UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PATEL, KAUSHAL JITENDRABHAT, Petitioner, v. **LOWE, CRAIG, Warden, Pike County Correctional Facility,** **NOEM, KRISTI, in her official capacity as Secretary of the United States Department of Homeland Security,** -and- **LYONS, TODD M., in his official capacity as Acting Director of Immigration and Customs Enforcement,** Respondents.	**No.** **EMERGENCY RELIEF REQUESTED**

EMERGENCY PETITION
FOR WRIT OF HABEAS CORPUS

Petitioner, Kaushal Jitendrabhat Patel ("Petitioner"), by and through Counsel, Raymond G. Lahoud, Esquire, petitions the Court, with urgency, for the issuance of a writ of habeas corpus rendering Petitioner's detention unlawful Petitioner's immediate release.

In support, Petitioner states what follows.

I. INTRODUCTION

Petitioner has been in the United States since 1998 and contends that entry was a result of an inspection and admission. Respondents claim that Respondent entered without inspection. Petitioner was taken into Respondents' custody on or about September 11, 2025. While the Immigration Court granted Petitioner bail, Respondents challenge the Immigration Court's decision, arguing that Petitioner entered without inspection and, therefore, is not eligible for bond. Regardless of Petitioner's manner of entry, Petitioner's continued detention is contrary to the United States Constitution, federal law, and federal regulations.

Since at least the passage of the Immigration and Nationality Act of 1952 (the "INA" or the "Act"), noncitizens who entered the country illegally or in any other manner could generally be released on bond while their removal proceedings were pending. Yet earlier this year, United States Immigration and Customs Enforcement ("ICE") "revisited" its position and determined that all noncitizens who are present without admission are subject to mandatory detention while in removal proceedings. The Board of Immigration Appeals ("BIA" or the "Board") recently reached the same conclusion in a precedential decision, Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025), holding for the first time that all noncitizens who entered the country without admission are categorically ineligible for bond regardless of how long they have lived in the United States.

More than one hundred federal judges have already found this novel interpretation incompatible with the Act. The provision on which Respondents rely states that

noncitizens who are "seeking admission" are subject to mandatory detention while in removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined "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). Thus, by its plain terms, the provision only applies to noncitizens who present themselves at a port of entry. And in addition to disregarding the plain text of Section 1225(b)(2)(A), Title 8, United States Code, Respondents' contrary interpretation renders superfluous other provisions of the Act that require the mandatory detention of noncitizens who have engaged in criminal activity—including a provision, Section 1226(c)(1)(E), Title 8, United States Code, enacted this year in the Laken Riley Act.

Respondents' argument also flouts the Justice Department's own regulations. Since 1997, the Justice Department has precluded immigration judges from granting bond to so-called "arriving aliens"—i.e., those who seek admission at a port of entry—but not to those who entered the country without inspection. This distinction was the result of a deliberate choice made by the Attorney General following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the "IIRIRA"), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. Under bedrock principles of administrative law, agencies cannot "overrule" by adjudication regulations that were promulgated after notice and comment. Patel v. INS, 638 F.2d 1199, 1202 (9th Cir. 1980).

As a result of Respondents' new interpretation, every noncitizen who entered the United States without being admitted is subject to mandatory detention for the duration of

their removal proceedings. Respondents argue that Petitioner is one of those affected individuals.

II. REQUIREMENTS OF SECTION 2243, TITLE 8, UNITED STATES CODE

The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return within the statutory timeframe.

III. FACTUAL AND PROCEDURAL HISTORY

This is a Petition for the emergency issuance of a writ of habeas corpus pursuant to Section 2241(c)(3), Title 28 of the United States Code, challenging Petitioner's unlawful detention at Pike County Correctional Facility, Lords Valley, Pennsylvania, under the direction and authority of the United States Department of Homeland Security (the "Department" or "DHS").

Petitioner is a citizen of India who entered the United States in 1998. Petitioner contends that entry was following inspection and admission. Respondents argue that Petitioner entered without inspection.

In September of 2020, Petitioner filed am affirmative Form I-589, Application for Asylum and for Withholding of Removal, with the Department (the "Asylum Application").

In September of 2025, the Department and other federal agencies commenced an investigation into whether Petitioner voted in the 2020 election. On September 11, 2025,

Respondents took Petitioner into the Department's custody at the Pike County Correctional Facility, where Petitioner remains today.

Initially, the Department detained Petitioner without bond. On October 20, 2025, the Immigration Court at Elizabeth, New Jersey conducted a custody redetermination hearing, found Petitioner was neither a flight risk nor a danger to the community, and granted bond in the amount of $7,500. See Ex. A, Order of the Immigration Court (Oct. 20, 2025). The Department appealed to the Board and invoked a stay of Petitioner's release on the set bond pending the Board's decision on the Department's bond appeal. In the appeal, the Department argues that Petitioner was not inspected and admitted into the United States and that Respondent is not eligible for bond because Petitioner, according to the Department, entered without inspection. The Department further argues that Petitioner is a flight risk.

On October 14, 2025, Petitioner was indicted in the Eastern District of Pennsylvania for violating:

(1) 18 U.S.C. § 1015(f) - (false statement of citizenship in order to vote - 1 count);
(2) 52 U.S.C. § 20511(2)(A) - (fraudulent voter registration - 1 count);
(3) 52 U.S.C. § 20511(2)(B) - (fraudulent voting – 1 count); and
(4) 18 U.S.C. § 611 - (voting by alien -1 count).

See Ex. B, Indictment, United States of America v. Kaushakumar Jitendrabhai Patel, 5:25-cr-00452-CH-1. On October 29, 2025, the United States Attorneys Office for the Eastern District of Pennsylvania agreed to the conditions of Petitioner's release in the federal

criminal matter, finding that Petitioner is neither a flight risk nor a danger to the community. See Ex. C, ECF No. 11, Docket Sheet, United States of America v. Kaushakumar Jitendrabhai Patel, 5:25-cr-00452-CH-1.

On October 29, 2025, Magistrate Judge Pamela A. Carlos granted Petitioner $50,000 bail, on Petitioner's own recognizance in the federal criminal matter. See Ex. D, Bond Order, United States of America v. Kaushakumar Jitendrabhai Patel, 5:25-cr-00452-CH-1 (Oct. 29, 2025).

Petitioner established to the Immigration Court, the United States Attorneys Office for the Eastern District of Pennsylvania, and Magistrate Judge Pamela A. Carlos, that Petitioner was neither a flight risk nor a danger to the community, rendering the grant of bond appropriate.

Petitioner has been in the United States for over twenty-five years, has two United States Citizen children who Petitioner financially supports and lives with, maintains a place of residence, has been long employed by the same employer, and has led a life free from criminal justice interactions, but for the pending federal criminal proceedings. The federal criminal proceedings are merely allegations, however, not convictions. Petitioner is ready, willing, and able to post the $7,500 bond that the Immigration Court set. See Ex. A.

Respondents will argue that Petitioner is subject to mandatory detention as an "arriving alien," arguing that Petitioner entered the United States without inspection. Petitioner contends that entry was with inspection and admission and, therefore lawful.

Either way, Petitioner's continuing detention is contrary to the United States Constitution, federal law, and federal regulations.

IV. PARTIES

Petitioner is an individual who is detained in custody of the Warden of the Pike County Correctional Faciltiy, whose powers are delineated through Respondent, Kristi Noem and Respondent, Todd Lyons. Petitioner's mailing address of 175 Pike County Blvd, Lords Valley, Pennsylvania 18428.

Respondent, Craig Lowe ("Respondent-1"), is the Warden of Pike County Correctional Facility, and maintains physical custody of Petitioner. This action is against Respondent, Craig Lowe, in his official capacity as Warden, Pike County Correctional Facility, who maintains a place of business is Pike County Correctional Facility, 175 Pike County Blvd, Lords Valley, Pennsylvania 18428.

Respondent, Kristi Noem ("Respondent-2"), is the Secretary of the United States Department of Homeland Security, who maintains ultimate control over the detention of all aliens, including, but not limited to, Petitioner. This action is against Respondent, Kristi Noem, brought in her official capacity as Secretary of the United States Department of Homeland Security. Respondent-2's principal place of business is 2707 Martin Luther King Jr Avenue SE, Washington, District of Columbia 20528.

Respondent, Todd Lyons ("Respondent-3"), is the Acting Director of United States Immigration and Customs Enforcement ("ICE"), who is responsible for managing, directing, and overseeing all assets and immigration enforcement at the Northern and

Southern Borders of the United States, directs enforcement of federal immigration laws within the interior of the United States, leads the chief law enforcement department of the United States Department of Homeland Security, and is delegated with the responsibility of detaining aliens, such as Petitioner. This action is against Respondent, Todd Lyons, brought in his official capacity of Acting Director of ICE. Respondent-2's principal place of business is 500 12th Street SW, Washington, District of Columbia 20536.[1]

V. JURISDICTION

The Court has jurisdiction under Section 2241(c)(3), Title 28, United States Code, to grant a writ of habeas corpus to a person in custody in violation of the Constitution, laws, or treaties of the United States. Demore v. Kim, 538 U.S. 510, 517 (2003). Absent "suspension, the writ of habeas corpus remains 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). A habeas petitioner has "the burden of sustaining his allegations by a preponderance of evidence." Walker v. Johnston, 312 U.S. 275, 286 (1941).

Further, jurisdiction vests with the Court in "all civil actions arising under the Constitution, laws, or treaties of the United States" and the ability to grant equitable relief in the absence of an exclusive statutory review scheme. 28 U.S.C. § 1331; see also Semper v. Gomez, 747 F.3d 229, 242 (3d Cir. 2014). Here, Petitioner is in the physical custody of

[1] Respondent-1, Respondent-2, and Respondent-3 are collectively referred to as "Respondents" throughout this Petition.

Respondents and detained in federal immigration detention within the Middle District of Pennsylvania.

Subject matter jurisdiction vests with the Court pursuant to Section 2241(c)(5), Title 28, United States Code (habeas corpus), Section 1331, Title 28, United States Code (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

Further, the Court may grant relief pursuant to Section 2241, Title 28, United States Code, the Declaratory Judgment Act, and the All Writs Act. See 28 U.S.C. § 2201 et seq.; see also 28 U.S.C. § 1651.

Respondents may argue that the "zipper clause" at Section 1252(b)(9), Title 8, United States Code, bars review of the Petition. Such an argument is wrong as the "zipper clause" does not apply in this matter as Petitioner challenges custody rather than review of removal orders. See Aguilar v. U.S. ICE, 510 F.3d 1, 13–14 (1st Cir. 2007) (holding that Section 1252(b)(9)[, Title 8, United States Code,] funneled an ineffective-assistance challenge into a petition for review because the challenge was "inextricably intertwined with" the alien's "removal proceeding"); see also Tazu v. Att'y Gen. United States, 975 F.3d 292 (3d Cir. 2020) (holding that "Section 1252(b)(9)[, Title 8, United States Code,] does not foreclose all claims by an immigration detainee. If [petitioner] had challenged the length of his confinement, for instance, he could have pursued that challenge outside a petition for review. That is because prolonged detention suggests that removal is not reasonably foreseeable. Challenges to the length or conditions of an alien's confinement

are not directly about removal. For these claims, review is now or never. So the Act does not funnel them into a petition for review.").

Moreover, Respondents will likely argue that the bar to review at Section 1252(g), Title 8, United States Code, prevents the Court from exercising jurisdiction. Petitioner submits that Section 1252(g), Title 8, United States Code is inapplicable, and, further, the categorical exclusions in Sections 1252(a)(2)(A)-(D), Title 8, United States, do not cover the statutory provisions this matter challenges.

The Real ID Act of 2005 provides that an order of removal may only be judicially reviewed through a petition for review filed with the appropriate court of appeals. Real ID Act of 2005, Pub. L. No. 109-13, sec. 106, § 242, 119 Stat. 231 (codified, as amended at 8 U.S.C. § 1252 (2018)). Indeed, the Court does not have the jurisdiction to review a final removal order. See, e.g., Merritt v. U.S. Immigration & Customs Enf't, 737 F. App'x 66, 68 (3d Cir. 2018) (noting that "the District Court lacked jurisdiction" to consider habeas corpus petition challenging removal order); Khouzam v. Attorney General of U.S., 549 F.3d 235, 244 (3d Cir. 2008) (noting that the Real ID Act removed district courts' habeas corpus jurisdiction over petitions challenging removal orders); Zubrytskyy v. Doll, No. 1:18-CV-02239, 2019 WL 1227459, at *2 (M.D. Pa. Mar. 15, 2019) (holding "federal district courts have no jurisdiction over any claims asserted by aliens challenging their underlying removal orders."); Shafer v. Bureau of Immigration & Customs Enf't, No. 3:07-CV-00264, 2007 WL 1217692, at *4 (M.D. Pa. Feb. 22, 2007) (recommending dismissal of habeas petition challenging removal order for lack of jurisdiction), report and

recommendation adopted, No. 3:07-CV-00264, 2007 WL 1217692, at *3 (M.D. Pa. Apr. 24, 2007). The limiting provision prevents the Court from exercising habeas corpus jurisdiction over a final order of removal, to stay an order of removal, to prevent the execution of a final order of removal, or to review the merits of the order of removal itself. See, e.g., Reddi v. Lowe, No. 3:11-CV-00488, 2011 WL 1398486, at *4 n.3 (M.D. Pa. Apr. 13, 2011) (stating that "we find that we have no jurisdiction to enjoin the Respondents from executing a removal order."); Charles v. Bice, No. 4:06-CV-02316, 2007 WL 88213, at *1 (M.D. Pa. Jan. 9, 2007) (finding that court lacked jurisdiction to issue stay of removal under Real ID Act).

The Court, however, must consider the constitutional challenges raised in the Petition, as such challenges do not run afoul of the jurisdiction-stripping clauses set forth in Section 1252(g), Title 8, United States Code. Section 1252(g), Title 8, United States Code states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g), Title 8, United States Code's "bar on jurisdiction is 'narrow[ ],' and 'does not preclude jurisdiction over the challenges to the legality of [a noncitizen's] detention.'" Id. at 397 (citing Öztürk v. Hyde, 136 F.4th 382, 396 (2d Cir. 2025); (quoting Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999)); (quoting Kong v. United States, 62 F.4th 608, 609 (1st Cir. 2023)). Thus, "[e]ven though, '[i]n a but-for sense,' a claim of unlawful detention might arise from the

government's decision to commence proceedings, adjudicate a case, or execute a removal, challenges to unlawful detention 'do not "arise from" the government's decision to "execute removal orders" within the meaning of Section 1252(g)[, Title 8, United States Code,] simply because the claims relate to that discretionary, prosecutorial decision.' " Id. (quoting Kong, 62 F.4th at 613).

Jurisdiction, therefore, clearly vests with the Court.

VI. VENUE

Venue is proper before the United States District Court for the Middle District of Pennsylvania because Petitioner is detained in and the events that give rise to this Petition occurred and are still occurring within the geographic boundaries of the United States District Court for the Middle District of Pennsylvania. See 28 U.S.C. § 2241(d) (stating that venue is appropriate in both the district in which the prisoner is in custody and the district in which he was convicted and sentences); see generally Braden v. 30th Judicial Cir. Ct., 410 U.S. 484, 93 S. Ct. 1123, 35 L.Ed.2d 443 (1973) (holding that in nearly every case, the federal district court in the State in which the custodian of the petitioner resides has personal jurisdiction over the habeas corpus actions brought by the petitioner).

VII. EXHAUSTION AND FUTILITY

Prudential exhaustion of administrative remedies is not required when pursuit of agency relief would be futile because the agency has effectively predetermined the issue. McCarthy v. Madigan, 503 U.S. 140 (1992). Matter of Yajure Hurtado and related developments render administrative appeals futile in many cases, supporting judicial

consideration here as to the question of whether an individual who entered the United States many, many years ago without inspection is not eligible for bond.

Further, the Supreme Court has recognized that courts should not require exhaustion where there is an unreasonable or indefinite time frame for administrative action, as is the case here. Exhaustion is thus not appropriate where Petitioner "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." Id. at 147. Petitioner has a constitutionally protected liberty interest in his freedom from government custody. Zadvydas, 533 U.S. at 690. Petitioner's unlawful and indefinite detention constitutes irreparable harm, particularly when the appeal to the Board is requested by the Department, not Petitioner. See Seretse-Khama v. Ashcroft, 215 F. Supp.2d 37, 53 (D.D.C. 2002); Hardy v. Fischer, 701 F.Supp. 2d 614, 619 (S.D.N.Y. 2010) (threat of unlawful detention and reimprisonment would constitute quintessential irreparable harm).

Moreover, the Immigration Court granted Petitioner bond. Petitioner has no reason to appeal this grant of bond.

Exhaustion, therefore, is not necessary.

VIII. LEGAL FRAMEWORK

(1) Immigration and Nationality Act and Federal Regulations

The Act prescribes detention mechanisms for noncitizens in removal-related contexts. Relevant provisions include Sections 1226, 1225, and 1231, Title 8, United States Code, and implementing regulations at Sections 1003.19, 1236.1, and related provisions, Title 8, Code of Federal Regulations.

Section 1225(b)(2)(A) provides for detention of an "alien seeking admission" pending removal proceedings. The statutory definition of "admission" in Section 1101(a)(13)(A), Title 8, United States Code, refers to lawful entry after inspection and authorization. Federal regulations promulgated in 1997 preclude immigration judges from granting bond to "arriving aliens" as defined at Section 1001.1(q), Title 8, Code of Federal Regulations, while preserving bond redetermination for others who entered without inspection.

Section 1226 and its recent amendments, including Section 1226(c)(1)(E), Title 8, United States Code, enacted by the Laken Riley Act, address mandatory detention for specified categories of noncitizens and demonstrate overlap that the government's current interpretation would render surplusage.

By its terms and legislative context, Section 1225(b)(2)(A), Title 8, United States Code, targets noncitizens seeking admission at ports of entry and does not encompass individuals apprehended within the country who never sought admission at a port-of entry; construing Section 1225, Title 8, United States Code 1225 to sweep in all persons who lack formal admission conflicts with the term "entry" and renders other statutory provisions superfluous.

The Supreme Court in Jennings v. Rodriguez succinctly described the difference between the statutory provisions at issue here, beginning with two situations immigration officials encounter in making admission or removal decisions:

> Every day, immigration officials must determine whether to admit or remove the many 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. Immigration officials must also determine on a daily basis whether there are grounds for removing any of the aliens who are already present inside the country. The vast majority of these determinations are quickly made, but in some cases deciding whether an alien should be admitted or removed is not as easy. As a result, Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.

583 U.S. 281,285-86 (2018). The Court explained, "to implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." Id. at 286. Explaining Section 1225, Title 8, United States Code § 1225, the Court stated, the "process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." Id. at 287. An "applicant for admission" is a noncitizen who "arrives in the United States, or 'is present' in this country but has not been admitted." 8 USC § 1225(a)(1). Pursuant to Section 1226(a)(1), Title 8, United States Code, "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers."

Section 1225(b), Title 8, United States Code, describes two classes of applicants for admission: (1) noncitizens "initially determined to be inadmissible due to fraud,

misrepresentation, or lack of valid documentation" and "certain other aliens designated by the Attorney General in his discretion" and (2) a catchall provision "that applies to all applicants for admission not covered by Section 1225(b)(1), Title 8, United States Code . . . (with specific exceptions[])"). Jennings, 583 U.S. at 287. Most noncitizens under Section 1225(b)(1), Title 8, United States Code, are ordered removed "without further hearing or review" under Section 1225(b)(1)(A)(i), Title 8, United States Code. Id. Others who fall under Section 1225(b)(1), Title 8, United States Code, are detained when a noncitizen states an intention to apply for asylum and is determined in an interview to have a credible fear of persecution. Id. Noncitizens covered under the broader scope of Section 1225(b)(2), Title 8, United States Code, "'shall be detained for a [removal] proceeding' if an immigration officer 'determines that [the noncitizen is] not clearly and beyond a doubt entitled to be admitted' into the country." Id. at 288. Under either Subsection of 1225(b), Title 8, United States Code, "applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" Id. (quoting Section 1182(d)(2)(5)(A), Title 8, United States Code). This type of "parole" is not an "admission" pursuant to 1182(d)(5)(A), Title 8, United States Code. Id.

Introducing its discussion of Section 1226, Title 8, United States Code, the Jennings Court states:

> Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more . . . classes of deportable aliens.' That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission.

Id. (quoting Sections 1227(a)(1), (2), Title 8, United States Code.). Noncitizens falling within this definition may be arrested and detained pending removal. Id.

The default rule for arrest and detention is under Section 1226(a), Title 8, United States Code: "[t]he Attorney General may issue a warrant for the arrest and detention of an alien 'pending a decision on whether the alien is to be removed from the United States.'" Id. (quoting Section 1226(a), Title 8, United States Code). Noncitizens falling under the default rule may be released by the Attorney General on bond or conditional parole. Id.

Section 1226(c), Title 8, United States Code, carves out an exception to the default rule of discretionary release in Section 1226(a), Title 8, United States Code, applicable to "'any alien' who falls into one of several enumerated categories involving criminal offenses and terrorist activities." Id. at 289. There are a narrow set of circumstances when the Attorney General may release someone who falls under Section 1226(c), Title 8, United States Code. Id. In summary of this statutory framework, the Court explained, "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under Sections 1225(b)(1) and (b)(2), Title 8, United States Code. It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under Sections 1226(a) and (c), Title 8, United States Code."

(2) The Board of Immigration Appeals

The issue presented to the Board in Hurtado was whether the Act requires

> that all applicants for admission, even those like [Hurtado] who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?

Hurtado, 29 I&N Dec. at 220. Hurtado conceded that he was an "applicant for admission" under Section 1225(a)(1), Title 8, United States Code, because he entered without inspection, but he argued he was not "seeking admission" because he had resided in the U.S. for almost three years. Id. at 221. The Board found this argument unpersuasive because it did not answer the question of Hurtado's legal status. Id. The Board found the plain language of the Act would not support a reading that after some undefined period of time residing in the interior of the United States without lawful status. . . . an applicant for admission is no longer "seeking admission," and has somehow converted to a status that render[s] him or her eligible for a bond hearing under [Section 1226(a), Title 8, United States Code]." Id.

The Board further disagreed with Hurtado's contention that "DHS' 'longstanding practice' of treating aliens who are present in the United States without inspection as detained under . . . [Section 1226(a), Title 8, United States Code]" supported the conclusion that "Congress did not intend . . . [Section 1226(b)(2)(A), Title 8, United States Code], to apply to aliens who are arrested after having lived in the United States for more than 2 years[.]" Id. at 225-26. According to the Board, the longstanding practice of the Government under Section 1226(a), Title 8, United States Code, could not "somehow

change or even eviscerate, explicit statutory text that is contrary to that practice." Id. at 226. The same was true in cases where the Department issued an arrest warrant in conjunction with a Form I-862, Notice to Appear and a Notice of Custody Determination pursuant to Section 1226(a), Title 8, United States Code because "the issuance of an arrest warrant does not endow an [IJ] with authority to set bond for an alien who falls under. . . [Section 1225(b)(2)(A), Title 8, United States Code]." Id. at 227.

While the Board's decision might be a good read, the Court is not bound by it, see Loper Bright Enters. v. Raimondo, 603 U.S. 369, 385-86, 401 (2024) (interpretation of the meaning of a statute belongs to the "judgment" of the courts, as "agencies have no special competence in resolving statutory ambiguities"), particularly where Board made prior pronouncements to the contrary. See Hurtado, 29 I&N Dec. at 225 n.6 (stating that "[w]e acknowledge that for years Immigration Judges have conducted [Section 1226(a), Title 8, United States Code,] bond hearings for aliens who entered the United States without inspection."); see Martinez, 2025 WL 2084238, at *8 (discussing prior Board decisions). Under Loper, the Court is not required to defer to the Board's recent interpretation, particularly when that view has not "remained consistent over time." 603 U.S. at 386; id. at 385-86 (stating that "'the longstanding practice of the government'—like any other interpretive aid—'can inform [a court's] determination of what the law is'") (citations omitted); see Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (stating that the "weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later

pronouncements, and all those factors which give it power to persuade, if lacking power to control").

(3) Interpretation

Further, "courts must exercise independent judgment in determining the meaning of statutory provisions." Loper, 603 U.S. at 394. Courts may seek guidance from agency interpretations, and such interpretations "may be especially useful" when they are "issued contemporaneously with the statue at issue, and which have remained consistent over time." Id. Where a statute delegates discretionary authority to an agency, the reviewing court must independently interpret the statute and "effectuate the will of Congress subject to constitutional limits." Id. at 395. "In an agency case as in any other, though, even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—the reading the court would have reached if no agency were involved." Id. at 399 (citation modified). Courts should apply all relevant interpretive tools and conclude the best statutory interpretation. Id. at 400.

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." City & Cnty. Of San Francisco, California v. Env"t Prot. Agency, 604 U.S. 334, 350 (2025) (citation modified). Respondents' likely interpretation of Section 1225(b)(2)(A), Title 8, United States Code, is incompatible with the overall statutory scheme, which the Supreme Court in Jennings described as (1) deciding who may enter the country under Section

1225(b), Title 8, United States Code; and (2) deciding who may remain in the country after entering under Section 1226(a), (c), Title 8, United States Code. 583 U.S. at 286.

Respondents will completely ignore the plain and longstanding distinction in United States immigration law between those noncitizens who are entering the country and those who remain after entering, focusing instead on the definitions of "applicant for admission" and misreading a misreading of the statutory phrase "seeking admission" to include the past-tense, an alien who already entered the country without inspection under Section 1225, Title 8, United States Code. The best statutory interpretation, consistent with the Jennings Court's discussion of the overall statutory scheme, is that Section 1225(b)(2), Title 8, United States Code, governs "applicants for admission at the border and mandates custody without bond while admissibility is determined" and Section 1226(a), Title 8, United States Code "applies to noncitizens already present and allows for detention pending removal, with bond hearings before an immigration judge." Eliseo A.A. v. Olson., No. 25-3381, 2025 WL 2886729, at *2 (D. Minn. Oct. 8, 2025); Lopez Benitez, 2025 WL 2371588, at *6 (stating that, "[b]y reading [the] phrase [seeking admission] out of the statute, Respondents' interpretation of [Section] 1225[, Title 8, United States Code,] clearly 'violates the rule against surplusage.'" (quoting Martinez v. Hyde, No. 25-11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025)); Sampiao, 2025 WL 2607924, at*7 (holding that "[t]he plain text of Section 1226(a)[, Title 8, United States Code,] . . . indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant"); Leal Hernandez, 2025 WL 2430025, at *10 (holding that "[t]he Government

appears willfully blind to the operation of [Section] 1226(a)[, Title 8, United States Code.]" by ignoring the statutory text that an alien may be arrested and detained on a warrant issued by the Attorney General pending a decision on removal); Kostak, 2025 WL 2472136, at *3 (holding that "[t]he Jennings analysis explains the necessity for both statutes by differentiating between the detention of arriving aliens who are seeking entry into the United States under Section 1225[, Title 8, United States Code,] and the detention of those who are already present in the United States under Section 1226[, Title 8, United States Code.]"); Mosqueda, 2025 WL 2591530, at *5 (holding that "[t]he Court finds that the conflict is avoided by interpreting [S]ections 1225(b)(2) and 1226(a)[,] Title 8, United States Code], to apply to different sets of noncitizens—those "seeking admission" compared to those already in the country who are arrested and detained."); Zumba v. Bondi, No. 25-CV-14626, 2025 WL 2753496, at *10 (D.N.J. Sept. 26, 2025) (holding, in a factually similar situation to now before the Court, that the "[p]etitioner's mandatory detention is not authorized by [Section] 1225, [Title 8, United States Code,] serves no legitimate purpose, and amounts to punitive detention, warranting habeas relief"); Pizarro Reyes v. Raycraft, No. 25-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (citation modified) (holding that "[w]hereas [Section] 1225[, Title 8, United States Code,] governs removal proceedings for 'arriving aliens,' [Section] 1226(a)[, Title 8, United States Code] serves as a catchall. . . [Section] 1226(a)[, Title 8, United States Code,] is the 'default rule' and 'applies to aliens already present in the United States' . . . inclusion of both provisions ... is likely . . . a way for Congress to capture noncitizens who fall outside of the

specified categories"); Barrera v. Tindall, No. 25-541, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (holding the text of Section 1225, Title 8, United States Code is focused "on inspections for noncitizens when they arrive" and "suggest[s] that Section 1225, Title 8, United States Code, is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States.").

This Court must find that the historical practice – under which § 1225(b)(2)(A) would not have applied to Petitioner – is consistent with the text, structure, and statutory scheme.

As noted above, Section 1225(a), Title 8, United States Code, 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" and in turn, Section1225(b)(2)(A), Title 8, United States Code, states 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 [S]ection 1229a[,]" Title 8, United States Code. Any argument of Respondents that every noncitizen who has not been lawfully admitted into the United States continues to be a noncitizen "seeking admission" appears to equate "applicant for admission" with "seeking admission." But such a reading would render the phrase "seeking admission" in Section 1225(b), Title 8, United States Code, superfluous—that is, it is not doing any work in the statutory text, which would violate the rule against surplusage. See United States, ex rel. Polansky v. Exec. Health Res., Inc., 599 U.S. 419, 432 (2023) (holding that "'every clause

and word of a statute' should have meaning."). It is a basic canon of statutory interpretation that a statute should be construed as to give effect to all its provisions and that no part will be superfluous. Corley v. United States, 556 U.S. 303, 314 (2009). If an interpretation of one provision "would render another provision superfluous, courts presume that interpretation is incorrect." Bilski v. Kappos, 561 U.S. 593, 607-08 (2010). This presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme." Marx v. Gen. Rev. Corp., 568 U.S. 371, 386 (2013). Under Respondents likely reading and application of Section 1225(b)(2), Title 8, United States Code, nearly all noncitizens already in the United States but not previously admitted or entered illegally would be subject to § 1225(b)'s mandatory detention. If, as Respondent will submit, § 1225(b)'s mandatory detention provision applies to all noncitizens who remain applicants for admission to the United States, this would render superfluous the mandatory detention provisions found in Sections 1226(c)(1)(A), (D), and (E), Title 8, United States Code. Section 1226(c)(1)(A), Title 8, United States Code, provides that the "Attorney General shall take into custody any alien who is inadmissible by reason of having committed any offense covered in [S]ection 1182(a)(2)[,]" Title 8, United States Code," such as crimes of moral turpitude and offenses relating to controlled substances. 8 U.S.C. § 1226(c)(1)(A).

This mandatory detention under Section 1226(c), Title 8, United States Code, would be unnecessary if all persons who have not been admitted into the United States were already subject to Section 1225(b), Title 8, United States Code's mandatory detention

provisions. Likewise, Congress amended Section 1226, Title 8, United States Code, this year with the Laken Riley Act by adding Section 1226(c)(1)(E), Title 8, United States Code, which makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions in Section 1182, Title 8, United States Code, and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes. 8 U.S.C. § 1226(c)(1)(E). Even under this new amendment, only when the inadmissibility and the criminal conduct criterion are both satisfied did Congress intend for mandatory detention to be triggered. See Gomez, 2025 WL 186929, at *6. Thus, Respondents' likely theory that Section 1225, Title 8, United States Code, applies to noncitizens who are arrested on a warrant while residing in the United States would make Section 1226(c)(1)(E), Title 8, United States Code's criminal conduct requirement superfluous, thereby "nullify[ing] a statute that Congress enacted this very year." Id. at *7. In sum, the Court must conclude that Respondents' likely reading of the relationship between Sections 1226(c) and 1225, Title 8, United States Cose would contravene Congress's intent that, except as provided in Section 1226(c), Title 8, United States Code, Section 1226(a), Title 8, United States Code's discretionary framework applies to all citizens arrested on a warrant while residing the United States. Further, the issuing officer did not deem Petitioner to be an "arriving alien" but instead deemed him, at the time, to be "present" in the United States. As explained, the Supreme Court has interpretated the language of noncitizens "seeking admission" to mean something different from those already present in the United States.

Finally, Respondents' likely interpretation of the statutory scheme does not square with more than a century of Supreme Court's holdings interpreting the relationship between Section 1225(b) and 1226(a), Title 8, United States Code. In 1958, the Court held that "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality[;] [i]n the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" Leng May Ma v. Barber, 357 U.S. 185, 187 (1958). The Supreme Court later explained in Zadvydas that "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." 533 U.S. 678, 693 (2001) (noting that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"). In Jennings, the Supreme Court reaffirmed this principle, stating that § 1225(b) governs "aliens seeking admission into the country" whereas § 1226(a) governs "aliens already in the country" who are subject to removal proceedings. 583 U.S. at 289.

And as recently as 2020, in Department of Homeland Security v. Thuraissigiam, where a petitioner was arrested a mere twenty five yards after crossing the border, the Supreme Court held that he was still "at the threshold of initial entry" and although technically in the country, could still be treated as "an alien seeking initial entry." 591 U.S.

103, 114 (2020) (holding that a noncitizen detained "within 25 yards of the border" is treated as if stopped at the border and therefore due process claim failed). Contrary to Respondents' likely position, Thuraissigiam did not upend more than a century of precedent but rather held that noncitizens detained close to the border "shortly after unlawful entry" have not yet "effected an entry." Id. at 140. It continues to be the law of in this country that noncitizens "on the threshold of initial entry stand[ ] on a different footing" than those who have "passed through our gates." Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953).

Here, the Court must find that Petitioner "effected entry" into the United States more than twenty-five years ago, see Thuraissigiam, 591 U.S. at 140, and therefore was "already in the country," see Jennings, 583 U.S. at 289. Accordingly, Petitoner's current detention fits squarely under Section 1226(a), Title 8, United States Code. Petitioner entered the United States in 1998, and has lived in the United States since. Regardless of whether Plaintiff was admitted or not admitted, Section 1226(a), Title 8, United States Code, is applicable.

(4) The Automatic Stay Provision

As noted, supra, Respondents appealed the Immigration Court's grant of bond to the Board and, in doing so, invoked the automatic stay provision under Section 1003.19(i)(2), Title 8, Code of Federal Regulations, on Petitioner's detention, which states:

> In any case in which DHS has determined that an alien should not be released or has set a bond of $ 10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of

> intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board.

The automatic stay provision under Section 1003.19(i)(2), Title 8, Code of Federal Regulations, is unconstitutional.

Petitioner is owed full due process rights because, even assuming Respondents are correct in finding that Petitioner entered without inspection, Petitioner is not an applicant for admission at the threshold of entry. Additionally, the Supreme Court has long held that "[t]he Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these [noncitizens] from deprivation of life, liberty, or property without due process of law." Mathews v. Diaz, 426 U.S. 67, 77 (1976). The Court continued: "[e]ven one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection." Id.; see Zadvydas, 533 U.S. 678, 693 (2001) (holding that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States. . ."). The Supreme Court affirmed its previous holdings in Reno v. Flores, finding that "the Fifth Amendment entitles aliens to due process of law in deportation proceedings." 507 U.S. 292, 306 (1992)

In recent weeks, courts across the United States have found that the automatic stay provision under Section 1003.19(i)(2), Title 8, Code of Federal Regulations, violates due process. See e.g., Günaydin v. Trump, No. 25- CV-01151, ____ F.Supp.3d ____, 2025 U.S. Dist. LEXIS 99237 (D. Minn. May 21, 2025) (finding the regulation violated

procedural due process); Anicasio v. Kramer, No. 4:25CV3158, 2025 U.S. Dist. LEXIS 157236 (D. Neb. Aug. 14, 2025) (finding the regulation violated procedural and substantive due process). Litigation over the unconstitutionality of the automatic stay provision has also been ongoing for over twenty years. See e.g., Ashley v. Ridge, 288 F. Supp. 2d 662, 673 (D.N.J. 2003) (finding the regulation violated substantive and procedural due process); Zavala v. Ridge, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same); Bezmen v. Ashcroft, 245 F. Supp. 2d 446 (D. Conn. 2003) (finding the regulation violated substantive due process).

CLAIMS FOR RELIEF

COUNT I
VIOLATION OF THE ACT

The mandatory-detention provision at Section 1225(b)(2)(A), Title 8, United States Code, does not apply to noncitizens who were residing in the United States after entering without inspection and later apprehended, or to noncitizens who entered with inspection and admission and are later apprehended for an immigration violation, because the provision applies to "aliens seeking admission" as defined in Section 1101(a)(13)(A), Title 8, United States Code.

Petitioner therefore is properly considered under Section 1226(a), Title 8, United States Code, which permits bond except where mandatory detention under Section 1226(c), Title 8, United States Code, applies.

Here, mandatory detention does not apply. Further, the Immigration Court granted Petitioner a $7,500 bond, finding Petitioner is neither a flight risk nor a danger to the community.

COUNT II
VIOLATION OF FEDERAL REGULATIONS

Federal regulations limit the category of noncitizens precluded from bond to "arriving aliens" as defined by regulation, and the Attorney General's 1997 rulemaking confirms that persons who entered without inspection retain access to bond redetermination before immigration courts. 8 C.F.R. §§ 1003.19, 1236.1; 62 Fed. Reg. 10312 (March 6, 1997). Likewise, noncitizens who were inspected and admitted into the United States are not precluded from immigration bond. Id.

Here, the Immigration Court granted Petitioner bond and Petitioner is ready, willing, and able to post the bond. Respondents, however, refuse to release Petitioner, in violation of the respective sections of the Code of Federal Regulations. Id.

COUNT III
VIOLATION OF DUE PROCESS

Petitioner has a protected liberty interest and Respondents' mandatory detention practice in both the mandatory/automatic stay during appeal of bond by the Department, in applying mandatory-detention provision at Section 1225(b)(2)(A), Title 8, United States Code to Petitioner, and in refusing to release Petitioner on the bond that the Immigration Court set, deprive Petitioner of liberty without due process in violation of the Fifth Amendment.

PRAYER FOR RELIEF

Petitioner, Kaushal Jitendrabhat Patel, requests that the Court enter an Order that:

1. Assumes jurisdiction over this matter;
2. Sets the matter for expedited consideration;
3. Issues a writ of habeas corpus;
4. Immediately releases Petitioner upon Petitioner's posting of a $7,500 bond; and
5. Grant any other relief the Court deems just and proper.

Respectfully Submitted:

LAHOUD LAW GROUP, P.C.

Date: November 11, 2025

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