the underlying removal determination. *See Demore*, 538 U.S. at 517 ("§ 2241 habeas corpus proceedings remain available for challenges to detention that is alleged to violate the Constitution or laws of the United States"). This distinction is critical and well-established.

In *Contreras Maldonado v. Cabezas*, No. 25-13004 (D.N.J. Oct. 23, 2025)(unpub.), Judge Semper of this District granted habeas relief based on this distinction, holding that challenges to the lawfulness of detention under § 1225(b)(2) are cognizable under § 2241 even where the underlying removal proceedings are not challenged. *Contreras Maldonado*, slip op. at 1-3, 12.

Similarly, in *Soto v. Luis Soto*, No. 25-cv-16200 (D.N.J. Oct. 22, 2025) (attached as Ex. B), Judge O'Hearn explained:

> "Petitioner's continued detention without a bond hearing violates the Immigration and Nationality Act ('INA') and the Due Process Clause of the Fifth Amendment. More specifically, he contends that he is not subject to mandatory detention under § 1225(b)(2),

and that he should be released or treated as a detainee under § 1226(a) and entitled to seek bond."*Id.* at 4.

The *Soto* court granted the habeas petition, finding that § 1225(b)(2) does not apply to noncitizens apprehended after residing in the United States for years. *Id.* at 13-14. Similarly, in *Benito Vasquez v. Moniz*, No. 25-11737, 2025 WL 1737216, at *3 (D. Mass. June 23, 2025), the court noted: "[T]o the extent petitioner seeks to enjoin ICE from removing him from Massachusetts, to compel ICE to afford him an interview sooner, or to have the Court review ICE's determination regarding his removal, such requests are beyond habeas relief."

But challenges to detention are cognizable. Petitioner seeks no such relief here. He challenges detention alone.

B. Section 1225(b)(2) Does Not Authorize Mandatory Detention Without Good Cause

Respondents argue that Petitioner is subject to mandatory detention under § 1225(b)(2)(A), which provides: "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Respondents contend that because Petitioner is an "applicant for admission" (defined as an alien "present in the United States who has not been admitted"), he is automatically "seeking admission" and thus subject to mandatory detention. Answer at 13-14. This interpretation is contrary to the plain text of the statute and defies common sense.

1. The Phrase "Seeking Admission" Requires Affirmative Action

Indeed, just last month, Judge Semper of this District granted habeas relief in closely analogous circumstances, ordering the immediate release of a petitioner unlawfully detained

under § 1225(b)(2). *See Contreras Maldonado v. Cabezas*, No. 25-13004, slip op. at 12 (D.N.J. Oct. 23, 2025) (ordering release within 24 hours and permanently enjoining detention under § 1225(b)(2)). In an unpublished decision, Judge Semper comprehensively addressed—and rejected—the exact statutory interpretation Respondents advance here. In *Contreras Maldonado*, the court held:

> "The Court joins other federal district courts, including in this district, that have recently interpreted 'the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, [to] indicate[ ] that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States.'"*Contreras Maldonado*, slip op. at 6-7 (quoting *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025))(unpub.).

The word "seeking" is a present participle connoting **present, continuing action**. *Id.* at 7 (citing *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025)). As Judge O'Hearn explained in *Soto*:

> "The verb 'seeking' is a present participle, and the 'present participle is used to signal present and continuing action.' . . . 'Seeking admission' clearly requires an act currently underway not a static condition." *Soto*, slip op. at 11 (quoting *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022)).

Petitioner is not "seeking admission." He entered the United States over two years ago, was processed and released by the government, and has resided here continuously ever since. He is not standing at the border requesting entry. He is not at a port of entry undergoing inspection. He was arrested while working at a restaurant in New Jersey. *See* Pet. ¶ 6.

2. Respondents' Interpretation Renders "Seeking Admission" Surplusage

If every "applicant for admission" is automatically "seeking admission," then the phrase "seeking admission" in § 1225(b)(2)(A) is meaningless. Courts must interpret statutes to give effect to every word. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.").

As the *Soto* court observed:

> "Removing the words 'seeking admission' from § 1225(b)(2)(A) would not alter its meaning under Respondents' theory . . . That result is inconsistent with the principle that courts must interpret a statute to give meaning to 'every clause and word' that Congress chose to include."
>
> *Soto*, slip op. at 12-13.

The *Contreras Maldonado* court agreed, noting that Respondents' interpretation "would render the 'seeking admission' language superfluous" because it would apply § 1225(b)(2) to every noncitizen present without admission, regardless of whether they were actually seeking entry. *Contreras Maldonado*, slip op. at 7.

3. The Broader Statutory Scheme Confirms This Interpretation

The Supreme Court has explained that § 1225(b) "applies primarily to aliens seeking entry into the United States" in the context of "aliens who have arrived at an official 'port of entry' (e.g., an international airport or border crossing) or who have been apprehended trying to enter the country at an unauthorized location." *Jennings v. Rodriguez*, 583 U.S. 281, 285, 297 (2018) (emphasis added).

By contrast, § 1226 "generally governs the process of arresting and detaining . . . aliens already in the country pending the outcome of removal proceedings." *Id.* at 288-89 (emphasis

added). The statutory titles and headings reinforce this distinction. Section 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." 8 U.S.C. § 1225 (emphasis added). Its provisions repeatedly reference "inspection," "examination," and "inadmissible arriving aliens"—terms that connote border or port-of-entry processing. *See Soto*, slip op. at 13. As the *Contreras Maldonado* court explained:

> "Here, Petitioner has resided in New Jersey for six years, was released to family under Office of Refugee Resettlement supervision in August 2019, and pursued lawful humanitarian relief while in the United States. . . . It is uncontested that Petitioner was present in the United States when she was detained on July 8, 2025, not at the threshold of entry. Accordingly, Respondents' invocation of § 1225(b) as applied to Petitioner is inconsistent the statutory framework distinguishing between entry-based and interior detention authority." *Contreras Maldonado*, slip op. at 7.

It defies logic to conclude that Petitioner—who was arrested while working at a resstaurant in New Jersey over two years after entry—was "seeking admission" or subject to "inspection" under § 1225(b)(2).

4. Respondents Admit Their Interpretation Represents a Radical Departure from Decades of Practice

Respondents concede that their current interpretation of § 1225(b) is **new**. Answer at 14 n.4. As Respondents admit, immigration authorities "did not always interpret [§ 1225(b)] that way," and "noncitizens who were present without admission were detained under the discretionary rules of 8 U.S.C. § 1226(a)." *Id.*

Indeed, prior to July 8, 2025, "the predominant form of detention authority for . . . noncitizens arrested in the interior of the United States was § 1226(a)." *Rivera Zumba*, 2025 WL

2753496, at *3 (attached as Ex. C). For decades, the Government followed a consistent practice of distinguishing between people who recently crossed the border and those already living in the United States. Pet. (notes).

This abrupt policy reversal—effectuated through a BIA decision and internal DHS memo—cannot override the plain text of the statute. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 328 (2014) ("[A]n agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.").

5. DHS's Prior Classification of Petitioner as Subject to § 1226 Is Instructive

The *Contreras Maldonado* court found it significant that DHS had previously classified the petitioner as subject to § 1226(a), not § 1225(b)(2):

> "Moreover, the Court finds § 1226, not § 1225, is applicable to Petitioner because Respondents have previously treated Petitioner as subject to § 1226(a), not § 1225(b). When Border patrol agents arrested Petitioner the day after she entered the United States in July 2019, DHS issued a Notice of Custody Determination stating that '[p]ursuant to the authority contained in [8 U.S.C. § 1226(a)],' DHS would detain Petitioner pending a final administrative determination in Petitioner's immigration case. *Contreras Maldonado*, slip op. at 7-8.

The court continued:

> "This Court, like others that have recently considered the applicability of §§ 1225(b)(2) and 1226(a) to detained noncitizens present in the United States, relies on DHS's prior classification of Petitioner to support its conclusion that Petitioner was subject to discretionary detention under § 1226(a) rather than mandatory detention under § 1225(b)(2). *See, e.g.*, *Zumba*, 2025 WL 2753496, at *9 ('Courts have given great weight

to the manner in which DHS treated the petitioner in determining which detention statute applies')."*Id.* at 8 (also citing *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at *6 (E.D.N.Y. Sept. 29, 2025)).

Here, when Petitioner entered the United States in March 2023 as an unaccompanied minor, he was processed and released to family in New Jersey. Pet. ¶¶ 15-19. His March 31, 2023 NTA—which DHS has failed to produce but which is referenced in the Form I-213—did not establish a hearing date or time, rendering it jurisdictionally defective under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). DHS subsequently issued a corrected NTA on August 6, 2025, more than two years later, placing Petitioner in removal proceedings—the standard proceeding for noncitizens already in the United States. Pet. Ex. B ¶ 16.

DHS did not apply § 1225(b)(2) expedited removal procedures when Petitioner entered in 2023, nor could it have, because Petitioner was an unaccompanied child from a non-contiguous country entitled to full § 1229a proceedings under the TVPRA. *See infra* Part IV.B.6. Instead, DHS processed him under the protective framework established by Congress for unaccompanied minors, transferred him to ORR custody, and released him to a sponsor—actions wholly inconsistent with § 1225(b)(2) procedures.

Respondents cannot now, over two years later, retroactively reclassify Petitioner as subject to § 1225(b)(2) mandatory detention based solely on the fact that he entered without inspection. Such an interpretation would allow DHS to detain indefinitely—without bond or individualized determination—any noncitizen who ever entered without inspection, no matter how many years they have resided in the United States, no matter what ties they have established, and no matter what lawful relief they are pursuing. This cannot be what Congress

intended, and it is directly contrary to the protective scheme Congress created for unaccompanied minors under the TVPRA.

6. Petitioner's Status as a Former Unaccompanied Child Triggers Additional Statutory Protections

Petitioner's entry as an unaccompanied minor triggers additional statutory protections that independently preclude application of § 1225(b)(2). In *L.G.M.L. v. Noem*, No. 25-cv-2942 (D.D.C. Aug. 31, 2025)(attached as Ex. D), the District Court for the District of Columbia addressed the government's attempt to summarily remove Guatemalan unaccompanied children in ORR custody. The court held that the Trafficking Victims Protection Reauthorization Act ("TVPRA") "guarantees certain protections for unaccompanied children—irrespective of the specific circumstances that led an unaccompanied child to arrive at the border." *L.G.M.L.*, slip op. at 13.

The TVPRA mandates that any unaccompanied child sought to be removed by DHS—except for certain unaccompanied children from a contiguous country—"shall (i) be placed in removal proceedings under section 8 U.S.C. § 1229a; (ii) be eligible for relief under 8 U.S.C. § 1229c [voluntary departure] at no cost to the child; and (iii) be provided access to counsel." 8 U.S.C. § 1232(a)(5)(D) (emphasis added). As the *L.G.M.L.* court emphasized: "Guatemala is not a country that is contiguous to the United States, as they share no border. As such, the mandate provided in 8 U.S.C. § 1232(a)(5)(D) applies to Guatemalan unaccompanied children."*L.G.M.L.*, slip op. at 4.

Critically, "[t]he TVPRA contains no exceptions to its protections, confirming Congress's clear directive regarding the removal protections afforded to unaccompanied children." *Id.* at 5 (emphasis added). The statute "does not distinguish between unaccompanied children who have

or do not have prior immigration histories. More specifically, it does not exclude those who have prior removal orders. The TVPRA does not allow DHS to bypass § 1229a proceedings and remove children without observance of the procedures of the Immigration and Nationality Act ('INA') and without their day in court." *Id.*

By requiring that DHS place unaccompanied children in § 1229a removal proceedings, the TVPRA exempts unaccompanied children from placement in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b). 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D). As the *L.G.M.L.* court explained:

> "Under the expedited removal statute, certain noncitizens with limited ties to the United States may be removed without a hearing. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). However, all unaccompanied children—regardless of the circumstances of their arrival to the United States—receive the benefit of full immigration proceedings, including a hearing on claims for relief before an immigration judge." *L.G.M.L.*, slip op. at 4-5.

Here, Petitioner entered as an unaccompanied minor from Guatemala—a non-contiguous country. Pet. ¶ 14. He was released to family in New Jersey pursuant to ORR's custody determination. Pet. ¶¶ 15-19. He was placed in § 1229a removal proceedings, as required by the TVPRA. Pet. Ex. B. He remains eligible to pursue SIJS relief—a form of protection specifically designed for vulnerable children who have been abused, abandoned, or neglected by parents. Pet. ¶¶ 2, 24, 31.

Respondents cannot now circumvent the TVPRA's procedural protections by retroactively applying § 1225(b)(2) simply because Petitioner has aged out of ORR custody. The TVPRA's protections do not expire when a child turns 18. The statute protects "any unaccompanied alien child" from a non-contiguous country, and Petitioner **was** an

unaccompanied alien child when he entered and when DHS initiated his § 1229a removal proceedings. 8 U.S.C. § 1232(a)(5)(D).

As the *L.G.M.L.* court recognized, applying § 1225(b) to bypass the TVPRA's mandatory § 1229a proceedings requirement "would render the TVPRA's mandatory language meaningless and violate Congress's clear intent to protect vulnerable children from summary removal." *L.G.M.L.*, slip op. at 15-16. The same principle applies here.

C. Petitioner's Detention is Arbitrary and Violates Statutory and Constitutional Rights

1. DHS Has Authority to Release Petitioner

Even if § 1225(b)(2) were deemed applicable, DHS retains discretionary authority under 8 U.S.C. § 1182(d)(5)(A) to parole "any alien applying for admission to the United States" for "urgent humanitarian reasons or significant public benefit." This authority is broad and has been recognized by the Supreme Court. *See Biden v. Texas*, 597 U.S. 785, 806 (2022).

Petitioner's circumstances present compelling humanitarian reasons for parole:

- He was released as an unaccompanied minor and has resided lawfully in the United States for over two years;
- He has established deep community ties in New Jersey;
- He is pursuing SIJ status and has established prima facie eligibility;
- He has no criminal record and poses no flight risk or danger;
- He is only nineteen years old and was compliant with all immigration requirements prior to detention.

Yet Respondents have neither considered nor offered parole, effectively treating the "shall be detained" language of § 1225(b)(2) as eliminating DHS's parole authority—a result Congress did

not intend. *See* § 1182(d)(5)(A) (granting DHS parole authority for aliens "applying for admission").

2. Section 1226 Provides for Detention "Pending a Decision" on Removal

Even assuming *arguendo* that § 1225(b) initially authorized Petitioner's detention, § 1226 provides the governing framework once removal proceedings are underway. Section 1226(a) authorizes detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

Petitioner was already rescheduled for a hearing in 2026 and was already in removal proceedings. Pet. (notes). The issues Petitioner raises have to do with **arbitrary detention**, not whether Petitioner is an applicant for admission.

Moreover, no circumstances apply to Petitioner that would render him deportable under 8 U.S.C. § 1227(a), which lists classes of deportable aliens. Pet. (notes). Respondents admit that under § 1226(a), a noncitizen who is "present in [the] country but not [an] applicant[] for admission" must have "something happen that made them deportable" under § 1227(a). Answer at 13. No such circumstances apply to Petitioner.

3. Respondents Have Not Established Any Basis for Mandatory Detention

Respondents bear the burden of showing that detention is warranted. Yet they have provided **no record** of:

- A credible fear screening,
- A determination regarding Petitioner's fear of return, or
- Any determination of Petitioner's "intent to apply for asylum or expression of fear of persecution." *See* 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii), (B)(iii)(IV); Pet. (notes).

Without such determinations, Respondents cannot establish that Petitioner's detention under § 1225(b) is even authorized, much less "presumptively reasonable."

4. Petitioner's Detention Violates Due Process

a. Mandatory Detention Under § 1225(b)(2) is a Statutory and Constitutional Violation

Petitioner challenges his mandatory detention on both statutory and constitutional grounds. As detailed above, § 1225(b)(2) does not apply to him. But even if it did, prolonged mandatory detention without a bond hearing violates the Due Process Clause of the Fifth Amendment.

The Supreme Court has held that due process "prohibit[s] unduly prolonged detention" under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). While some amount of detention is permissible, *see Demore v. Kim*, 538 U.S. 510 (2003), Petitioner has been detained for over a month without any individualized determination of whether he poses a flight risk or danger. In the Third Circuit, the three-factor balancing test set forth in *Mathews v. Eldridge* applies to determine what due process requires in immigration detention cases. 424 U.S. 319 (1976). These factors are: (i) "the private interest that will be affected by the official action"; (ii) "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 (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 331 (3d Cir. 2021) (citing *Mathews*, 424 U.S. at 335).

The *Contreras Maldonado* court applied *Mathews* and held that all three factors weighed in favor of the petitioner: "As to the first factor, freedom from imprisonment is 'the most elemental of liberty interests.' *Hamdi v. Rumsfeld*, 542 U.S. at 529. Here, the record is

uncontested that Respondents detained Petitioner without an individualized determination as to factors such as her flight risk or dangerousness." *Contreras Maldonado*, slip op. at 9.

The court continued: "Prior to detention pursuant to § 1226(a), immigration officers must allow a noncitizen to 'demonstrate to the satisfaction of the officer that . . . release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.' 8 C.F.R. § 1236.1(c)(8). *See also Lopez*, 2025 WL 2371588, at *10 ('Reading § 1226(a) as requiring an initial detention decision by DHS is the only way to make sense of the broader statutory and regulatory scheme, which provides for an opportunity to appeal a detention decision to an immigration judge who then conducts their own assessment of the noncitizens' flight risk and dangerousness, among other factors.')

The Court does not question DHS's discretion in detaining non-citizens pursuant to lawful processes; indeed, it may ultimately exercise this discretion to detain Petitioner again. But here, Petitioner was entitled to more due process than she received when initially detained." *Id.* at 9-10.

Here, as in *Contreras Maldonado*, Petitioner was detained without any individualized determination. ICE officers arrested him at his place of work in New Jersey and placed him in mandatory detention under § 1225(b)(2) without assessing whether he posed a flight risk or danger. Pet. ¶¶ 6, 10. This deprivation of liberty without an individualized determination violates the first *Mathews* factor.

b. Petitioner Is Vulnerable to Prolonged Detention Despite Positive Discretionary Factors

As to the second *Mathews* factor, "the risk of erroneous deprivation of Petitioner's liberty interest is high because no individualized determination was made contemporaneously with

Respondents' decision to detain Petitioner." *Contreras Maldonado*, slip op. at 10 (citing *J.U.*, 2025 WL 2772765, at *10).

Petitioner would not be granted a bond hearing under the current interpretation of *Yajure Hurtado*, making him vulnerable to prolonged detention despite all positive discretionary factors:

- No criminal record,
- Deep community ties,
- Compliance with all immigration requirements,
- Pursuit of lawful immigration status (SIJ),
- Release as a minor by ORR, and
- Sponsorship by family in New Jersey.

Pet. ¶¶ 5, 19, 65; Pet. (notes). These factors demonstrate that Petitioner poses no flight risk or danger, yet he has been afforded no opportunity to present them at a bond hearing before being detained.

c. ICE Bears the Burden of Showing Detention Is Necessary

As to the third *Mathews* factor, the Government has interests in "ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (citation omitted). However, as the *Contreras Maldonado* court recognized, "habeas corpus has historically been 'an adaptable remedy' that gives the reviewing court considerable latitude 'to correct errors that occurred during the [prior] proceedings' in appropriate circumstances." *Contreras Maldonado*, slip op. at 10 (quoting *Boumediene v. Bush*, 553 U.S. 723, 780, 786 (2008)).

Even under a "presumptive reasonableness" framework, ICE bears the burden of showing that detention is necessary. Respondents have made no such showing. To the contrary, the

Government's own prior actions—releasing Petitioner as a minor and allowing him to reside in New Jersey for years—undermine any claim that detention is now necessary.

The *Contreras Maldonado* court concluded:

> "The Court therefore finds that Petitioner's due process rights were violated when she was detained without an individualized determination under § 1226(a) and its implementing regulations." *Id.* at 10.

The same conclusion is compelled here.

d. Petitioner's Status as a Young Person Recently Aged Out of UAC Status Heightens Due Process Protections

Petitioner's status as a nineteen-year-old who entered as an unaccompanied minor heightens the due process protections he is owed. As the *L.G.M.L.* court recognized, "children are entitled to special due process protections." *L.G.M.L.*, slip op. at 17. The Supreme Court has noted that "viewed together, our cases show that although children generally are protected by the same constitutional guarantees as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for concern, sympathy, and paternal attention." *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (quotation marks, alterations, and citation omitted).

While Petitioner is now nineteen, he entered at sixteen and was released to family under ORR supervision. Pet. ¶¶ 14-19. His youth, vulnerability, and compliance with immigration requirements all weigh heavily in favor of finding that mandatory detention without an individualized determination violates due process.

D. Respondents Fail to Address Petitioner's Actual Legal Claims

1. The *Yajure Hurtado* Decision Does Not Control This Court

Respondents rely heavily on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), for the proposition that all noncitizens present without admission are subject to mandatory detention under § 1225(b). Answer at 9.

However, this Court owes **no deference** to *Yajure Hurtado*. Following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts do not defer to agency interpretations that conflict with a statute's unambiguous text. As the *Soto* court explained:

> "This Court owes no deference to an agency interpretation that conflicts with the statute's unambiguous text. *Loper Bright*, 603 U.S. at 400–01 (observing that while 'agencies have no special competence in resolving statutory ambiguities,' '[c]ourts do')."*Soto*, slip op. at 14; *see also Rivera Zumba*, 2025 WL 2753496, at *9 ("[T]his Court need not defer to . . . *Hurtado*, and its newly-minted interpretation of § 1225(b)(2)(A).").

The *Contreras Maldonado* court did not address *Yajure Hurtado* because the statutory text is unambiguous. *See Contreras Maldonado*, slip op. at 6-7 (holding that "the plain text" forecloses the government's interpretation). When statutory text is clear, agency interpretations—even from the BIA—do not control. *See Loper Bright*, 603 U.S. at 400-01.

2. *Yajure Hurtado* Misinterprets the Statutory Text

The BIA's conclusion in *Yajure Hurtado* that all "applicants for admission" are "seeking admission" is contrary to the plain text and violates the rule against surplusage. As discussed above, "seeking admission" requires affirmative action—not a static status. *See* Part IV.B, *supra*.

Moreover, *Yajure Hurtado* represents a radical departure from decades of consistent agency practice. For over twenty years, DHS interpreted § 1226(a) as the applicable detention authority for noncitizens apprehended in the interior of the United States, even if they entered without inspection. *See Rivera Zumba*, 2025 WL 2753496, at *3. The BIA cannot overturn this

longstanding interpretation through adjudication without reasoned explanation. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (requiring agencies to "display awareness that it is changing position" and "show that there are good reasons for the new policy").

3. Even Under *Yajure Hurtado*, Petitioner's Detention Violates Due Process

Even if *Yajure Hurtado* were deemed to categorically bar bond hearings for noncitizens present without admission, prolonged mandatory detention of a nineteen-year-old who entered as a minor, was previously released by ORR, established deep community ties, has no criminal record, and poses no demonstrated flight risk or danger violates substantive due process under *Zadvydas*. Continued detention without a bond hearing in these circumstances is arbitrary and capricious.

4. Respondents Misapply Third Circuit Precedent Regarding SIJ Status

Respondents argue that SIJ classification "provides a path to legal permanent residence but not exemption from removal" per Third Circuit precedent. Answer at [15]. But this misses the point. Petitioner does not claim that SIJ status exempts him from removal proceedings. Rather, he argues that:

- **SIJ status provides a pathway to permanent residency** for some children who have been abused, neglected, or abandoned by parents or guardians, 8 U.S.C. § 1101(a)(27)(J);
- **SIJ beneficiaries are being unlawfully stripped of rights provided by statute**, including the right to pursue this legal remedy without interference from arbitrary detention; and
- **For decades, removal proceedings have been terminated for individuals with approved SIJ status**, demonstrating that Respondents' current approach represents a radical policy shift.

Even with the recent policy change regarding deferred status, Petitioner has established prima facie eligibility for SIJ status and is entitled to pursue this legal remedy. He was not placed in expedited proceedings at entry, and DHS cannot detain with the intention of expediting to deprive him of access to this legal remedy.

5. Respondents' Arguments Fail to Address the Constitutional Violation

Respondents argue that Petitioner's due process challenges must be raised through the administrative process. Response at 14-17. This argument fails for multiple reasons.

First, Petitioner has been denied any opportunity to seek bond pursuant to *Matter of Yajure Hurtado*, 28 I&N Dec. 801 (BIA 2024), which stipulates that the Immigration Court lacks jurisdiction to consider bond. If, at the Respondents allege, the petitioner is subject to mandatory detention under § 1225(b)(2), he is therefore categorically ineligible for any bond hearing. Pet. ¶ 10. Petitioner did not file a bond motion because, under *Yajure Hurtado*, he would be immediately deemed ineligible based on DHS's assertion that he is an "applicant for admission" subject to mandatory detention.

The constitutional violation is twofold: (1) Petitioner's initial detention without any individualized assessment as required by § 1226(a) and 8 C.F.R. § 1236.1(c)(8), and (2) the complete foreclosure of any opportunity for bond review based on DHS's misapplication of mandatory detention authority under § 1225(b)(2).

Second, as the *Contreras Maldonado* court held, exhaustion is excused where the constitutional violation occurs at the moment of detention and the administrative process cannot provide a remedy. The Third Circuit excuses exhaustion where "administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to

prevent irreparable injury." *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988); *see also Contreras Maldonado*, slip op. at 11 (applying *Lyons* to excuse exhaustion in § 2241 case).

The *Contreras Maldonado* court explained: "There is no doubt that Petitioner was not afforded an individualized assessment before she was detained; as such, the BIA cannot provide relief through Petitioner's appeal of the IJ's [bond] decision." *Contreras Maldonado*, slip op. at 11-12. The court further held that "[e]xhaustion is not required for 'colorable' due process claims that could not have been presented to the BIA in the first instance." *Id.* at 12 (quoting *Abdulla v. Att'y Gen. of United States*, No. 19-1167, 2025 WL 2460506, at *5 (3d Cir. Aug. 27, 2025) (citing *Calderon-Rosas v. Att'y Gen.*, 957 F.3d 378, 384 (3d Cir. 2020))).

Here, exhaustion would be futile because:

- The immigration court has already concluded it lacks jurisdiction to consider bond under *Yajure Hurtado*, meaning Petitioner cannot obtain any relief through the administrative process;
- The BIA cannot remedy the constitutional violations because it is bound by *Yajure Hurtado*'s interpretation that § 1225(b)(2) subjects arriving aliens to mandatory detention without bond eligibility;
- The administrative process cannot address the threshold legal question of whether DHS properly classified Petitioner under § 1225(b)(2) in the first place, particularly given that he was processed as an unaccompanied minor under the TVPRA in 2023 and placed in § 1229a proceedings;
- The constitutional violation occurred at the moment of detention on October 20, 2025, when Respondents failed to conduct any individualized assessment and instead asserted

categorical mandatory detention authority. No subsequent administrative proceedings can cure this initial deprivation of liberty without due process.

Third, Respondents' misclassification of Petitioner as subject to § 1225(b)(2) mandatory detention violates due process both procedurally and substantively. Petitioner entered as an unaccompanied minor from Guatemala in 2023, was processed under the TVPRA's protective framework, transferred to ORR custody, and released to a sponsor—all procedures fundamentally inconsistent with § 1225(b)(2) expedited removal. DHS placed him in § 1229a removal proceedings with a hearing scheduled for July 2026. Pet. Ex. B. DHS did not assert mandatory detention authority until October 2025, more than two years later, after Petitioner had established significant ties to the community, enrolled in school, and pursued SIJ relief.

This retroactive application of mandatory detention to a noncitizen who was never processed under § 1225(b)(2) procedures violates both the statute's plain language and fundamental due process principles. As *Contreras Maldonado* recognized, "the constitutionality of a particular detention scheme depends on the purposes Congress sought to achieve through its enactment." Slip op. at 13 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Congress enacted § 1225(b)(2) to expeditiously process newly arrived aliens at the border—not to authorize indefinite mandatory detention of individuals who have resided in the United States for years, established community ties, and pursued lawful immigration relief.

Applying mandatory detention to Petitioner under these circumstances transforms § 1225(b)(2) from a border enforcement mechanism into a tool for indefinite detention without individualized review—a result the Constitution cannot tolerate. Petitioner is entitled to an individualized bond hearing under § 1226(a) with the government bearing the burden of proving he poses a danger or flight risk.

E. The Notice to Appear is Deficient and Does Not Support Detention

1. Petitioner Was Not Issued an NTA at Entry

Respondents only submit an NTA dated August 6, 2025, indicating removal proceedings were just initiated. Pet. (notes); ECF No. 7-3. This NTA was issued almost three **years** after Petitioner entered the United States.

It remains unclear whether the Petitioner was issued an NTA at entry. The original NTA from March 2023 that the Respondents refer to should have been issued when he was released from ORR custody as an unaccompanied minor, but no such NTA has been produced by the Respondents. Pet. Ex. B. Furthermore, the Petitioner is not subject to a final order of removal, nor was he previously placed in expedited proceedings. Pet. (notes).

2. The March 31, 2023, Notice to Appear ("NTA")

The NTA Respondents now rely upon to justify detention was properly served only recently as required by 8 U.S.C. § 1229(a)(1) on August 6, 2025. Furthermore, there is no evidence that Petitioner received actual notice of the NTA that Respondents refer to in March of 2023. Without proper service, the NTA cannot serve as a basis for removal proceedings or detention. *See Pereira v. Sessions*, 138 S. Ct. 2105, 2110 (2018) (holding that an NTA must contain specific information, including time and place of removal proceedings, to be valid).

Moreover, Respondents' failure to produce the March 31, 2023, NTA—despite its explicit reference in the Form I-213—leaves the Court with no way to determine whether that initial NTA was ever properly served or whether it complied with statutory requirements. The only NTA that this Court has record of is the August 6, 2025, NTA which properly placed the Petitioner in removal proceedings.

The absence of any court appearances or hearing notices between March 2023 and August 2025 strongly suggests defective service or a jurisdictionally deficient NTA under *Pereira*. Respondents cannot simultaneously invoke the 2023 NTA as evidence of Petitioner's immigration status while withholding the document itself.

3. Respondents Have Provided No Record of Screening or Determination

Respondents have provided **no record** of:

- A credible fear screening,
- A reasonable fear determination, or
- Any similar determination regarding Petitioner's fear of return to Guatemala.

Pet. (notes). Accordingly, Respondents **cannot state** that Petitioner's detention under § 1225(b) is warranted, since there has been no determination of Petitioner's "intent to apply for asylum or expression of fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii), (B)(iii)(IV).

F. Recent Case Law Supports Petitioner's Right to Release or Bond Hearing

1. This District Has Uniformly Rejected the Government's Interpretation

Since the July 8, 2025, DHS policy change and the September 25, 2025, *Yajure Hurtado* decision, multiple judges in this District have rejected the Government's interpretation of § 1225(b)(2) and granted habeas relief to petitioners in analogous circumstances.

a. *Contreras Maldonado v. Cabezas* (D.N.J. Oct. 23, 2025)

Most recently, Judge Semper of this District granted habeas relief in *Contreras Maldonado v. Cabezas*, No. 25-13004 (D.N.J. Oct. 23, 2025). The court held:

> "The Court joins other federal district courts, including in this district, that have recently interpreted 'the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, [to] indicate[ ] that Section 1225(b)(2) does not apply to

> noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States.'" *Contreras Maldonado*, slip op. at 6-7 (quoting *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025)).(Attached as Ex. E).

The court ordered the petitioner's immediate release within 24 hours and permanently enjoined Respondents "from rearresting or otherwise detaining Petitioner under § 1225(b)(2)." *Id.* at 12.

The court's reasoning rests on the plain text of the statute, the distinction between "seeking admission" and being "present in the United States," and the importance of DHS's prior treatment of similarly situated noncitizens. The court held that "Because Petitioner resided in the United States when detained on July 8, 2025, § 1226, not § 1225, is applicable to Petitioner." *Id.* at 7.

b. *Soto v. Luis Soto* (D.N.J. Oct. 22, 2025)

In *Soto v. Luis Soto*, No. 25-cv-16200 (D.N.J. Oct. 22, 2025), Judge O'Hearn granted the habeas petition, holding:

> "Petitioner's interpretation, that § 1225(b)(2)(A) applies only when a noncitizen is affirmatively 'seeking admission' at or near the border or a port of entry, comports with the ordinary meaning of the statutory text. It gives meaning to the words 'seeking admission,' and remains faithful to *Jennings*, where the Supreme Court explained that § 1225(b) 'applies primarily to aliens seeking entry into the United States.'"*Soto*, slip op. at 13.

The court further found that Petitioner's detention violated due process: "The Court finds that the *Mathews* factors weigh decisively in Petitioner's favor, and as such his mandatory detention under § 1225(b)(2)(A) violates his procedural due process rights." *Id.* at 17.

c. *Rivera Zumba v. Bondi* (D.N.J. Sept. 26, 2025)

In *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025), Judge Sheridan held: "[P]etitioner is not saying that ICE acted unlawfully for initiating removal proceedings. As petitioner conceded to removability charges the issue here is unlawful, arbitrary detention."*Id.* at *4 (emphasis added). The court granted the petition and ordered the petitioner's immediate release. *Id.* at *11.

2. District Courts Nationwide Have Reached the Same Conclusion

Similar holdings have issued from district courts across the country, creating a national consensus rejecting the Government's interpretation:

- **Southern District of New York**: *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (holding that "[s]omeone who enters a movie theater without purchasing a ticket . . . would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there." *Id.* at *7)
- **District of Massachusetts**: *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (holding that Respondents' interpretation "violates the rule against surplusage and negates the plain meaning of the text"); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Escobar v. Hyde*, 2025 WL 2823324 (D. Mass. Oct. 3, 2025)
- **Eastern District of Virginia**: *Singh v. Lyons*, No. 25-01606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025)

- **Northern District of California**: *Chavez v. Kaiser*, No. 25-06984, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025)
- **Eastern District of New York**: *J.U. v. Maldonado*, No. 25-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025)
- **District of Nevada**: *Vazquez v. Feeley*, No. 25-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025)

These decisions are consistent with long-standing Supreme Court precedent recognizing that § 1225 applies to aliens "seeking entry into the United States" and those who have "arrived at an official 'port of entry,'" while § 1226 governs detention of aliens "already in the country." *Jennings*, 583 U.S. at 285, 288-89.

3. The District Court for the District of Columbia Recognized Additional TVPRA Protections

In *L.G.M.L. v. Noem*, No. 25-cv-2942 (D.D.C. Aug. 31, 2025), the court addressed an emergency motion for a temporary restraining order to prevent the summary removal of hundreds of Guatemalan unaccompanied minors. The court held:

> "Plaintiffs are likely to succeed on the merits of their claim that Defendants' summary removals violate the TVPRA and the INA and the due process clause. These statutes unambiguously mandate a specific procedure for determining whether unaccompanied minors may be removed from the United and specific protections that the government has no discretion to ignore." *L.G.M.L.*, slip op. at 12-13.

The court emphasized that the TVPRA "guarantees certain protections for unaccompanied children—irrespective of the specific circumstances that led an unaccompanied child to arrive at the border." *Id.* at 13 (emphasis added). The statute mandates: "Section 1232(a)(5)(D) contains

no exceptions other than those for minors from contiguous countries. By summarily removing Plaintiffs, Defendants are violating the statutory mandate of § 12232(a)(5)(D)." *Id.* at 14.

These TVPRA protections provide an independent basis for relief that applies regardless of whether § 1225(b)(2) or § 1226(a) governs Petitioner's detention.

4. Petitioner Meets the Criteria for Release or Bond

Even if this Court were to find that § 1226(a) applies to Petitioner (which it should), Petitioner easily meets the criteria for release or bond. Under § 1226(a) and 8 C.F.R. § 236.1(c)(8), an alien may be released if he demonstrates that he:

- "Would not pose a danger to property or persons," and
- "Is likely to appear for any future proceeding."

Petitioner satisfies both prongs:

- **No Danger**: Petitioner has no criminal record, no history of violence, and no evidence of any conduct suggesting he poses a danger. He has worked steadily, supported his family, and complied with all immigration requirements for over two years.
- **No Flight Risk**: Petitioner has deep community ties in New Jersey, where he has resided with his uncle since 2023. He has appeared for all prior immigration proceedings and has every incentive to continue appearing given his pending SIJ application and asylum claim.

The Government has made no showing to the contrary. The only reason Petitioner has not received a bond hearing under the proper legal standard is the Government's erroneous application of § 1225(b)(2).

5. Respondents' Arguments Regarding Parole Are Contradictory

Respondents argue that parole under § 1182(d)(5)(A) would not be a remedy because Petitioner "is an applicant for admission and therefore subject to mandatory detention." Answer at [3]. But this argument is circular and contradicts Respondents' own position.

Section 1182(d)(5)(A) grants DHS authority to parole "any alien applying for admission" for "urgent humanitarian reasons or significant public benefit." If, as Respondents argue, Petitioner is an "applicant for admission," then he falls within the scope of DHS's parole authority. Respondents cannot have it both ways—either Petitioner is an "applicant for admission" (in which case parole is available), or he is not (in which case § 1225(b) does not apply).

Moreover, the fact that Respondents have not considered parole for Petitioner—despite his compelling humanitarian circumstances—underscores the arbitrary nature of his detention.

V. RELIEF: IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY

Where, as here, a noncitizen is detained in violation of due process and applicable statutes, courts have broad remedial authority under the habeas statute to order immediate release. In *Contreras Maldonado*, Judge Semper "ordered Respondents to release Petitioner from detention within 24 hours" and permanently enjoined Respondents "from rearresting or otherwise detaining Petitioner under § 1225(b)(2)." *Contreras Maldonado*, slip op. at 12.

The same remedy is appropriate here for multiple reasons:

1. The Violation Cannot Be Cured Retroactively

Petitioner was detained on October 20, 2025, without the individualized determination required by § 1226(a) and 8 C.F.R. § 1236.1(c)(8). As the *Contreras Maldonado* court held, no subsequent bond hearing can cure this initial constitutional violation: "There is no doubt that Petitioner was not afforded an individualized assessment before she was detained; as such, the

BIA cannot provide relief through Petitioner's appeal of the IJ's August 14, 2025 decision on bond."*Contreras Maldonado*, slip op. at 11-12.

The constitutional injury occurred at the moment of detention. Even if Petitioner were to receive a bond hearing now (which he should), that would not remedy the deprivation of liberty he has already suffered without due process.

2. Respondents' Classification Error Is Clear

Respondents applied the wrong statute—§ 1225(b)(2) instead of § 1226(a)—to justify mandatory detention. This error pervaded all subsequent proceedings and cannot be remedied through further proceedings under the wrong statutory framework.

As the *Contreras Maldonado* court recognized, when the statutory classification is wrong from the outset, the appropriate remedy is release, not remand for further proceedings under a corrected statutory framework. *Id.* at 12.

3. Prolonged Detention Compounds the Harm

Petitioner has been detained since October 20, 2025—almost one month as of the filing of this Response. During this time, he has been separated from his family and community in New Jersey, unable to work or support himself, unable to pursue his education or immigration relief applications in person and confined in an adult detention facility. Pet. ¶¶ 3, 5-6, 34. Each additional day of detention inflicts ongoing constitutional injury that cannot be remedied through monetary damages or belated procedural protections.

4. Petitioner Poses No Flight Risk or Danger

The evidence demonstrates overwhelmingly that Petitioner poses neither a flight risk nor a danger to the community. He has resided continuously in Keansburg, New Jersey for over two years, maintained stable housing with his uncle, attended school and worked, appeared for all

immigration proceedings, pursued lawful immigration relief through SIJ, and has no criminal convictions. Pet. ¶¶ 20, 22, 24. These factors demonstrate that Petitioner is neither a flight risk nor a danger.

5. The Government Has Failed to Justify Continued Detention

Respondents have provided no evidence that Petitioner poses a flight risk or danger sufficient to justify continued detention. The Government's own prior actions—releasing Petitioner as a minor and allowing him to reside in New Jersey for years—contradict any claim that Petitioner is a flight risk or danger.

6. Habeas Courts Have Authority to Order Release

As the *Contreras Maldonado* court recognized, citing *Boumediene v. Bush*, 553 U.S. 723, 779 (2008): "A habeas court has 'the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy....'" *Contreras Maldonado*, slip op. at 12 (quoting *Boumediene*, 553 U.S. at 779).

The *Zumba* court similarly held that where detention under § 1225(b)(2) is unlawful, immediate release is appropriate. *Zumba*, 2025 WL 2753496, at *10-11.

7. In the Alternative, Petitioner Is Entitled to a Proper Bond Hearing

If this Court declines to order immediate release, Petitioner is entitled, at minimum, to a bond hearing that comports with constitutional and statutory requirements. Such a hearing must include:

1. **Proper burden allocation**: The Government must bear the burden of proving by clear and convincing evidence that Petitioner poses a flight risk or danger warranting continued detention.

2. **Individualized determination**: The immigration judge must consider Petitioner's specific circumstances, including his length of residence, community ties, family support, pursuit of lawful relief, lack of criminal history, and youth.
3. **Prompt scheduling**: Any bond hearing must be scheduled promptly to minimize the ongoing constitutional injury from unlawful detention.
4. **Proper statutory framework**: The hearing must proceed under § 1226(a), not § 1225(b)(2), and must afford Petitioner all procedural protections applicable to § 1226(a) detainees.

However, as the *Contreras Maldonado* court recognized, even a properly conducted bond hearing cannot cure the initial constitutional violation of detaining Petitioner without an individualized determination. *Contreras Maldonado*, slip op. at 11-12. Therefore, immediate release—not a bond hearing—is the constitutionally required remedy.

8. Permanent Injunction Against Re-Detention Under § 1225(b)(2)

The *Contreras Maldonado* court not only ordered immediate release but also permanently enjoined Respondents "from rearresting or otherwise detaining Petitioner under § 1225(b)(2)." *Contreras Maldonado*, slip op. at 12. This injunctive relief is necessary to prevent Respondents from re-detaining Petitioner under the same unlawful statutory authority.

Without such an injunction, Respondents could simply re-arrest Petitioner immediately after release and claim authority to detain him under § 1225(b)(2), rendering this Court's habeas relief meaningless. The permanent injunction ensures that if Respondents wish to detain Petitioner in the future, they must do so under the proper statutory authority (§ 1226(a)) and with proper procedural safeguards (individualized determination at time of arrest).

This Court should issue the same injunctive relief here.

VI. CONCLUSION

This case is fundamentally about arbitrary detention—not removal proceedings, not a stay of removal, and not a challenge to ICE's authority to initiate proceedings. Petitioner seeks only what the Constitution and statutes guarantee: **release from unlawful detention or, at a minimum, a bond hearing** at which an immigration judge can assess whether he poses a flight risk or danger.

The legal landscape has shifted dramatically since the Petitioner filed this Petition. The reasoning of *Contreras Maldonado* applies with equal force: Petitioner has resided in New Jersey for two years, was released as an unaccompanied minor, has complied with immigration requirements, poses no demonstrated flight risk or danger, and was detained without the individualized determination required by § 1226(a).

The *Contreras Maldonado* decision joins a growing national consensus of district courts that have uniformly rejected the Government's interpretation of § 1225(b)(2) as applied to noncitizens residing in the United States. *See Soto*, *Rivera Zumba*, *Lopez Benitez*, *Martinez*, *Gomes*, *Singh*, *Quispe*, *Chavez*, *J.U.*, *Vazquez*, *Escobar*, and numerous other decisions detailed above.

Moreover, the *L.G.M.L.* decision from the District of Columbia demonstrates that Petitioner's status as a former unaccompanied child triggers additional statutory protections under the TVPRA that independently preclude application of § 1225(b)(2). The TVPRA mandates that Guatemalan unaccompanied children be placed in § 1229a proceedings and exempts them from expedited removal under § 1225(b). These protections reflect Congress's judgment that vulnerable children deserve procedural safeguards that cannot be circumvented through agency reinterpretation.

The facts are undisputed, the statutory text is clear, and the constitutional violations are manifest. Petitioner has been detained for over one month without an individualized determination that he poses a flight risk or danger. He has deep ties to New Jersey, no criminal convictions, family support, and compelling humanitarian circumstances. He poses no threat to public safety and has every incentive to appear for his immigration proceedings given his pending applications for SIJ status and asylum.

For the foregoing reasons, the Court should:

1. **DENY Respondents' motion to dismiss**;
2. **GRANT Petitioner's Petition for Writ of Habeas Corpus**;
3. **ORDER Petitioner's immediate release** from custody within 24 hours, *see Contreras Maldonado*, slip op. at 12; *Zumba*, 2025 WL 2753496, at *10;
4. **PERMANENTLY ENJOIN** Respondents from rearresting or otherwise detaining Petitioner under 8 U.S.C. § 1225(b)(2), *see Contreras Maldonado*, slip op. at 12;
5. In the alternative, **ORDER a bond hearing** under 8 U.S.C. § 1226(a) within seven (7) days, at which:
    - The Government must demonstrate by clear and convincing evidence that Petitioner poses a flight risk or danger warranting continued detention;
    - The burden of proof rests on the Government, not on Petitioner;
    - The immigration judge must conduct an individualized assessment of Petitioner's specific circumstances, including his length of residence, community ties, family support, pursuit of lawful relief, lack of criminal history, youth, and compliance with immigration requirements; and

- The hearing must proceed under the proper statutory framework (§ 1226(a)) with all applicable procedural safeguards.

The statutory framework is clear, the constitutional violations are established, and the judicial consensus supports Petitioner's position. Following *Contreras Maldonado*, *Soto*, *Rivera Zumba*, and the dozens of other district court decisions granting habeas relief in analogous circumstances, this Court should grant Petitioner's petition and order his immediate release. Justice demands that Petitioner be afforded the process he is due and released from unlawful detention.

Respectfully submitted,

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Dated: November 18, 2025

CERTIFICATE OF SERVICE

I, Franklin S. Montero, hereby certify that on November 18, 2025, a true and correct copy of the foregoing Reply in Support of Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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Dated: November 18, 2025

Exhibit A

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

YANDDIRY YANETH CONTRERAS MALDONADO, *Plaintiff*, v. ALEXANDER CABEZAS *et al*., *Respondents*.	Civil Action No. 25-13004 **OPINION** October 23, 2025

SEMPER, District Judge.

THIS MATTER comes before the Court is Petitioner Yanddiry Yaneth Contreras Maldonado's ("Petitioner") Amended Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, in which she challenges the lawfulness of her immigration detention. (ECF 18, "Amended Petition" or "Am. Pet.") The Amended Petition raises complex statutory and constitutional questions concerning whether Petitioner's custody falls under 8 U.S.C. §§ 1225(b)(2) or 1226(a). (*Id.*) Respondents filed a response to the Amended Petition on September 2, 2025. (ECF 26, "Response".) Petitioner filed a reply on September 10, 2025. (ECF 29, "Reply".) The Court held a hearing on October 9, 2025, and reserved ruling on the ultimate merits of the habeas petition. (ECF 30-35.) Pending final disposition, the Court enjoined the government from effectuating Petitioner's removal from the United States. (ECF 35.) For the reasons stated below, the Court **GRANTS** Petitioner's Amended Petition and directs Respondents to release Petitioner from immigration detention within 24 hours. Respondents are further enjoined from detaining Petitioner again under 8 U.S.C. § 1225(b)(2).

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner is a 23-year-old citizen of Honduras who entered the United States in June 2019 at age seventeen, fleeing persecution. (Am. Pet. ¶¶ 1, 20-22, 29.) A Notice of Custody Determination issued by the Department of Homeland Security ("DHS") on July 9, 2019 stated that Petitioner was detained pursuant to 8 U.S.C. § 1226. (*Id.* ¶ 24 & Ex. 7.) Because Petitioner was under 18 when she entered the United States, she was classified as an unaccompanied child ("UAC"), which border patrol agents acknowledged. (Am. Pet. ¶ 25)

Because Petitioner was considered a UAC, she was released to her aunt's care in New Jersey, where she attended high school. (*Id.* ¶¶ 26-27.) She later applied for asylum and Special Immigrant Juvenile Status ("SIJS").[1] (*Id.* ¶¶ 28-29, 36-40 & Exs. 5, 14.) United States Citizenship and Immigration Services ("USCIS") granted her SIJS petition and deferred action on November 15, 2023, protecting her from removal until November 2027.[2] (*Id.* ¶ 40 & Ex. 14.) ICE records indicate that since entering the country, Petitioner has been arrested twice on criminal charges of simple assault and driving without a license. (Response at 7 (citing ECF 10-1, at 2)). On both occasions, Plaintiff failed to appear for a subsequent court appearance, resulting in the issuance of a bench warrant. (Response at 7.) Petitioner maintains that despite these encounters with law enforcement, she has never been convicted of a crime. (Am. Pet. ¶ 40, Exs. 15-17.)

On July 8, 2025, ICE arrested Petitioner at her asylum interview in Newark and detained her in Elizabeth, New Jersey. (*Id.* ¶¶ 3-4, 13, 50-54.) On July 13, 2025, Petitioner was transferred to the El Paso Enhanced Hardened Facility in El Paso, Texas. (*Id.* ¶ 66.) Petitioner was transferred

[1] SIJS is a form of humanitarian relief for individuals under 21 years of age who have been abandoned, abused, or neglected by one or both parents. 8 U.S.C. §§ 1101(a)(27)(J), 1255(a), (h).
[2] USCIS recently revised its policy regarding deferred action for SIJS recipients. (Response at 5.) Under current policy, USCIS may terminate previously granted deferred action on a case-by-case basis. (*Id.* at 5-6.)

again on July 27, 2025 to the Otero County Processing Center in Otero County, New Mexico. (*Id.* ¶ 73.)

On August 6, 2025, the immigration court held a master calendar hearing in Petitioner's case (*Id.* ¶ 82.) At the hearing, Immigration Judge ("IJ") Brock E. Taylor noted that Petitioner was detained pursuant to 8 U.S.C. § 1225(b). (*Id.* ¶ 83 & Ex. 1 ¶ 43.) The IJ also took jurisdiction over Petitioner's asylum application. (*Id.* ¶ 84.) On August 8, 2025, Petitioner's counsel filed a motion for bond on Petitioner's behalf. (*Id.* ¶ 85 & Ex. 28.) The IJ denied the motion in part because he lacked jurisdiction to consider releasing Petitioner since Petitioner had entered without inspection and was mandatorily detained under § 1225(b). (*Id.* ¶ 85; *see also* Response at 8.)

The IJ, however, subsequently held a bond hearing on August 14, 2025. (Am. Pet. ¶ 86.) At this hearing, the ICE attorney stated that the statutory basis for Petitioner's detention was § 1226 and, therefore, Petitioner was bond eligible. (*Id.*) At the August 14, 2025 hearing, the IJ denied Petitioner's bond on the grounds that she failed to meet her burden of showing that she was not a flight risk or danger to the community. (*Id.* ¶ 87 & Ex. 1 ¶¶ 45-47; ECF 29-2, Reply Ex. 2; ECF 26-2, Response Ex. 2.)

Petitioner filed her Original Petition for Writ of Habeas Corpus on July 9, 2025, one day after ICE detained her in Newark, New Jersey. (ECF 1.) On the same day, the Court issued an Order to Show Cause directing Respondents to explain the basis for Petitioner's detention. (ECF 3.) Following her transfers to ICE facilities in Texas and New Mexico, Petitioner filed an Amended Petition on August 18, 2025. (ECF 18.) Respondents filed a response on September 2, 2025. (ECF 26.) Petitioner filed a reply on September 10, 2025. (ECF 29.) On October 8, 2025, the Court heard argument from both parties and reserved ruling on the habeas petition. (ECF 34.) The Court subsequently entered an interim order enjoining Petitioner's removal from the United States

pending its decision. (ECF 35.) On October 22, 2025, Petitioner filed a notice informing the Court of the status of Petitioner's immigration proceedings. (ECF 36.)

II. LEGAL STANDARD

The 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). District courts have the power to grant writs of habeas corpus. 28 U.S.C. § 2241(a). A district court may grant habeas relief if the petitioner "is in custody in violation of the laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). A district court's authority includes jurisdiction to hear habeas challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The burden is on Petitioner to show that she 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). Jurisdiction lies in the district of initial custody and is unaffected by subsequent transfers. *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 445-46 (3d Cir. 2021); *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004).

III. DISCUSSION

Petitioner argues that as a noncitizen whose detention is properly governed by § 1226(a), she should have been afforded a pre-detention individualized determination concerning the bases for depriving her of her liberty, and the government's failure to conduct such an individualized determination mandates her immediate release. (Am. Pet. ¶ 8.) She further argues that Respondents have violated her due process right to a meaningful post-deprivation review of her custody status (*Id.* ¶¶ 9-11; Reply at 9-11.) Finally, she alleges that Respondents violated her First Amendment rights because ICE transferred her to a facility outside of New Jersey and interfered with her access to counsel, retaliating against her for filing her original habeas petition. (Am. Pet. ¶ 12; Reply at

14.) Petitioner seeks, among other relief, an order directing Respondents to immediately release her from custody under 28 U.S.C. § 2241(c)(3) or, in the alternative, that the Court hold a curative bond hearing. (Am. Pet. at 49-50.)

Respondents, on the other hand, argue that Petitioner's detention is lawful under 8 U.S.C. § 1225(b); according to Respondents, because Petitioner entered the U.S. without inspection or parole, she must be detained under § 1225. (Response at 10-12.) Respondents argue that Petitioner properly received a bond hearing before an IJ and any due process challenges on that basis must be raised through the administrative process of the INA. (*Id.* at 14-17.) Respondents also contest Petitioner's allegations that ICE transferred her in retaliation for filing her habeas petition. (*Id.* at 19.)

The Court starts by addressing the statutory question.

A. Statutory Classification

As an initial matter, the Court must first determine whether Petitioner was initially detained pursuant to §§ 1225(b) or 1226(a). If she was detained under the former, her detention is mandatory. Detention under § 1226(a), on the other hand, is pursuant to DHS's discretionary authority. The distinction is critical for Petitioner.

The Immigration and Nationality Act ("INA") provides two principal sources for civil detention of noncitizens in removal proceedings. 8 U.S.C. § 1225(a) applies to "applicants for admission," who are, as relevant here, noncitizens "present in the United States who [have] not been admitted." 8 U.S.C. § 1225(a)(1). Following inspection by an immigration officer, certain applicants for admission are then subject to expedited removal proceedings. *Id.* §§ 1225(a)(3), 1225(b)(1); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09 (2020). However, § 1225(b)(2) provides that "in the case of an alien who is an applicant for admission, if the examining

immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). A noncitizen detained under § 1225(b)(2) may be released only if paroled for "urgent humanitarian reasons or significant public benefit" pursuant to 8 U.S.C. § 1182(d)(5)(A), exceptions not alleged here. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).

Next, § 1226(a) provides that, for a noncitizen who is "arrested and detained" "[o]n a warrant issued by the Attorney General," the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on bond of at least $1,500 . . . ." or (3) "may release the alien on . . . conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). § 1226(a), therefore, "establishes a discretionary detention framework." *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025). The arresting immigration officer makes an initial custody determination, but noncitizens have the right to request a custody redetermination hearing before an Immigration Judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1). As with § 1225, there are some limited exceptions under § 1226(c) requiring "detention for non-citizens who meet certain criminal and inadmissibility criteria" which are not applicable here.

Historically, DHS has interpreted § 1226(a) as applicable to individuals present without admission but apprehended inland after unlawful entry. (Response at 10-12.) Now, Respondents interpret § 1225 to apply to noncitizens who entered the United States without inspection, no matter how long they have resided in the United States. (*See id.* at 10-11.) *See also Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496, at *4 (D.N.J. Sept. 26, 2025) (describing Respondents' change in statutory interpretation).

The Court joins other federal district courts, including in this district, that have recently interpreted "the plain text of Sections 1225 and 1226, together with the structure of the larger

statutory scheme, [to] indicate[ ] that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States." *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (citing *Gomes*, 2025 WL 1869299, at *7; *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)); *see also, e.g.*, *Zumba*, 2025 WL 2753496, at *8; *Singh v. Lyons et al.*, No. 25-01606, 2025 WL 2932635, at *2 (E.D. Va. Oct. 14, 2025); *Chavez v. Kaiser, et al.*, No. 25-06984, 2025 WL 2909526, at *5 (N.D. Cal. Oct. 9, 2025) (collecting cases); *Escobar v. Hyde et al.*, 2025 WL 2823324, at *3 (D. Mass. Oct. 3, 2025); *Quispe v. Crawford, et al.*, No. 25-1471, 2025 WL 2783799, at *4-6 (E.D. Va. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-04836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Vazquez v. Feeley*, No. 25-01542, 2025 WL 2676082, at *11-16 (D. Nev. Sept. 17, 2025).

Here, Petitioner has resided in New Jersey for six years, was released to family under Office of Refugee Resettlement supervision in August 2019, and pursued lawful humanitarian relief while in the United States. (Am. Pet. ¶¶ 26-28.) It is uncontested that Petitioner was present in the United States when she was detained on July 8, 2025, not at the threshold of entry. Accordingly, Respondents' invocation of § 1225(b) as applied to Petitioner is inconsistent the statutory framework distinguishing between entry-based and interior detention authority. *See Zumba*, 2025 WL 2753496, at *8. Because Petitioner resided in the United States when detained on July 8, 2025, § 1226, not § 1225, is applicable to Petitioner.

Moreover, the Court finds § 1226, not § 1225, is applicable to Petitioner because Respondents have previously treated Petitioner as subject to § 1226(a), not § 1225(b). When Border patrol agents arrested Petitioner the day after she entered the United States in July 2019, DHS issued a Notice of Custody Determination stating that "[p]ursuant to the authority contained

in [8 U.S.C. § 1226(a)]," DHS would detain Petitioner pending a final administrative determination in Petitioner's immigration case.[3] (Am. Pet. Ex. 7.) Although the July 8, 2025 Notice to Appear alleges Petitioner is removable under 8 U.S.C. § 1182(a)(6)(A)(i) as "an alien present in the United States who has not been admitted or paroled" (*id.* Ex. 20), at Petitioner's bond hearing on August 14, 2025, ICE's attorney stated that Petitioner was eligible for a bond determination under § 1226(a). (Response at 8, 12 n.6.) This Court, like others that have recently considered the applicability of §§ 1225(b)(2) and 1226(a) to detained noncitizens present in the United States, relies on DHS's prior classification of Petitioner to support its conclusion that Petitioner was subject to discretionary detention under § 1226(a) rather than mandatory detention under § 1225(b)(2). *See, e.g.*, *Zumba*, 2025 WL 2753496, at *9 ("Courts have given great weight to the manner in which DHS treated the petitioner in determining which detention statute applies"); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at *6 (E.D.N.Y. Sept. 29, 2025).

For the foregoing reasons, the Court finds that, under the circumstances here, Petitioner is subject to detention only as a matter of discretion under § 1226(a).

B. Due Process

Petitioner argues that her initial detention under § 1225 violates due process. (Am. Pet. ¶¶ 102-07.) The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

[3] DHS did not formally commence removal proceedings against Petitioner, and because she was an unaccompanied minor, DHS transferred her into the custody of the Office of Refugee Resettlement, an agency within the Department of Health and Human Service, pursuant to the requirements of the Trafficking Victims Protection Reauthorization Act. (Am Pet. ¶ 26; *see also id.* ¶ 26 n.4.)

In the Third Circuit, the three-factor balancing test set forth in *Mathews v. Eldridge* applies to determine what due process requires when faced with immigration detention due process claims. 424 U.S. 319 (1976). These factors are: (i) "the private interest that will be affected by the official action"; (ii) "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 (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 331 (3d Cir. 2021) (citing *Mathews*, 424 U.S. at 335).

As to the first factor, freedom from imprisonment is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. at 529. Here, the record is uncontested that Respondents detained Petitioner without an individualized determination as to factors such as her flight risk or dangerousness. (*See* Am. Pet. ¶ 107; Response at 10-12 (arguing that Petitioner is detained pursuant to § 1225(b)(2).) Prior to detention pursuant to § 1226(a), immigration officers must allow a noncitizen to "demonstrate to the satisfaction of the officer that . . . release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). *See also Lopez*, 2025 WL 2371588, at *10 ("Reading § 1226(a) as requiring an initial detention decision by DHS is the only way to make sense of the broader statutory and regulatory scheme, which provides for an opportunity to appeal a detention decision to an immigration judge who then conducts their own assessment of the noncitizens' flight risk and dangerousness, among other factors.") The Court does not question DHS's discretion in detaining non-citizens pursuant to lawful processes; indeed, it may ultimately exercise this discretion to detain Petitioner again. But here, Petitioner was entitled to more due process than she received when initially detained.

Second, the risk of erroneous deprivation of Petitioner's liberty interest is high because no individualized determination was made contemporaneously with Respondents' decision to detain Petitioner in July 2025. *See J.U.*, 2025 WL 2772765, at *10.

Finally, as to the last factor, "the Government has interests in ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (citation omitted). ICE argued at the August 14, 2025 bond hearing that Petitioner was both a flight risk and a danger to the community. (ECF 29-2 at 11:7-13:6.) While the Court does not question the Government's interest in or determination of the foregoing factors, habeas corpus has historically been "an adaptable remedy" that gives the reviewing court considerable latitude "to correct errors that occurred during the [prior] proceedings" in appropriate circumstances. *Boumediene v. Bush*, 553 U.S. 723, 780, 786 (2008). In this case, Respondents' post-hoc reasoning at the August 14, 2025 bond hearing does not rectify the lack of individualized determination at the time of arrest.

The Court therefore finds that Petitioner's due process rights were violated when she was detained without an individualized determination under § 1226(a) and its implementing regulations.

B. Bond Hearing

Respondents argue that even if the Court holds that 8 U.S.C. § 1226(a) governs Petitioner's detention, Petitioner's due process claim fails because she received a constitutionally sufficient bond hearing on August 14, 2025 and her due process challenges must be raised through the administrative process of the INA. (Response at 14-17.)

The parties dispute whether the *Mathews* factors were satisfied at the bond hearing and separately whether the IJ properly placed the burden of proof on Petitioner to establish bond

eligibility, rather than placing the burden on the government to show why release was inappropriate. (*Compare* Am. Pet. ¶¶ 109-116, *with* Response at 14-17.) For the reasons set forth below, the Court finds it unnecessary to resolve those issues, but notes that the record indicates that the August 14, 2025 bond hearing afforded Petitioner an opportunity to be heard and represented by counsel. (ECF 26-2, Response Ex. 2.) In addition to the arguments made at the August 14, 2025 hearing, on August 8, 2025, Petitioner's counsel submitted a fulsome brief to the IJ in support of Petitioner's request for a custody and bond redetermination hearing, which included numerous exhibits supporting her release on bond. (ECF 18-28, Am. Pet. Ex. 28.)

Respondents' argument that Petitioner must exhaust her administrative remedies for release with the Board of Immigration Appeals ("BIA") before raising them with the Court is, however, unavailing. (*See* Response at 15 (citing 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3).) The Third Circuit excuses exhaustion where "administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury." *Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988) (citation omitted); *see also Woodall v. Fed. Bureau of Prisons*, No. 05-1542, 2005 WL 1705777, at *5-6 (D.N.J. July 20, 2005), *aff'd*, 432 F.3d 235 (3d Cir. 2005) (excusing administrative exhaustion in case brought pursuant to 28 U.S.C. § 2241).

Petitioner's August 14, 2025 bond hearing was a custody re-determination pursuant to § 1226. *See* 8 C.F.R. § 236.1(d)(1)) ("After an initial custody determination by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 240 becomes final, request amelioration of the conditions under which he or she may be released."). There is no doubt that Petitioner was not afforded an individualized assessment before

she was detained; as such, the BIA cannot provide relief through Petitioner's appeal of the IJ's August 14, 2025 decision on bond. *Abdulla v. Att'y Gen. of United States*, No. 19-1167, 2025 WL 2460506, at *5 (3d Cir. Aug. 27, 2025) (citing *Calderon-Rosas v. Att'y Gen.*, 957 F.3d 378, 384 (3d Cir. 2020)) ("Exhaustion is not required for 'colorable' due process claims that could not have been presented to the BIA in the first instance.")

IV. CONCLUSION

For the reasons set forth above, Petitioner's mandatory detention under § 1225(b)(2) violates the Due Process Clause of the Fifth Amendment. The Court grants the writ of habeas corpus (ECF 18) and orders Respondents to release Petitioner from detention within 24 hours. *See Zumba*, 2025 WL 2753496, at *10 (quoting *Boumediene*, 553 at 779) ("A habeas court has 'the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy….'") Following Petitioner's release, Respondents are permanently enjoined from rearresting or otherwise detaining Petitioner under § 1225(b)(2). An appropriate order follows.

/s/ Jamel K. Semper
HON. JAMEL K. SEMPER
United States District Judge

Orig: Clerk
cc: James B. Clark, U.S.M.J.
Parties

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

[redacted]
SOTO,

Petitioner,

v.

LUIS SOTO, *et al.*,

Respondents.

No. 25-cv-16200

OPINION

O'HEARN, District Judge.

Petitioner, [redacted], is an immigration detainee currently detained at the Delaney Hall Detention Facility in Newark, New Jersey, and he has filed a counseled Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1 at ¶ 1). For the reasons set forth in this Opinion, the Court will grant the Petition.

I. BACKGROUND

Petitioner is a native and citizen of Guatemala. (*Id*.). He entered the United States without inspection on May 31, 2018, with his mother on his twelfth birthday. (*Id*. at ¶ 2). Shortly after their arrival, Petitioner was separated from his mother and placed in the custody of the Department of Health and Human Services. (*Id*. at ¶¶ 3–4). He was reunited with his mother seven weeks later, and both were released from custody on July 23, 2018, under an order of release on recognizance. (*Id*. at ¶ 4).

Following his release, Petitioner and his mother settled in Camden, New Jersey, where Petitioner has resided since that time. (*Id*. at ¶ 5). He attended school for several years before leaving to work in factories to support himself and his siblings in Guatemala. (*Id*.). In 2024,

Petitioner's mother returned to Guatemala, and he remained in New Jersey, residing with relatives. (*Id*.).

On September 16, 2025, Immigration and Customs Enforcement ("ICE") officers arrested Petitioner while he was working at a fruit packing facility in Gloucester County, New Jersey. (*Id*. at ¶ 6). He was not charged with any crimes and was transferred to the Delaney Hall Detention Facility in Newark, New Jersey. (*Id*.). Following his arrest, there is some dispute as to whether Petitioner was properly placed in removal proceedings, (*id*. at ¶ 33; ECF No. 7 at 10–11), but on September 29, 2025, an immigration judge closed those proceedings for failure to prosecute. (ECF No. 1 at ¶ 33). Despite that closure, Petitioner remained in custody without a bond determination. (*Id*. at ¶ 34).

On October 1, 2025, Petitioner sought bond, (*Id.* at ¶ 10), and an immigration judge denied the request, concluding that the court lacked jurisdiction to consider bond, due to the Board of Immigration Appeals' ("BIA") recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). (*Id*.). Pursuant to the BIA's decision in *Hurtado*, nearly all noncitizens who entered the United States without inspection are now subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2), rather than the discretionary detention provisions of 8 U.S.C. § 1226(a). *Hurtado*, 29 I. & N. Dec. at 227–29.

Petitioner now argues that since he was apprehended after residing within the United States for many years, he should be detained under § 1226(a), which authorizes discretionary detention "pending a decision on whether the [noncitizen] is to be removed from the United States" and expressly permits immigration judges to conduct a bond hearing. (*Id*. at ¶ 35). According to Petitioner, for decades before *Hurtado*, the Government followed a consistent practice of distinguishing between individuals who had recently arrived at the border and those already living

within the United States. (*Id.* at ¶¶ 35–38). Indeed, Respondent admits this had been the practice prior to July 8, 2025 when ICE suddenly changed its position, interpretation and application of the relevant statutes. (ECF No. 7 at 14 n.4).

On October 15, 2025, the Department of Homeland Security ("DHS") filed a second notice to appear to initiate removal proceedings against Petitioner, which remain pending. (ECF No. 7-3). Petitioner argues, however, that the notice is deficient because it was never properly served upon him as required by 8 U.S.C. § 1229(a)(1), reflects an incorrect address at a facility where he has never been housed, and contains internally inconsistent dates suggesting that it was "served" nearly a month before it was filed with the immigration court. (ECF No. 8 at 10–11).

Petitioner filed the instant Petition on October 2, 2025, arguing that *Hurtado* was wrongly decided and in any event, is not binding upon this Court, and that his mandatory detention under § 1225 violates his statutory and constitutional rights. (ECF No. 1 at ¶¶ 55–69). He seeks release from custody or, in the alternative, a bond hearing under § 1226(a). (*Id*. at ¶¶ 69–73). Respondents filed an Answer opposing relief, (ECF No. 7), and Petitioner filed a Reply. (ECF No. 8).

II. STANDARD OF REVIEW AND JURISDICTION

District courts have jurisdiction under 28 U.S.C. § 2241 to hear claims that an immigration detainee is "in custody in violation of the Constitution or laws or treaties of the United States." § 2241(c)(3); *see also Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 439 (3d Cir. 2021); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 440 (D.N.J. 2019). Petitioners have the burden to demonstrate that their detention violates the Constitution or federal law. *See, e.g.*, § 2241(c)(3); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496, at *4 (D.N.J. Sept. 26, 2025); *Sarkisov v. Underwood*, No. 24-88, 2025 WL 1640826, at *1 (W.D. Pa. May 5, 2025).

As Petitioner was detained in New Jersey at the time he filed his Petition and challenges the legality of that detention on federal constitutional and statutory grounds, this Court has jurisdiction to consider his claims. (ECF No. 1 at ¶¶ 1, 55–69).

III. DISCUSSION

Petitioner argues that because he was apprehended inside the United States after residing here for many years, his continued detention without a bond hearing violates the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. More specifically, he contends that he is not subject to mandatory detention under § 1225(b)(2), and that he should be released or treated as a detainee under § 1226(a) and entitled to seek bond. (ECF No. 1 at ¶¶ 11, 51, 55–69). Respondents contend that Petitioner's detention is lawful pursuant to *Hurtado*, arguing that despite decades of contrary practice, nearly all noncitizens present in the United States without admission are subject to mandatory detention under § 1225(b). (ECF No. 7 at 7–8).

A. The July 8, 2025 Policy Change

The circumstances of this case arise from a July 8, 2025 DHS internal memo[1] to all ICE employees, drastically changing how the agency interpreted the INA's detention provisions. (ECF No. 1 at ¶ 39; ECF No. 7 at 13–14). Under the new interpretation and policy, individuals "present in the United States without admission or parole" are now treated as "applicants for admission" subject to mandatory detention under § 1225(b)(2), rather than discretionary detention under § 1226(a). (ECF No. 1 at ¶ 39; ECF No. 7 at 13–14). Thus, nearly all noncitizens who have never been admitted, regardless of whether they were stopped at the border or arrested years later inside the country, are now classified as an "applicant for admission" that is "seeking admission" into the country under § 1225(b). (*See* ECF No. 7 at 13–14; ECF No. 1 at ¶¶ 39–40). This interpretation

[1] Although Respondents have not provided the Court with a copy of the memo, Judge Boulware described the leaked memo in *Vazquez v. Feeley*, No. 25-01542, 2025 WL 2676082, at *5 (D. Nev. Sept. 17, 2025), as follows:

> On July 8, 2025, DHS instituted a notice titled "Interim Guidance Regarding Detention Authority for Applicants for Admission" to all ICE Employees. The Notice indicated that DHS, in coordination with the DOJ, "revisited its legal position" on the INA and determined that § 1225(b)(2), rather than § 1226, is the applicable immigration authority for any alien present in the U.S. "who has not been admitted . . . whether or not at a designated port of arrival." Accordingly, "it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole." The Notice further provides "[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated."

(footnotes omitted) (alterations in original).

potentially "subjects millions of noncitizens to mandatory prolonged detention without the opportunity for release on bond, no matter how long they have resided within the country." *Zumba*, 2025 WL 2753496, at *4 (quoting *Vazquez*, 2025 WL 2676082, at *1); *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, at *5 (D. Mass. July 24, 2025) ("It has been estimated that this novel interpretation would require the [mandatory] detention of millions of immigrants currently residing in the United States.").

Respondents acknowledge this drastic and sudden change in policy, conceding that immigration authorities "did not always interpret [§ 1225(b)] that way," and until recently, "read § 1225(b) to apply only to those who have arrived in the United States." (ECF No. 7 at 14 n.4). Respondents admit that even DHS's predecessor agency, the U.S. Immigration and Naturalization Service, "detained arriving aliens" under § 1225(b), but "[n]oncitizens who were present without admission were detained under the discretionary rules of 8 U.S.C. § 1226(a)." (*Id*. (citing *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131 (Mar. 6, 1997) ("Despite 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.")). *See generally Zumba*, 2025 WL 2753496, at *4 ("Respondents readily admit that if petitioner had been arrested on the basis of her inadmissibility prior to July 8, 2025, she would have been discretionarily detained under 8 U.S.C. § 1226(a) and eligible for a bond hearing.").

Indeed, it was previously well established that § 1225(b) applied "primarily" to individuals arriving at our nation's borders, ports of entry, or other points of inspection and who were "seeking entry" into the United States. *E.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 285, 297 (2018)

(explaining that "§ 1225(b) applies primarily to aliens seeking entry into the United States" in the context of "aliens who have arrived at an official 'port of entry' (*e.g.*, an international airport or border crossing) or who have been apprehended trying to enter the country at an unauthorized location"); *Rodriguez v. Robbins*, 715 F.3d 1127, 1132 (9th Cir. 2013) (explaining that § 1225(b) "applies to 'applicants for admission,' such as those apprehended at the border or at a port of entry.").

On the other hand, as the Supreme Court described, § 1226 "generally governs the process of arresting and detaining" noncitizens "once inside the United States." *Jennings*, 583 U.S. at 288. "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2) . . . [and] to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 289. Consistent with that interpretation, Respondents[2] recently admitted in *Zumba* that "up until July 8 the predominant form of detention authority for . . . noncitizens arrested in the interior of the United States was § 1226(a)." 2025 WL 2753496, at *3 (cleaned up).

B. The Relevant Statutes

With that historical backdrop, Petitioner contends that § 1226(a) governs his detention, (ECF No. 1 at ¶ 51), and Respondents maintain that § 1225(b)(2) controls. (ECF No. 7 at 13–14). "Given that detention under § 1225(b)(2) is essentially mandatory and that detention under § 1226(a) is largely discretionary," determining which statute applies carries significant consequences for Petitioner. *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) ("[T]here is no dispute that the provisions . . . are mutually exclusive—

[2] Except for Respondent Tsoukaris, who was not a party in *Zumba*.

a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226.").

When faced with an issue of statutory construction, courts must first "start . . . with the statutory language." *E.g.*, *United States v. Brow*, No. 22-2203, 2023 WL 2443081, at *4 (3d Cir. Mar. 10, 2023) (citation omitted). A court must determine "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). Courts should generally interpret words "as taking their ordinary, contemporary, common meaning at the time Congress enacted the statute." *Wisconsin Cent. Ltd v. U.S.*, 585 U.S. 274, 284 (2018) (alteration and citation omitted). Courts must also read the words "in their context and with a view to their place in the overall statutory scheme." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 320 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). "When the words of a statute are unambiguous . . . [the] judicial inquiry is complete." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992) (quotation marks and citation omitted).

In other words, a court may not "replace the actual text with speculation as to Congress' intent." *Magwood v. Patterson*, 561 U.S. 320, 334 (2010). Rather, a court must "presume" that "the legislature says what it means and means what it says." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022) (quoting *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017)).

Applying those principles here, the Court begins with the relevant language of § 1225:

§ 1225. Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission
An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival

and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

(2) Stowaways
An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection
All 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.

(4) Withdrawal of application for admission
An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements
An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission . . .

(2) Inspection of other aliens

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

(B) Exception
Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,
(ii) to whom paragraph (1) applies, or
(iii) who is a stowaway.

Next, the relevant language of § 1226:

§ 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release
On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

As Respondents contend that Petitioner is subject to § 1225(b)(2)(A), the Court begins with the text of that provision: "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that *an alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." § 1225(b)(2)(A) (emphasis added). Thus, it is unambiguous and patently clear that for the provision to apply and thus subject a noncitizen to mandatory detention: (1) there must be an "examining immigration officer" who determines; (2) that an "applicant for admission"; (3) is "seeking admission"; and (4) "not clearly and beyond a doubt entitled to be admitted." *Id.*; *Zumba*, 2025 WL 2753496, at *8; *Benitez*, 2025 WL 2371588, at *5; *Martinez*, 2025 WL 2084238,

at *2. Under the INA, an "applicant for admission" is a term of art defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States." § 1225(a)(1); *Benitez*, 2025 WL 2371588, at *6. Respondents contend that § 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," including a noncitizen "present in the United States without admission or parole," like Petitioner. (*See* ECF No. 7 at 13–14 (quotation marks omitted)). In other words, they argue that "all 'applicants for admission' are, by definition 'seeking admission.'" (*Id*. at 15).

But Respondents' interpretation "violates the rule against surplusage and negates the plain meaning of the text." *E.g.*, *Martinez*, 2025 WL 2084238, at *6 (citation omitted); *see also Zumba*, 2025 WL 2753496, at *8; *Benitez*, 2025 WL 2371588, at *6. The phrase "seeking admission" in § 1225(b)(2)(A) necessarily connotes some affirmative, present-tense action. The verb "seeking" is a present participle, and the "present participle is used to signal present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022); *see, e.g.*, *D.L. Markham DDS, MSD, Inc. 401(K) Plan v. Variable Annuity Life Ins. Co.*, 88 F.4th 602, 610 (5th Cir. 2023) ("The word 'providing,' used here as a present participle, most commonly describes a person who is *currently* providing services.") (emphasis in original); *United States v. Hull*, 456 F.3d 133, 145 (3d Cir. 2006) (Ackerman, Sr. Dist. J., sitting by designation, concurring) ("Congress's use of the present participle 'committing' connotes present, continuing action."); Present Participle, *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary /present%20participle (last visited Oct. 20, 2025) ("[A] participle that typically expresses present action in relation to the time expressed by the finite verb in its clause and that in English is formed with the suffix *-ing* and is used in the formation of the progressive tenses."); *see also Martinez*, 2025 WL 2084238, at *6.

As such, Respondents' argument that § 1225(b)(2)(A) requires no "affirmative" action, is contrary to the plain, ordinary meaning of the words "seeking admission." (*See* ECF No. 7 at 14–15). "Seeking admission" clearly requires an act currently underway not a static condition. *E.g.*, *Zumba*, 2025 WL 2753496, at *8; *Benitez*, 2025 WL 2371588, at *6. For example, one could deem every person in the country a "potential homebuyer," but they are not "seeking to buy a home," without taking some affirmative action towards that goal. Nor is every "employable adult" in the country "applying for a job," simply because jobs exist. Or, as Judge Ho explained in *Benitez*, "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." *Benitez*, 2025 WL 2371588, at *7. Further, "[e]ven if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as 'seeking admission' . . . at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there." *Id*.

Respondent's interpretation also "violates the rule against surplusage." *Id*. (quoting *Martinez*, 2025 WL 2084238, at *6). As the Supreme Court has explained, "every clause and word of a statute should have meaning," and "no clause, sentence, or word shall be superfluous, void, or insignificant." *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (quotation marks omitted); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). If § 1225(b)(2)(A) applied to all "applicant[s] for admission," it would render the phrase "seeking admission" unnecessary and a mere surplusage. *E.g.*, *Benitez*, 2025 WL 2371588, at *6; *see also Zumba*, 2025 WL 2753496, at *8.

By way of example, removing the words "seeking admission" from § 1225(b)(2)(A) would not alter its meaning under Respondents' theory: "[I]n the case of an alien who is an applicant for

admission, if the examining immigration officer determines that an alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained[.]" That result is inconsistent with the principle that courts must interpret a statute to give meaning to "every clause and word" that Congress chose to include. *See Polansky*, 599 U.S. at 432 (quotation marks omitted).

Petitioner's interpretation, that § 1225(b)(2)(A) applies only when a noncitizen is affirmatively "seeking admission" at or near the border or a port of entry, comports with the ordinary meaning of the statutory text. (ECF No. 8 at 13–15). It gives meaning to the words "seeking admission," and remains faithful to *Jennings*, where the Supreme Court explained that § 1225(b) "applies primarily to aliens seeking entry into the United States," those who are "seeking admission into the country." *Jennings*, 583 U.S. at 285, 289, 297. As opposed to § 1226, which "generally governs the process of arresting and detaining . . . *aliens already in the country* pending the outcome of removal proceedings." *Id.* at 288–89 (emphasis added).

Petitioner's interpretation is also consistent with "the overall statutory scheme." *See Util. Air Regul. Grp.*, 573 U.S. at 320. The titles, headings, and other provisions of § 1225 repeatedly refer to "inspection," and "inadmissible arriving aliens," and "examin[ations]," which typically "occur at ports of entry, their functional equivalent, or near the border." *Zumba*, 2025 WL 2753496, at *8. It strains credulity to conclude, as Respondents argue, that Petitioner was "seeking admission" to the United States when ICE officers "inspected" and detained him, (ECF No. 7 at 12), while he was working at a fruit packing facility in New Jersey.[3] (ECF No. 1 at ¶ 1).

[3] Moreover, courts have given significant weight to how DHS itself treated the petitioner in determining which detention statute governs. *See Benitez*, 2025 WL 2371588, at *3; *Zumba*, 2025 WL 2753496, at *9. That principle applies here: when DHS apprehended Petitioner and issued the two Notices to Appear, it designated him as an "alien present in the United States."

The BIA's contrary conclusion in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), does not alter this result. This Court owes no deference to an agency interpretation that conflicts with the statute's unambiguous text.[4] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–01 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do"); *Zumba*, 2025 WL 2753496, at *9 ("[T]his Court need not defer to . . . *Hurtado*, and its newly-minted interpretation of § 1225(b)(2)(A)") (citation omitted); *see also Chang Barrios v. Shepley*, No. 25-406, 2025 WL 2772579, at *9 (D. Me. Sept. 29, 2025); *Salcedo Aceros v. Kaiser*, No. 25-06924, 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025).

For all these reasons, the Court concludes that § 1225(b)(2)(A) applies only to noncitizens who are actively, *i.e.*, affirmatively, "seeking admission" to the United States. Accordingly, it does not apply to individuals like Petitioner, who has been residing in the United States "for over seven years."[5] (ECF No. 1 at ¶ 2). This Court joins the *vast* majority of district courts that have arrived at the same conclusion. *See, e.g.*, *Belsai D.S. v. Bondi*, No. 25-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Zumba*, 2025 WL

(Pet'r's Reply, ECF No. 8 at 10–11, 24). Those choices confirm that Respondents themselves did not treat Petitioner as subject to § 1225(b).

[4] Indeed, while agencies may interpret ambiguity; they may not fabricate it. They may "clarify" only what Congress left unclear, not what Congress said plainly. *See Util. Air Regul. Grp.*, 573 U.S. at 328 ("[A]n agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate."). Respondents' position does not interpret the statute so much as invert it—a policy preference dressed in legal language and paraded as statutory faithfulness. Calling that a "clarification" is no act of interpretation; it is legislation without authority and lawmaking without accountability.

[5] "In reaching this conclusion, it is unnecessary to define the precise outer boundaries of when mandatory detention under § 1225 applies because it clearly does not apply to someone who has resided in the country for" seven years, like Petitioner. *See, e.g.*, *Benitez*, 2025 WL 2371588, at *5.

2753496; *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lepe v. Andrews*, No. 25-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 25-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. 25-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 45–96, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall*, No. 25-541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, No. 25-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Vazquez*, 2025 WL 2676082; *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Lopez Santos v. Noem*, No. 25-1193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Perez v. Kramer*, No. 25-3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-7559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *JOE v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Raycroft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Benitez*, 2025 WL 2371588. It is clear that this Court is not alone in its rejection of *Hurtado*.

C. The Due Process Clause

Having determined that § 1225(b)(2)(A) does not apply to Petitioner, the Court notes that he would ordinarily fall within the discretionary detention framework of § 1226(a). *See Jennings*, 583 U.S. at 288–89 ("Section 1226 generally governs the process of arresting and detaining . . . aliens already in the country pending the outcome of removal proceedings.") Respondents, however, have not argued in the alternative that § 1226(a) applies to Petitioner. (*See* ECF No. 7). In any event, Petitioner's continued mandatory detention under § 1225(b)(2)(A) violates his procedural due process rights.

The Fifth Amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. To determine what process is due, courts apply the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *B.C. v. Att'y Gen. United States*, 12 F.4th 306, 314–15 (3d Cir. 2021). Under *Mathews*, courts weigh 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; *B.C.*, 12 F.4th at 315.

Here, the first factor weighs heavily in Petitioner's favor, as the official action has deprived him of his physical liberty. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention by [the] government."); *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects."); *see, e.g.*, *Barrios*, 2025 WL 2772579, at *11; *Zumba*, 2025 WL 2753496, at *10.

Similarly, the second *Mathews* factor weighs heavily in Petitioner's favor, as he is presently and *erroneously* detained under the mandatory detention provisions of § 1225, without an opportunity for a bond hearing. *Barrios*, 2025 WL 2772579, at *11; *Zumba*, 2025 WL 2753496, at *10. Nor do Respondents suggest that he would be denied bond if he were afforded such a hearing. (*See* ECF No. 7); *see also Barrios*, 2025 WL 2772579, at *11 (discussing the importance

of respondents' failure to show that petitioner "present[ed] any public safety or flight risk"); *Benitez*, 2025 WL 2371588, at *12 (same).

Finally, the third *Mathews* factor, the Government's interests in detaining noncitizens are typically "ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community." *See, e.g.*, *Zadvydas*, 533 U.S. at 690 (cleaned up). The Court finds that this factor weighs moderately in Petitioner's favor, as Respondents do not dispute that he has no criminal record, (*see* ECF No. 1 at ¶ 65), and have not alleged that he poses a risk of flight. (*See* ECF No. 7).

Taken together, the Court finds that the *Mathews* factors weigh decisively in Petitioner's favor, and as such his mandatory detention under § 1225(b)(2)(A) violates his procedural due process rights. *See Barrios*, 2025 WL 2772579, at *11; *Zumba*, 2025 WL 2753496, at *10; *Benitez*, 2025 WL 2371588, at *12–13.

IV. CONCLUSION

In short, Petitioner's detention under § 1225(b)(2)(A) is unlawful under the INA and violates his procedural due process rights.[6] As Respondents have not argued in the alternative that Petitioner should be detained under § 1226(a), the Court cannot construe the record to authorize his continued detention on that basis. Accordingly, the Court will order Petitioner's immediate release and permanently enjoin Respondents from re-detaining him under § 1225. *See, e.g.*, *Zumba*, 2025 WL 2753496, at *11. Should Respondents elect to later detain him under § 1226(a) and fail

[6] As the Court will grant the Petition on the grounds that Petitioner's detention is unlawful under the INA and violates his procedural due process rights, the Court declines to consider Petitioner's remaining arguments, including his claims under the Administrative Procedure Act, his challenge to the denial of bond, and his substantive due process claim. (ECF No. 1 at ¶¶ 51–62).

to provide him with a timely bond hearing, at which an immigration judge assesses whether he is a danger or a flight risk, Petitioner may move to reopen this matter. An appropriate Order follows.

DATED: October 22, 2025

/s/ Christine P. O'Hearn
Christine P. O'Hearn
United States District Judge

Exhibit C

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DIANA M. RIVERA ZUMBA, *Petitioner*, v. PAM BONDI, *Attorney General of the United States*, KRISTI NOEM, *Secretary of the Department of Homeland Security*, TODD M. LYONS, *Acting Director, United States Immigration and Customs Enforcement*; LUIS SOTO, *Director, Delaney Hall Detention Facility*, *Respondents*.	Civ. No. 25-cv-14626 (KSH) **OPINION**

Katharine S. Hayden, U.S.D.J.

I. Introduction

Petitioner Diana M. Rivera Zumba has filed a verified petition for writ of habeas corpus under 28 U.S.C. § 2241, challenging the legality of her detention and seeking release. Presently before the Court is the question of jurisdiction, which was called into issue by respondents'[1] disclosure shortly after the petition was filed that petitioner had been moved out of this district. And indeed, the record now reflects that beginning the day petitioner filed this action, she was in at least eight different states over four days, finally ending up across the country in Adelanto, California, where she remains. With the benefit of the parties' arguments on the record and in

[1] Respondents are Pam Bondi, the Attorney General of the United States; Kristi Noem, Secretary of the Department of Homeland Security; Todd M. Lyons, Acting Director of United States Immigration and Customs Enforcement ("ICE"); and Luis Soto, Director of the Delaney Hall Detention Facility in Newark, New Jersey.

supplemental written submissions, the Court concludes that it retains jurisdiction to consider the petition.

II. Background

This background is drawn from the petition, the parties' respective submissions, and the matters the parties have otherwise made of record, and the material events are undisputed.

Petitioner is a 44-year-old native and citizen of Ecuador who entered the United States without inspection nearly 23 years ago, in September 2002, and has not left. (D.E. 1, Verified Habeas Corpus Petition ("Pet'n") ¶ 9.) Removal proceedings were initiated many years ago; specifically when is not a matter of record here, but no later than May 31, 2017, when petitioner and her husband (now deceased, as discussed *infra*) were issued a Notice to Appear in Removal Proceedings. (*Id.* ¶ 10; D.E. 17-1, Declaration of Diego Sinchi ("Sinchi Decl."), Ex. A, Notice to Appear).)[2]

In the context of those proceedings, petitioner applied for cancellation of removal based on exceptional and extremely unusual hardship. (*Id.* ¶ 11.) On October 30, 2019, an immigration judge ("IJ") denied her application (and her husband's) and ordered both removed to Ecuador. (*Id.* ¶ 12.) Just over two months later, on January 9, 2020, petitioner's husband, who the petition describes as the lead applicant in the removal proceedings, died. (*Id.* ¶ 13.) Petitioner moved before the Board of Immigration Appeals ("BIA") to remand her case for further proceedings based on new evidence; that motion was granted on November 13, 2023, with the BIA remanding to the IJ for "further proceedings" and the "entry of a new decision." (*Id.* ¶¶ 14-15 & Ex. A.) Since that remand nearly two years ago, petitioner has been awaiting a new court date before the Newark Immigration Court. (*Id.* ¶ 16.)

[2] The petition's reference to a May 31, 2007 NTA (Pet'n ¶ 10) appears to be a typographical error.

What led to the instant petition began on Friday, August 8, 2025, when petitioner, who lives in Newark with her son, was arrested by the "ICE Fugitive Unit . . . at a traffic light a few blocks from her house telling her that she had a final removal order and would be removed." (*Id.* ¶ 17; D.E. 16, Ex. A, Guaman Aff. ¶ 1.) On Monday, August 11, 2025, petitioner's counsel (who also represented her in the immigration case) served a letter on ICE advising that petitioner had an open removal case and that her detention and potential removal were unlawful. (Pet'n ¶¶ 14, 18 & Ex. B.) The letter also referenced a motion for bond, which petitioner filed the following day, August 12, 2025, with the Elizabeth Detention Center, resulting in a bond hearing being scheduled for August 19, 2025. (*Id.* ¶ 19; Ex. B, E.)

By the end of the day on August 12, 2025, as things stood, petitioner was detained at Delaney Hall in Newark, New Jersey; her attorney had advised ICE of her open immigration case and position that her detention was improper; and she had a pending bond hearing scheduled for one week hence. The following afternoon, on August 13, petitioner's counsel became aware through a conversation with petitioner's sister that petitioner expected to be moved out of Delaney Hall the following day, August 14, given that her account there had been closed. (D.E. 16, Ex. B, Affidavit of Regis Fernandez, Esq. ("Fernandez Aff.") ¶ 4.) Petitioner's son, John Guaman, similarly relayed to counsel around 7:00 a.m. on August 14 that, based on his conversation with petitioner around 6:30 a.m. that day, she expected to be sent to California that afternoon. (*Id.* ¶ 5; D.E. 16, Ex. B, Affidavit of John Guaman ("Guaman Aff.") ¶¶ 4-5.) Counsel understood from viewing the ICE online inmate locator around 8:00 a.m. that petitioner remained at Delaney Hall, and he prepared and filed this petition around 1:24 p.m. (Fernandez Aff. ¶¶ 5-6.)

The two-count petition under 28 U.S.C. § 2241 asserts that petitioner's detention is in violation of the due process clause of the United States Constitution (count I), and the Immigration and Nationality Act ("INA") (count II). (Pet'n ¶¶ 27-28.) By way of relief, petitioner sought immediate release, "absent a showing that she has a final order of removal or that circumstances have materially changed in her case." (*Id.* at 6.)

The petition was accompanied by an application for an order to show cause, which sought temporary restraints prohibiting respondents from transferring her out of this district. (*See* D.E. 1-2, Br. in Supp. OTSC, at 2; D.E. 1-3, Proposed OTSC.) But by that time, as will be discussed below, petitioner had already been moved out of New Jersey.

The Court convened a teleconference with counsel for petitioners and respondents the afternoon the petition was filed, at which respondents' counsel represented, after conferring with ICE, that petitioner had been transferred out of New Jersey that morning and was on her way to detention in California with at least one stop anticipated before her arrival there. Petitioner's counsel requested, and was granted, an adjournment until August 18, 2025, to address whether this Court had jurisdiction over the case. (*See* D.E. 4.)

On August 18, 2025, petitioner argued that this Court does have jurisdiction notwithstanding her transfer because she was in transit when the petition was filed. (D.E. 5.) The Court directed respondents to file their response that day and scheduled a conference for the following morning. (D.E. 6.) Respondents' submission, timely made, took the position that the Court lacks jurisdiction because petitioner had already been moved out of New Jersey when the petition was filed—she was, they represented, at the Baltimore/Washington Airport from 12:50 p.m. to 2:00 p.m. on August 14, which means "the District of Maryland had jurisdiction over the petition at the time it was filed." (D.E. 7, at 1-2.)

On Tuesday, August 19, 2025, the parties' attorneys appeared in person before the Court. After hearing argument, the Court concluded that further submissions were required on what was proving to be a rapidly changing set of facts, and that respondents had to supply the statutory basis on which they were detaining petitioner. Respondents' supplemental submissions were to include "appropriate factual support that provides a timeline of [petitioner's] whereabouts from August 8, 2025 to the present, including the time spent at each interim location until her arrival at her present place of confinement." (D.E. 11 ¶ 1.) Petitioner's counsel was also directed to file a similar chronology with the events as he knew them. (*Id.* ¶ 3.) And to preserve the Court's ability to have a hearing if warranted and to address the merits of the case generally, the Court also ordered that pending further order, petitioner was not to be transferred from her current location or removed from the United States. (D.E. 8, 11.)

Respondents' submission was due on Friday, August 22. They requested a three-day extension shortly before the filing deadline to present a "more complete record of the facts underlying the jurisdictional inquiry." (D.E. 14.) The Court granted that request (D.E. 15), giving respondents until noon the following Monday, and extended petitioner's time to respond to the day following; petitioner's attorneys' deadline for his declaration remained unchanged.

Accordingly, on August 22, 2025, petitioner filed two supplemental affidavits, that of her attorney (the Fernandez Affidavit) and her son (the Guaman Affidavit).[3] Together, they pieced together petitioner's journey from Delaney Hall to Adelanto, California. Guaman attested that in a "five-minute conversation" with petitioner—all she was allowed—around 8:00 p.m. on Friday, August 15, she advised that she was detained in, but would not be processed at, a detention

[3] Also attached was the immigration court's recent order denying as moot petitioner's bond motion (which was, as noted earlier, scheduled to be held on August 19, 2025) because she had been transferred. (D.E. 16, Ex. C.)

center in Louisiana, and expected her stay there to be temporary and that she would go to California in a day or two. (Guaman Aff. ¶ 6.) By Sunday, August 17, around 8:00 a.m., she told Guaman that she had arrived in California and been processed at a detention center in Adelanto, California. (*Id.* ¶ 7.)

Guaman at that point learned that petitioner's trip had not involved only the Louisiana stop but many more: from Delaney Hall in Newark, petitioner was taken by car to Baltimore, Maryland, then flown to Richman Detention Center in Monroe, Louisiana (where she arrived around midnight on August 14), then, leaving around 5:30 p.m. on August 15, taken by car to Texas, where she arrived at 11:00 p.m. on August 15, then, by unspecified means, taken to Arizona, arriving at 1:00 a.m. on August 16. (*Id.* ¶¶ 8-9.) Five and a half hours later, around 6:30 a.m., she was moved from Arizona to Las Vegas, Nevada, arriving at 11:00 a.m.; next, around 2:00 p.m., she was taken to Washington, then, finally, to Adelanto Detention Center in California. (*Id.* ¶ 9.)

In a phone conversation on August 20, 2025, petitioner told Fernandez she had arrived at the Adelanto Detention Center on Sunday, August 17, 2025, having been in transit since leaving Delaney Hall the morning of August 14, and had not been checked into any detention facility after Delaney Hall and before Adelanto. (Fernandez Aff. ¶ 10.)

On August 25, 2025, respondents filed a brief captioned as an answer to the petition, in which they took the position that ICE had arrested petitioner under INA § 235(b)(1), 8 U.S.C. § 1225(b)(2). (D.E. 17, Resp. Br., at 1.) Respondents continue to argue that the Court lacks jurisdiction over the petition because it was not filed in the district of confinement and named the wrong respondent. When the petition was filed, they assert, petitioner was in ICE custody in the District of Maryland, requiring the Court either to dismiss the petition or transfer it to the District

of Maryland (where petitioner was at the time of the filing) or to the Central District of California (where she is currently detained), or petitioner to start anew in the Central District of California. They further assert that even if the Court has jurisdiction, petitioner's claims fail on the merits.

Although respondents sought an extension of time in order to supply a "more complete record" for the jurisdictional inquiry, they offered one declaration, which fails to address petitioner's entire trip from New Jersey to California. (D.E. 17-1, Sinchi Decl.) In it, Diego Sinchi, a Supervisory Detention and Deportation Office with ICE Enforcement and Removal Operations ("ICE-ERO") in Newark, New Jersey, attests that on August 8, 2025, ICE-ERO arrested petitioner and transported her to Delaney Hall because she "is an alien present in the United States without admission or parole under [INA § 212(a)(6)(A)(i)]." (*Id.* ¶¶ 1, 3.) The apparent basis for this statement is an attached May 31, 2017 Notice to Appear.

Sinchi further states that petitioner was transferred out of Delaney Hall at 7:31 a.m.[4] on August 14, 2025, and, "via ground transportation," taken to Baltimore/Washington International Airport (BWI), where she arrived at 12:50 p.m. (*Id.* ¶¶ 4-5.) At some point between 1:00 p.m. and 1:30 p.m.—the period encompassing the filing of the petition, which the parties agree was 1:24 p.m.—she boarded an airplane, which left BWI at 2:00 p.m., headed for Louisiana. (*Id.* ¶ 5.) She "was scheduled to arrive" at a Louisiana airport at 4:30 p.m., and when she arrived, she was taken to Richwood Correctional Center in Monroe, Louisiana. (*Id.* ¶¶ 5-6.) Sinchi disclaimed any knowledge of petitioner's whereabouts between Richwood Correctional Center and her final location of Adelanto, California:

> 7. The remainder of Petitioner's journey from Richwood Correctional Center to her final destination at Adelanto ICE Processing Center in Adelanto,

[4] All times in Sinchi's declaration are indicated as "local time" for the respective locations.

California, where she remains detained to date, is unknown to ICE-ERO Newark at this time. It is my understanding that the information is in the possession of ICE-ERO Los Angeles.

8. Petitioner was ultimately transferred to the Adelanto ICE Processing Center in Adelanto, California on August 16, 2025, where she remains detained to date.

9. This is the most complete information available to ICE-ERO Newark at this time concerning Petitioner's whereabouts during the transfer from Delaney Hall Detention Facility in Newark, New Jersey to Adelanto ICE Processing Center in Adelanto, California.

(*Id.* ¶¶ 7-9.) Only petitioner supplied a chronology for the remainder of her journey; respondents "do not dispute it at this time." (D.E. 17, Resp. Br., at 4-5 n.2.)[5]

The following day, on August 26, 2025, petitioner filed her reply (D.E. 18), invoking exceptions to the immediate custodian and place of confinement rules for habeas jurisdiction, based on petitioner's unclear and in-transit status at the time of the petition's filing. Petitioner also sharply disputed respondents' arguments on the merits of her claims, arguing that her detention was and remains unlawful.

III. Discussion

Under 28 U.S.C. § 2241, the Court may "grant the writ of habeas corpus on the application of a prisoner held 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Bruce v. Warden Lewisburg USP*, 868 F.3d 170, 178 (3d Cir. 2017) (quoting 28 U.S.C. § 2241(c)(3)). A § 2241 habeas petitioner challenging her "present physical custody within the United States" – as petitioner has done here – "should name [her] warden as respondent and file the petition in the district of confinement." *Anariba v. Dir. Hudson Cnty.*

[5] Petitioner's submissions reflect an arrival date of August 17 in California, and Sinchi simply states that she was "transferred" there on August 16—suggesting she left for there on August 16, but not when she arrived. The Court understands petitioner to have arrived on August 17, given that respondents do not dispute petitioner's chronology.

Corr. Ctr., 17 F.4th 434, 444 (3d Cir. 2021) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004)).

This standard has two components: first, the "immediate custodian" rule, under which the "default" is that the proper respondent to a § 2241 habeas petition challenging present physical confinement is the person with custody over the petitioner—the "warden of the facility where the prisoner is being held," as opposed to "some . . . remote supervisory official," such as the Attorney General. *Padilla*, 542 U.S. at 434-35. Second is the "place of confinement" or "district of confinement" rule, which is rooted in § 2241(a)'s language that "writs of habeas corpus may be granted by . . . the district courts. . . within their respective jurisdictions." *See id.* at 442. This requirement allows the issuing court to reach the custodian. *Id.* ("We have interpreted this language [in § 2241(a)] to require 'nothing more than that the court issuing the writ have jurisdiction over the custodian.'" (citation omitted)); *see also id.* at 444 ("In habeas challenges to present physical confinement . . . the district of confinement is synonymous with the district court that has territorial jurisdiction over the proper respondent. . . . By definition, the immediate custodian and the prisoner reside in the same district.") (emphases omitted)).

This "simple rule" – immediate custodian plus district of confinement, when domestic physical custody is challenged – aims to effectuate the principle that habeas jurisdiction "lies in only one district," with one proper respondent who can produce the petitioner's body, thereby preventing forum shopping by petitioners, courts having overlapping jurisdiction, and the "inconvenience, expense, and embarrassment" of an alternative scenario where "every judge anywhere could issue the Great Writ on behalf of applicants far distantly removed from the courts whereon they sat." *Padilla*, 542 U.S. at 434-35, 442, 443, 447 (citation modified).

The *Padilla* majority rejected a scenario where this rule would bend or stretch based on the factual whims of each case. *See id.* at 448-49. But it also signaled that the rule is not ironclad, admitting of no exceptions under any scenario.

In a concurrence, Justice Kennedy, joined by Justice O'Connor (both also having joined the majority opinion), outlined as a situation warranting an exception one in which the government, which has both the petitioner and the knowledge of petitioner's whereabouts, acts in a way that prevents the petitioner's lawyer from accessing that information to exercise the petition right:

> The Court has made exceptions in the cases of nonphysical custody, of dual custody, and of removal of the prisoner from the territory of a district after a petition has been filed. In addition, I would acknowledge an exception if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention. In cases of that sort, habeas jurisdiction would be in the district court from whose territory the petitioner had been removed. In this case, if the Government had moved Padilla from the Southern District of New York but refused to tell his lawyer where he had been taken, the District Court would have had jurisdiction over the petition. Or, if the Government did inform the lawyer where a prisoner was being taken but kept moving him so a filing could not catch up to the prisoner, again, in my view, habeas jurisdiction would lie in the district or districts from which he had been removed.

Padilla, 542 U.S. at 454 (Kennedy, J., concurring) (internal citations omitted).

Further, the *Padilla* majority distinguished the scenario before it as straightforward and not tainted by manipulations that could affect jurisdiction: "There is no indication that there was any attempt to manipulate behind Padilla's transfer-he was taken to the same facility where other al Qaeda members were already being held, and the Government did not attempt to hide away from Padilla's lawyer where it had taken him. . . . His detention is thus not unique in any way

that would provide arguable basis for a departure from the immediate custodian rule." *Id.* at 441 (majority opinion); *see also id.* at 450 n.18.

This awareness at the highest level that detention decisions could breed mischief found expression in the Third Circuit in 2021 when it decided *Anariba v. Hudson County Correctional Center*, 17 F.4th 434. Reversing the district court's determination that Angel Argueta Anariba in filing a motion under Rule 60(b) was improperly bringing a second, separate habeas petition, the Third Circuit discussed a second basis for permitting the petitioner to go ahead with his claims after he was moved out of New Jersey: the government's blatant post-petition transfers of Argueta from ICE facility to facility. The panel noted that "the Government has transferred Argueta at least 15 times to 6 different facilities in 4 different states. When continuous transfer permeates the reality of ICE detention, it suggests that the Government has the machinery already in place to permit extensive forum shopping." *Id.* at 448.

The court was particularly concerned with the havoc that could be wrought through post-petition maneuvers, noting

> the Government could willingly transfer an ICE detainee seeking habeas relief from continued detention to a jurisdiction that is more amenable to the Government's position, or the Government could transfer an ICE detainee for the purpose of intentionally introducing complicated jurisdictional defects to delay the merits review of already lengthy § 2241 claims. Taken to an extreme, the Government could transfer a petitioner with such consistency as to evade a district court ever even obtaining jurisdiction over a petitioner's § 2241 claims.

Id. at 447.

The facts here take this case "to an extreme" where the government has transferred petitioner with such consistency as to evade jurisdiction over her § 2241 claims at the time she filed them. The remedy for that, and to preserve the petitioner's access to the habeas corpus writ, is the "unknown custodian" exception, which encompasses situations where either the custodian

or place of confinement, or both, are made unknown to petitioner or her attorney. *See Suri v. Trump*, 2025 WL 1806692, at *4-6 (4th Cir. July 1, 2025) (government did not establish strong likelihood of success on argument that district court lacked habeas jurisdiction due to petitioner's physical absence from district at time of filing, and concluding that district court had properly applied "unknown custodian" exception); *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *2-4 (D.N.J. June 24, 2025) (O'Hearn, J.) (applying exception where petitioner's attorneys "received conflicting, inaccurate, and delayed information about [petitioner's] whereabouts," and he "was not permitted to communicate his location or ultimate destination during transit"); *Khalil v. Joyce*, 777 F. Supp. 3d 369, 396-410 (D.N.J. 2025) (Farbiarz, J.) (discussing and applying exception).

It is appropriate to apply the exception in this case. First, there is the movement of petitioner by car out of Newark early on Thursday morning when ICE officials knew that her attorney had obtained a bond hearing nearby the following Tuesday. Second, there were multiple stops over multiple days; respondents' suggestion that during the first one, Baltimore airport, the District of Maryland obtained jurisdiction over petitioner's habeas petition being filed at that moment in federal court in Newark, where the ICE locator indicated petitioner was being held, is unavailing.

Petitioner was not checked in at any facility where a custodian could be found to put on the caption; respondents have never identified who that custodian was or could have been; and the information on where she was certainly was not available to either petitioner or her attorney until after the fact. For days and nights thereafter, respondents' declarant states he doesn't know where she was and with every passing hour, petitioner was without the remedy of the Great Writ. Respondents' suggestion that petitioner could simply refile in the Central District of California institutionalizes this view. That untenable scenario is rejected. *Khalil*, 777 F. Supp. 3d at 410

(citing authority supporting that "there is no gap in the fabric of habeas—no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it").

As petitioner argues, in respondents' concept, "habeas jurisdiction would potentially amount to an elusive exercise of whack-a-mole with jurisdiction potentially vesting in multiple jurisdictions or none at all since there is no known location or known custodian during this 4-day trip." (D.E. 18, at 4.) A trip, the facts show, by air and car and "ground transportation" hustling petitioner from state to state to a location thousands of miles from her lawyer and her son, who were initially led to believe she was going to California—but never told, again until after the fact, that she would be in more than a half-dozen places before she got there. This is contrary to the principle, as elucidated in *Padilla* and discussed above, that jurisdiction vests squarely in *one* jurisdiction.

And third, most disturbingly, these movements designed to defeat the unfolding of petitioner's known legal position – that she was improperly detained in the first place – executes what respondents' submission on its detention authority announces: ICE's policy change that would deny her a bond hearing, mystifyingly classify her for the first time and in the face of undisputed facts (beginning with her presence in the United States since 2002) as "an arriving alien seeking admission"; and – as ICE's actions beginning early on August 14 show – expose her to expedited deportation.

The record therefore compels the conclusion that petitioner properly filed in New Jersey, the last known location known, and reasonably knowable, to her and to her attorney under the circumstances, and as a corollary, properly named her immediate custodian there, the director of Delaney Hall, *see Suri*, 2025 WL 1806692, at *6; *see also Padilla*, 542 U.S. at 454 (Kennedy, J.,

concurring), and also appropriately named the more remote custodians as respondents, whether as a matter of the unknown custodian exception or so as to effectuate any future relief the Court may grant, while the facts relevant to that issue are developed, *see Padilla*, 542 U.S. at 440 & n.14; *Munoz-Saucedo*, 2025 WL 1750346, at *4. Neither jurisdiction-based dismissal, nor transfer to the District of Maryland (where petitioner was for at most 70 minutes, and had no identified or identifiable custodian)[6] or to the Central District of California (where petitioner's ostensible custodian did not have control over her until three to four days *after* the petition was filed, and thus could not have been named at the time of filing) is warranted. *See* 28 U.S.C. § 1631 (permitting transfer to court where action "could have been brought at the time it was filed or noticed"); *Padilla*, 542 U.S. at 453 (Kennedy, J., concurring) ("When an exception applies, courts must still take into account the considerations that in the ordinary case are served by the immediate-custodian rule, and, in a similar fashion, limit the available forum to the one with the most immediate connection to the named custodian.").

What is called for now is attention to the basis respondents have given for detaining her in the first place, its weeks-old policy change, which petitioner takes head-on in her reply (D.E. 18). This is the core issue of the habeas petition, that the policy change subjecting petitioner to

[6] Respondents contend that petitioner "sues the incorrect respondent" and "names the wrong custodian" (D.E. 17, at 1, 6) but do not identify whom the petition should have named. Instead, they merely state that petitioner's "immediate custodian is *now* the Warden of the Adelanto ICE Processing Center in Adelanto, California," rather than the warden of Delaney Hall. (*Id.* at 8.) On this record, respondents, who are in exclusive possession of this information, have not established that *anyone* was petitioner's custodian in Maryland; this Court cannot be deprived of jurisdiction based on petitioner's failure to name a nonexistent Maryland custodian. *Ozturk v. Hyde*, 136 F.4th 382, 393 (2d Cir. 2025) (where government had "never clarified who, if it was not [Hyde, the ICE field director named in petition as custodian], had immediate custody of [petitioner] in transit," either Hyde was the proper custodian, or the custodian "remains unknown"; under those circumstances, "immediate custodian" rule did not defeat court's jurisdiction).

mandatory detention is unlawful and that the provisions of INA § 236(a), 8 U.S.C. § 1226(a), apply to petitioner's detention, and not INA § 235(b), 8 U.S.C. § 1225(b).

Accordingly, respondents shall SHOW CAUSE on **Friday, September 12, 2025, at 10:00 a.m.**, why petitioner is not being unlawfully detained under 8 U.S.C. § 1225(b) and why she should not be immediately released from detention. To permit a full record for its decision, the Court will hold a hearing at which both sides may present argument and evidence. In advance, respondents shall submit their brief, exhibits and witness list by **Friday, September 5, 2025, at 5:00 p.m.,** and petitioner shall submit her brief, exhibits and witness list by **Tuesday, September 9, 2025, at 5:00 p.m.**

The Court's order enjoining petitioner's transfer or removal remains in effect to preserve the status quo until this matter concludes. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." As explained by the district court in *Abrego Garcia v. Noem*, 2025 WL 2062203, at *6 (D. Md. July 23, 2025), "courts have recently invoked the All Writs Act to preserve their jurisdiction over constitutional challenges to lightning-fast deportations." *Accord A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1369 (2025) (relying on All Writs Act to prevent deportation of group of immigrant detainees until constitutional claims could be heard on merits; noting that "we had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter") (citing 28 U.S.C. § 1651(a)); *see also Ozturk*, 136 F.4th at 394 (affirming district court's equitable authority under the All Writs Act to order the return of an immigration detainee from Louisiana to Vermont); *Perez Parra v. Castro*, 765 F. Supp. 3d 1241, 1243 (D.N.M. 2025) (finding that All Writs Act provided the court with the authority to temporarily enjoin the transfer of petitioners to

Guantanamo Bay to maintain the status quo until the conclusion of the matter); *Arostegui-Maldonado v. Baltazar*, -- F. Supp.3d --, No. 25-cv-2205, 2025 WL 2280357, at *16 (D. Colo. Aug. 8, 2025) (relying on All Writs Act to enter an injunction preventing immigration detainee's transfer out of the District of Colorado during the pendency of his habeas action); *Abrego Garcia*, 2025 WL 2062203, at *6 (relying on the All Writs Act to limit petitioner's transfer to three nearby districts).

In this matter, ICE surreptitiously moved petitioner far away from her immigration proceedings and her attorney, across multiple states, and may remove her on an expedited basis pursuant to a new and unprecedented policy[7] prior to this Court's ruling on her constitutional challenge. Petitioner's unlawful deportation would plainly amount to irreparable harm. To prevent this, the Court's prior orders (D.E. 8, 11) remain in effect.

IV. Conclusion

For the reasons set forth above, the Court has jurisdiction, and the parties are direct to file their submissions as outlined above. An appropriate order will follow.

s/Katharine S. Hayden
Katharine S. Hayden, U.S.D.J

Date: August 28, 2025

[7] Prior to this policy change, it appears uncontested that if the government arrested petitioner on the basis of her inadmissibility, she would be discretionarily detained under INA § 236(a), 8 U.S.C. § 1226(a), and would be eligible for a bond hearing. (*See* D.E. 17, at 16-17.) Under this new policy, however, the government purports that petitioner and all noncitizens who entered and without inspection or admission and reside here are "applicants for admission" under INA § 235(b), 8 U.S.C. § 1225(b). (*See id.* at 17-18.) Applicants for admission under INA § 235(b), unlike other noncitizens who are already present in the United States, are not entitled to bond hearings and are subject to mandatory detention during their removal proceedings. (*Id.*) Petitioner argues that this reclassification is contrary to the INA and that her detention under INA § 235(b) violates her right to due process of law.

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

L.G.M.L. et al., *Plaintiffs*, v. KRISTI NOEM et al., *Defendants*.	Civil Action No. 25-2942 (TJK)

ORDER

For the reasons set forth in the Court's accompanying Memorandum Opinion, it is hereby **ORDERED** that:

1. Plaintiffs' Motion to Certify Class, ECF No. 6, is **GRANTED** to the extent it is consistent with the class described below. It is further **ORDERED** that the following class is **PROVISIONALLY CERTIFIED** under Federal Rule of Civil Procedure 23(b)(2): all unaccompanied alien children from Guatemala who are or will be in the custody of Defendants and who (1) are not subject to an executable final order of removal and (2) have not been permitted to voluntarily depart under 8 U.S.C. § 1229c and applicable regulations;
2. Plaintiffs' Motion for Preliminary Injunction, ECF No. 20, is **GRANTED**. It is further **ORDERED** that Defendants, their agents, representatives, and all persons or entities in concert with them are **ENJOINED** from transferring, repatriating, removing, or otherwise facilitating the transport of any Plaintiff—including both named Plaintiffs and all members of the provisionally certified class—from the United States;

3. It is further **ORDERED** that Plaintiffs shall, by September 22, 2025, post a $1.00 bond in accordance with Federal Rule of Civil Procedure 65(c).

SO ORDERED.

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: September 18, 2025

Exhibit E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS JAVIER LOPEZ BENITEZ,

Petitioner,

v.

FRANCIS et al.,

Respondents.

25 Civ. 5937 (DEH)

OPINION AND ORDER

DALE E. HO, United States District Judge:

On July 18, 2025, Petitioner Carlos Javier Lopez Benitez ("Petitioner" or "Mr. Lopez Benitez") filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking, *inter alia*, his immediate release from ICE custody. *See* Pet. for Writ of Habeas Corpus ("Petition"), ECF No. 1. Mr. Lopez Benitez alleges that, on July 16, 2025, masked ICE agents "violently detained" him as he left a scheduled immigration court appearance in Manhattan in violation of the Due Process Clause and the Fourth Amendment. *Id.* at 1; *see also id.* ¶¶ 1, 12, 13, 31, 38. For the reasons stated herein, Mr. Lopez Benitez's Petition is **GRANTED**.

BACKGROUND

A. Factual Background

In 2023, Mr. Lopez Benitez fled his native Paraguay "seeking protection from persecution." *Id.* ¶¶ 1, 8. On or about May 11, 2023, U.S. Customs and Border Protection ("CBP") encountered Mr. Lopez Benitez "at or near the Mexico-Arizona border" and took him into custody. Oh Decl. ¶ 4, ECF No. 9. On May 14, 2023, CBP served Mr. Lopez Benitez "with a Form I-200 warrant for his arrest under section 236 of the Immigration and Nationality Act ("INA")," codified at 8 U.S.C. § 1226, and a Notice to Appear ("NTA"), charging him with removability under 8

U.S.C. § 1182(a)(6)(A)(i) as a noncitizen[1] "present in the United States without being admitted or paroled." *Id.* ¶¶ 5, 6. In the NTA, CBP expressly declined to designate him as an "arriving alien." *See* Oh Decl. Ex. B, ECF No. 9-2. That same day, CBP released Mr. Lopez Benitez on his own recognizance "pursuant to INA section 236." Petition ¶ 7.

Since his release from ICE custody more than two years ago, Mr. Lopez Benitez has lived with one of his two U.S.-citizen sisters in Flushing, Queens, worked in construction, and regularly attended church. *Id.* ¶¶ 8, 10. Mr. Lopez Benitez has no criminal history in any country. *Id.* ¶ 11.

On November 1, 2023, Mr. Lopez Benitez appeared *pro se* for his first scheduled immigration court date. Oh Decl. ¶ 9. He regularly attended his subsequent court dates and filed an asylum application in January 2025. *Id.* ¶¶ 10-13.[2] On July 16, 2025, Mr. Lopez Benitez, accompanied by his two sisters, appeared *pro se* for another court date during which the immigration judge adjourned his case to July 19, 2029, for a merits hearing. *Id.* ¶ 14. Mr. Lopez Benitez alleges that, as he left that hearing, masked ICE agents "suddenly" and "violently detained" him, "knocking one of his sisters to the ground in the process." Petition at 1. The "incident was captured on video and [was] widely publicized."[3] *Id.* ¶ 13.

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[1] This Opinion uses the terms "alien" and "noncitizen" interchangeably.

[2] Respondents allege that "[o]n July 3, 2024, Petitioner failed to appear at his master calendar hearing." Resp'ts' Mem. L. in Resp. to O.S.C. and in Opp'n to Pet. for Writ of Habeas Corpus ("Resp'ts' Opp'n") at 3, ECF No. 8; *see* Oh Decl. ¶ 11, ECF No. 9. The immigration court subsequently "adjourned that matter to December 23, 2024, to permit Petitioner another opportunity to appear," which he did. Resp'ts' Opp'n at 3; *see* Oh Decl. ¶¶ 11, 12.

[3] *See, e.g.*, Luis Ferré-Sadurní, *Immigrants File Class-Action Lawsuit to Stop ICE Courthouse Arrests*, N.Y. Times (July 16, 2025), https://www.nytimes.com/2025/07/16/nyregion/trump-ice-arrests-lawsuit-immigrants.html?smid=url-share (capturing, on video, ICE's arrest of Mr. Lopez Benitez on July 16, 2025, including his sister being pushed to the ground). A photo of this incident was an Associated Press "Photo of the Week" for the week of July 11-17, 2025. *See The top photos of the week by AP's photojournalists, July 11-17, 2025*, Assoc. Press (July 18, 2025), https://apnews.com/photo-gallery/associated-press-top-photos-this-week-c8d46f3134bbf3bb5dd98d97b532fb0c?utm_source=copy&utm_medium=share.

Mr. Lopez Benitez alleges that ICE arrested him pursuant to a new "nationwide campaign to detain people attending their immigration court hearings" without any "individualized basis," such as an assessment of an individual's dangerousness or flight risk. *Id.* ¶¶ 14, 24, 31. Mr. Lopez Benitez further contends that, pursuant to this new policy "[h]e has received neither notice nor an opportunity to be heard as to whether a change in custody status was warranted" and that "[t]he government lacked reliable information of changed or exigent circumstances [since his 2023 arrest and release] that would justify [his] arrest [now]." *Id.* ¶¶ 31, 37.

After arresting Mr. Lopez Benitez, ICE detained him at the "ICE processing space" at 26 Federal Plaza in New York, New York and served him with a "new Form I-200 arrest warrant." Oh Decl. ¶¶ 15, 16; *see* Oh Decl. Ex. D, ECF No. 9-4. While detained at 26 Federal Plaza, Mr. Lopez Benitez alleges that he was subject to "inhumane conditions of confinement," including no access to "a bed, bathing facilities, or a change of clothes." Petition at 1. He was held there for approximately three days, where he slept on the floor, *see id.* ¶ 13, until July 19, 2025, when ICE transferred Mr. Lopez Benitez to the Joe Corley Processing Center in Conroe, Texas, *see* Oh Decl. ¶ 17.

B. Procedural Background

On Friday, July 18, 2025, while still detained at 26 Federal Plaza, Mr. Lopez Benitez filed this Petition seeking, *inter alia*, his "immediate and unconditional release" from custody. Petition at 1. This matter was assigned to the undersigned on Monday, July 21, 2025. *See* July 21, 2025 Dkt. Entry. That same day, this Court, in order to preserve its jurisdiction, directed that Mr. Lopez Benitez not be removed from the country during the pendency of this litigation; ordered Respondents to show cause why the Petition should not be granted by Tuesday, July 22, 2025; and instructed Mr. Lopez Benitez to submit any Reply by Wednesday, July 23, 2025, at 5:00 p.m. *See*

July 21, 2025 Order, ECF No. 4. The Order also scheduled a hearing for Thursday, July 24, 2025, at 10:00 a.m. *Id.* at 1.

Respondents subsequently requested an extension for their Opposition, *see* ECF No. 6, which the Court granted over Petitioner's objection, instructing Mr. Lopez Benitez to submit any Reply by Friday, July 25, 2025, and adjourning the hearing to Monday, July 28, 2025, at 11:00 a.m., *see* ECF No. 7. The parties timely filed their respective briefs and the July 28, 2025 hearing proceeded as scheduled. At the conclusion of the hearing, the Court issued an oral order granting the Petition and ordering that Mr. Lopez Benitez be returned to this District and released from custody no later than July 31, 2025. *See* Conf. Tr. 37:2-43:22. It further directed Respondents to certify its compliance with the Court's order on the docket. *See id.* at 46:24-47:2. The Court also noted that this written Opinion and Order would follow, which now supersedes the Court's oral ruling. *See id.* at 43:21-22.

On August 1, 2025, Respondents certified by letter that Mr. Lopez Benitez was released from ICE custody and reunited with his family on July 31, 2025, in accordance with the Court's order. *See* August 1, 2025 Letter, ECF No. 11.

DISCUSSION[4]

This Petition raises three principal issues: (1) whether Mr. Lopez Benitez, who has resided in the United States for approximately two years, was detained pursuant to 8 U.S.C. § 1225(b)(2)(A) ("§ 1225" or "§ 1225(b)"), which requires mandatory detention of certain noncitizens "seeking admission" to the country, or pursuant to 8 U.S.C. § 1226(a) ("§ 1226" or "§1226(a)"), which provides for discretionary authority to detain other noncitizens who are

[4] All references to Rules are to the Federal Rules of Civil Procedure. In all quotations from cases, the Court omits citations, alterations, emphases, internal quotation marks, and ellipses, unless otherwise indicated.

"already in the country," *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018) (citing 8 U.S.C. § 1226); (2) whether, if Mr. Lopez Benitez was detained under § 1226(a), his detention without an individualized consideration of his circumstances and/or an opportunity to appeal the Department of Homeland Security's ("DHS") decision to detain him to an immigration judge violates the Due Process Clause; and (3) if his detention violates the Due Process, whether administrative exhaustion, in the form of an appeal to an immigration judge, is required before this Court may order his requested relief of immediate release from ICE custody. The Court considers each issue in turn below.

I. Whether Petitioner is Detained Pursuant to 8 U.S.C. § 1225 or § 1226

As a threshold matter, the Court must first determine whether Mr. Lopez Benitez was detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and subject to mandatory detention, or pursuant to 8 U.S.C. § 1226(a) and subject to detention on a discretionary basis—as is consistently represented in DHS documents. *See* Resp'ts' Mem. L. in Resp. to O.S.C. and in Opp'n to Pet. for Writ of Habeas Corpus ("Resp'ts' Opp'n") at 6, ECF No. 8; Oh Decl. Exs. A-D, ECF Nos. 9-1 to 9-4.

The Court begins with a brief overview of § 1225 and § 1226. It then concludes that Mr. Lopez Benitez was detained pursuant to DHS's discretionary authority under § 1226(a), for two independent reasons: (1) DHS has consistently treated Mr. Lopez Benitez as subject to detention on a *discretionary* basis under § 1226(a), which is fatal to Respondents' claim that he is subject to mandatory detention under § 1225(b); and (2) a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225's provision for mandatory detention of noncitizens "seeking admission" does not apply to someone like Mr. Lopez Benitez, who has been residing in the United States for more than two years.

A. Overview of § 1225 and § 1226

Section 1225 provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). "A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled 'for urgent humanitarian reasons or significant public benefit' pursuant to 8 U.S.C. § 1182(d)(5)(A)." *Gomes v. Hyde*, 25 Civ. 11571, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (quoting *Jennings*, 583 U.S. at 300). Such parole "into the United States," under section 1182(d)(5)(A), permits a noncitizen to physically enter the country, 8 U.S.C. § 1182(d)(5)(A), subject to a reservation of rights by the Government that it may continue to treat the noncitizen "as if stopped at the border," *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). Other than this limited exception (which is not implicated here), detention under § 1225(b)(2) is considered mandatory. *See, e.g.*, *Gomes*, 2025 WL 1869299, at *8 (describing detention under § 1225(b)(2) as "mandatory"). Individuals detained under § 1225 are not entitled to a bond hearing. *See Jennings*, 583 U.S. at 297 ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.").

As the Supreme Court has explained, while "U.S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2)," "[i]t also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 288-89 (emphasis added); *see also id.* at 288 (explaining that, "*once inside* the United States . . . *an alien present in the country* may still be removed" under "Section 1226") (emphasis added). Section 1226(a) provides that, for a noncitizen who is "arrested and detained" "[o]n a warrant issued by the Attorney General," the Attorney General (1) "may continue to detain" the arrested noncitizen, (2) "may

release" the noncitizen on "bond," or (3) "may release" the noncitizen on "conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). Section 1226(a), therefore, "establishes a discretionary detention framework." *Gomes*, 2025 WL 1869299, at *1. Critically, under 8 C.F.R. § 1236.1(d)(1), a noncitizen detained under § 1226 may appeal an "initial custody determination," including the setting of bond, to an immigration judge. Notwithstanding the above, pursuant to a recent amendment, there are some limited exceptions (not directly implicated here) under subsection (c) requiring "detention for non-citizens who meet certain criminal and inadmissibility criteria." *Martinez v. Hyde*, 25 Civ. 11613, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (citing *Gomes*, 2025 WL 1869299, at *6); *see* 8 U.S.C. § 1226(c).

Given that detention under § 1225(b)(2) is essentially mandatory and that detention under § 1226(a) is largely discretionary, it follows that whichever statute Mr. Lopez Benitez is subject to is potentially dispositive here. That is, if Mr. Lopez Benitez was detained as a noncitizen "seeking admission" to the country under § 1225(b)(2) (as Respondents argue), his detention would be mandatory. If, instead, he was detained as a noncitizen "already in the country" under § 1226(a), *Jennings*, 583 U.S. at 288-89, (as Mr. Lopez Benitez argues) then his detention is discretionary and he would be, at a minimum, entitled to an appeal before an immigration judge.

To be sure, the line between when a person is "seeking admission" as opposed to being "already in the country" is not necessarily obvious. For instance, someone who has just crossed the border may technically be "in" the country but is still treated as "an alien seeking initial entry." *Thuraissigiam*, 591 U.S. at 114, 139 (holding that a noncitizen detained "within 25 yards of the border" is treated as if stopped at the border). But there is no dispute that the provisions at issue here are mutually exclusive—a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226, a point that Respondents conceded. *See* Conf.

Tr. 22:17-23:2. It therefore follows that if Mr. Lopez Benitez was detained pursuant to one provision, he cannot be subject to the other.

B. Respondents' Treatment of Mr. Lopez Benitez under § 1226

Here Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a). The warrants for Mr. Lopez Benitez's respective arrests in 2023 and 2025 explicitly authorized those arrests pursuant to "section 236 of the Immigration and Nationality Act"—i.e., § 1226. Oh Decl. Exs. A, D; *see* Oh Decl. ¶ 5 ("On May 14, 2023, CBP personally served Lopez Benitez with a Form I-200 warrant for his arrest under section 236."); Conf. Tr. 22:2-6. In fact, Mr. Lopez Benitez's 2023 Notice of Custody Determination explicitly states—and Respondents confirm—that CBP released him on his own recognizance also pursuant to § 1226. *See* Oh Decl. Ex. C; Conf. Tr. 13:13-17. Such a release on recognizance is not "humanitarian" or "public benefit" "parole into the United States" under §§ 1225 and 1182(d)(5)(A), but rather a form of "conditional parole" from detention, authorized under § 1226. *See Martinez*, 2025 WL 2084238 at *3 (explaining that petitioner's release on her own recognizance "does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ('[i]n accordance with section 236 of the Immigration and Nationality Act')"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an "Order of Release on Recognizance" necessarily must have been detained and released under § 1226, including because he was not an "arriving alien" under the regulations governing § 1225 examinations). Respondents aver that Mr. Lopez Benitez's 2023 release under § 1226 was "revoked on July 16, 2025, when he was arrested," Resp'ts' Opp'n at 7, but that does not change the fact that his 2023 release was under § 1226. And when Respondents arrested and detained Mr. Lopez Benitez last month, they did so again under § 1226 explicitly. *See* Oh Decl. Ex. D.

During oral argument, counsel for Respondents initially stated that when Mr. Lopez Benitez was first encountered by CBP in 2023, § 1225 could have been applicable to him and that, in fact, he may have initially been designated for such treatment under § 1225. *See* Conf. Tr. 16:11-21. But Respondents' counsel also acknowledged that there was nothing in the record to reflect that hypothesis. *See id.* Accordingly, the Court cannot credit that speculation. Nothing in the 2023 documents authorizing Mr. Lopez Benitez's arrest and subsequent release suggest anything to that effect. And the record is unclear as to precisely where and how close to the border Mr. Lopez Benitez was first encountered by CBP in 2023. In any event, regardless of what Mr. Lopez Benitez's designation *could have been* when he was initially arrested in 2023, there is no dispute that: (1) he *was* in fact designated for treatment under § 1226 at that time; (2) his most recent warrant from last month was also issued subject to § 1226; and (3) Respondents detained him on that basis. That has been Respondents' position consistently. And during oral argument, counsel for Respondents disclaimed any notion that the documents authorizing Mr. Lopez Benitez's arrest and subsequent release in 2023 were issued in error. *See id*. at 13:18-23.

Thus, it is indisputable that Respondents have consistently treated Mr. Lopez Benitez as subject to § 1226, and that they most recently detained him last week pursuant to that statute. Indeed, the record is devoid of any reference to § 1225 in connection with Mr. Lopez Benitez's arrest and detention until they filed their Opposition to his Petition. *See id.* at 22:7-16; Resp'ts' Opp'n at 6-8; *see also Martinez*, 2025 WL 2084238, at *2 ("In their new motion, Respondents clearly state for the first time their position that Petitioner's initial encounter with Border Patrol . . . is what establishes her as subject to mandatory detention under section 1225 (b)(2)(A) . . . The record, however, does not support that conclusion."). The Court cannot credit Respondents' new position as to the basis for Mr. Lopez Benitez's detention, which was adopted post hoc and raised for the first time in this litigation. *Cf. Dep't of Homeland Sec. v. Regents of*

the Univ. of Cal., 591 U.S. 1, 22, 24 (2020) (holding that, under arbitrary and capricious review in the administrative law context, "[t]he basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted," not on "impermissible post hoc rationalizations"). These facts, taken together, can support only one conclusion—that Mr. Lopez Benitez was not mandatorily detained as a noncitizen "seeking admission" under § 1225(b), but rather as someone "already in the country," *Jennings*, 583 U.S. at 288-89, pursuant to Respondents' discretionary authority under § 1226(a)—which Respondents have consistently maintained until they filed their Opposition to the Petition last week, *see* Resp'ts' Opp'n.

C. Case Law on the Respective Scopes of § 1225 and § 1226

Even without Respondents' prior concessions as reflected in their exhibits, the Court reaches the same conclusion in light of a proper understanding of the statutory provisions at issue. The Court does so based on the plain text of the provisions, as well as the reasoning in the only cases it has identified confronting the question of the respective scopes of each provision, including two recent decisions from the District of Massachusetts, concluding 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 on a warrant issued by the Attorney General while residing in the United States." *Gomes*, 2025 WL 1869299, at *7; *see Martinez*, 2025 WL 2084238, at *8. In reaching this conclusion, it is unnecessary to define the precise outer boundaries of when mandatory detention under § 1225 applies because it clearly does not apply to someone who has resided in the country for two years like Mr. Lopez Benitez.

Martinez v. Hyde, a recent decision from the District of Massachusetts, considered whether a petitioner (Ms. Diaz Martinez) was subject to mandatory detention under § 1225(b)(2)(A). *See* 2025 WL 2084238, at *1. The court began its analysis by looking to the plain text of the statute. As relevant here, § 1225(b)(2)(A) states:

> [I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that *an alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(emphasis added). *Martinez* then explained, "for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" 2025 WL 2084238, at *2. The court concluded that, because Ms. Diaz Martinez was already residing in the country when she was detained, she was not "seeking admission" at that time, and therefore, "Section 1225(b)(2)(A) . . . simply had no application to her case." *Id.* at *8. And because the respondents in her case did not "assert[] that [Ms. Diaz Martinez was] subject to detention under section 1226, the Court [saw] no reason to consider that basis," and ruled her detention unlawful. *Id.* at *8 n.23.

Here, the facts of Mr. Lopez Benitez's case are virtually identical in all material respects to those of Ms. Diaz Martinez's. He had been residing in the United States for more than two years at the time of his arrest and detention in 2025. *See* Petition ¶¶ 8, 10. He was not "seeking admission" at that time and is therefore not subject to § 1225(b). Adopting the reasoning and conclusions set forth in *Martinez*, the Court likewise concludes that Mr. Lopez Benitez is not subject to mandatory detention under § 1225(b).[5]

Nonetheless, it remains Respondents' position that a noncitizen who is already present and has been residing in the United States for several years can still be subject to mandatory detention pursuant to § 1225(b). *See* Conf. Tr. 19:3-20:6. According to Respondents, someone in Mr. Lopez Benitez's position—i.e., someone who has never been lawfully "admitted" to the United States—

[5] Unlike in *Martinez*, however, the Court will consider the validity of Mr. Lopez Benitez's detention under § 1226(a), because Respondents have expressly raised that provision as an alternative basis for his detention. *See* Resp'ts' Opp'n at 12.

continues to be a noncitizen who is "seeking admission," and therefore remains subject to mandatory detention under § 1225(b)(2)(A). *See id*. at 19:3-20:6. This argument is unavailing for several reasons.

First, as *Martinez* concluded, this argument would render the phrase "seeking admission" in § 1225(b)(2)(A) mere surplusage. *See* 2025 WL 2084238, at *4 (describing respondents as treating the phrase "seeking admission" as mere surplusage of the "applicant" requirement in § 1225(b)(2)(A)). As discussed, mandatory detention under § 1225(b)(2)(A) applies to a noncitizen who meets three criteria: (1) one who is an "applicant for admission" (a "term of art" in the INA that includes noncitizens who "arrive[] in the United States," as well as those already "present in the United States who ha[ve] not been admitted," U.S.C. § 1225(a)(1)); (2) who is actively "seeking admission" to the country, and (3) whom an examining immigration officer determines "is not clearly and beyond a doubt entitled to be admitted." *Martinez*, 2025 WL 2084238, at *2 (quoting § 1225(b)(2)(A)). If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all "applicant[s] for admission," there would be no need to include the phrase "seeking admission" in the statute. That is, rather than stating that mandatory detention is required for any "applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted," § 1225(b)(2)(A) (emphasis added), the statute would instead provide for mandatory detention for any "applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted." By reading a phrase out of the statute, Respondents' interpretation of § 1225 clearly "violates the rule against surplusage." *Martinez*, 2025 WL 2084238, at *6; *see United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."); *TRW Inc. v.*

Andrews, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

Martinez further stated that Respondents' reading of § 1225(b)(2)(A) "negates the plain meaning of the text." 2025 WL 2084238, at *6 (citing *Polansky*, 599 U.S. at 432). The court explained that the active construction of "the phrase 'seeking admission,'" though undefined in § 1225(b)(2)(A), "necessarily implies some sort of present-tense action." *Id.* The INA defines "admitted" and "admission" 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). While respondents are correct that Mr. Lopez Benitez was never "admitted" to the United States in that he never lawfully entered it (and is therefore treated as an "applicant for admission" under various provisions of the statute), it does not follow that he continues to be actively "seeking" such lawful entry at this time. He has already "entered" the country (albeit unlawfully). Respondents' interpretation of § 1225(b)(2)(A) simply ignores the statute's present-tense active language. *See Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process.'") (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020)).[6] And by treating the terms "applicant for admission" and "alien seeking admission" as synonymous, Respondents' interpretation violates the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings. *See Yale New Haven Hosp. v. Becerra*, 56 F.4th 9, 21 (2d Cir. 2022) (describing the "meaningful-variation canon" as "the principle that

[6] To the extent that Respondents might point to Mr. Lopez Benitez's asylum application to argue that he continues to "seek" something, what he seeks is not "admission" or "lawful entry" to the United States, but to obtain a lawful means to *remain* here. *See Remain*, Merriam-Webster, https://www.merriam-webster.com/dictionary/remain ("[T]o stay in the same place or with the same person or group") (last visited August 8, 2025).

where a statutory scheme has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea") (citing *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022)).

The implementing regulations—which were "promulgated mere months after passage of the statute" and have remained consistent over time—further underscore the active nature of the term "seeking admission" in § 1225(b). *Martinez*, 2025 WL 2084238, at *6 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024)[7]). Pursuant to those regulations, the term "arriving alien," *see id.* (citing 8 C.F.R. § 235.3(c)(1)), is treated as "roughly interchangeable with an 'applicant . . . seeking admission,'" and is defined as "an applicant for admission *coming or attempting to come into* the United States," *id.* (citing 8 C.F.R. § 1.2) (emphasis added). "In other words, an 'arriving alien' is an 'applicant' who is also doing something: 'coming or attempting to come into the United States.'" *Id.*[8] "This mirrors the text of section 1225(b)(2)(A)," under which detention is mandatory for an "applicant" who is "doing something: 'seeking admission.'" *Id.*

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

[7] *Loper Bright* explained that an agency's implementing regulations, while not binding, can still "provide a useful reference point for understanding a statutory scheme, particularly where those regulations were 'issued roughly contemporaneously with enactment of the statute and [have] remained consistent over time.'" *Martinez v. Hyde*, 25 Civ. 11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024)).

[8] Notably, after CBP arrested him in 2023, Mr. Lopez Benitez could have been designated by CBP as an "arriving alien" on his Notice to Appear but he was not—instead, like Ms. Diaz Martinez, CBP designated him as "present" in the country. *See* Oh Decl. Ex. A, ECF No. 9-1.

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.

Respondents' interpretation fails for several additional reasons. For instance, the *Martinez* court explained that "section 1225(b)(2) cannot be read to mandate detention of non-citizens already present within the United States . . . as that would nullify a recent amendment to the immigration statutes." *Id.* at *7 (citing *Gomes*, 2025 WL 1869299, at *5-8). As noted, an amendment codified at § 1226(c), "added only months ago . . . mandates detention for non-citizens who meet certain criminal *and* inadmissibility criteria." *Id.* (citing *Gomes*, 2025 WL 1869299, at *6) (emphasis added). But if, as Respondents suggest, "a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment," which requires detention for noncitizens who are *both* inadmissible and meet certain criminal criteria, "would have no effect." *Id.* (citing *Gomes*, 2025 WL 1869299, at *7); *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation," such as this one, "would render superfluous another part of the same statutory scheme."); *Gundy v. United States*, 588 U.S. 128, 141 (2019) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.")). Such a result, *Martinez* opined, is "presumptively dubious" and further supports the conclusion that sections 1225 and 1226 "apply to different classes" of noncitizens. 2025 WL 2084238, at *7 (citing *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (Att'y Gen. 2019) ("[S]ection [1225] (under which detention is mandatory) and section [1226]

(under which detention is permissive) can be reconciled only if they apply to different classes of aliens.")).

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,[9] 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.

By contrast, decades of practice reflect "DHS's longstanding interpretation" of § 1226(a) as "appl[ying] to those who have crossed the border between ports of entry and are shortly thereafter apprehended." *Martinez*, 2025 WL 2084238, at *7 (citing Transcript of Oral Argument 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)). As the *Martinez* court concluded, and "[t]he line historically drawn between" sections 1225 and 1226, "making sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking

[9] "It has been estimated" that the application of § 1225 that Respondents propose "would require the detention of millions of immigrants currently residing in the United States." *Martinez*, 2025 WL 2084238, at *5 (citing Maria Sacchetti & Carol D. Leonning, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, Washington Post (July 14, 2025), https://washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/ [https://perma.cc./LN4F-FJDG] ("[T]he policy will apply to millions of immigrants who crossed the U.S.-Mexico border over the past few decades").

admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'" *Id.* at *8 (citing *Jennings*, 583 U.S. at 288-89); *see Rodriguez v. Bostock*, No. 25 Civ. 524, 2025 WL 1193850, at *12-16 (W.D. Wash. Apr. 24, 2025) (finding that a noncitizen apprehended within the United States and charged with inadmissibility was necessarily detained under section 1226, rather than 1225); *Gomes*, 2025 WL 1869299, at *5-8 (same). The *Martinez* court noted that this conclusion was further supported by "three recent, albeit unpublished, decisions by the Board of Immigration Appeals ("BIA"), all clearly holding that the detention of a non-citizen arrested within the United States is governed under section 1226, rather than section 1225." 2025 WL 2084238, at *8 (citing *Rodriguez*, 2025 WL 1193850, at *5). Indeed, in one case, the BIA "stated that it was 'unaware of any precedent' that would support Respondents' position here." *Id.* This Court has similarly been unable to identify any authority to support Respondents' expansive interpretation of § 1225(b).

Finally, Respondents argue that, even assuming all of the above is correct, Mr. Lopez Benitez may have properly been understood as someone who was actively "seeking admission" when he was *first* arrested by CBP in 2023. *See* Conf. Tr. 19:3-8. But as noted above, that assertion is belied by Respondents' own exhibits and admissions regarding his 2023 arrest and release, indicating both occurred under § 1226. In any event, Mr. Lopez Benitez's initial arrest is not at issue in this case. It is his 2025 arrest, which occurred at a time when he was (and had long been) residing in the United States, and thus subject to § 1226(a). Respondents conceded as much at oral argument by acknowledging that their position in this case does not hinge on Mr. Lopez Benitez's first arrest in 2023, but on the fact that he was never lawfully admitted into the United States and that his presence here remained unauthorized as of his 2025 arrest. *See, e.g.*, *id.* at 23:22-24:16. For the reasons explained above, the Court rejects the notion that § 1225(b) applies to all such individuals.

* * *

In sum, the Court declines to credit Respondents' position that Mr. Lopez Benitez is "seeking admission" to the United States and is thus subject to mandatory detention under § 1225(b). Respondents' concessions in their exhibits regarding Mr. Lopez Benitez's arrest, release, and subsequent re-arrest are by themselves, a sufficient basis to conclude that he was detained pursuant to § 1226. But even without those concessions, a proper reading of § 1225(b) compels the conclusion that it does not apply to Mr. Lopez Benitez. Again, the Court need not reach the outer limits of the scope of the phrase "seeking admission" in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone "already in the country," *Jennings*, 583 U.S. at 289, Mr. Lopez Benitez may be subject to detention only as a matter of discretion under § 1226(a).

II. Due Process

Having concluded that Mr. Lopez Benitez's detention is discretionary and not mandatory, the Court next turns to whether it violates due process. The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). It is well established that such protection extends to noncitizens, including those who are in removal proceedings. *See id.* at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Reno v. Flores*, 507 U.S. 292, 306 (1993). "Even noncitizens have a liberty interest in continued freedom from civil immigration confinement." *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *2 (S.D.N.Y. June 18, 2025) (citing *Lopez v. Sessions*, No. 18 Civ. 4189, 2018 WL 2932726, at *12

(S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.")).

In the Second Circuit, the "*Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test applies when determining the adequacy of process in the context of civil immigration confinement." *Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528, 2025 WL 1927931, at *2 (S.D.N.Y. July 13, 2025) (citing *Valdez*, 2025 WL 1707737, at *3). "The determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail." *Id.* (citing *Mathews*, 424 U.S. at 335). As explained below, applying the *Mathews v. Eldridge* balancing test here, the Court concludes that Mr. Lopez Benitez's detention violates due process.

A. The Private Interest

First, Mr. Lopez Benitez invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). A person's liberty cannot be abridged without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690. Here, Mr. Lopez Benitez "does not contend that greater judicial-type procedures must be imposed upon the administrative actions of ICE than those already required by law; [rather, he] argues that the agency must comply with the procedures already in place, and its failure to do so amounts to a complete and arbitrary denial of due process." *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (citing *Velasco Lopez*, 978 F.3d at 851).

Section 1226(a) provides that, "pending a decision on whether [an] alien is to be removed from the United States," the Attorney General "may . . . detain" the noncitizen or "may release" the noncitizen on "bond" or "conditional parole." 8 U.S.C. § 1226(a). This language undoubtedly vests broad authority to arrest and detain noncitizens, "but due process must account for the wide discretion that Section 1226(a) vests in the Government to arrest *any* person in the United States suspected of being removable." *Reyes v. King*, No. 19 Civ. 8674, 2021 WL 3727614, at *6 (S.D.N.Y. Aug. 20, 2021) (emphasis in original). And before the Government may exercise such discretion to detain a person, "§ 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020), *appeal withdrawn sub nom. Velesaca v. Wolf*, No. 20 Civ. 2153, 2020 WL 7973940 (2d Cir. Oct. 13, 2020). That conclusion follows from the text of § 1226(a), which provides that the Attorney General "may continue to detain" an arrested noncitizen, as "[t]he Supreme Court has interpreted similar 'may' language in other provisions of the INA to require the Attorney General to make 'some level of individualized determination.'" *Id.* at 235 (quoting *I.N.S. v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991) (interpreting 8 U.S.C. § 1252)).

Moreover, the regulations implementing § 1226(a) delegate to DHS officers the authority to grant bond or conditional parole, and pursuant to such authority, a DHS officer must make an individualized determination as to the appropriateness of detention based on two factors—whether the noncitizen is a "danger to property or persons" and is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see* 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."). Respondents concede

that under the applicable regulations, "[w]hen an alien is apprehended, a DHS officer makes an initial custody determination." Resp'ts' Opp'n at 13 (citing 8 C.F.R. § 236.1(c)(8)). If DHS ultimately decides to detain a noncitizen after conducting such an assessment, that noncitizen may appeal said decision before an immigration judge, who must consider the same factors. *See* 8 C.F.R. §§ 1003.19(d), (e) (providing for review of custody and bond determinations by an immigration judge); *Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (B.I.A. 2018) ("An alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2012), must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.") (citing *Matter of Fatahi*, 26 I. & N. Dec. 791, 793-94 (B.I.A. 2016); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1112-13 (B.I.A. 1999), *modified on other grounds*, *Matter of Garcia Arreola*, 25 I. & N. Dec. 267 (B.I.A. 2010)).

Reading § 1226(a) as requiring an initial detention decision by DHS is the only way to make sense of the broader statutory and regulatory scheme, which provides for an opportunity to appeal a detention decision to an immigration judge who then conducts their own assessment of the noncitizens' flight risk and dangerousness, among other factors. *See* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge . . . may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service."). If all noncitizens subject to § 1226(a) could simply be detained on a categorical (or arbitrary) basis without any kind of individualized assessment, it would make little sense to permit such individuals an opportunity to challenge their detention by an appeal before an immigration judge on the basis of specific factors such as dangerousness or flight risk.

This conclusion is further confirmed by looking to § 1226(c), which "carves out certain disfavored [criminal] non-citizens whom the Government is required to detain." *Martinez*, 2025

WL 2084238, at *7 (citing *Gomes*, 2025 WL 1869299, at *6); *see* 8 U.S.C. § 1226(c). There would be little need for such a carveout requiring detention of certain criminal noncitizens if § 1226(a) were intended to authorize the categorical detention of any noncitizen unlawfully present inside the country. Rather, it is clear that § 1226(a) requires some exercise of discretion when determining whether or not to detain a noncitizen in the first instance.

Turning to the matter at hand, Mr. Lopez Benitez asserts that no individualized determination as to factors such as his flight risk or dangerousness occurred before ICE arrested him on July 16, 2025. *See* Pet'r's Reply in Supp. of Pet. for Writ of Habeas Corpus ("Pet'r's Reply") at 3, ECF No. 10. Respondents acknowledge that there is no evidence suggesting that any kind of individualized determination was ever made as to Mr. Lopez Benitez. *See* Conf. Tr. 15:13-16:1. In fact, nothing in the record reflects—and counsel for Respondents was unaware of—(1) who made the decision to detain him, (2) when that decision occurred, (3) on what basis the decision to detain him was made, (4) whether there was any material change in circumstances with respect to Mr. Lopez Benitez that triggered his detention, or (5) whether there was any sort of new policy in place that triggered his detention. *See id.* at 16:22-17:13; 18:14-24. As noted above, Petitioner asserts the existence of a new ICE campaign to detain more noncitizens under § 1225, *see* Petition ¶¶ 14, 23, and there is some media reporting indicating the existence of a new ICE policy to that effect, *see Martinez*, 2025 WL 2084238 at *4 n.10. But at the hearing in this case, counsel for Respondents could neither confirm nor deny the existence of the alleged policy, or its application to Mr. Lopez Benitez. *See* Conf. Tr. 18:14-24. The utter lack of transparency here is problematic, to say the least, as it makes it impossible to determine why Mr. Lopez Benitez was detained in the first place. *Cf. Biden*, 597 U.S. at 806-07 (holding that for an exercise of discretion to be valid, it must be "reasonably explained").

At the hearing, counsel for Respondents argued that § 1226(a) does not require that a noncitizen be given notice and an opportunity to contest detention at "some sort of pre-deprivation hearing in front of a DHS officer." Conf. Tr. 17:14-18:1. The Court does not hold anything to the contrary. To be clear, the Court does not hold that some sort of adversarial hearing-like process is required before DHS may exercise its discretion to detain a noncitizen under § 1226(a). Nor does the Court hold that DHS must engage in a painstaking review of every facet of a noncitizen's history and characteristics before doing so. *Cf. Reno*, 507 U.S. at 313 (finding that the requirement of an "individualized determination" in at least some contexts "does not mean that [DHS] must forswear use of reasonable presumptions and generic rules"). DHS undoubtedly has wide discretion under § 1226(a). It may shift its enforcement priorities and adopt internal policies meant to effectuate those priorities. And the adoption of new policies may, of course, have significant consequences, resulting in different kinds of detention determinations than were made previously, including on a broad scale.

At a minimum, however, § 1226(a) requires a valid exercise of DHS's discretion. And here, there is nothing to suggest that DHS exercised any discretion *at all* in detaining Mr. Lopez Benitez. To be clear, the problem is not that Respondents' proffered basis in its decision to detain Mr. Lopez Benitez is substantively inadequate in some respect. DHS has wide latitude with respect to its discretion in this regard that is not subject to second-guessing by this Court. The problem is that Respondents have not offered any explanation for Mr. Lopez Benitez's detention other than their initial assertion that it is mandatory—that is, that it is *non-discretionary*. Such an assertion is precisely the *opposite* of an exercise of discretion, which entails some sort of judgment. *See Discretion*, Merriam-Webster, https://www.merriam-webster.com/dictionary/discretion ("[I]ndiv idual choice or judgment . . . the quality of having or showing discernment or good judgment . . . the result of separating or distinguishing") (last visited August 8, 2025). There is

simply nothing in the record to suggest that DHS engaged in any kind of exercise of discretion whatsoever with respect to Mr. Lopez Benitez, in contravention of the basic procedural requirements of § 1226(a) and the regulations implementing it.

In sum, the facts clearly demonstrate that Mr. Lopez Benitez was "entitled to more process than he received" pursuant to § 1226(a) and its implementing regulations. *Valdez*, 2025 WL 1707737, at *4 (citing *Mathews*, 424 U.S. at 335). Thus, the Court concludes that a violation of Mr. Lopez Benitez's "liberty interest is clearly established" here. *Id.* at *3 (citing *Lopez*, 2018 WL 2932726, at *11; *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1168 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)).

B. The Risk of Erroneous Deprivation

As to the second prong of the *Mathews v. Eldridge* balancing test, the Court concludes that the risk of erroneous deprivation is particularly high here. *See id.* (citing *Lopez*, 2018 WL 2932726, at *11, for the proposition that there was "a risk of erroneous deprivation in the context of re-detention absent a change in circumstances, procedure, or evidentiary findings"). The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Respondents concede that there is no evidence in the record suggesting that Mr. Lopez Benitez is a flight risk or a danger to his community. *See* Conf. Tr. 17:6-13. Indeed, when DHS first released Mr. Lopez Benitez in 2023 pursuant to § 1226(a), it could not have done so validly unless it did not consider him to be a flight risk or danger to the community at that time, and Respondents do not contend that his 2023 release was erroneous. *See id*. at 14:17-15:10. Moreover, Respondents have failed to "articulate[] any change in circumstances between the time of [Mr. Lopez Benitez's] initial release [in 2023] and his re-detention [in 2025] that now makes him a flight risk" or a danger to the community. *Valdez*, 2025 WL 1707737, at *3. Rather, the

evidence in this case unequivocally suggests that Mr. Lopez Benitez is neither a flight risk nor a danger to the community, *see* Petition ¶¶ 10-13, and that his most recent detention occurred without the individualized assessment he was due under § 1226(a), *see* Conf. Tr. 15:17-16:1. Therefore, Mr. Lopez Benitez's "re-detention without" any individualized assessment such as "any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest." *Valdez*, 2025 WL 1707737, at *4 (citing *Mathews*, 424 U.S. at 335; *Lopez*, 2018 WL 2932726, at *11).

C. The Government's Interest

Finally, "the Attorney General's discretion to detain individuals under 8 [] U.S.C. [§] 1226(a) is valid where it advances a legitimate governmental purpose," such as "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Id.* (quoting *Velasco Lopez*, 978 F.3d at 854; *Zadvydas*, 533 U.S. at 690). But here, as Respondents acknowledge, there is nothing in the record demonstrating that Mr. Lopez Benitez is a flight risk or a danger to the community. *See* Conf. Tr. 17:6-13. On the contrary, the record demonstrates that Mr. Lopez Benitez regularly attended his immigration court appearances, filed an asylum application, obtained employment in the construction industry, regularly attended church, and has significant family ties in New York. *See* Petition ¶¶ 10-13. A family application was also filed on his behalf by one of his U.S.-citizen sisters, and he has no criminal history. *See id.* ¶¶ 11, 12. While there is substantial evidence in the record indicating that Mr. Lopez Benitez is not a flight risk or a danger to the community, there is no evidence in the record pointing in the opposite direction. Respondents have therefore clearly "failed to show a significant interest in [Mr. Lopez Benitez's] continued detention." *Valdez*, 2025 WL 1707737, at *4.

Thus, "[g]iven the significant liberty interest at stake, the high risk of erroneous deprivation, and Respondents' failure to show a significant interest in [his] detention," the Court

concludes that "Respondents' ongoing detention of [Mr. Lopez Benitez] with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond, violates his due process rights." *Id.* (citing *Lopez*, 2018 WL 2932726, at *15, for the proposition that there was "a due process violation when the petitioner was re-detained by immigration authorities with 'no deliberative process prior to, or contemporaneous with,' the detention").

III. Administrative Exhaustion

The final issue to consider is whether Mr. Lopez Benitez must exhaust administrative remedies—in this case, by appealing his detention to an immigration judge, before this Court can award relief. Courts generally require "administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus," as a "prudential matter." *Quintanilla v. Decker*, No. 21 Civ. 417, 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18 Civ. 2640, 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)). However, such exhaustion is not a "statutory requirement." *Id.* Indeed, courts in this Circuit may excuse exhaustion where certain exceptions apply, including when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), *as amended* (July 24, 2003). Here, the Court concludes that Mr. Lopez Benitez is excused from administrative exhaustion because he has no genuine opportunity for adequate relief and has raised a substantial constitutional question. *See id.*

Mr. Lopez Benitez asserts, and this Court agrees, that he was denied due process when ICE detained him on July 16, 2025, without first conducting an individualized assessment as to his dangerousness or flight risk, or any kind of process at all sufficient to qualify as a valid exercise of discretion. *See* Pet'r's Reply at 3. Respondents maintain that, to cure this violation, Mr. Lopez

Benitez may seek relief from this violation in a bond hearing in immigration court. *See* Resp'ts' Opp'n at 12-15. To be sure, a noncitizen detained under § 1226(a) is undoubtedly entitled to a bond hearing before an immigration judge. However, the implementing regulations provide that, "[s]uch hearings . . . are provided for the purpose of custody *re*-determination—a hearing held by an immigration judge after ICE makes its initial decision to detain." *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (citing 8 C.F.R. § 236.1(d)(1)) (emphasis in original); *see* 8 C.F.R. § 236.1(d) ("Application to immigration judge. After an initial custody determination . . . the respondent may . . . request amelioration of the conditions under which he or she may be released."). And in this case, the issue is that there is no "initial decision" for Mr. Lopez Benitez to "appeal." Accordingly, "[s]uch a hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Chipantiza-Sisalema*, 2025 WL 1927931, at *3; *cf. Velesaca*, 458 F. Supp. 3d at 241 ("[T]he fact that Plaintiffs may seek review by an IJ of their initial bond determination does nothing to mitigate the harm to Plaintiffs in the time they are in detention awaiting review.").

Indeed, given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment *before* detaining him—any post-deprivation review by an immigration judge would be inadequate. This is particularly so given that "[d]etention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded." *Velasco Lopez*, 978 F.3d at 852. Accordingly, "Respondents' suggestion that [Mr. Lopez Benitez] has an adequate remedy available to [him] . . . rings hollow," and the first exhaustion exception applies here. *Chipantiza-Sisalema*, 2025 WL 1927931, at *3.

Two courts in this District recently imposed a prudential exhaustion requirement on petitioners who were detained by ICE under circumstances somewhat similar to that of Mr. Lopez Benitez. *See Castillo Lachapel v. Joyce*, No. 25 Civ. 4693, 2025 WL 1685576, at *2-4 (S.D.N.Y. June 16, 2025); *Guzman v. Joyce*, No. 25 Civ. 4777, 2025 WL 1696891, at *1-2 (S.D.N.Y. June 17, 2025). However, both cases can be distinguished on the grounds that neither considered the arguments the Court does here. Namely, neither considered whether an exercise of discretion to detain a noncitizen under § 1226(a) requires a pre-deprivation individualized assessment, and if so, whether the failure to provide such an assessment violates due process. *See Castillo Lachapel*, 2025 WL 1685576, at *2-4; *Guzman*, 2025 WL 1696891, at *2-3.

With respect to the fourth exception, there is no doubt that Mr. Lopez Benitez's Petition raises a substantial constitutional question that cannot properly be adjudicated administratively. *See Chipantiza-Sisalema*, 2025 WL 1927931, at *3 ("[C]ourts may excuse administrative exhaustion where the petitioner has raised a substantial constitutional question . . . as Chipantiza-Sisalema has here.") (citing *Beharry*, 329 F.3d at 62; *Valdez*, 2025 WL 1707737, at *1 n.1). Here, Mr. Lopez Benitez does not argue that he merely needs an opportunity to contest his detention, but that his detention under § 1226(a) without first receiving an individualized assessment is a violation of his due process rights. *See* Pet'r's Reply at 3-4. Neither an immigration judge nor the Board of Immigration Appeals are positioned to properly adjudicate such a claim—any relief that either could award would necessarily be after-the-fact. *See Valdez*, 2025 WL 1707737, at *1 n.1 ("Here[,] Petitioner has raised a constitutional question that could not be properly addressed by the Immigration Judge or Board of Immigration Appeals.") (citing *Quintanilla*, 2021 WL 707062, at *2). Therefore, the Court concludes that Mr. Lopez Benitez is excused from exhausting administrative remedies.

CONCLUSION

To summarize: Mr. Lopez Benitez has lived in this country for more than two years, works in construction, and has no criminal record. He is an applicant for asylum and voluntarily appeared for a regularly scheduled proceeding in immigration court. At the conclusion of that proceeding, masked federal agents suddenly appeared, forcibly separated him from his U.S.-citizen siblings, detained him in a room without a bed or access to a shower for three days, and then shipped him halfway across the country. They offered no explanation as to why they did this until, more than a week later, they filed their Opposition to Mr. Lopez Benitez's Petition.

First, Respondents say that Mr. Lopez Benitez's detention was mandatory under 8 U.S.C. § 1225(b), even though the Government itself has for years consistently treated him as subject to detention only as a matter of *discretion* under a different statute, 8 U.S.C. § 1226(a). Respondents so assert even though mandatory detention under § 1225(b) is reserved for undocumented immigrants "seeking admission" to the United States, rather than for those "already in the country," *Jennings*, 583 U.S. at 288-89—and Mr. Lopez Benitez has resided here for more than two years. Given Respondents' concessions, the plain meaning of sections 1225 and 1226, and case law interpreting those provisions, the Court cannot credit Respondents' position that Mr. Lopez Benitez's detention was mandatory.

No matter, Respondents say—even if Mr. Lopez Benitez's detention was not compulsory but a matter of discretion under § 1226(a), they *chose* to exercise such discretion. But they do not say that they considered Mr. Lopez Benitez's individual circumstances. They do not even say who, when, why, or how the decision to detain him was made. In fact, they offer no explanation whatsoever of their purported "exercise of discretion" to detain Mr. Lopez Benitez other than their initial assertion that his detention was *non-discretionary*. Essentially, Respondents say they chose

to detain him because they had no choice to do otherwise. That does not suggest that any "discretion" was actually exercised.

Not to worry, Respondents say, because even if Mr. Lopez Benitez has a valid claim for his release, he can appeal to an immigration judge. He just has to stay incarcerated for weeks in a far-flung location while the appeal plays out, during which the immigration judge will consider various factors such as whether he is a risk of flight or a danger to the community—factors that Respondents cannot say one way or the other if DHS even considered in making its initial detention determination. That option, the Court concludes, is inadequate to address the denial of due process that Mr. Lopez Benitez was entitled to in the first instance.

Mr. Lopez Benitez appears to be far from alone. His counsel assert that his treatment is part of a "nationwide campaign," as set forth in an ICE internal memo that has been described in various media reports, which suggests that millions could be swept up in the same way. For their part, Respondents cannot confirm or deny the existence of such a new policy. Yet, they appear to maintain that they must categorically detain all undocumented immigrants who they believe have entered the United States unlawfully—no matter how long they have been residing in the country since. In practice, Respondents seem to be detaining some arbitrary portion of such individuals as they leave their regularly-scheduled immigration court proceedings. But treating attendance in immigration court as a game of detention roulette is not consistent with the constitutional guarantee of due process. And the "suggestion that government agents may sweep up any person they wish, for [no] reason [whatsoever] . . . so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (citing *Velasco Lopez*, 978 F.3d at 851-52; *Valdez*, 2025 WL 1707737, at *3-4).

For the reasons stated above, Mr. Lopez Benitez's Petition, ECF No. 1, is **GRANTED**. As stated orally during the hearing, the Court **ORDERED** Respondents to transport Mr. Lopez Benitez (A Number 240-425-738) back to the Southern District of New York by Thursday, July 31, 2025, and immediately upon effectuating his transfer, to release Mr. Lopez Benitez from custody; and further, to certify compliance with the Court's order by a filing on the docket. On August 1, 2025, Respondents confirmed that Mr. Lopez Benitez was released from custody on July 31, 2025, in accordance with the Court's order. *See* August 1, 2025 Letter. The Clerk of Court is respectfully directed to terminate the case.

SO ORDERED.

Dated: August 8, 2025

New York, New York

DALE E. HO
United States District Judge

Exhibit F

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JORGE ESTUARDO MARIN, Petitioner, v. TONYA ANDREWS,[1] Respondent.	Case No. 1:25-cv-01422-SAB-HC ORDER GRANTING PRELIMINARY INJUNCTION[2] (ECF No. 2)

Petitioner, represented by counsel, is an immigration detainee proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The parties have consented to the jurisdiction of a United States magistrate judge. (ECF Nos. 6, 9, 10.)

I.

BACKGROUND

Petitioner is a 35-year-old Guatemalan citizen who alleges he has resided continuously in the United States since 1989. (ECF No. 2-1 at 3.[3]) On July 6, 2001, Petitioner filed an application for lawful permanent residency with Immigration and Naturalization Services ("INS").[4] On

[1] Respondents contend that the "Court should dismiss all respondents other than the Warden of the Golden State Annex, Tonya Andrews." (ECF No. 11 at 1 n.1.) As noted by the Court during the November 13, 2025 hearing, given that the Golden State Annex is a privately owned and operated facility, it appears that at least some of the named government Respondents should not be dismissed. However, in the interest of expedience, the Court will defer determination of that issue to the merits phase.

[2] Upon agreement of the parties, (ECF No. 11 at 2; ECF No. 12 at 2), the Court converts Petitioner's motion for temporary restraining order into a motion for preliminary injunction. Respondents had notice, opportunity to respond, and the ability to be heard. There is no benefit in additional briefing, and the standard is the same. As such, given the nature of the relief granted by this order and so as to appropriately permit Respondents the ability to appeal should they choose to do so, the Court converts this to a motion for preliminary injunction. See Bennett v. Medtronic, Inc., 285 F.3d 801, 804 (9th Cir. 2002) ("Ordinarily, temporary restraining orders, in contrast to preliminary injunctions, are not appealable . . . .").

[3] Page numbers refer to ECF page numbers stamped at the top of the page.

[4] "In 2002, Congress passed the Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135, which abolished INS and transferred most immigration functions to the newly formed DHS [Department of Homeland Security], which

November 1, 2002, INS denied Petitioner's application. On August 12, 2012, Petitioner was arrested, and that same day, ICE took Petitioner into custody after referral from the Alameda County Jail. (ECF No. 11-1 at 2.)

On August 16, 2012, Petitioner was served with a Notice to Appear and placed in removal proceedings. Petitioner was released from custody on a $2,500 bond posted by his mother. (ECF No. 1 at 7; ECF No. 1-1 at 26; ECF No. 2-1 at 3–4; ECF No. 11-1 at 2.) Petitioner failed to appear for his scheduled hearing in immigration court after failing to receive notice of the hearing, and on August 22, 2013, an immigration judge ("IJ") ordered Petitioner removed in absentia. (ECF No. 2-1 at 4; ECF No. 11-1 at 2.)

On July 9, 2025, ICE officers apprehended Petitioner.[5] (ECF No. 11-1 at 2.) Petitioner only learned of his removal order after his detention on July 9. (ECF No. 1-1 at 19.) That same day, Petitioner's fiancée contacted counsel for legal representation for Petitioner, who was then transferred to the Golden State Annex in McFarland, California. (ECF No. 1 at 7.) Counsel attempted to contact Petitioner on July 9, 2025, but was unsuccessful, and could only make a video appointment, the earliest of which was July 15, 2025. (Id. at 8.)

On July 10, 2025, counsel emailed the Department of Homeland Security ("DHS"), notifying it of an impending motion to reopen and rescind the in absentia order of removal for lack of notice under section 240(b)(5)(C) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a(b)(5)(C), and 8 C.F.R. § 1003.23(b)(4)(ii). DHS was alerted of the automatic stay that applies when such motions are filed. (ECF No. 1 at 8.) On July 11, 2025, Petitioner filed a motion to reopen and rescind his in absentia order of removal. (ECF No. 1 at 8; ECF No. 11-1 at 2.) Petitioner's counsel informed DHS that the motion had been filed and provided them with a copy of the cover page of the filed motion, which had been duly served. (ECF No. 1 at 8.)

On July 11, 2025, Petitioner spoke to his counsel and indicated that he was being removed. Petitioner was advised to inform the immigration officials that a motion to reopen had

houses Immigration and Customs Enforcement ("ICE")." Flores v. Rosen, 984 F.3d 720, 728 (9th Cir. 2020) (citing 6 U.S.C. §§ 111, 251, 291).

[5] At the time of detention on July 9, 2025, Petitioner had no pending applications or motions before the immigration court or United States Citizenship and Immigration Services ("USCIS") and was subject to the August 22, 2013 final order of removal. (ECF No. 11-1 at 2.)

been filed and an automatic stay was in place. Nonetheless, Petitioner was transferred from the Golden State Annex to an unknown location for his removal. Petitioner was incommunicado from July 11, 2025, and his whereabouts were unknown by his counsel and Petitioner's family until Petitioner called his fiancée on July 14, 2025 to inform her that he was in Guatemala.[6] (ECF No. 1 at 8.)

On July 23, 2025, the immigration court granted Petitioner's motion to reopen and rescinded his in absentia removal order. (ECF No. 14-1 at 2.) After a petition for habeas corpus was filed before a different jurisdiction, Petitioner was returned to the United States on August 26, 2025. The previous petition for habeas corpus was dismissed as part of the agreement to secure Petitioner's return to the United States. (ECF No. 1 at 8; ECF No. 11-1 at 2.) Upon Petitioner's return, he was re-detained purportedly pursuant to 8 U.S.C. § 1225(b) and detained at the Golden State Annex. (ECF No. 1 at 9; ECF No. 11-1 at 2–3.) On September 26, 2025, Petitioner requested a bond hearing before an IJ, and on October 17, 2025, an IJ denied Petitioner's request for a bond hearing, finding that the immigration court lacked jurisdiction. (ECF No. 1 at 9; ECF No. 11-1 at 3.)

On October 24, 2025, Petitioner filed a petition for writ of habeas corpus and a motion for temporary restraining order ("TRO"). (ECF Nos. 1, 2.) In the petition, Petitioner raises the following claims for relief: (1) the erroneous application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the Immigration and Nationality Act; (2) Petitioner's re-detention after being released on bond in 2012 without a pre-deprivation hearing violates his Fifth Amendment due process rights; and (3) detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others also violates his right to due process. (ECF No. 1 at 14–16.) The motion for TRO raises only the issue of the erroneous application of 8 U.S.C. § 1225(b)(2) to Petitioner. (ECF No. 2.) Respondent filed an opposition, Petitioner filed a reply, and the parties filed supplemental briefs. (ECF Nos. 11, 12, 14, 16.) On November 13, 2025, the Court held a hearing on the motion.

[6] Respondents confirm that Petitioner was removed from the United States to Guatemala on July 14, 2025. (ECF No. 11-1 at 2.)

II.

DISCUSSION

In the motion for preliminary injunction, Petitioner asserts that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before an immigration judge is unlawful and that 8 U.S.C. § 1226(a) governs his detention. Petitioner seeks either: (1) immediate release from custody and to enjoin Respondents from re-detaining Petitioner unless he is afforded a pre-deprivation hearing; or (2) an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 2 (2008) (citations omitted).

> Under the "sliding scale" variant of the *Winter* standard, "if a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two *Winter* factors are satisfied."

All. for the Wild Rockies v. Pena, 865 F.3d 1211, 1217 (9th Cir. 2017) (quoting Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281, 1291 (9th Cir. 2013)). "A preliminary injunction is an extraordinary remedy never awarded as of right." Winter, 555 U.S. at 24 (citation omitted). An injunction may only be awarded upon a clear showing that the Petitioner is entitled to relief. Winter, 555 U.S. at 22 (citation omitted).

A. Whether Petitioner Seeks Appropriate Preliminary Relief

At the outset, the Court addresses Respondent's argument that Petitioner improperly seeks "an ultimate determination on the merits" when the "purpose of a preliminary injunction is to preserve the status quo between the parties pending a resolution of a case on the merits," relying on Senate of Cal. v. Mosbacher, 968 F.2d 974, 978 (9th Cir. 1992), and Keo v. Warden of Mesa Verde ICE Processing Center, No. 1:24-cv-00919-HBK, 2024 WL 3970514 (E.D. Cal. Aug. 28, 2024). (ECF No. 11 at 4.) Respondent contends that "Petitioner does not seek to maintain the status quo against irreparable injury pending a determination on the merits. Rather,

Petitioner requests the same relief he seeks on the merits, i.e., release from detention." (ECF No. 11 at 4.)

"The 'purpose of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits.'" Boardman v. Pac. Seafood Grp., 822 F.3d 1011, 1024 (9th Cir. 2016) (quoting Sierra Forest Legacy v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009)). Respondent impliedly argues that the status quo ante litem is Petitioner's detention. However, the "status quo ante litem refers not simply to any situation before the filing of a lawsuit, but instead to 'the last uncontested status which preceded the pending controversy[.]'" GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting Tanner Motor Livery, Ltd. v. Avis, Inc., 316 F.2d 804, 809 (9th Cir. 1963)).

"[S]everal district courts have recently concluded that releasing a re-detained noncitizen who had been on supervised release preserves rather than alters the status quo." Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *10 (W.D. Wash. Aug. 21, 2025) (collecting cases). Accordingly, the Court finds that Petitioner's request for release or an individualized bond hearing is not inappropriate. See, e.g., Castellon v. Kaiser, No. 1:25-cv-00968-JLT-EPG, 2025 WL 2373425, at *7 n.7 (E.D. Cal. Aug. 14, 2025) (rejecting similar argument and government's reliance on Mosbacher and Keo); Alvarenga Matute v. Wofford, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2817795, at *4 (E.D. Cal. Oct. 3, 2025) (same).

B. Likelihood of Success on the Merits

"Likelihood of success on the merits is a threshold inquiry and is the most important factor." Env't Prot. Info. Ctr. v. Carlson, 968 F.3d 985, 989 (9th Cir. 2020) (citing Edge v. City of Everett, 929 F.3d 657, 663 (9th Cir. 2019)).

1. Statutory Framework

An intricate statutory scheme governs the detention of noncitizens during removal proceedings and after a final removal order is issued. "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." Prieto-Romero v. Clark, 534 F.3d 1053, 1057 (9th Cir. 2008).

"Four statutes grant the Government authority to detain noncitizens who have been placed in removal proceedings: 8 U.S.C. §§ 1225(b) ('Section 1225(b)'), 1226(a) ('Subsection A'), 1226(c) ('Subsection C'), and 1231(a) ('Section 1231(a)')." Avilez v. Garland, 69 F.4th 525, 529 (9th Cir. 2023). "Subsection A is the default detention statute for noncitizens in removal proceedings and applies to noncitizens '[e]xcept as provided in [Subsection C].'"[7] Avilez, 69 F.4th at 529 (alterations in original) (quoting 8 U.S.C. § 1226(a)). "[D]etention under Subsection A is discretionary" and "provides for release on bond or conditional parole." Avilez, 69 F.4th at 529. "When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination," and the noncitizen "will be released if he 'demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.'" Rodriguez Diaz v. Garland, 53 F.4th 1189, 1196 (9th Cir. 2022) (quoting 8 C.F.R. § 236.1(c)(8)).

"[A]n alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" Jennings v. Rodriguez, 583 U.S. 281, 287 (2018) (quoting 8 U.S.C. § 1225(a)(1)). "Applicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law." Jennings, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." Jennings, 583 U.S. at 287. "Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens." Id. As relevant here, § 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Thus, "[a]ll applicants for admission who are not processed for expedited removal [pursuant to § 1225(b)(1)] are placed in regular removal proceedings under § 1225(b)(2)(A). That process generally entails a hearing before an immigration judge pursuant to § 1229a." Innovation Law

[7] Subsection C, which is not at issue here, "provides for the detention of 'criminal aliens' and states that '[t]he Attorney General shall take into custody any alien who' is deportable or inadmissible based on a qualifying, enumerated offense." Avilez, 69 F.4th at 530 (alteration in original) (quoting 8 U.S.C. § 1226(c)).

Lab v. McAleenan, 924 F.3d 503, 507 (9th Cir. 2019). Although § 1225(b)(2) "mandates detention of aliens throughout the completion of applicable proceedings," they "may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" Jennings, 583 U.S. at 302, 288 (quoting 8 U.S.C. § 1182(d)(5)(A)). "Such parole, however, 'shall not be regarded as an admission of the alien,'" and "when the purpose of the parole has been served, 'the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'" Id. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

2. Applicability of 8 U.S.C. § 1225(b)(2)(A)

Petitioner argues that he is likely to succeed on his claim that his ongoing detention under 8 U.S.C. § 1225(b)(2) is unlawful because the "text, context, and legislative and statutory history of the Immigration and Nationality Act," in addition to longstanding agency practice, "all demonstrate that 8 U.S.C. § 1226(a) governs [Petitioner's] detention." (ECF No. 2-1 at 5.) Respondent contends that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), relying on Matter of Yajure Hurtado, 29 I & N Dec. 216, 221 (BIA 2025). (ECF No. 11 at 5–7.)

"We start, of course, with the statutory text. Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) (citations omitted). Section 1225(b)(2)(A) provides:

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

8 U.S.C. § 1225(b)(2)(A). An "applicant for admission" is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

"[F]or section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for

admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" Martinez v. Hyde, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025). First, there is nothing in the record before this Court establishing that an examining immigration officer has made these determinations. Second, "the phrase 'seeking admission' is undefined in the statute but necessarily implies some sort of present-tense action." Id. at *6. Thus, while Petitioner "was never 'admitted' to the United States in that he never lawfully entered it (and is therefore treated as an 'applicant for admission' under various provisions of the statute), it does not follow that he continues to be actively 'seeking' such lawful entry at this time," and there is nothing in the record before this Court establishing Petitioner was actively "seeking admission." Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025).

Additionally, the Court must "bear[] in mind the fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." King v. Burwell, 576 U.S. 473, 492 (2015) (internal quotation mark omitted) (quoting Utility Air Regulatory Group, 573 U.S. 302, 320 (2014)). Courts have found that "section 1225(b)(2) cannot be read to mandate detention of non-citizens already present within the United States, based on certain inadmissibility grounds, as that would nullify a recent amendment to the immigration statutes," the Laken Riley Act. Martinez, 2025 WL 2084238, at *7. See Maldonado v. Olson, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) ("If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless. The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)."). "The line historically drawn between these two sections, making sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'" Martinez, 2025 WL 2084238, at *8 (citing Jennings, 583 U.S. at 288–89).

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"District courts around the country have rejected the government's position that section 1225(b)(2) permits it to pursue mandatory detention against noncitizens who have not been lawfully admitted but have been present in the country for years." Valencia Zapata v. Kaiser, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025) (citing Salcedo Aceros v. Kaiser, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025) (collecting cases)). Respondent cites only the Board of Immigration Appeals' recent decision Matter of Yajure Hurtado, 29 I & N Dec. 216, 221 (BIA 2025), to support the government's position. "Because 'agencies have no special competence in resolving statutory ambiguities,' 'the BIA decision is entitled to little deference.'" Pablo Sequen v. Albarran, No. 25-CV-06487-PCP, 2025 WL 2935630, at *9 (N.D. Cal. Oct. 15, 2025) (quoting Salcedo Aceros, 2025 WL 2637503, at *9). The "BIA's interpretation is owed deference only to the extent that 'the validity of its reasoning' and 'its consistency with earlier and later pronouncements' give it 'power to persuade,'" but "the BIA's current position is inconsistent with its earlier pronouncements," including a non-precedential decision wherein "the Board even stated that it was 'unaware of any precedent' that would support the Government's position." Salcedo Aceros, 2025 WL 2637503, at *9 (quoting Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944); Martinez, 2025 WL 2084238, at *8). Moreover, Respondent concedes that "the weight of authority holds that mandatory detention under section 1225(b)(2) does not apply to noncitizens who have been residing unlawfully in the United States for years." (ECF No. 11 at 7 n.3)

Based on the foregoing, the Court finds that Petitioner is likely to succeed on the merits of his claim that he is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

C. Irreparable Harm

In order to establish that preliminary injunctive relief should be granted, Petitioner must "demonstrate that irreparable injury is *likely* in the absence of an injunction." Winter, 555 U.S. at 22. "Deprivation of physical liberty by detention constitutes irreparable harm," Arevalo v. Hennessy, 882 F.3d 763, 767 (9th Cir. 2018), and the Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to immigration detention," such as "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and

their families as a result of detention, and the collateral harms to children of detainees whose parents are detained," Hernandez v. Sessions, 872 F.3d 976, 995 (9th Cir. 2017). Accordingly, the Court finds that Petitioner has demonstrated that irreparable harm is likely in the absence of an injunction.

D. Balance of Equities and Public Interest

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party." Nken v. Holder, 556 U.S. 418, 435 (2009). "'[T]he public has a strong interest in upholding procedural protections against unlawful detention,' and the Ninth Circuit has recognized that '[t]he costs to the public of immigration detention are "staggering[.],"'" Jorge M. F. v. Wilkinson, No. 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (second alteration in original) (first quoting Ortiz Vargas v. Jennings, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020); then quoting Hernandez, 872 F.3d at 996). Although the government has a strong interest in enforcing immigration laws, the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations," Zepeda v. U.S. Immigr. & Nat. Serv., 753 F.2d 719, 727 (9th Cir. 1983), and the government's immigration enforcement interests are not undermined because Petitioner remains in removal proceedings. "[T]he only potential injury that the government faces is a 'short delay' in detaining Petitioner[] if it 'ultimately demonstrates to a neutral decisionmaker' that their detention is necessary to prevent flight or danger to the community." Valencia Zapata, 2025 WL 2741654, at *13 (quoting Salcedo Aceros, 2025 WL 2637503, at *14). Accordingly, the Court finds that the balance of equities and public interest weigh in favor of a preliminary injunction.

E. Conclusion

Based on the foregoing, the Court finds that Petitioner is likely to succeed on the merits of his claim that he is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), irreparable injury is likely in the absence of an injunction, and the balance of equities and public interest weigh in favor of a preliminary injunction.

The Court now turns to the appropriate relief. Petitioner seeks either: immediate release from custody and to enjoin Respondents from re-detaining Petitioner unless he is afforded a pre-deprivation hearing, or an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the Court's preliminary injunction order.

The purpose of a preliminary injunction is to return the parties to the status quo ante litem, which "refers not simply to any situation before the filing of a lawsuit, but instead to 'the last uncontested status which preceded the pending controversy[.]'" GoTo.com, 202 F.3d at 1210 (quoting Tanner Motor Livery, 316 F.2d at 809). Here, Petitioner was released from custody on a $2,500 bond in August 2012. (ECF No. 1-1 at 26; ECF No. 2-1 at 3–4; ECF No. 11-1 at 2.) On August 22, 2013, an IJ issued an in absentia order of removal. (ECF No. 2-1 at 4; ECF No. 11-1 at 2.) On July 9, 2025, ICE officers apprehended Petitioner, and at that time, Petitioner had no pending applications or motions before the immigration court or USCIS and was subject to the August 22, 2013 final order of removal. (ECF No. 11-1 at 2.) On July 14, 2025, Petitioner was removed from the United States to Guatemala. (ECF No. 11-1 at 2.) On July 23, 2025, the immigration court granted Petitioner's motion to reopen and rescinded his in absentia removal order. (ECF No. 14-1 at 2.) On August 26, 2025, Petitioner was returned to the United States and upon his return, Petitioner was re-detained, purportedly under § 1225(b)(2)(A). (ECF No. 11-1 at 2–3.)

For purposes of the motion for preliminary injunction, Petitioner challenges his current, ongoing detention upon his return from Guatemala. In the motion, Petitioner does not argue that he was unlawfully apprehended on July 9, 2025 pursuant to the August 22, 2013 order of removal. Given that detention under § 1225(b)(2)(A) was improper, "the last uncontested status would be the moment before petitioner was unlawfully detained under that provision"—in the Court's view, that is Petitioner in the United States released on bond given that the in absentia removal order had been vacated. J.A.C.P. v. Wofford, No. 1:25-cv-01354-KES-SKO (HC), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025). Under these specific circumstances, the Court finds that the appropriate relief is immediate release and a pre-deprivation hearing in the event the government seeks to re-detain Petitioner. Id.

F. Bond

"Federal Rule of Civil Procedure 65(c) permits a court to grant preliminary injunctive relief 'only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.'" Johnson v. Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting Fed. R. Civ. P. 65(c)). "Despite the seemingly mandatory language, 'Rule 65(c) invests the district court with discretion as to the amount of security required, *if any.*'" Id. (some internal quotation marks omitted) (quoting Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 2003)). "In particular, '[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.'" Johnson, 572 F.3d at 1086 (quoting Jorgensen, 320 F.3d at 919).

The Court finds that no security is required here. See Lepe v. Andrews, No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025) ("The security bond requirement of Federal Rule of Civil Procedure 65(c) is waived. Courts regularly waive security in cases like this, and the government has not established a need to impose a security bond.").

III.

ORDER

Based on the foregoing, the Court HEREBY ORDERS that:

1. Petitioner's motion for temporary restraining order (ECF No. 2) is converted to a motion for preliminary injunction and **GRANTED**.
2. Respondents **SHALL IMMEDIATELY RELEASE** Petitioner Jorge Estuardo Marin under the same conditions of his 2012 order of release. Respondents **SHALL NOT** impose any additional restrictions on Petitioner unless that is determined to be necessary at a later custody hearing.
3. If the government seeks to re-detain Petitioner, it must provide no less than seven (7) days' notice to Petitioner and must hold a pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its implementing regulations, at which Petitioner's

eligibility for bond must be considered.

4. Within **seven (7) days** of the date of this order, the parties SHALL meet and confer and submit a joint statement regarding case management and how they would like to proceed for the remainder of this case.

IT IS SO ORDERED.

Dated: **November 13, 2025**

STANLEY A. BOONE
United States Magistrate Judge