UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:25-cv-25179-JB

EDUARDO DUVALLON BOFFILL,

Petitioner,

v.

FIELD OFFICE DIRECTOR,
Miami Field Office,
U.S. Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as the Secretary of the Department of Homeland Security (DHS),

Respondents.
_____/

PETITIONER'S TRAVERSE

The Petitioner hereby submits his Traverse in Response to the Respondent's Return [ECF No. 7], and in support of his Petition for Writ of Habeas Corpus [ECF No. 1].

In his Writ of Habeas Corpus [ECF No. 1], the Petitioner makes two claims. *First*, he challenges his designation and subjection to continued mandatory detention under 8 U.S.C. § 1225(b)(2) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). [ECF No. 1, 32-57, 66-77]. He argues that while he is statutorily defined as an "applicant for admission" under 8 U.S.C. § 1225(a)(1), he was not "seeking admission" at the time of his most recent arrest by ICE on or around October 2, 2025—after having been initially released from DHS custody and having resided in the United States for over three (3) years—and is therefore outside the gambit of § 1225(b)(2)(A)'s mandatory detention provision. Instead, he contends that his detention is controlled by § 1226, and he is entitled to a full custody redetermination hearing on the merits before an IJ,[1] and that his continued detention without a full custody redetermination hearing

[1] "An alien requesting a redetermination of his or her custody status under section 236(a) [8 U.S.C. § 1226(a)] 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." *Matter of R-A-V-P*, 27 I&N Dec. 803 (BIA 2020).

before an IJ is unlawful, as it violates the Immigration and Nationality Act (INA) and the Due Process Clause. U.S. Const. Amend. V. [ECF No. 1, ¶ 46-57].

Second, the Petitioner argues that if this Court is inclined to find he is, and was, subject to mandatory detention under § 1225(b)(2)(A), then it follows that the Department of Homeland Security (DHS) paroled him out of custody pursuant to 8 U.S.C. § 1182(d)(5)(A) when the agency, under its own volition, decided to release him on April 25, 2022, as it was the only manner under the law in which it could have released the petitioner. [ECF No. 1, ¶ 58-65].

In its Return, the government presents various arguments regarding exhaustion and jurisdiction, in addition to responding to the merits of the Petitioner's arguments. [ECF No. 7]. The Petitioner responds in turn.

I. 8 U. S. C. § 1252(e)(3) is a savings clause, not a jurisdictional bar.

In arguing that § 1252(e)(3) is an obstacle to this Court's routine habeas authority, the government puts all its eggs in the proverbial basket of § 1252(e)(3)(A)'s reference to "determinations under section 1225(b) of this title and its implementation." [D.E. 7, at 4-5.] So the argument goes, since that provision cites § 1225(b) while not specifically referencing §1225(b)(1), then it also applies to determinations under §1225(b)(2). Not so.

"[A] court should not interpret each word in a statute with blinders on, refusing to look at the word's function within the broader statutory context." *Abramski v. United States*, 573 U.S. 169, 179 n.6 (2014). "[A] 'provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme ... because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.' " *Id.* (ellipsis in original) (citation omitted); *United States v. Hernandez*, 107 F.4th 965, 969 (11th Cir. 2024) ("As in all interpretive enterprises, 'context is king.' ") (citation omitted); *Harrison v. Benchmark Elecs. Huntsville, Inc.*, 593 F.3d 1206, 1212 (11th Cir. 2010) (" 'We do not look at one word or term in isolation, but instead we look to the entire statutory context.' ") (citations omitted). And although "[s]ection headings cannot limit the plain meaning of the text," they "may be utilized to interpret a statute … where the statute is ambiguous." *Scarborough v. Off. of Pers. Mgmt.*, 723 F.2d 801, 811 (11th Cir. 1984) (citations omitted).

Looking to the structure of § 1252 as a whole, keeping in mind the context of § 1252(e)(3) as a safety valve exception to the jurisdictional bars in § 1252(a)(2)(A), the fact of the matter is that § 1252(e)(3) is **not** a jurisdictional bar. Rather, it is a grant of jurisdiction that functions as a

carve out from the jurisdiction that is precluded by § 1252(a)(2)(A).

To begin with, § 1252(e)(3) lacks the hallmarks of the jurisdiction barring language found throughout § 1252. Applying the logic that the Supreme Court used in interpreting § 1252(d)(1) to the text of § 1252(e)(3) shows why it is not a jurisdictional bar:

> Instead, a second feature of the statute compounds our doubt that § 1252[(e)(3)] qualifies as a jurisdictional rule: That provision's language differs substantially from more clearly jurisdictional language in related statutory provisions. Elsewhere in the laws governing immigration cases, Congress specified that "no court shall have jurisdiction" to review certain matters. Over and over again, Congress used that language in provisions that were enacted at the same time—and even in the same section—as § 1252[(e)(3)].
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> The contrast between the text of § 1252[(e)(3)] and the "unambiguous jurisdictional terms" in related provisions "show[s] that Congress would have spoken in clearer terms if it intended" for § 1252[(e)(3)] "to have similar jurisdictional force." *Gonzalez v. Thaler*, 565 U.S. 134, 143, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012); accord, *Henderson*, 562 U.S. at 438–439, 131 S.Ct. 1197.

Santos-Zacaria v. Garland, 598 U.S. 411, 418-19 (2023) (footnotes omitted). "And, here, there is good reason to infer that the linguistic contrast between § 1252[(e)(3)] and neighboring provisions is meaningful, not haphazard: Unlike other provisions, § 1252[(e)(3)] concerns" a carveout to the jurisdictional bars under § 1252(a)(2)(A).

Section 1252(a)(2)(A) states expressly that "no court shall have jurisdiction to review" four general matters enumerated at clauses (i) through (iv). First, this is unmistakably a jurisdictional bar with jurisdiction stripping language that is not found in any part of § 1252(e)(3). *Santos-Zacaria*, 598 U.S. at 418-19. Second, all four of those enumerated clauses pertain to matters specifically and only having to do with § 1225(b)(1). §§ 1252(a)(2)(A)(i) ("pursuant to § 1225(b)(1) of this title"); (ii) ("the provisions of such section"); (iii) ("under section 1225(b)(1)(B) of this title"); (iv) ("the provisions of section 1225(b)(1) of this title").

Third, and most tellingly, three of the four enumerated jurisdictional bars specifically reference § 1252(e) as an exception to their jurisdiction stripping. §§ 1252(a)(2)(A)(i) ("except as provided in subsection (e)"); (ii) (same); (iv) (same). Thus, by design, the various savings clauses found in § 1252(e), including (e)(3), are exceptions to the prohibitions enumerated in § 1252(a)(2)(A), and thus only apply to the enumerated matters relating to § 1225(b)(1) detention and processing—they have nothing to do with § 1225(b)(2). See *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("The general/specific canon is perhaps most

frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one.") (citation omitted). And to the extent the Court finds that there is still ambiguity left here, then the section heading for § 1252(e) should resolve the matter: "Judicial review of orders under section 1225(b)(1)."

In sum, § 1252(e)(3) is not a jurisdictional bar. And even if it was, it has nothing to do with detention and habeas issues relating to § 1225(b)(2).

II. 8 U. S. C. § 1252(g) does not strip this Court of jurisdiction to review Petitioner's habeas claim.

The Respondent contends that 8 U.S.C. § 1252(g) strips this Court to review the legality of the Petitioner's continued mandatory detention. But, that provision does not "cove[r] the universe of deportation claims." *Reno* v. *Am.-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 482 (1999). "In fact, what § 1252(g) says is much narrower." *Id.* "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders' ." *Id.* (emphasis in original). "There are of course many other decisions or actions that may be part of the deportation process . . . ." *Id.* "It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.*

As the Supreme Court, the Eleventh Circuit, and Courts in this District have continually made clear, § 1252(g) does not strip district courts of jurisdiction to consider habeas challenges over the "extent of the Attorney General's [ICE's] authority" to detain non-citizens. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (dismissing in a parenthetical any notion that § 1252(g) would bar review of the government's detention authority); *I.N.S. v. St. Cyr*, 533 U.S. 289, 311 n.34 (2001) (dismissing in a footnote any notion that § 1252(g) would bar habeas review of unlawful detention); *Madu*, 470 F.3d at 1368 ("While this provision bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions. . . Here, Madu does not challenge the INS's exercise of discretion. Rather, he brings a constitutional challenge to his detention and impending removal. ... Accordingly, section 1252(g) does not apply."); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *3 (S.D. Fla. Sept. 9, 2025) ("The Eleventh Circuit has nevertheless distinguished between situations where an alien's claims are

founded directly on a decision or action to commence proceedings, adjudicate cases, or execute removal orders, from those where an alien challenges the "underlying legal bases" of those decisions or actions.") (citing *Madu*, 470 F.3d at 1368); see also *Canal A. Media*, 964 F. 3d at 1257–58 ("When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.")

The government mischaracterizes the Petitioner's argument by citing *Alvarez v. ICE*, a *Bivens* action challenging the manner in which ICE commenced removal proceedings and ICE's initial discretionary decision to detain the alien in order to commence those proceedings. 818 F.3d 1194, 1203 (CA11 2016) [EFC No. 7, p. 5-6]. The factual and legal scenario presented in this case differs from *Alvarez*. The Petitioner is not challenging the initial discretionary decision to detain him, the commencement of his removal proceedings, or the execution of a (non-existent) removal order. Instead, he is challenging the legality of his continued mandatory detention pursuant to *Yajure Hurtado,* without being able to seek a full custody redetermination hearing (to determine flight risk and danger to the community) before the Immigration Judge. *Supra*, n.1. Because the Petitioner's habeas petition constitutes a challenge to the "underlying legal bas[i]s" of his continued detention, *Madu*, 470 F.3d at 1368, without a full custody re-determination hearing before an Immigration Judge, § 1252(g) does not deprive this Court of jurisdiction to consider his habeas claim.

III. Neither 8 U. S. C. §§ 1252(a)(5) nor (b)(9) strips the Court of jurisdiction to review the petitioner's habeas claim because he is not seeking the review of an order of removal.

Because the petitioner is not seeking review of his order of removal, the channeling provisions at 8 U.S.C. §§1252(a)(5), and (b)(9) are inapplicable. "Thus, to determine whether [(a)(5)] applies here, we must determine whether [petitioner] seeks review of an order of removal." *Madu v. U.S. Att'y Gen.*, 470 F. 3d 1362, 1366 (CA11 2006). Here, the jurisdiction bar at § 1252(a)(5) does not strip this Court of jurisdiction to review the Petitioner's habeas claim of unlawful detention because he is not "challeng[ing] a final administrative order of removal or seek[ing' review of a removal order." *Id.*, at 1367.

Similarly, § 1252(b)(9) does not strip this Court of jurisdiction because the Petitioner's claim of unlawful detention does not "aris[e] from any action taken or proceeding brought to remove an alien from the United States." § 1252(b)(9). "Moreover, while the REAL ID Act amended § 1252(b)(9) by adding an explicit bar on habeas jurisdiction **over certain claims**, the

Act did not expand the scope of (b)(9) by making it applicable to cases other than those involving 'review of an order of removal.' Because section 1252(b)(9) applies only 'with respect to review of an order of removal,' and this case does not involve review of an order of removal, we find that section 1252(b)(9) does not apply to this case." *Madu,* 470 F.3d at 1367[2] (emphasis added); see also *Canal A. Media Holding, LLC* v. *USCIS*, 964 F. 3d 1250, 1257 (CA11 2020) ("The zipper clause is not intended to cut off claims that have a tangential relationship with pending removal proceedings. … The zipper clause promotes judicial economy by consolidating "challenges to any action related to removal proceedings … with the review of a final order of removal.") (citation omitted).

The same applies here. The Petitioner is not challenging any action or decision involving the "review of an order of removal." *Madu*, 470 F.3d at 1367. Instead, he is only challenging his designation and subjection to continued mandatory detention under 8 U.S.C. § 1225(b)(2). [ECF No. 1, pp. 7-11]. Such a challenge has nothing to do with the review of a removal order, because if the Court grants the Petitioner's habeas, and he is released on bond, his removal proceedings before the immigration court will continue in a non-detained setting.

This reading corresponds with the jurisprudence from the Supreme Court. In *Jennings*, while finding that § 1252(b)(9) did not bar petitioner's habeas claims, the Court held that the "arising from" language in that section should not be read in an "extreme way." 138 S. Ct., 839-41, 840. Without "attempt[ing] to provide a comprehensive interpretation," the Court found it "enough to note that [the claimants] are not asking for review of an order of removal; they are not challenging the *decision* to detain them *in the first place or to seek removal*; and they are not even challenging any part of the *process by which their removability will be determined*." *Id.*, at 841 (emphasis added); see also *Nielsen v. Preap*, 586 U.S. 392, 402, (2019). The same is true here, and neither §§ 1252(a)(5) nor (b)(9) bars this Court from reviewing the Petitioner's habeas claim of unlawful detention.

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[2] Although the Respondent contends that the REAL ID Act precluded all habeas corpus relief in the district courts under § 2241 [ECF No. 7, p. 7], Section 106(c) of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231, 311, provided for the transfer of pending habeas cases "**challenging a final administrative order of removal**" to the court appeals "in which a petition for review could have properly filed under . . . (8 U.S.C. 1252), as amended by this section." Such challenges to final administrative orders of removal via habeas in district court were commonplace before the REAL ID Act channeled such final order review to the § 1252 Petition for Review Process.

IV. The Petitioner need not exhaust his administrative remedies by appealing the Immigration Judge's bond determination to the Board of Immigration Appeals.

The government argues that the Court cannot grant the Petitioner's Writ of Habeas Corpus and order the IJ to consider his custody redetermination request because he has yet to appeal the IJ's bond decision to the Board of Immigration Appeals (BIA), and has thus failed to exhaust his administrative remedies. [ECF No. 7, p. 9]. This argument is incorrect.

No exhaustion is statutorily required for the Petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo* v. *Warden*, 785 F. 3d 467, 474 (CA11 2015)." Exhaustion in the habeas context is at most a "non-jurisdictional," *id.*, at 475, "judicially-created . . . doctrine," *Haitian Refugee Ctr., Inc.* v. *Nelson*, 872 F.2d 1555, 1561 (CA11 1989) (*HRC* v. *Nelson*), aff'd sub nom. *McNary* v. *Haitian Refugee Ctr., Inc.*, 498 U. S. 479 (1991), subject to various exceptions. See *Jaimes* v. *United States*, 168 Fed. Appx. 356, 359, n. 4 (CA11 2006) ("judicially-created exhaustion requirements may be waived by the courts for discretionary reasons") (quoting *Gallo Cattle Co.* v. *U. S. Dep't of Agric.*, 159 F. 3d 1194, 1197 (CA9 1998)); *Richardson* v. *Reno*, 162 F. 3d 1338, 1374 (CA11 1998) (*Richardson I*), cert. granted, judgment vacated on other grounds, 526 U.S. 1142 (1999) ("judicially developed exhaustion requirements might be waived for discretionary reasons by courts").[3] For example, "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim.' " *Boz* v. *United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogation on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (quoting *HRC* v. *Nelson*, 872 F. 2d, at 1561).

First, no statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's constitutional claim seeks to remedy. "Because the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame* v. *U. S. Att'y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *HRC* v. *Nelson*, 872 F. 2d, at 1561 (exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS); see also *Matter of Punu*, 22 I. & N. Dec. 224, 229 (BIA 1998) ("this Board cannot

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[3] In a revised opinion following remand, the Eleventh Circuit "readopt[ed] and reaffirm[ed] the reasoning in *Richardson I* except to the extent it relied on INA § 242(g) to support its holding." *Richardson* v. *Reno*, 180 F. 3d 1311, 1313 (CA11 1999) (*Richardson II*).

entertain constitutional challenges") (citations omitted). The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene* v. *Bush*, 553 U. S. 723, 783 (2008).

Second, the petitioner's statutory claim challenging the agency's precedent of *Yajure Hurtado* (and therefore the agency's application of § 1225(b)(2) to him) is not subject to prudential exhaustion. In addition to the rule that prudential exhaustion is not required " 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz*, 248 F. 3d, at 1300 (citation omitted), the same is also true where "the nature of [a] challenge [to agency] procedures is such that relief at the administrative review level would [be] unlikely," *HRC* v. *Nelson*, 872 F. 2d, at 1561. This analysis is conducted by balancing the nature of a claim against "[t]he policies advanced by allowing the administrative process to run its full course" to determine whether such policies "are not thwarted by judicial intervention in [a] case." *Haitian Refugee Ctr.* v. *Smith*, 676 F. 2d 1023, 1034 (CA5 Unit B 1982) (*HRC* v. *Smith*) (precedential under *Stein* v. *Reynolds Sec., Inc.*, 667 F. 2d 33, 34 (CA11 1982), disapproved of on other grounds by *Jean v. Nelson*, 727 F. 2d 957, 976, n. 27 (CA11 1984) (en banc).

As noted by precedent, "the Supreme Court [has] deemed it insignificant that [an] agency . . . possess[es] the power to change the content of its procedures and thus could . . . pretermit[t] the necessity for judicial intervention." *HRC* v. *Smith*, 676 F. 2d, at 1034 (citing *Mathews* v. *Eldridge*, 424 U. S. 319 (1976)). As "[t]he [Supreme] Court commented: 'It is unrealistic to expect that the [agency head] would consider substantial changes in the current administrative review system at the behest of a single [regulated party] raising a [legal] challenge in an adjudicatory context.' " *Id.*, (quoting *Mathews*, 424 U. S., at 330). In the immigration context, "[an] assumption that the INS or the BIA would . . . substantially revis[e] the procedures established for [a specific] program is equally naive." *Id.*

Here, the petitioner isn't required to exhaust administrative remedies if "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Counsel on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Where the immigration judge denied that bond was available to the petitioner based upon agency precedent *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the petitioner need not exhaust (and waste time) asking the Board to reverse its existing and recently published

precedent. "Since the result of Petitioner's custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements are excused for futility." *Puga v. Ass't Field Office Director*, Case No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025).

V. The petitioner was not "seeking admission" at the time of his most recent arrect by ICE, and his detention is therefore not governed by § 1225(b)(2)(A).

The government asserts that the Petitioner is both an "applicant for admission [as defined in 8 U.S.C. § 1225(a)(1)] and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ." [ECF No. 7, p. 22; *see generally* ECF No. 7, pp. 12-22]. In support of this claim, the government relies upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.*, pp. 13-15, 22.

The Petitioner contends that while he is statutorily defined as an "applicant for admission" under 8 U.S.C. § 1225(a)(1), he was not "seeking admission" at the time of his most recent arrest by ICE on or around October 2, 2025—after having been initially released from DHS custody and having resided in the United States for over three (3) years–and is therefore outside the gambit of § 1225(b)(2)(A)'s mandatory detention provision. Therefore, his continued mandatory detention is not authorized by § 1225(b)(2)(A), but is controlled by § 1226, and he is entitled to a full custody redetermination hearing on the merits before an IJ.

"Whether Petitioner is detained under section 1225(b)(2) or section 1226(a) is an issue of statutory interpretation that hinges on the meaning of 'seeking admission.'" *Puga*, 2025 WL 2938369, at *4 (S.D. Fla. Oct. 15, 2025). "The Court thus applies traditional tools of statutory construction, beginning with the plain meaning of the statutes, to decipher the meaning of that phrase." *Id.* "To begin, the phrase "seeking admission" is ambiguous in the context of the INA." *Id.* "Section 1225 defines an 'applicant for admission' as '[a]n alien present in the United States who has not been admitted or who arrives in the United States[.]' *Id.* (citing § 1225(a)(1)). "And 'admission' and 'admitted' are defined as 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.' *Id.* (citing § 1101(a)(13)).

"But the INA does not define '*seeking* admission.'" *Id.* (emphasis original). "Some courts have noted that the phrase "implies action — something that is currently occurring, and... would most logically occur at the border upon inspection." *Id.* (citations omitted). "And in the context of the title of section 1225, which references 'arriving' aliens, § 1225; and its function —

establishing an *inspection* scheme for when to allow aliens into the country — the language appears susceptible to multiple interpretations." *Id.* (citations omitted, emphasis original.).

"Next, the Court turns to the structure of sections 1225 and 1226, as well as their legislative history — which each support Petitioner's interpretation. *Id.* "Whereas [section] 1225 governs removal proceedings for 'arriving aliens,' [section] 1226(a) serves as a catchall." *Id.* (citation omitted). "As the Supreme Court noted in *Jennings*, section 1226 'creates a default rule' that 'applies to aliens already present in the United States.'" *Id.* (citing *Jennings*, 583 U.S. at 303). "The inclusion of a 'catchall' provision in section 1226, particularly following the more specific provision in section 1225, is 'likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories.'" *Id.* (citations omitted).

"Additionally, a recent amendment to section 1226 would be rendered meaningless under Respondents' interpretation of section 1225." *Id.*, at *5. The Court explained that:

> In January 2025, the Laken Riley Act ("LRA"), Pub. L. No. 119-1, section 2, 139 statute 3, 3 (2025), added section 1226(c)(1)(E), which "mandates detention for noncitizens who (i) "are inadmissible under [section] 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Petitioner), [section] 1182(a)(6)(C) ([obtaining a visa, documents, or admission through] misrepresentation [or fraud]), or [section] 1182(a)(7) (lacking valid documentation)" and (ii) "have been arrested for, charged with, or convicted of certain crimes.

Puga, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025).

"If Respondents' interpretation of section 1225 is correct — that the mandatory detention provision in section 1225(b)(2)(A) applies to all noncitizens present in the United States who have not been admitted — then Congress would have had no reason to enact section 1226(c)(1)(E)." *Id.* "[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]" Id. (citation omitted). "This principle...applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Id.* (citation omitted). "The Court will not find that Congress passed the [LRA] to perform the same work that was already covered by [section] 1225(b)(2)." *Id.*

In response to the government's reliance on *Yujure Hurtado* in that case, the Court continued:

> "Respondents' reliance on the BIA's decision in *Matter of Yajure Hurtado* — rejecting the argument that a noncitizen who entered the United States without inspection and has resided here for years is not 'seeking admission' under section 1225(b)(2)(A) — is also misplaced. The Court need not defer to the BIA's interpretation of law simply because the statute is ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[C]ourts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." (alteration added)).
>
> As explained, the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so. Additionally, numerous courts that have examined the interpretation of section 1225 articulated by Respondents — particularly following the BIA's decision in *Matter of Yajure Hurtado* — have rejected their construction and adopted Petitioner's. … For these reasons, the Court finds that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)."

Puga, at *5; accord *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); accord *Garcia v. Noem*, Case No. 2:25-CV-00879-SPC-NPM, 2025 WL 3043895 (M.D. Fla. Oct. 31, 2025).

Here, the Petitioner was not "seeking admission" at the time of his most recent arrest by ICE on or around October 2, 2025—after having been initially released from DHS custody and having resided in the United States for over three (3) years—and is therefore outside the scope of § 1225(b)(2)(A)'s mandatory detention provision. Therefore, his current detention is not authorized by § 1225(b)(2)(A), but is controlled by § 1226, and he is entitled to a full and individualized custody redetermination hearing on the merits before an IJ.

VI. The Court should also grant relief under Count IV of the verified petition.

The government does not meaningfully oppose Petitioner's cause of action under Count IV of the verified petition [ECF No. 1, at 18-19], simply arguing that, "[l]ike any past event, the act of parole is a factual occurrence [ECF No. 7, at 27 (citation omitted)], that "Petitioner incorrectly attempts to categorize his release by an Order of Release on Recognizance as a parole [ECF No. 7, at 27], that "Petitioner does not present any evidence that he was paroled into the United States, merely relying on [*Matter of*] *Q. Li*[, 29 I&N Dec. 66 (BIA 2025)]" [ECF No. 7, at 28]. But the government never disputes that, under *Matter of Q. Li*, parole under 8 U.S.C. 1182(d)(5)(A) would have been the only lawful release mechanism available to the government

when it released Petitioner from its custody upon his arrival to the United States.

In *Sicar v. Chertoff*, the Eleventh Circuit addressed a "class action complaint" by a group of Haitian nationals "seek[ing] declaratory and injunctive relief, alleging the Government has systematically misclassified their parole status during the course of status adjustment determinations under the Haitian Refugee Immigration Fairness Act of 1998, Pub.L. No. 105–277, 112 Stat. 2681 (HRIFA)." 541 F.3d 1055, 1057 (11th Cir. 2008). The case was ultimately dismissed due to a HRIFA-specific jurisdictional bar, which has no application to this case. *Id.* at 1058 ("Section 902(f) provides, '[a] determination by the Attorney General as to whether the status of any alien should be adjusted under this section is final and shall not be subject to review by any court.' "). But the Court did address the claim for standing purposes, providing helpful guidance here.

The plaintiffs there "arrived in the United States without lawful immigration status, were taken into immigration custody, and were released on their own recognizance." *Id.* Among other claims, the plaintiffs there "claim[ed] the Government's finding they had not been paroled is improper as a matter of statutory interpretation." *Id.* Finding that the plaintiffs there had Article III standing, the Court explained that "a plain reading of their complaint indicates the injury they allege is actually the misclassification of their releases-on-recognizance, not the ultimate denial of their status adjustment applications." *Id.* at 1060. Specifically, the plaintiffs there "claim[ed] they were denied a classification to which they were entitled—that of parolees for purposes of" seeking adjustment of status, and "[t]his alleged misclassification is an injury in fact for standing purposes, regardless of how Appellants' ultimate status adjustment determinations may be resolved." *Id.* The Court added that "this injury is fairly traceable to the actions of the Government, as it was the Government that allegedly misclassified Appellants' releases-on-recognizance." *Id.* "Moreover, this injury would be redressed by a favorable decision in federal court." *Id.* "Were the court to find Appellants had been paroled, the misclassification would be corrected, and Appellants could have another attempt to have their status adjusted, this time without the allegedly incorrect initial classification." *Id.*

That is exactly what Petitioner is arguing here under Count IV of his verified petition. He brings a valid claim for which the Court has Article III jurisdiction to adjudicate and redress. Further, as noted in the verified petition [ECF No. 1, at 15-16], precedent from the Board of Immigration Appeals and Courts of Appeals recognize that whether or not someone has been

paroled is a question of law that looks to substance over form. *Vitale v. INS*, 463 F.2d 579 (7th Cir. 1972); *Medina Fernandez v. Hartman*, 260 F.2d 569 (9th Cir. 1958); *Matter of O-*, 16 I&N Dec. 344 (BIA 1977). This tradition, known as the procedural regularity doctrine, is also true in the context of whether an admission has occurred. *Matter of Quilantin*, 25 I&N Dec. 285 (BIA 2010); *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). There is no authority to the contrary, and the government cites none to undermine this logic.

Further, the case that the government relies upon, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023), does not address this issue. There is not a single citation to 8 U.S.C. 1225(b)(2)(A) in that decision at all. And to the extent it can be read as addressing the government's detention authority when it stated that "section 236(a)(2)(B) of the INA, 8 U.S.C. § 1226(a)(2)(B), provides DHS with an alternative statutory mechanism for releasing the present respondents," *id.*, at 749, that conclusion is completely irreconcilable with what the Board said in *Matter of Q. Li*:

> Similarly, we have held, in other contexts, that the term "arriving" applies to aliens, like the respondent, "who [are] apprehended" just inside "the southern border, and not at a point of entry, on the same day [they] crossed into the United States." *Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020). Thus, the respondent is an alien "who arrives in the United States" under section 235(a)(1) of the INA, 8 U.S.C. § 1225(a)(1).

29 I&N Dec. at 68 (footnote omitted). And, as the Board held, "for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" *Id.* (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)) (footnote omitted). This is true, as a matter of law and substance, regardless of how the government papers the case. *Id.* at 69 n.4 ("Once an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a) through the post-hoc issuance of a warrant."). In such circumstances, "[t]he only exception permitting the release of aliens detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), is the parole authority provided by section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A)." *Id.* at 69. The government disputes none of this.

Now, to be clear, Petitioner's position is that *Matter of Q. Li* was correctly decided, but that *Matter of Yajure Hurtado* goes too far, ignoring the limitations built into § 1225(b)(2)(A)

requiring that a detainee be "seeking admission" in order to be subject to mandatory detention. In Petitioner's case, he was subject to mandatory detention under § 1225(b)(2)(A) at the time of his original release from DHS custody on April 25, 2022, because he was "seeking admission" at that time. But now, during his most recent detention by DHS on or around October 2, 2025, he is no longer subject to mandatory detention under § 1225(b)(2)(A) because he was no longer "seeking admission" at the time of his most recent arrest – he was already in the United States, no longer seeking "lawful entry … into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (defining "admission").

Notably, the government has not tried to justify the Petitioner's current detention under *Matter of Q. Li,* relying solely on *Matter of Yajure Hurtado.* See *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) ("[I]n both civil and criminal cases, in the first instance and on appeal ..., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present."); *id.*, at 376 ("In short, Courts are essentially passive instruments of government. They do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties.") (cleaned up, citation omitted)

Lastly, Petitioner does not understand why the government is disputing his eligibility for a preliminary injunction, or arguing that the Petitioner is ineligible for a writ of mandamus or relief under the All-Writs Act. [ECF No. 7, at 27-28.] Petitioner is seeking none of those remedies. Rather, Count IV of his verified Petition seeks a permanent injunction under the Administrative Procedure Act, 5 U.S.C. § 701, et seq. [ECF No. 1, at 18-19.] The Court should grant that relief.

Conclusion

For the reasons stated herein, the Court should grant the Petitioner's Writ of Habeas Corpus [ECF No. 1], and Order that he be provided a custody redetermination hearing before the Immigration Judge within a reasonable time determined by the Court, Declare that the Petitioner's April 25, 2022, release from DHS custody was a parole under 8 U.S.C. § 1182(d)(5)(A), and Order the respondents to provide the petitioner with evidence of his parole out of physical custody as required by 8 CFR § 235.1(h)(2).

Dated: November 17, 2025

s/ Anthony Dominguez
Fla. Bar No. 1002234
s/Maitte Barrientos
Fla. Bar No. 1010180
Prada Dominguez, PLLC
12940 SW 128 Street, Suite 203
Miami, FL 33186
c. 786.447.8897
o. 786.703.2061
adominguez@pradadominguez.com
maitte@pradadominguez.com

Counsel for the Petitioner