UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FERNANDO JOSUE ARDON-QUIROZ,

Petitioner,

v.

ASSISTANT FIELD OFFICE DIRECTOR, Krome North Service Processing Center, U.S. Immigration and Customs Enforcement,

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

Respondents.

Case No: 1:25-cv-25290-XXXX

PETITIONER'S TRAVERSE

The Petitioner hereby submits his Traverse in Response to the Respondent's Return [ECF No. 9], and in support of his Petition for Writ of Habeas Corpus [ECF No. 1].

Introduction

In his Writ of Habeas Corpus [ECF No. 1], the Petitioner challenges his designation and subjection to continued mandatory detention under 8 U.S.C. § 1225(b)(2) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). [ECF No. 1, p. 13]. He argues that while he is statutorily defined as an "applicant for admission" under 8 U.S.C. § 1225(a)(1), he was not "seeking admission" at the time of his most recent arrest by the Department of Homeland Security ("DHS") Office of Immigration and Customs Enforcement ("ICE") on September 11, 2025—after having been initially released from DHS custody and having resided in the United States for over three (3) years—and is therefore outside the gambit of § 1225(b)(2)(A)'s mandatory detention provision. Instead, he contends that his detention is controlled by § 1226, and he is entitled to a full custody redetermination hearing on the merits before an immigration judge ("IJ"),[1] and that his continued

[1] "An alien requesting a redetermination of his or her custody status under section 236(a) [8 U.S.C. § 1226(a)] must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to

detention without a full custody redetermination hearing before an IJ is unlawful, as it violates the Immigration and Nationality Act (INA) and the Due Process Clause. U.S. Const. Amend. V. [ECF No. 1, pp. 14-15].

In its Return, the government presents various arguments regarding exhaustion and jurisdiction, in addition to responding to the merits of the Petitioner's arguments. [ECF No. 9]. The Petitioner responds in turn.

Argument

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

In arguing that § 1252(e)(3) is an obstacle to this Court's routine habeas authority, the government puts all its eggs in the proverbial basket of § 1252(e)(3)(A)'s reference to "determinations under section 1225(b) of this title and its implementation." [ECF No. 9, pp. 3-5.] So the argument goes, since that provision cites § 1225(b) while not specifically referencing §1225(b)(1), then it also applies to determinations under §1225(b)(2). Not so.

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

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

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persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of R-A-V-P*, 27 I&N Dec. 803 (BIA 2020).

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

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

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

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

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

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

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

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

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

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

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

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

The government mischaracterizes the Petitioner's argument by citing *Alvarez v. ICE*, a *Bivens* action challenging the manner in which ICE commenced removal proceedings and ICE's initial discretionary decision to detain the alien in order to commence those proceedings. 818 F.3d 1194, 1203 (CA11 2016) [ECF No. 9, p. 4]. The factual and legal scenario presented in this case differs from *Alvarez*. The Petitioner is not challenging the initial discretionary decision to detain him, the commencement of his removal proceedings, or the execution of a (non-existent) removal order. Instead, he is challenging the legality of his continued mandatory detention pursuant to *Yajure Hurtado,* without being able to seek a full custody redetermination hearing (to determine flight risk and danger to the community) before the Immigration Judge. *Supra*, n.1. Because the Petitioner's habeas petition constitutes a challenge to the "underlying legal bas[i]s" of his continued detention, *Madu*, 470 F.3d at 1368, without a full custody re-determination hearing before an Immigration Judge, § 1252(g) does not deprive this Court of jurisdiction to consider his habeas claim.

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

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

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

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

The same applies here. The Petitioner is not challenging any action or decision involving the "review of an order of removal." *Madu*, 470 F.3d at 1367. Instead, he is only challenging his designation and subjection to continued mandatory detention under 8 U.S.C. § 1225(b)(2). [ECF No. 1, pp. 11-15]. Such a challenge has nothing to do with the review of a removal order because, if the Court grants the Petitioner's habeas petition and he is released on bond, his removal proceedings before the Immigration Court will continue in a non-detained setting.

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

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[2] Although the Respondents contend that the REAL ID Act precluded all habeas corpus relief in the district courts under § 2241 [ECF No. 9, p. 5], Section 106(c) of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231, 311, provided for the transfer of pending habeas cases "**challenging a final administrative order of removal**" to the court appeals "in which a petition for review could have properly filed under . . . (8 U.S.C. 1252), as amended by this section." Such challenges to final administrative orders of removal via habeas in district court were commonplace before the REAL ID Act channeled such final order review to the § 1252 Petition for Review Process.

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

The government argues that the Court cannot grant the Petitioner's Writ of Habeas Corpus and order the IJ to consider his custody redetermination request because he has yet to appeal the IJ's bond decision to the Board of Immigration Appeals ("BIA"), and has thus failed to exhaust his administrative remedies. [ECF No. 9, p. 6]. This argument is incorrect.

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

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

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

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

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

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

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

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

Finally, the government argues that the Petitioner must exhaust before the BIA the specific argument he raised in his Motion for Custody and Bond Redetermination before the Immigration Judge that he is not a mandatory detainee because he entered the United States as an "Undocumented [Noncitizen] Child" ("UC"), as defined by 6 U.S.C. § 279(g)(2)); 8 U.S.C. § 1232(g), and that the Trafficking Victims Protections Reauthorization Act of 2008 ("TVPRA") controls determinations regarding his custody. [ECF No. 9, p. 6].

The government confuses the issues. The Petitioner's request for habeas relief before this Court challenges the legal basis for Respondents continuing to hold the Petitioner without affording him an individualized custody determination on the theory that he is subject to mandatory detention under 8 U.S.C. § 1225(b) by claiming he was "seeking admission" at the time of his detention over three (3) years after his entry on July 27, 2022. [ECF No. 1, pp. 13-14]. His entry as a UC and transfer of custody from DHS to the Department of Health and Human Services ("HHS"), Office of Refugee Resettlement ("ORR"), to whom Congress has authorized custody determinations over UCs, are factual issues before this Court which are not in dispute. Although the Petitioner raised this argument before the Immigration Judge, his Petition for Writ of Habeas Corpus is entirely based on the government's erroneous classification of him as a mandatory detainee under INA § 1225. The issue of the government's basis for the Petitioner's detention – that he is mandatorily detained under 8 U.S.C. § 1225(b) – needs not be exhausted because the BIA has already decided the issue in *Matter of Yajure Hurtado*, categorically denying bond eligibility to individuals like Petitioner, based solely on manner of entry.

This Court and federal courts nationwide have already found the government's recent change in interpretation and application of its detention authority under 8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a) to be erroneous and determined detentions on this basis to be unlawful in granting habeas relief to noncitizens like the Petitioner. *See, e.g.*, *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 LX 451385, at *14 (S.D. Fla. Oct. 15, 2025) ("This Court likewise declines to follow *Matter of Yajure Hurtado*, whose interpretation of § 1225 is at odds with the text of § 1225 and § 1226, is inconsistent with earlier BIA decisions, and renders superfluous the recent Laken

Riley Act amendments to § 1226(c)."); *Puga v. Ass't Field Office Dir.*, No. 25-24535-CIV, 2025 LX 462379, at *13-14 (S.D. Fla. Oct. 15, 2025) ("[T]he Court finds that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a).").[4] Whether

[4] The overwhelming majority of United States Federal District Courts, including those in the Eleventh Circuit, have drawn the same conclusion. *See, e.g., Antonio Aguirre Villa v. Normand*, No. 5:25-cv-89, 2025 LX 442534, at *35-36 (S.D. Ga. Nov. 4, 2025) ("I conclude Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) . . . Thus, Petitioner's detention based on 8 U.S.C. § 1225(b)(2) is unlawful. Any immigration court order which has relied on this misinterpretation to continue to detain Petitioner is contrary to the INA, and therefore, § 2241 relief is proper."); *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 LX 418115, at *14-16 (M.D. Ga. Nov. 1, 2025) (rejecting the government's arguments, which largely parrot the rationale in *Yajure Hurtado* . . . [to] conclude[] that § 1226(a), not § 1225(b)(2), applies" to immigrants like Petitioner, and ordering the immigration court to grant a bond hearing); *Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, 2025 LX 400655, at *11 (M.D. Fla. Oct. 31, 2025) ("Since DHS's change in policy, courts in this District and around the country have rejected its new interpretation of the INA. This Court agrees with the growing consensus."); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 U.S. Dist. LEXIS 212865, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Aguilar Guerra v. Joyce*, 2:25-cv-534-SDN, 2025 U.S. Dist. LEXIS 208608, 2025 WL 2986316 (D. Maine Oct. 23, 2025); *Contreras Maldonado v. Cabezas*, No. 25-cv-13004, 2025 U.S. Dist. LEXIS 208752, 2025 WL 2985256 (D. N.J. Oct. 23, 2025); *Gomez Garcia v. Noem*, No. 5:25-cv-02771-ODW (PDx), 2025 U.S. Dist. LEXIS 209286, 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290, 2025 WL 2977650 (D.Colo. Oct. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 U.S. Dist. LEXIS 204142, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *N.A. v. Larose*, No. 25-cv-2384-RSH-BLM, 2025 U.S. Dist. LEXIS 198688, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 U.S. Dist. LEXIS 175513, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 U.S. Dist. LEXIS 174828, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 U.S. Dist. LEXIS 171714, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 U.S. Dist. LEXIS 167280, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 U.S. Dist. LEXIS 165015, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 U.S. Dist. LEXIS 163056, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 U.S. Dist. LEXIS 161109, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 U.S. Dist. LEXIS 158808, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Rosado v. Figueroa*, No. 25-CV-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. 25-CV-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. 25-CV-11613-BEM, 2025 U.S. Dist. LEXIS 141724, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Rosado v. Figueroa et al.*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025);

noncitizens entered as UCs has not altered the courts' determinations that their custody is governed by 8 U.S.C. § 1226(a) when they are re-detained years after their initial release. *See, e.g.*, *Contreras Maldonado v. Cabezas*, No. 25–13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025); *Torres v. Wamsley*, No. C25-5772 TSZ, 2025 WL 2855379, at *3–5 (W.D. Wash. Oct. 8, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-SKO (HC), 2025 WL 2686866, at *4 (E.D. Cal. Sept. 18, 2025); *Andres Salvador v. Bondi*, No. 25-CV-07946-MRA-MAA, 2025 WL 2995055 (C.D. Cal. Sept. 2, 2025).

Further, Respondents argue in their Return that Petitioner's UC status upon entry does not foreclose his mandatory detention under 8 U.S.C. § 1225(b) and *Matter of Yajure Hurtado* as he had already turned eighteen (18) when he was re-detained. [ECF No. 9, p. 8]. Certainly, the BIA would draw the same conclusion rendering futile any appeal of the Immigration Judge's denial of the Petitioner's bond hearing motion. *Puga v. Ass't Field Office Director*, Case No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025) ("Since the result of Petitioner's custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements are excused for futility.").

Whether the TVPRA affords the Petitioner additional protections as a UC is irrelevant to the Petitioner's request that this Court find his classification as a mandatory detainee under 8 U.S.C. § 1225(b) and continued detention without the right to a bond hearing before an immigration judge under *Matter of Yajure Hurtado* is unlawful. Thus, the Petitioner should not be required to exhaust this separate issue before the BIA to merit habeas relief from this Court.

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

The government asserts that the Petitioner is both an applicant for admission as defined in 8 U.S.C. § 1225(a)(1) and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ. [ECF No. 9, p. 12; *see generally* ECF No. 9, pp. 6-19]. In support of this claim, the government relies upon

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Lopez Benitez v. Francis et al., ---F.Supp.3d----, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, ---F.Supp.3d ----, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM (W.D. La. Aug. 27, 2025).

Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). *Id.*, pp. 13-15, 22.

The Petitioner contends that while he is statutorily defined as an "applicant for admission" under 8 U.S.C. § 1225(a)(1), he was not "seeking admission" at the time of his most recent arrest by ICE on or around September 11, 2025—after having been initially released from DHS custody and having resided in the United States for over three (3) years–and is therefore outside the gambit of § 1225(b)(2)(A)'s mandatory detention provision. Therefore, his continued mandatory detention is not authorized by § 1225(b)(2)(A), but is controlled by § 1226, and he is entitled to a full custody redetermination hearing on the merits before an IJ.

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

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

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

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

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

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

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

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

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

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

A review of the earlier statutory history renders the Respondents' arguments that the statutory history is inconsistent without merit. See *Puga v. Ass't Field Office Director*, Case No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025); *Carcamo v. Noem*, Case No. 2:25-cv-00922-SPC-NPM, 2025 U.S.Dist. LEXIS 219450 at *8–9 (M.D. Fla. Nov. 11, 2025) ("It is no accident that noncitizens in the country are treated differently than those seeking entry. As the Supreme Court observed, '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. In 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.'" (citations omitted); *see also Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001) ("But 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.")).

Furthermore, earlier statutory history evidences congressional acknowledgement "that noncitizens present in the United States [i.e., applicants for admission] have more substantial due process rights than new arrivals [i.e., those seeking admission]." *Carcamo*, at *9 (citing H.R. Rep. 104-469, p.1, at 163-66). Congress further recognized that "an alien present in the U.S. has a constitutional liberty interest to remain in the U.S. . . ." H.R. Rep. 104-469, p.1, at 163-66. Federal regulation mirrored this congressional intent when following amendment as "[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." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

On July 8, 2025, DHS departed from this congressional intent when it issued its new policy, the subject of this unlawful detention, that:

> An 'applicant for admission' is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated

> port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated."

ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA Doc. No. 25071607 (July 8, 2025) (emphasis in original); *see also Merino v. Ripa*, 2025 U.S. Dist. LEXIS 206662, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025) (discussing the memo). DHS's new interpretation of the INA is a departure from this congressional intent, adopted by the BIA in *Matter of Yajure Hurtado*, which "flies in the face of the plain language and historical understanding of the INA . . . ." *Carcamo*, at *10. Courts around the country, including in this District, "have overwhelmingly rejected DHS's new interpretation of the INA." *Id.* at *11.

In sum, the Petitioner was not "seeking admission" at the time of his most recent arrest by ICE on or around September 11, 2025—after having been initially released from DHS custody and having resided in the United States for over three (3) years—and is therefore outside the scope of § 1225(b)(2)(A)'s mandatory detention provision. Therefore, his current detention is not authorized by § 1225(b)(2)(A), but is controlled by § 1226, and he is entitled to a full and individualized custody redetermination hearing on the merits before an IJ and as Congress intended.

VI. The Respondents' arguments that the Petitioner's prior status as a UC does not foreclose the application of 8 U.S.C. § 1225(b) are irrelevant.

The government argues that the Petitioner's prior status as a UC does not foreclose the application of 8 U.S.C. § 1225(b) to classify him as a mandatory detainee. The Petitioner makes no such argument in his petition for habeas relief.

It is undisputed that the Petitioner entered the United States as a UC on July 27, 2022, and was transferred from DHS to the custody of ORR who then released the Petitioner to his mother after considering the "[g]eneral principles that apply to the care and placement of" the Petitioner, which includes whether he was a danger to the community or a flight risk. *See* 8 U.S.C. § 1232(c)(2)(a); 45 CFR § 410.1003(f); [ECF No. 1, p. 2]; [ECF No. 9, p. 2].

The government first argues that the transfer of custody of the Petitioner from DHS to HHS did not alter his immigration status and that contrary to Petitioner's allegations that he entered as

a UC, he is actually an "applicant for admission" subject to the removal and detention provisions of 8 U.S.C. § 1225(b). The Petitioner does not argue that his UC designation or placement in ORR custody altered his immigration status as UCs, by definition, have "no lawful immigration status in the United States." 6 U.S.C. § 279(g)(2)); 8 U.S.C. § 1232(g). The government concedes the Petitioner was a UC upon entry which, contrary to the government's argument, means that he was statutorily exempt from DHS detention and expedited removal under 8 U.S.C. § 1225(b) by virtue of the TVPRA and Homeland Security Act of 2002 ("HSA"). Therefore, if the government argues that the Petitioner was a mandatory detainee upon his entry, it is incorrect as a matter of law as his custody at that time was governed by the TVPRA and HSA which give ORR exclusive authority to make custody determinations regarding UCs and contemplate that ORR will release UCs upon identification of a sponsor, not detain them during the entirety of their removal proceedings, as the government contends it has authority to do under 8 U.S.C. § 1225(b). *See* 6 U.S.C. §§ 279(b)(1), (1)(C) ("[T]he Director of the Office of Refugee Resettlement ***shall*** be responsible for—(C) making placement determinations for all unaccompanied alien children...."") (Emphasis added); 8 U.S.C. § 1232(b)(1)(a) ("[T]he care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.").

The government next argues that the Petitioner was no longer a UC when he was detained on his eighteenth birthday on September 11, 2025 because he had turned eighteen (18) and ORR had released him to his mother. [ECF No. 9, p. 8]. However, whether the Petitioner held UC status at the moment of his detention is irrelevant to the Petitioner's argument that he was not "seeking admission" when he was detained on September 11, 2025, and has no bearing on whether he is entitled to habeas relief from the government's unlawful detention.

When he was re-detained, the Petitioner had already resided in the United States for over three (3) years and was already in removal proceedings as his Notice to Appear had been filed with the Executive Office for Immigration Review (EOIR) on April 25, 2025, two (2) and a half years after his entry and five (5) months before his re-detention. As a noncitizen who entered without inspection and already residing in the country for over three (3) years, his custody is governed by 8 U.S.C. § 1226(a), which provides for discretionary detention and bond eligibility, rather than by 8 U.S.C. § 1225(b), which would subject him to mandatory detention, as the government contends. *See, e.g.*, *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 LX 451385, at *14 (S.D. Fla.

Oct. 15, 2025; *Puga v. Ass't Field Office Dir.*, No. 25-24535-CIV, 2025 LX 462379, at *13-14 (S.D. Fla. Oct. 15, 2025).

That the Petitioner is a UC does not undermine his petition for habeas relief. To the contrary, the Petitioner's UC status upon entry and subsequent release by ORR further establishes that he is not a mandatory detainee because the TVPRA anticipates UCs are not subject to mandatory detention but should be released upon ORR's identification of a sponsor or, if still in ORR custody upon turning eighteen (18) years old, be considered for release or placement in the least restrictive setting available if transferred to DHS custody. 8 U.S.C. § 1232(c)(2) ("Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home."). A plain reading of the statute presumes that every UC in HHS custody who reaches eighteen (18) years old will not be automatically transferred to the DHS's custody. *See Ramirez v. U.S. Immigr. & Customs Enf't*, 471 F. Supp. 3d 88 (D.D.C. 2020) (finding the DHS, Immigration and Customs Enforcement (ICE), in systematic violation of 8 U.S.C. § 1232(c)(2)(B) when it transferred eighteen-year-old UCs in HHS custody to ICE detention facilities without considering or attempting to place them in the least restrictive placement available).

It undermines the Respondents' interpretation of INA § 235(b)(2)(A) that UCs automatically become mandatory detainees upon reaching eighteen (18) years old. *See Corley v. United States*, 556 U.S. 303, 314, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009) ("[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]") ((alterations added; citation and quotation marks omitted); *Bilski v. Kappos*, 561 U.S. 593, 608, 130 S. Ct. 3218, 177 L. Ed. 2d 792 (2010) ("This principle . . . applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times.") (alteration added; citation omitted). Therefore, the TVPRA and HSA work together with 8 U.S.C. § 1226(a) to demonstrate that the Petitioner is not a mandatory detainee based on his manner of entry as he was already released from government custody and then re-detained years later, upon which time he could no longer be classified as a noncitizen "seeking admission," but as a noncitizen already in the United States whose custody is governed by 8 U.S.C. § 1226(a).

VII. The Respondents' arguments that applicants for admission in expedited removal proceedings are detained pursuant to 8 U.S.C. § 1225(b)(1) are irrelevant.

The Respondents argue that applicants for admission referred for § 1229a removal proceedings after establishing a credible fear of persecution or torture are ineligible for a custody redetermination hearing before an IJ. [ECF No. 9, p. 9]. The Petitioner does not understand why the Respondents have raised such issue before this Court. The Petitioner has never been subject to expedited removal proceedings as UCs from non-contiguous countries are statutorily exempt from expedited removal proceedings and the Petitioner was designated a UC upon his initial entry by DHS. 8 U.S.C. § 1232(a)(5)(D)(i). Additionally, once DHS has filed an NTA with the immigration court, the IJ has jurisdiction over the noncitizen's removal, and a noncitizen is no longer subject to expedited removal by DHS unless his immigration court proceedings are dismissed or terminated by an immigration judge. *See* 8 C.F.R. § 1239.2(c) At the time of his re-detention, the Petitioner was already in INA § 240 removal proceedings, so DHS did not have the authority to place him in expedited removal proceedings. Therefore, any arguments related to the Petitioner's unlawful detention within the context or expedited removal are irrelevant.

VIII. The Respondents' assertion that applicants for admission may only be released from detention on an 8 U.S.C. § 1182(d)(5) parole is erroneous.

Respondents argue that noncitizens like the Petitioner are applicants for admission who may only be released from detention if DHS invokes its discretionary parole authority under § 1182(d)(5), and that the government's decision not to grant parole is unreviewable by an immigration judge or the BIA. [ECF No. 9, pp. 16-17]. While DHS may invoke its discretionary parole to release noncitizens recently arriving at or between POEs, in the Petitioner's case, as previously explained, DHS designated him as a UC upon his entry thus invoking his rights under the TVPRA and HSA to be transferred to HHS custody and released to a sponsor, after considering the "[g]eneral principles that apply to the care and placement of" the Petitioner, which includes whether he was a danger to the community or a flight risk. *See* 8 U.S.C. § 1232(c)(2)(a); 45 CFR § 410.1003(f). The Petitioner does not argue that he was released under DHS's parole authority, but that he was released by DHS to ORR pursuant to the statutory framework set out in the TVPRA and HSA, which the government does not dispute. [ECF No. 1, p. 2]; [ECF No. 9, p. 2]. Therefore, if Respondents' contention is that the Petitioner could only have been paroled by DHS upon his entry as a UC, it is incorrect.

Even though the Petitioner had turned eighteen (18) on the day of his re-detention and was

no longer in ORR custody, he still was not subject to mandatory detention under 8 U.S.C. § 1225(b) that would trigger DHS's exclusive discretionary parole authority under § 1182(d)(5). The Respondents' argument that the Petitioner can only be released under a discretionary grant of parole by DHS depends entirely upon its erroneous interpretation of its detention authority of noncitizens who entered without inspection years before their re-detention and are not subject to any other grounds of mandatory detention, like Petitioner. *See, e.g.*, *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 LX 451385, at *14 (S.D. Fla. Oct. 15, 2025) ("This Court likewise declines to follow *Matter of Yajure Hurtado*, whose interpretation of § 1225 is at odds with the text of § 1225 and § 1226, is inconsistent with earlier BIA decisions, and renders superfluous the recent Laken Riley Act amendments to § 1226(c).").

Upon the Petitioner's re-detention years after his initial entry and release by ORR, the Petitioner was no longer "seeking admission" which would subject him to mandatory detention and DHS's sole discretion to release him under 8 U.S.C. § 1225(b). As this Court has previously found, detention of noncitizens like the Petitioner is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A), and thus the Petitioner is entitled to an individualized bond hearing. *See Puga v. Ass't Field Office Dir.*, No. 25-24535-CIV, 2025 LX 462379, at *13-14 (S.D. Fla. Oct. 15, 2025).

IX. The Respondents' assertion that Section 1226 does not impact the detention authority for applicants for admission is erroneous.

The Respondents argue that Section 1226(a) does not have any controlling impact on the directive in § 1225(b)(2)(A). This argument has failed before this Court and federal courts nationwide. *Supra*, at p. 10, n.4. The result is a consensus among courts that detentions on this basis are unlawful in granting habeas relief to noncitizens like the Petitioner. *See, e.g., id.*

Accordingly, the Petitioner's instant case belongs to the ever-growing line of cases wherein courts have rejected these very same arguments, and we pray this Court will enter an order granting the Petitioner's request for relief.

Conclusion

For the reasons stated herein, the Court should grant the Petitioner's Writ of Habeas Corpus [ECF No. 1], and Order that he be provided a custody redetermination hearing before the Immigration Judge within a reasonable time determined by the Court, enjoin the Respondents from transferring Petitioner outside the jurisdiction of the United States District Court for the Southern District of Florida, award the Petitioner fees in this action as provided for by the Equal Access to

Justice Act, 28 U.S.C. § 2412, and grant any additional relief this Court deems just and proper.

Dated: November 20, 2025

Respectfully submitted,

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