

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Division**

LUIS BERNARDO ORTEGA ALVAREZ,)

c/o Grant, Herrmann, Schwartz &)
Klinger LLP)
107 Greenwich St., 25th Fl.)
New York, NY 10006)

Petitioner,)

v.)

Civil Action No. 2:25-cv-
17401

KRISTI NOEM, *Secretary of Homeland Security,*)
U.S. Department of Homeland Security)
245 Murray Lane, SW, Mail Stop 0485)
Washington, DC 20528-0485)

TODD LYONS, *Acting Director, U.S.*)
Immigration and Customs Enforcement,)

JOHN TSOUKARIS, *Director, Newark ICE Field*)
Office, U.S. Immigration and Customs)
Enforcement,)
500 12th St., SW)
Washington, D.C. 20536)

PAMELA BONDI, *Attorney General, U.S.*)
Department of Justice,)
950 Pennsylvania Avenue, NW)
Washington, DC 20530-0001)

WARDEN, *Delaney Hall Detention*)
Facility)
451 Doremus Ave,)
Newark, NJ 07105)

Respondents.)
_____)

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, Luis Bernardo Ortega Alvarez, is unlawfully detained by Respondents in this judicial district and, therefore, must be ordered released. Petitioner is a citizen of Bolivia who fled to the United States following his and his family’s persecution there. On April 4, 2023, Petitioner was encountered by immigration officials and issued a Notice to Appear (“NTA”) charging him with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) (8 U.S.C. § 1182(a)(6)(A)(i)) as an alien present without admission or parole. The following day, immigration officials released Petitioner with an Order of Release on Recognizance which indicates that his release was “*[i]n accordance with section 236 of the [INA] [8 U.S.C. § 1226][.]*” (emphasis added). Following his release, Petitioner appeared in immigration court in New York and thereafter filed an asylum application with U.S. Citizenship and Immigration Services (“USCIS”). On June 6, 2024, Petitioner’s Employment Authorization was approved and granted by USCIS, valid until June 5, 2029. Accordingly, Petitioner was free from official restraint in the United States continuously for over two and a half years, from April 5, 2023 until his recent unlawful detention by U.S. Immigration and Customs Enforcement (“ICE”) on or about October 21, 2025.

Due to a new policy announced by ICE in July 2025, and a September 2025 Board of Immigration Appeals (“BIA”) decision that overturns decades of settled law, Respondents now erroneously contend—contrary to decades of established precedent, statutory interpretation, internal consistency, implementation, and Petitioner’s ORR which explicitly indicates that his release was in accordance with INA § 236 (8 U.S.C. § 1226)—that Petitioner is detained under INA § 235(b) (8 U.S.C. § 1225(b)). While § 1225 provides for mandatory detention and does not allow release on bond, crucially it only applies to noncitizens apprehended at the border and charged as “arriving aliens” or applicants for admission “seeking admission,” and not to individuals initially charged as aliens present in the United States who have not been admitted or paroled, or those initially detained and subsequently released under INA § 236 (8 U.S.C. § 1226), such as Petitioner. Petitioner therefore brings this action seeking a declaratory judgment from this Court that his purported detention under 8 U.S.C. § 1225(b) is unlawful and, therefore, he must be released, and that he may only be re-detained pursuant to 8 U.S.C. § 1226(a); and, should Respondents re-detain him pursuant to 8 U.S.C. § 1226(a), seeking an order that Respondents schedule him for a discretionary bond hearing pursuant to § 1226(a) before an Immigration Judge (“IJ”) as soon as possible but no later than 15 days from this Court’s order. Petitioner also requests that the Court immediately

issue an order enjoining Petitioner's transfer outside of this judicial district pending this litigation.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary, and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

3. This Court also has federal question jurisdiction, through the Administrative Procedure Act ("APA"), to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

4. Venue lies in this District because Petitioner is currently detained within the territorial jurisdiction of this division of this District, and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

THE PARTIES

5. Petitioner Luis Bernardo Ortega Alvarez is a citizen and native of Bolivia and is currently detained by Respondents at Delaney Hall Detention Facility, located in Newark, NJ 07105, within the territorial jurisdiction of this Court.

6. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

7. Respondent Todd Lyons is the Acting Director of ICE. He is the head of the federal agency responsible for all immigration enforcement in the United States.

8. Respondent John Tsoukaris is the Director of the Newark ICE Enforcement and Removal Operations (“ERO”) Field Office. He is the head of the ICE office that is unlawfully detaining Petitioner, and is the immediate legal custodian of Petitioner.

9. Respondent Pamela Bondi is the Attorney General of the United States. The IJs who decide removal cases and applications for bond and relief from removal do so as her designees.

10. Respondent Warden of the Delaney Detention Facility in Newark, NJ, is the immediate custodian who is currently holding Petitioner in physical custody. The Warden is sued in his or her official capacity.

11. All government Respondents are sued in their official capacities.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

12. When noncitizens are alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an IJ will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

13. Detention is authorized for “certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the “default” provision for immigration detention for those subject

to traditional removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept as provided in subsection (c) of this section,’ the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.*

14. Alternatively, mandatory detention is authorized for “certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2)[.]” *Jennings*, 583 U.S. at 289 (emphasis added). Individuals inspected under § 1225(b) and determined to be “applicants for admission” may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

“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 the purposes of this chapter to be an applicant for admission.”

§ 1225(a)(1).

15. The first subset of individuals, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be “arriving aliens,” and if they have not been physically present in the United States continuously for a two-year period immediately prior. Regulations define an “arriving alien” as:

“an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.”

8 C.F.R. § 1.2.

16. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of an “applicant for admission,” specifically stating that when “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,” *i.e.*, for traditional removal proceedings. (emphasis added).

17. An “arriving alien” or an applicant for admission “seeking admission” may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a “parole bond” – a release must be under either parole pursuant to § 1182(d)(5) or bond (conditional parole) pursuant to § 1226(a). *Id.*

18. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE’s initial custody determination before the IJ (a “custody review hearing”), who has the authority to (1) modify ICE’s custody determination and set bond in a case in which ICE has designated no bond, (2) lower bond when ICE has set a cash bond amount, or (3) deny bond completely. 8 C.F.R. § 1003.19.

19. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

20. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime

after release, as detained under § 1226(a)[,]” citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

B. New ICE memo erroneously reinterpreting 8 U.S.C. § 1225(b)(2)

21. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad—and flawed—interpretation of 8 U.S.C. § 1225(b)(2). See ICE memorandum “Interim Guidance Regarding Detention Authority for Applications for Admission.”¹ This memo concerns the detention of “applicants for admission” as defined by § 1225(a)(1). “Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* (“For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.”)

22. In addition to the announcement reinterpreting § 1225(b)(2), the memo further clarifies that “[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and

¹ Available at: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited Nov. 12, 2025).

chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].”

Id.

23. Moreover, the memo maintains that “DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position.” *Id.* Notably, ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of “correct” paperwork is nonetheless permissible. *Id.* (“Accordingly, ERO and HIS [Homeland Security Investigations] are not required to ‘correct’ the release paperwork by issuing INA § 212(d)(5) parole paperwork.”)

24. Nationwide implementation of ICE’s § 1225(b)(2) mass detention policy then ensued.

C. Recent BIA decision *Matter of Yajure Hurtado*

25. On September 5, 2025, the BIA, which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE’s reinterpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

26. The BIA held that the respondent in that case was an “applicant for admission” within the scope of § 1225(b), and therefore subject to mandatory detention.

27. The BIA characterized the issue before it as “one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent 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?” *Id.* at 220 (emphasis added).

28. The BIA reasoned that individuals “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer.” *Id.* at 228.

29. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225, FN6 (“We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled ‘Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,’ 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization

Service took the position at that time that “[d]espite 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.”)

30. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

31. The BIA decision is binding on all IJs nationwide.

32. Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 (“It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.”).

33. “The vast majority of courts confronting this precise issue have rejected Respondents’ interpretation, and the BIA’s interpretation in *Hurtado*, as contradictory to the plain text of § 1225.” *Romero Lopez v. Noem*, No. 25-cv-16890-SDW (D.N.J. Nov. 5, 2025) (ECF No. 8, at 5); *see also Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (holding, in a factually similar scenario to Petitioner’s detention where a petitioner was charged as being present

without admission or parole and then detained without bond, that the “[p]etitioner’s mandatory detention [wa]s not authorized by § 1225, serve[d] no legitimate purpose, and amount[ed] to punitive detention, warranting habeas relief”); *Patel v. Almodovar*, No. 25-cv-15345, 2025 WL 3012323, at *3 (D.N.J. Oct. 28, 2025); *Soto v. Soto, et al.*, No. 25-cv-16200, 2025 WL 2976572, at *5 (D.N.J. Oct. 22, 2025); *Castillo v. Lyons*, No. 25-cv-16219, 2025 WL 2940990 (D.N.J. Oct. 10, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *S.D.B.B. v. Johnson*, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v.*

Raycraft, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Rodriguez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept, 17, 2025); *Chogllo Chafla v. Scott*, Nos. 2:25-cv-00437-SDN, 2:25-cv-00438-SDN, 2:25-cv-00439-SDN, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Hernandez Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

FACTS

34. Petitioner is a citizen of Bolivia. He entered the United States without inspection between ports of entry in early April 2023. On April 4, 2023 he was encountered by immigration officials and issued an NTA charging him as being present without admission or parole. *See* Ex. 1.

35. On April 5, 2023, immigration officials released Petitioner with an Order of Release on Recognizance which indicates that his release was “[i]n

accordance with section 236 of the [INA] [8 U.S.C. § 1226][.]” (emphasis added).

Ex. 2.

36. Following his release, Petitioner made his way to the New York area, where he established a life. His residence is in Astoria.

37. He subsequently appeared in immigration court in New York and thereafter filed an asylum application with USCIS (as a derivative on his mother’s application). Ex. 3.

38. On June 6, 2024, Petitioner’s Employment Authorization was approved and granted by USCIS, valid until June 5, 2029. Ex. 4.

39. Petitioner was at liberty in the United States continuously for over two and a half years, from April 5, 2023 until his recent unlawful detention by ICE on or about October 21, 2025.

40. Over two and a half years after his release by ICE on his own recognizance under INA § 236 (8 U.S.C. § 1226), Petitioner was detained by ICE but this time purportedly under INA § 235 (8 U.S.C. § 1225).

41. Petitioner is currently detained at the Delaney Hall Detention Facility in Newark, NJ within the territorial jurisdiction of this Court. *See* ICE Detainee Locator information (available at <https://locator.ice.gov/> (last visited on Nov. 12, 2025)):

The screenshot shows the official website of the Department of Homeland Security, U.S. Immigration and Customs Enforcement. The header includes the agency logo and name, along with a "Report Crimes" link. The navigation menu includes "Home", "Who We Are", "What We Do" (highlighted), "Newsroom", "Information Library", and "Contact ICE". The main content area displays search results for "LUIS BERNARDO ORTEGA ALVAREZ". Key details include: Country of Birth: Bolivia; A-Number: [REDACTED]; Status: In ICE Custody; State: NJ; Current Detention Facility: DELANEY HALL DETENTION FACILITY. A note states: "* Click on the Detention Facility name to obtain facility contact information". A "BACK TO SEARCH >" button is present. To the right, there are sections for "Related Information" (Helpful Info: Status of a Case, About the Detainee Locator, Brochure, ICE ERO Field Offices, ICE Detention Facilities, Privacy Notice) and "External Links" (Bureau of Prisons Inmate Locator). Social media icons are at the bottom.

42. Petitioner has pending removal proceedings and a Master Calendar Hearing set for December 3, 2025, and is not subject to a final order of removal. *See* EOIR Automated Case Information (available at <https://acis.eoir.justice.gov/> (last visited on Nov. 12, 2025)):

The screenshot displays the "Automated Case Information" page. At the top, it shows the case name: "Name: ORTEGA ALVAREZ, LUIS BERNARDO" and "A-Number: [REDACTED]". The "Docket Date" is listed as "5/5/2023". Below this, there are two main information panels. The left panel, titled "Next Hearing Information", states: "Your upcoming MASTER hearing is on December 3, 2025 at 8:30 AM." It lists the "JUDGE" as "Rastegar, Ramin" and the "COURT ADDRESS" as "625 EVANS STREET, ELIZABETH, NJ 07201". The right panel, titled "Court Decision and Motion Information", features a scale of justice icon and a clock icon, with the text "This case is pending." below them.

43. Petitioner's detention has caused severe financial and emotional hardship for his family. Before Petitioner's detention, his income was his family's main source of support for both his household in New York and his children in Bolivia, paying for almost all the rent, utilities, school and medical expenses, etc. His absence has therefore left his family in extreme economic distress. Petitioner's mother struggles to manage the household expenses alone, as her limited house cleaning income is insufficient to cover their basic needs. She also suffers from elevated blood pressure, and Petitioner's detention has caused her significant anxiety which has negatively affected her blood pressure.

44. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *See Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to file a motion for release on bond. Exhaustion of administrative remedies would therefore be fruitless and further unnecessarily prolong Petitioner's unlawful detention.

**FIRST CLAIM FOR RELIEF
(Declaratory Judgment)**

45. Petitioner re-alleges and incorporates by reference paragraphs 1-44.

46. Petitioner requests a declaration from this Court that he is not an applicant for admission "seeking admission" or "an arriving alien" subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2), that his current

detention by Respondents is unlawful, and that he may only be lawfully detained under 8 U.S.C. § 1226(a).

47. For those individuals encountered in the interior of the United States, 8 U.S.C. § 1226(a) has been “the default rule” for discretionary detention of those “already present in the United States,” during their removal proceedings. *Jennings*, 583 U.S. at 303. *See also Abreu v. Crawford*, 2025 WL 51475, at *3 (E.D. Va. Jan 8, 2025) (“There is a statutory distinction between noncitizens who are detained upon arrival into the United States and those who are detained after they have already entered the country, legally or otherwise.”). Respondents’ new interpretation of Sections 1225(b)(2) is fundamentally flawed: it ignores key statutory language, renders whole sections of Section 1226(c) nugatory, and ignores decades of settled practice without good reason.

A. Respondents’ new interpretation of 8 U.S.C. § 1225(b)(2), the mandatory detention statute, ignores key statutory language and is thus erroneous.

48. As opposed to 8 U.S.C. § 1226(a), 8 U.S.C. § 1225(b) governs detention at or near the borders of the United States. Section 1225 applies to “applicants for admission” who are defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1). Section 1225(b)(1) dictates the mandatory detention of a subset of “arriving aliens” who

present themselves for admission at ports of entry or pass credible fear interviews, neither of which is relevant here. “Section 1225(b)(2) applies to all other applicants for admission.” *Jennings*, 583 U.S. at 287 (explaining that §1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)”); *see also Hasan*, 2025 WL 2682255, at *5.

49. Mandatory detention under 8 U.S.C. § 1225(b)(2) applies to an applicant for admission when “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.” The statute defines “admission” as “the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). Respondents’ policy and interpretation requires that all applicants for admission present in the U.S. are necessarily “seeking admission.”

50. However, the statutory text of “seeking admission” must do some work or it is rendered mere surplusage in the statute and interpreted out of meaning. *Corley v. United States*, 556 U.S. 303, 314 (2009). First, the statute defines an applicant for admission as an individual present who has not been admitted. Respondents would argue that by simply being in the U.S. without being admitted is in fact to be actively seeking admission into the U.S., but this empties the statutory requirement of “seeking admission” of any meaning. All applicants for admission

are already subject to § 1225(b)(2), therefore “seeking admission” must require something different.

51. The definition of an “admission” requires an entry, lawful means, and “inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). This means mandatory detention under § 1252(b)(2) is required for those applicants for admission who are “seeking [lawful entry into the U.S. after inspection and authorization by an immigration officer] and not clearly entitled to be admitted.” But for those individuals (like Petitioner) already present in the United States, they are not necessarily seeking *another* entry. Many are simply seeking lawful status, without transiting the border anew. Several lawful statuses available to individuals already present in the United States do not require an admission (or entry) as part of their eligibility requirements yet would still result in lawful status in the United States. *See, e.g.*, 8 U.S.C. § 1158(a)(1) (“Any alien who is physically present in the United States *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), irrespective of such alien’s status, may apply for asylum[.]”); 8 U.S.C. § 1229b(b)(1)(A) (cancellation of removal and adjustment of status for a noncitizen who “has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application”). These applications involve lawful means

and an inspection and authorization by an immigration official, but do not require *entry*. So it must be possible under the statute to be an “applicant for admission” yet not necessarily “seeking admission” if they are already present in the United States. Moreover, “even if petitioner could be deemed ‘an applicant for admission,’ under § 1225(a)(1), as respondents claim, [h]e does not meet the requirements of § 1225(b)(2), because [h]e was never ‘seeking entry’ nor inspected by immigration officials.” *Zumba v. Bondi*, 2025 WL 2753496 at *8.

52. Because “seeking admission” requires also seeking *entry* into the United States, this situates 8 U.S.C. § 1225(b)(2) back at the border (rather than the interior), as it has been understood to apply for decades. “As noted, § 1225(b) applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Jennings*, 583 U.S. at 297.

B. Respondents’ new interpretation of 8 U.S.C. § 1225(b)(2) would render other bases of detention under 8 U.S.C. § 1226(c) mere surplusage.

53. Respondents’ reinterpretation of 8 U.S.C. § 1225(b)(2) not only voids language in its own subsection, but also renders meaningless entire other bases for detention under 8 U.S.C. § 1226, including §§ 1226(c)(1)(A), (D), and (E). Because of this, Respondents’ reinterpretation cannot be correct. “One of the most basic interpretive canons is that a statute should be construed so that effect is given to all its provisions, and no part will be inoperative or superfluous, void or insignificant.” *Hasan*, 2025 WL 2682255, at *8, citing *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.’” *Id.*, citing *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).

54. Further, section 1226(c) allows for detention of various classes of criminal aliens, including any alien who “(A) is inadmissible by reason of having committed any offense covered in section 1182 of this title.” Or “(D) is inadmissible under section 1182(a)(3) of this title . . .” Or the most recently added sections pursuant to the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). “The LRA amendments mandate detention for noncitizens charged as inadmissible under Sections 1182(a)(6)(A) (the inadmissibility ground for a noncitizen “present in the United States without being admitted or paroled”), 1182(a)(6)(C) (the inadmissibility ground for misrepresentation), or 1182(a)(7) (the inadmissibility ground for lacking valid documentation) *and* if the noncitizen has been arrested for, charged with, or convicted of certain crimes. *Id.*” *Rodriguez*, 779 F.Supp.3d at 1246. “This mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)’s mandatory detention provisions.” *Hasan*, 2025 WL 2682255, at *8.

C. Decades of practice in applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the United States is evidence of the agency’s prior—and correct—view.

55. Lastly, the agency’s decades of practice applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the United States remains a persuasive indicator as to the correct, broader interpretation of the statutory detention scheme. “[A]s the Supreme Court explained in *Loper Bright*, cases dating back centuries have considered ‘the longstanding practice of government’ as they would ‘any other interpretive aid.’” *Rodriguez*, 779 F.Supp.3d at 1251, citing *Loper Bright*, 603 U.S. at 386; *see also Zumba*, 2025 WL 2753496, at *9 (same). At the time of the statutes’ enactment, it was understood that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” *Rodriguez*, 779 F.Supp.3d at 1260-61, citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

56. Respondents’ new position was announced for the first time on July 8, 2025, after decades of interpretation and implementation to the contrary. By the policy’s own language, ICE announced a sea-change for immigration detention. “Effective immediately, it is the position of DHS that such aliens are subject to detention under [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a

marked deviation from prior interpretation and treatment of affected noncitizens. *Id.*

57. The Board’s decision in *Yajure Hurtado* was its first to take the position that 8 U.S.C. § 1225(b)(2) applied to all individuals present without having been inspected and admitted. 29 I. & N. Dec. at 216. Indeed, in an unpublished decision just one year prior, the Board stated that it was “**unaware of any precedent** stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here.” *Rodriguez*, 779 F.Supp.3d at 1261 (emphasis added).

58. Lastly, the LRA was enacted by Congress less than a year prior to the announcement of this new detention policy, when ICE was still applying § 1226(a) to individuals who had entered the United States without inspection. “Another ‘customary interpretive tool’ is the principle that ‘[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,’ courts ‘generally presume the new provision should be understood to work in harmony with what has come before.’” *Rodriguez*, 779 F.Supp.3d at 1259, citing *Monsalvo Velazquez v. Bondi*, 604 U.S. --, 145 S.Ct. 1232 (2025).

59. For these reasons, Respondents’ interpretation of § 1225(b)(2) must be declared erroneous, Petitioner’s current detention must be declared unlawful, and

the Court must declare that Petitioner may only be lawfully detained under 8 U.S.C. § 1226(a).

**SECOND CLAIM FOR RELIEF
(No-Bond Detention in Violation of 8 U.S.C. § 1226(a))**

60. Petitioner re-alleges and incorporates by reference paragraphs 1-44.

61. Respondents' policy states that only those admitted to the United States may be subject to discretionary detention. However, Respondents' July 2025 policy cites no statutory authority for this assertion. Further, "§ 1226(a) does not include any language restricting its application to noncitizens who were admitted to the United States." *Zumba*, 2025 WL 2753496, at *8. Since Petitioner is not "an arriving alien" (subject to 8 U.S.C. § 1225(b)(1)) or an applicant for admission "seeking admission" (subject to 8 U.S.C. 1225(b)(2)), and he has no disqualifying criminal arrests or convictions (subject to 8 U.S.C. § 1226(c)), his current detention is unlawful and he must be released. However, should he be re-detained under the proper authority of 8 U.S.C. § 1226(a), he must be entitled to a bond redetermination hearing before an IJ pursuant to 8 U.S.C. § 1226(a).

62. Respondents' actions, as set forth herein, violate Petitioner's statutory right to a bond redetermination hearing in front of an IJ.

**THIRD CLAIM FOR RELIEF
(Detention in Violation of Due Process)**

63. Petitioner re-alleges and incorporates by reference paragraphs 1-44.

64. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

65. After entering the U.S. without inspection, Petitioner went on to develop ties to the community over the course of several years. Petitioner is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and has a liberty interest in freedom from physical restraint.

66. The question of whether the government violates due process by holding noncitizens subject to Section 1226(a) detention without the right to a bond hearing before an IJ was recently addressed in the District of New Jersey, and a court herein responded to this question in the affirmative. *See Zumba*, 2025 WL 2753496, at *10. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.*, citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

67. As the *Zumba* court explained, procedural due process claims are subject to the *Mathews* test, which balances the nature of the private interest involved, the risk of erroneous deprivation and the probative value of additional process, and the Government’s interest. *Id.*, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976). On the first and second prongs, the *Zumba* court held that “the first and second *Mathews* factors weigh heavily in petitioner's favor, as she

has been deprived of her liberty, erroneously subjected to mandatory detention under § 1225 during her removal proceedings, and denied due process protections, including the right to seek bond.” 2025 WL 2753496, at *10. *See also Chogllo Chafla*, 2025 WL 2688541, at *11 (explaining that “these types of factual determinations are properly decided by an Immigration Judge after a detention hearing, and only highlight the need for a hearing with properly allocated burdens to explore the risk, or lack thereof, that a noncitizen may pose to flight or dangerousness.”) Indeed, since the purpose of immigration detention is to reduce flight risk and danger to the community, *see Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), it seems self-evident that a review hearing before an administrative law judge would reduce the risk of erroneously confining a noncitizen who in fact poses neither risk. *See also Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025) (“The purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people [who] are ultimately detained.”).

68. The *Zumba* court further held that the third factor favored the petitioner “as neither the government nor the public has a significant interest in detaining a long-term resident of the United States with no criminal history who is participating in cancellation of removal proceedings, which are civil in nature.” *Id.* *See also*

Chogllo Chafra 2025 WL 2688541, at *10 (the government cannot have an interest in detention for detention’s sake alone). Indeed, Respondents cannot claim excessive burden when they are merely being asked to provide a procedure that they routinely provided in cases of this nature for decades without complaint. *Hyppolite*, 2025 WL 2829511, at *15 (“[U]ntil recently, the government has long provided noncitizens with bond hearings before detention pursuant to § 1226(a), and there is an established process for doing so that DHS can readily follow here. By contrast, the fiscal and administrative burdens of keeping Hyppolite — who the record suggests is not a flight risk nor a danger to the community — detained are extremely high.”).

69. In the end, Respondents cannot dispute that if Petitioner is subject to Section 1226(a), he is entitled to a bond hearing before an IJ pursuant to the statute and regulations. Even taking at face value the statement of the Supreme Court in *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) that “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned,” it is clear that Congress intended Petitioner to have access to bond pursuant to 8 U.S.C. § 1226(a); as such, that is the process that Petitioner is due.

70. Respondents’ actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of his rights without due process of law.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enter an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioners' detention in fact and in law, forthwith;
- b) Enjoining Petitioner's transfer outside of this judicial district pending this litigation;
- c) Declaring that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. § 1225(b);
- d) Declaring that Respondents' actions, as set forth herein, violate Petitioner's due process rights;
- e) Declaring that Petitioner is unlawfully detained under 8 U.S.C. § 1225(b);
- f) Granting the writ of habeas corpus and ordering that Respondents immediately release Petitioner from his unlawful detention purportedly pursuant to 8 U.S.C. § 1225(b);
- g) Declaring that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- h) Declaring that if Respondents thereafter detain Petitioner pursuant to 8 U.S.C. § 1226(a), they must conduct a bond hearing for Petitioner pursuant

to 8 U.S.C. § 1226(a) as soon as possible but no later than 15 days from the date of the Court's order;

- i) Declaring that if a bond is set by the Immigration Judge, Petitioner shall be released upon payment of the bond as ordered by the Immigration Judge;
- j) Awarding Petitioner his costs of suit; and
- k) Granting any other relief that this Court deems just and proper.

Respectfully submitted,

Date: November 13, 2025

By: /s/ Gregory H. Cayne
Gregory H. Cayne, Esq.
Grant, Herrmann, Schwartz & Klinger
LLP
107 Greenwich Street, 25th Floor
New York, NY 10006
Tel.: (332) 232-1605
gcayne@ghsklaw.com
Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Division**

LUIS BERNARDO ORTEGA ALVAREZ,)	
<i>Petitioner,</i>)	
v.)	Civil Action No. 2:25-cv-17401
KRISTI NOEM, <i>et al.</i>)	
<i>Respondents.</i>)	

INDEX OF EXHIBITS

- Ex. 1) DHS Notice to Appear
- Ex. 2) DHS Order of Release on Recognizance
- Ex. 3) Notice of filing and USCIS receipt for asylum application
- Ex. 4) Copy of Employment Authorization issued by USCIS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I electronically filed the foregoing Petition for Writ of Habeas Corpus, with the Clerk of the Court by using the CM/ECF system. I further certify that a copy of this Petition for Writ of Habeas Corpus, and all attachments thereto, will be delivered via PACER to:

Civil Process Clerk
U.S. Attorney's Office for the District
of New Jersey
970 Broad Street, 7th Floor
Newark, NJ 07102

Office of the General Counsel
U.S. Department of Homeland
Security
245 Murray Lane, SW, Mail Stop
0485
Washington, DC 20528-0485

Pamela Bondi
Attorney General of the United States
950 Pennsylvania Avenue, NW

Washington, DC 20530-0001
John Tsoukaris, Director,
Newark ICE Field Office
Office of the Principal Legal Advisor
U.S. Immigration and Customs
Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Warden
Delaney Hall Detention Facility
451 Doremus Avenue
Newark, NJ 07105

Respectfully submitted,

Date: November 13, 2025

By: /s/ Gregory H. Cayne
Gregory H. Cayne, Esq.
Grant, Herrmann, Schwartz & Klinger
LLP
107 Greenwich Street, 25th Floor
New York, NY 10006
Tel.: (332) 232-1605
gcayne@ghsklaw.com
Attorneys for Petitioner