UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

M.C.H.L.,	)	
	)	
Petitioner,	)	
	)	CASE NO.:
vs.	)	4:25-CV-00329-WMR
	)	
DARREN PIERCE, *in his official capacity as Sheriff of Whitfield County Jail*; and LADEON FRANCIS, *ICE Atlanta Field Office Director*; and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*) And PAMELA BONDI, *U.S. Attorney General.*	)	
	)	
Respondents.	)	

PETITIONER'S RESPONSE TO RESPONDENTS' RETURN (ECF No. 12) OF ORDER TO SHOW CAUSE (ECF No. 5) ON WRIT OF HABEAS CORPUS[1]

This Court has jurisdiction to review Petitioner's challenge to her wrongful detention by U.S. Immigration and Customs Enforcement (ICE), which is independent from Petitioner's removal proceedings. As laid out below, the Immigration and Nationality Act (INA) and the relevant caselaw all held that Petitioner is not "seeking admission" into the United States and cannot

[1] Although Respondents title ECF 12 as "Federal Respondents' Response in Opposition to Petition for Habeas Corpus," the proper name based on the case at hand is "Return of Order to Show Cause" or simply "Return".

be detained under 8 U.S.C. § 1225(b)(2)(A). Rather, Petitioner is an interior arrestee whose detention should be governed by the discretionary provisions of 8 U.S.C. § 1226(a), and she was previously released on an Order of Release on Recognizance (OREC).

As numerous courts have found, including all judges in the Northern District of Georgia who have decided the issue (Cohen, Grimberg, Ross, Story, as well as MDGA (Land) and SDGA (Cheesbro & Wood) in landmark decisions argued by undersigned counsel and dozens of similar habeas grants thereafter), the application of § 1225(b) to an individual like Petitioner who entered the U.S. years ago without inspection and has lived in the interior ever since, is wrong. This Court should order her outright release from detention as her OREC was either not cancelled (therefore she is improperly detained) or in the alternative, if it was cancelled, it was improperly cancelled. Since Respondents have not produced a proper notice of OREC cancellation, they have failed to show legitimate cause for her detention and proper release is warranted in her case (note that the other cases decided in NDGA cited above did not involve an OREC cancellation, just a standard 1225 vs. 1226 interpretation, however the same statutory conclusion as to Petitioner's detention that she is not an "applicant for admission" and therefore 8 U.S.C. § 1225 does not govern her detention should apply here).

I. FACTUAL BACKGROUND

Petitioner is a mother of three children, with no criminal record. She was apprehended at the border when she arrived to the United States and after passing a Credible Fear Interview (CFI), was released on an OREC into the U.S. to seek asylum. Petitioner's OREC permitted her to remain in the U.S. without the requirement of posting bond. She has complied with all reporting requirements and conditions of her OREC since her entry and was recently detained years after her entry. She has a pending asylum application and approved Employment Authorization Document (EAD).

On November 8, 2025, Petitioner was arrested in Floyd County, Georgia for a traffic violation. That same day ICE issued a detainer and on November 10, 2025, ICE assumed custody of the Petitioner at the Floyd County Jail and took her to the Atlanta field office. She was later transferred to the Stewart Detention Center (SDC).

ICE is unlawfully detaining Petitioner based solely on ICE's erroneous classification of her as an "arriving alien" or "applicant for admission", subject to mandatory detention under 8 U.S.C. § 1225(b). Further, ICE arrested Petitioner based on a deficient and unsupported immigration detainer and without a warrant. Petitioner has no criminal history, no record of violence, and was arrested in the interior solely for a minor traffic violation. The egregious unlawfulness of Petitioner's detention warrants outright release in

lieu of the standard bond hearing within 3 days that other judges in this Court have granted.

II. THE COURT HAS JURISDICTION OVER HABEAS PETITIONS UNDER 28 U.S.C. § 2241

A. The Northern District of Georgia is the proper venue for the habeas petition because Petitioner was in the custody and control of the Atlanta Field Office Director, within this district, at the time she filed her habeas petition.

Respondents put forth a collection of legally untenable arguments in an effort to secure a dismissal, delay the proceedings, or obtain a transfer to a different venue. Their attempt to defeat jurisdiction by transferring Petitioner after the petition was filed, coupled with their recent and erroneous reclassification of a long-term resident as an "applicant for admission" subject to mandatory detention, are post-hoc justifications for unlawful conduct, not good-faith interpretations of the law.

"The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is 'the person who has custody over the petitioner.'" *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242) (cleaned up). Generally, under the immediate custodian rule, "in habeas challenges to present physical confinement ... the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Id.*

at 435.[2] The logic of this rule rests in an understanding that "the warden ... has day-to-day control over the prisoner and who can produce the actual body." *Yi v. Maugans*, 24 F.3d 500, 507 (3d Cir. 1994); *see Wales v. Whitney*, 114 U.S. 564, 574 (1885) (recognizing that governing body of habeas law "contemplate[s] a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge").

Related, in habeas challenges to *present* physical confinement, the district of confinement is *synonymous* with the district court that has territorial jurisdiction over the proper respondent notwithstanding subsequent transfer. *Padilla*, 542 U.S. at 444. Although, indisputably, "[w]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal

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[2] However, the *Padilla* Court declined to decide whether the immediate custodian rule applies to habeas petitions filed by aliens challenging their detention. 542 U.S. at 435 n.8. Courts within the Eleventh Circuit similarly has not reached this question. *See Singh v. Wolf*, No. 1:20-CV-02212-AT-LTW, 2020 WL 13544296, at *1 (N.D. Ga. July 30, 2020), citing *Masingene v. Martin*, No. 19-CV-24693, 424 F.Supp.3d 1298, 2020 WL 465587, at *1 (S.D. Fla. Jan. 27, 2020) (Federal immigration detainees are detained "pursuant to the power and authority of the federal government" and not the warden of the non-federal facility where they are detained.); *see e.g.*, *Khodr v. Adduci*, 697 F.Supp.2d 774, 776 (E.D. Mich. 2010) (proper respondent was the ICE District Director, not the warden of county jail); *Abner v. Sec'y of Dep't of Homeland Security*, No. 06CV308(JBA), 2006 WL 1699607, at *3–4 (D. Conn. June 19, 2006) (ICE field office director, not warden of county facility, was the correct respondent); *Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 WL 1514122, at *3 (N.D. Cal. June 17, 2005) (ICE district director, also known as the field office director, who could direct the county warden to release the petitioner was the proper respondent); *see also Suri v. Trump*, 785 F. Supp. 3d 128, 140 (E.D. Va. 2025) (questioning whether an inquiry into an immigration detainee's permanent place of confinement is prudent because, as evidenced by the facts of this case and others like it, non-citizen detainees may be moved more frequently than those who are criminally incarcerated).

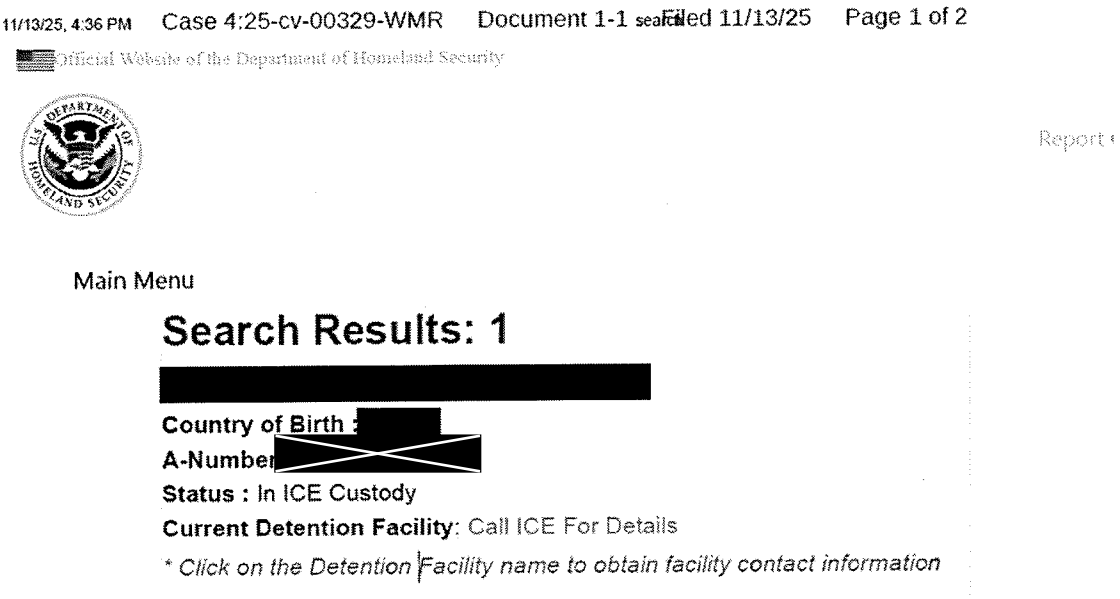
authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 441 (reaffirming its holding in *Ex parte Endo*, 323 U.S. 283, 306-07 (1944) (the objective of habeas relief may be in no way impaired or defeated by the removal of the prisoner from the territorial jurisdiction of the District Court); *see Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444–45 (3d Cir. 2021).

Importantly however, when the default rules of habeas jurisdiction have proved untenable, the Supreme Court and other Circuit Courts have recognized exceptions to these default rules. *See Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 499 (1973) (allowing petitioner confined in Alabama to file habeas petition challenging Kentucky indictment in Kentucky); *Strait v. Laird*, 406 U.S. 341, 344-346 (1972) (allowing conscientious objector petitioner to name his ultimate custodian in habeas petition); *U.S. v. Moussaoui*, 382 F.3d 453, 465 (4th Cir. 2004) (adopting exception to immediate custodian rule allowing petitioner to name ultimate custodian). That is because "the very nature of the writ [of habeas corpus] demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291-92 (1969) (The "language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary.") (citations omitted). The Supreme Court has made clear that a district court "has a wide-range of powers in administering the writ and

ensuring that the proceeding does not 'founder in a procedural morass.'" *Ainsworth v. Vasquez*, 759 F. Supp. 1467, 1475 (E.D. Cal. 1991) (quoting *Harris*, 394 U.S. at 292). In the U.S., "there is no gap in the fabric of habeas – — no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it." *Khalil v. Joyce et al.*, 777 F.Supp.3d 369, 410 (D.N.J. Apr. 1, 2025) ("*Khalil II*"), *mot. to certify appeal granted*, 777 F.Supp.3d 411 (D.N.J. Apr. 4, 2025).

In the instant case, Petitioner was in ICE custody and located within the Northern District of Georgia when she filed her habeas petition, notwithstanding the fact that by the time of filing the instant habeas she was already moved out of Floyd County Detention Center and into the ICE Atlanta Field Office. Specifically, because Petitioner's counsel understood Petitioner's last known location to be the Floyd County Detention Center in Rome, Georgia, under the custody of the Department of Homeland Security (DHS), Petitioner named as Respondents both Dave Roberson, as Sheriff of Floyd County Detention Center, and Ladeon Francis, the Field Office Director for ICE's Atlanta Field Office, as well as Kristi Noem, DHS Secretary, who was Petitioner's ultimate custodian. ECF No. 1 at Paragraph 1 (Petitioner's detention at the Floyd County Detention Center has been confirmed through her relatives); *see also* ECF No. 1-1 (ICE Detainee locator system indicating Petitioner was in ICE custody without further information). The following is a

screenshot of ECF 1-1, printed approximately 17 minutes prior to filing of the instant Petition at 4:36 p.m.:


11/13/25, 4:36 PM Case 4:25-cv-00329-WMR Document 1-1 seaFiled 11/13/25 Page 1 of 2

Official Website of the Department of Homeland Security

Report

Main Menu

Search Results: 1

[redacted]

Country of Birth [redacted]

A-Numbe[redacted]

Status : In ICE Custody

Current Detention Facility: Call ICE For Details

** Click on the Detention Facility name to obtain facility contact information*

It is clear that Respondents purposefully did not reveal Petitioner's whereabouts in their system so there is no way it was known to counsel at the time of filing.

Petitioner's counsel filed her habeas petition on November 13, 2025, and received confirmation via the Court's electronic case filing management system (ECF) that the filing was completed at 4:53 PM (last line of the filing receipt, Date/Time: 11/13/2025 04:53:42 ET). Exhibit 1.

According to Respondents, on November 13, 2025, Respondents checked Petitioner out of the Floyd County Jail at 1229/12:29 PM and transferred her to the Atlanta ICE Field office (located at 180 Ted Turner SW, Atlanta, GA),

which is still located within the Northen District of Georgia. Dkt. 11-1. Petitioner was transferred to the Atlanta ICE office for transport to SDC.

That same day, at approximately 1653/4:53 PM, Petitioner departed the Atlanta ICE office to begin her transfer to the SDC. *Id.* Finally, Respondents admit that Petitioner did not arrive at SDC until 19:30/7:30 PM on November 13, 2025 (her arrival at SDC was recorded in an ICE database which reflects a "Book In Date/Time" of November 13, 2025 at 1930/7:30 PM). *Id.*

Despite Respondents' various movements of Petitioner throughout the day, clearly, at the time of filing her petition, Petitioner either was still physically located in the Atlanta ICE Field Office itself, located at 180 Ted Turner Drive, SW, Atlanta, GA, or was in the custody of the Atlanta ICE Field Office Director, Ladeon Francis, having control over ICE agents within the Atlanta region and all of Georgia, who were transporting Petitioner to SDC, which is located approximately two hours away. Even if she was booked out at 4:53 p.m., there is no way she could have boarded the bus to transport her (and dozens of other ICE detainees) in less than a minute. Either way, at the time of filing, Petitioner remained physically located within the Norther District of Georgia under the legal custody of Ladeon Francis, the ICE Field Office Director for Atlanta, and under the ultimate custodian of DHS Secretary Kristi Noem and this Court has clear jurisdiction over the petition notwithstanding her subsequent transfer to the Middle District of Georgia.

Inexplicably, Respondent claims that because the habeas petition filing notification from ECF shows it was filed at 4:54 PM, "one minute after Petitioner left the ICE Atlanta Field Office," then somehow, "when the Petition was filed, the Director of the ICE Atlanta Field Office was no longer Petitioner's immediate custodian." ECF No. 12 at 9. Yet in the following paragraph, Respondents admit that Petitioner was released from the Atlanta Field Office at approximately 4:53 PM (the same timing of filing of her writ of habeas petition) and "was in transit" for the next two and half hours "and was not booked into SDC until 7:30 p.m. (Docket No. 11, ¶ 7), leaving the question of habeas jurisdiction in something of a limbo." *Id.* Given Respondents' admission of a "limbo" jurisdictional posture, this Court should also look to the reasoning of the district court in the Eastern district of Virginia in *Suri v. Trump*, where a habeas Petitioner did not have a permanent place of detention at the time of filing, and the court found that in accordance with the unknown custodian exception and ultimate custodian rule, the petitioner properly named the Secretary of Homeland Security as a respondent in his petition and the court had jurisdiction to review the petition. 785 F. Supp. 3d 128, 142 (E.D. Va. 2025).[3]

[3] Notably, the *Suri* court also highlighted that the government had not identified who Petitioner's immediate custodian was while he was in transit and found it "logical to assume that if Respondents could identify the individual Petitioner should have named as his immediate custodian, they would have." Here, like in *Suri*, the government has not identified who they believe the proper respondent

"The unknown-custodian exception is critical because a detainee must always have an available forum for a habeas petition, even if the government doesn't disclose their location." *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *5 (4th Cir. July 1, 2025); *accord Ozturk v. Trump*, 136 F.4th 382, 392 (2d Cir. 2025). Thus, when "the government moves a detainee from a district and their attorney cannot discover their location with reasonable inquiry, that attorney must be able to file a habeas petition in the detainee's **last-known location** against their ultimate custodian." *Suri*, 2025 WL 1806692, at *6. Without this critical exception, detainees such as Petitioner "would lack the ability to seek habeas relief as long as the government kept their location and custodian a secret, thus granting the political branches the power to switch the Constitution on or off at will, leading to a regime in which the President, not the Supreme Court, says what the law is." *Id.* (cleaned up) (quoting *Boumediene v. Bush*, 553 U.S. 723, 765 (2008)). See also *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2476524, at *6-7 (D.N.J. Aug. 28, 2025) (holding exception applied when "the information on where [the petitioner] was certainly was not available to either petitioner or her attorney until after the fact").

Finally, in a concurring opinion in *Padilla*, Justice Kennedy, joined by Justice O'Connor, outlined another situation warranting an exception: where

would have been in this case. *See* ECF No. 12 at 9 ("Petitioner was in transit" "leaving the question of habeas jurisdiction in something of a limbo.").

"there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention," jurisdiction would lie with "the district court from whose territory the petitioner had been removed." *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring). Accordingly, this Court may exercise habeas jurisdiction over this matter because Petitioner's last-know location at the time of filing was in this district. *Suri,* at *6. Additionally, the petition names as a Respondent Petitioner's **ultimate** custodian, DHS Secretary. *See Ozturk*, 136 F.4th at 392; *Suri*, 785 F. Supp. 3d at 141.

In either event, Petitioner was clearly still located at the ICE Atlanta Field Office at 180 Ted Turner Drive SW, at 4:53 p.m. on November 13, 2025, the time of filing of her writ of habeas petition. Even though the first Respondent (Floyd county Sherriff) did not have physical custody over Petitioner, the legal custodian were the second, third and fourth Respondents, Francis, Lyons and Noem and therefore the writ was properly filed in NDGA. All the other cases that were brought in ECF 12-2, 12-3, 12-4 and 12-5 (with the exception of the Trinh case who was transferred to SDC prior to filing of the writ of habeas with NDGA and thus the court correctly transferred the case to MDGA), all remained within the jurisdiction and venue of NDGA and received favorable TRO's and final orders that the detention is not properly governed by

8 U.S.C. § 1225(b).

B. Exhaustion of administrative remedies is not required here.

As specified in the Complaint (ECF No. 1), exhaustion of administrative remedies is not required in this habeas context because there is no statutory mandate for exhaustion under 28 U.S.C. § 2241, and the doctrine is prudential, not jurisdictional, in immigration detention cases like this one. Courts have consistently recognized that where Congress has not expressly required exhaustion, it is within the court's discretion to excuse it, particularly when administrative remedies are inadequate, futile, or incapable of providing effective relief. Here, exhaustion should be excused for several reasons: (1) the agency's current policy—embodied in the July 2025 ICE memorandum and *Matter of Yajure Hurtado*—categorically forecloses bond hearings for noncitizens classified as "arriving aliens," making any further administrative process futile, as immigration judges lack jurisdiction to grant bond in these circumstances; (2) administrative remedies cannot address the core statutory and constitutional claims raised in the habeas petition, including the legality of detention under the wrong statutory provision and the facial deficiency of the ICE detainer; and (3) requiring exhaustion would only prolong Petitioner's unlawful detention and risk irreparable harm, contrary to the interests of justice and judicial economy. Federal courts have repeatedly excused

exhaustion in analogous cases where administrative remedies are unavailable, futile, or incapable of providing prompt and adequate relief, especially where the agency has predetermined the issue or lacks authority to grant the relief sought. In this case, the issue is even more severe as the agency did not revoke Petitioner's OREC which makes her detention unlawful. Alternatively, even if they revoked it (they have not produced any evidence of revocation), such revocation was unlawful.

C. 8 U.S.C. § 1252(g) does not bar the Court's jurisdiction.

The Government asserts that this Court lacks jurisdiction under 8 U.S.C. § 1252(g), arguing that Petitioner's detention arises from the commencement of removal proceedings. ECF No. 12 at 11-12. This argument relies on an overly broad interpretation of § 1252(g) that has been consistently rejected by the Supreme Court and numerous circuit and district courts, including all decisions known to undersigned counsel from the Northern District of Georgia.

Section 1252 is "Congress's comprehensive scheme for judicial review of removal orders." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1256–57 (11th Cir. 2020). Section 1252(g) bars judicial review over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien[.]" 28 U.S.C. § 1252(g). The Supreme Court,

in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) (AADC), clarified that § 1252(g) 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.'"

8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful *discretion*** to in only three distinct actions: (1) commence removal proceedings, (2) adjudicate those cases, and (3) execute orders of removal." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025) (emphasis added). "1252(g) is not to be construed broadly as a 'zipper' clause applying to the full universe of deportation-related claims, but instead as applying narrowly to only the three 'discrete' governmental actions enumerated in that subsection." *Wallace v. Sec'y, U.S. Dep't of Homeland Sec.*, 616 F. App'x 958, 960 (11th Cir. 2015) (citing *A.A.D.C.*, 525 U.S. at 472–73). "And although many other decisions or actions may be part of the deportation process, only claims that arise from one of the covered actions are excluded from [a court's] review...." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (internal citations and quotations omitted).

The statute's opening phrase—"Except as provided in this section"—is critical. It means that the jurisdictional bar is not absolute; rather, it is subject to the exceptions and carve-outs that are expressly set forth elsewhere in

§ 1252. The enumeration of 28 U.S.C. § 2241, as well as other habeas and mandamus provisions, is intended to clarify that, except as otherwise provided in § 1252, these statutes do not independently confer jurisdiction over claims that fall within the specific actions listed: the Attorney General's decisions to commence proceedings, adjudicate cases, or execute removal orders.

Petitioner's habeas claims do not challenge the decisions to commence removal proceedings, adjudicate her case, or execute a removal order. She is separately seeking relief from removal before the immigration court in form of asylum. Instead, she challenges the legality and constitutionality of her detention without a bond hearing; a matter distinct from the enumerated actions in § 1252(g). Such claim is reviewable. *See Canal A Media Holding*, LLC, 964 F.3d at 1257–58 (claim was not barred by § 1252(g) where action did not fall into one of three categories as "[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged."); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (petitioner's due process challenge was not barred by § 1252(g) as it did not "challenge the actions of commencing proceedings, adjudicating cases, or executing removal orders."); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025) (challenges to the lawfulness of detention during the pendency of removal proceedings is not a challenge to one of the 'three discrete events along the road to deportation' to which § 1252(g)

applies); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL 2430025, at *5 (D. Md. Aug. 24, 2025) (same); *Sanchez v. LaRose*, No. 25-cv-2396, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) ("Petitioner seeks only review of the legality of her detention, which does not require judicial intervention into the Attorney General's decisions to commence proceedings, adjudicate cases, and execute removal orders.... Adopting [the government's] interpretation of 8 U.S.C. § 1252(g)...would eliminate judicial review of immigration detainee's claims of unlawful detention[.]").

Several Circuit courts have reiterated the same. *See e.g., Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at 8–9 (6th Cir. Aug. 13, 2025) (Section 1252(g) does not clearly state a jurisdictional bar on review of detention claims, and thus, does not preclude district court jurisdiction over habeas petitions that challenge the legality or constitutionality of immigration detention, as such claims are independent of, or collateral to, the removal process); *Kong v. United States*, 62 F.4th 608, 612 (1st Cir. 2023) ("construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause"); *Mahdawi v. Trump*, 136 F.4th 443, 450 (2nd Cir. 2025) (§ 1252(g) does not strip district courts of jurisdiction over habeas petitions challenging immigration detention); *Ozturk v. Hyde*, 136 F.4th 382, 397 (2nd Cir. 2025) (§ 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," and does not reach claims

that are independent of, or collateral to, the removal process). Conversely, the Government's reliance on *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016)[4] and *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013)[5] is misplaced because those cases involved direct challenges to the underlying removal proceedings or decisions, not to the legality of detention itself.

Moreover, the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and subsequent case law confirm that, while Congress sought to streamline and limit judicial review of removal orders, it did not intend to eliminate habeas review for claims that fall outside the three discrete actions listed in § 1252(g). Courts across the country have recognized that habeas review remains available for challenges to the legality of detention that does not directly arise from the commencement, adjudication, or execution of removal orders. Section 1252(g) does not bar habeas review of constitutional challenges to the procedures used to determine detention, or the duration of detention itself.

Petitioner's claims are not merely about the fact of Petitioner's detention during removal proceedings, but about the unlawful nature of that detention.

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[4] Section 1252(g) bars jurisdiction over claims arising from the decision to commence removal proceedings or detain an alien pending removal, but does not bar jurisdiction over claims that challenge the legality of continued detention after the statutory removal period, where removal is not reasonably foreseeable and the claim is not directly tied to the execution of a removal order.

[5] Gupta alleged that ICE agents violated his Fourth and Fifth Amendment rights by wrongfully procuring an arrest warrant, arresting and detaining him, and searching and seizing his property. Bivens and other claims alleging wrongful arrest, detention, and search and seizure are barred, but habeas claim regarding the legality and constitutionality of the detention are not barred.

The government's classification of Petitioner who has resided in the U.S. for over two years as an "applicant for admission" and "seeking admission" subject to § 1225(b)'s mandatory detention based on the BIA's erroneous reasoning in *Yajure Hurtado* also raises serious due process concerns that are squarely within this Court's habeas jurisdiction. To hold otherwise would effectively insulate all immigration detention decisions from judicial review, a result inconsistent with the fundamental role of habeas corpus in safeguarding individual liberty. In summary, Supreme Court and lower courts have consistently interpreted § 1252(g) narrowly, ensuring that habeas relief remains available for claims like those presented here, which challenge the lawfulness of ongoing detention. Accordingly, section 1252(g) does not prevent this Court from exercising jurisdiction over the Petition.

D. 8 U.S.C. § 1252(b)(9) does not bar the Court's jurisdiction.

Respondents erroneously contend that section 1252(b)(9) bars this Court's review of Petitioner's challenge to the basis of her detention by claiming it "arise[s] from [an] action taken...to remove an alien from the United States." ECF No. 12 at 11-12. This position was squarely addressed in *Jennings v. Rodriguez*, where the Supreme Court held that "questions of law" regarding whether "certain statutory provisions require detention without a bond hearing" do not "arise from" the decision to remove an alien from the country as set forth in section 1252(b)(9). *Jennings*, 583 U.S. at 292–294. The Supreme

Court rejected an "expansive interpretation of § 1252(b)(9)," explaining that even if "[t]he 'questions of law and fact' ...could be said to 'aris[e] from' actions taken to remove the aliens in the sense that the aliens' injuries would never have occurred if they had not been placed in detention," this "expansive interpretation of § 1252(b)(9) would lead to staggering results." *Id.*

Here, Petitioner is challenging her mandatory detention under section 1225(b)(2), arguing that the government is applying the incorrect statute to detain her specifically since she was paroled into the country with an OREC, which under binding precedent from the Board of Immigration Appeals (BIA) and ICE regulations, constitute a parole under 8 U.S.C. § 1226(a). Section 1252(b)(9) clearly does not encompass challenges to the legality of detention itself which is separate and distinct from the removal process. Such detention challenges are not "questions of law or fact arising from" removal proceedings and thus are not barred or channeled by § 1252(b)(9) or § 1252(g). District courts retain habeas jurisdiction over such claims.

Related, § 1252(b)(9) does not eliminate habeas jurisdiction over challenges to detention that are "independent of challenges to removal orders" *Ozturk v. Hyde*, 136 F.4th at 399. The legislative history of the REAL ID Act of 2005, which amended § 1252(b)(9), explicitly states that "nothing in the amendment would preclude habeas review over challenges to detention that are independent of challenges to removal orders" *Kong*, 62 F.4th at 614.

Petitioner's claims regarding the lawfulness of her detention and her right to a bond hearing are distinct from the merits of her removability and they can be resolved "without affecting pending removal proceedings" *Ozturk*, 136 F.4th at 399). Therefore, § 1252(b)(9) does not strip this Court of jurisdiction.

E. Suspension Clause supersedes jurisdiction-stripping statutes.

A broad interpretation of these jurisdiction-stripping provisions would raise grave constitutional concerns under the Suspension Clause of the U.S. Constitution, which protects the writ of habeas corpus (U.S. Const. art. I, § 9, cl. 2). Courts are obligated to construe statutes to avoid constitutional questions where possible. *Ozturk*, at 394; *Kong*, 62 F.4th at 612 ("construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause"). The writ of habeas corpus is a constitutional minimum that cannot be abrogated by statute, even if Congress were to attempt to do so expressly. The Supreme Court has repeatedly affirmed that habeas review must remain available to challenge unlawful detention, regardless of statutory limitations. See *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008) ("the Suspension Clause remains applicable and the writ must be available to test the legality of executive detention"); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) ("the writ of habeas corpus is available to all persons detained within the United States who claim to be held in custody in violation of the Constitution, laws, or treaties of the United States"). Thus, even if the

government's jurisdictional arguments under 8 U.S.C. § 1252 were accepted, they could not constitutionally foreclose habeas review of Petitioner's core liberty interest in freedom from unlawful detention. For these reasons, the Court has jurisdiction to consider the Petition.

III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2)(A) BECAUSE SHE IS NOT "SEEKING ADMISSION"

At the outset, an individual who enters the United States without inspection like Petitioner and is subsequently released on an OREC after being apprehended at the border should not be classified as an "arriving alien" under immigration law. The term "arriving alien" is specifically defined to include those who are seeking admission at a port of entry or are interdicted in international waters and brought to the U.S. In contrast, individuals who enter without inspection are already present in the United States without having been admitted or paroled, and thus do not fit the definition of an "arriving alien".

The Board of Immigration Appeals has confirmed that release on recognizance or bond is an exercise of § 1226 discretion pending proceedings. See *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023) (This decision reiterates that individuals released on their own recognizance under section 236 of the INA are not considered to be paroled under section 212(d)(5)); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 260 n.2 (BIA 2010) (This case

clarifies that release on conditional parole under section 236(a)(2)(B) of the INA is legally distinct from release on humanitarian parole under section 212(d)(5)(A) of the INA). These are Respondents' own binding decisions that they are not following as to Petitioner.

The statutory framework governing immigration detention draws a clear and deliberate distinction between the authority to detain "applicants for admission" at the border or port of entry under 8 U.S.C. § 1225(b), and the discretionary detention of noncitizens already present in the United States under 8 U.S.C. § 1226(a). Section 1225(b) mandates detention for those "seeking admission" who are not "clearly and beyond a doubt entitled to be admitted," while § 1226(a) authorizes the Attorney General to arrest and detain, on a warrant, any noncitizen pending a decision on removability, with the possibility of release on bond except as provided in § 1226(c) (mandatory detention for certain criminal aliens). Nothing in the plain language of § 1226(a) prevents it from applying to noncitizens who unlawfully entered the country, like Petitioner. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) (§ 1225 governs "arriving aliens" and those "seeking admission," while § 1226 applies to "an alien present in the country" and that it "generally governs the process of arresting and detaining that group of aliens pending their removal."). The government's recent policy—set forth in the July 2025 ICE memorandum and the Board of Immigration Appeals' *Matter of Yajure*

Hurtado, 29 I. & N. Dec. 216 (BIA 2025)—purports to reclassify all noncitizens who entered without inspection, regardless of their years-long residence in the U.S., as "applicants for admission" subject to mandatory detention under § 1225(b)(2). This interpretation is a significant and abrupt departure from decades of agency practice, regulatory guidance, and legal precedent that have consistently recognized that interior arrestees are subject to § 1226(a) and entitled to individualized custody determinations and bond hearings (assuming they are arrested pursuant to a warrant, which was not the case for Petitioner). The government's attempt to collapse this distinction by reclassifying all noncitizens present without admission as "applicants for admission" ignores both the statutory structure and decades of agency practice.

Further, the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), abrogated *Chevron* deference and requires courts to interpret statutes de novo, giving due respect to agency views but not deferring to them—especially where, as here, the agency's position is inconsistent with statutory text, legislative history, and the overwhelming consensus of federal courts. This Court must therefore independently construe §§ 1225 and 1226, and the record and authorities demonstrate that Petitioner's detention is governed by § 1226(a), not § 1225(b).

The overwhelming consensus among federal district courts—including numerous decisions from this district and Circuit—has rejected the

government's reclassification policy, instead holding that § 1226(a) governs the detention of noncitizens apprehended in the interior, including those who entered without inspection years ago and have established significant ties to the United States. *See e.g.*, *Miguel Hernandez v. Udzinski*, No. 2:25-CV-373-RWS (N.D. Ga. Nov. 24, 2025) (holding that § 1225 applies to noncitizens who are encountered attempting to enter the country, or shortly thereafter but does not refer to noncitizens already living here. In contrast, § 1226 applies to aliens already in the country); *Rojano Gonzalez v. Sterling*, No. 1:25-CV-6080-MHC, 2025 WL 3145764, at *6 (N.D. Ga. Nov. 3, 2025) (Noncitizens who are just "present" in the country, who have been here for years upon years, are not "seeking" admission); *Jimenez v. Warden*, No. 1:25-cv-05650-SDG (N.D. Ga. Nov. 6, 2025) (Doc. 24); *Lima v. Warden*, No. 1:25-CV-6304-ELR (N.D. Ga. Nov. 18, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342, 2025 WL 3050094 at *5 (M.D. Ga. Nov. 1, 2025) ("[U]nder no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'"); *Antonio Aguirre Villa v. Warden Tony Normand*, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025).

But as Respondents continue to assert the same argument, Petitioner reiterates why Respondents' government's reliance on the phrase "seeking admission" in 8 U.S.C. § 1225(b) is misplaced as applied to Petitioner's circumstances. Respondents' interpretation ignores the plain meaning of the

phrase "seeking admission." *See J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *2 (M.D. Ga. Nov. 1, 2025) (The interpretation of the applicable statutes by respondents and the BIA in *Yajure Hurtado* overlooks part of the language in § 1225(b)(2)(A), it gives little consideration to the overall statutory scheme, and it ignores § 1226).

The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer" (8 U.S.C. § 1101(a)(13)(A)). "And 'entry' has long been understood to mean 'a crossing into the territorial limits of the United States.'" *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025).

The phrase 'seeking admission' is undefined in the statute but necessarily implies some sort of present-tense action or effort to obtain something——in this context, to gain lawful entry into the United States. *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). "Seek" is an active verb, not a type of status. *J.A.M.*, 2025 WL 3050094, at *3. "Seeking" means "asking for" or "trying to acquire or gain" and implies some kind of affirmative action on the part of the actor. *Lepe*, 2025 WL 2716910, at *5 (citing Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking). "To piece this together, the phrase 'seeking admission' means that one must be actively 'seeking' 'lawful entry.'" *Id.*

(quoting *Lopez Benitez*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025)). Again, the phrase "implies action –something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

As Judge Story recently reiterated in *Miguel Hernandez v. Udzinski*, No. 2:25-CV-373-RWS (N.D. Ga. Nov. 24, 2025), Respondents' interpretation also violates several canons of statutory construction including the cannon against surplusage. *J.A.M.*, 2025 WL 3050094, at *3 ("[i]f possible, every word and every provision is to be given effect."). It makes no sense that Congress would use two different phrases in the same statutory sentence to mean the exact same thing. *See id.* ("The second phrase, 'seeking admission,' modifies and narrows the first, "an alien present in the United States who has not been admitted." It does not simply restate it."). It further violates the canon of noscitur a sociis, which requires courts to consider statutory language in reference to "the specific context in which that language is used, and the broader context of the statute as a whole." *Dawson*, 64 F.4th at 1237.

Considering the statutory framework of the INA, it is clear that § 1225 applies to noncitizens who are encountered attempting to enter the country or

shortly thereafter.[6] Section 1225 repeatedly refers to noncitizens actively entering the country's border and does not refer to noncitizens already living here. *See, e.g.*, 8 U.S.C. § 1225(b)(l)(A)(i) (screenings for aliens "arriving in the United States"); *id.* § 1225(b)(2)(C) (noting that aliens "arriving on land ... from a foreign territory contiguous to the United States" may be returned to that territory pending removal proceedings). Section 1226, in contrast, applies to "aliens already in the country." *Jennings*, 138 S. Ct. at 838.

Thus, based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to aliens in the U.S. who have not been admitted ("applicants for admission" definition) **AND** who are "seeking" or "attempting to obtain" lawful admission to the United States. *J.A.M.*, 2025 WL 3050094, at *3.

In the instant case, clearly Petitioner is not currently "seeking admission" and thus does not fall with an "applicant for admission" subject to mandatory detention under § 1225(b)(2) in the statutory sense. Petitioner was not taking affirmative action to be admitted into the country; she was apprehended within the interior of the United States, years after her initial entry. Thus, any detention of Petitioner necessitates an individualized process

[6] The regulatory definition of "arriving alien" under 8 C.F.R. § 1.2 further supports this distinction, limiting the term to those "coming or attempting to come into the United States at a port-of-entry" or interdicted at sea—not to individuals apprehended in the interior long after entry. The present-progressive language—"arriving," "coming," "attempting"—confirms that § 1225(b) applies only to those in the process of seeking admission, not to long-term residents like Petitioner.

and bond eligibility under § 1226(a). To interpret "seeking admission" to encompass long-term residents apprehended in the interior would not only disregard the statutory definition of "admission," but also collapse the deliberate distinction Congress drew between border and interior cases, rendering § 1226(a) superfluous and contrary to decades of agency and judicial practice.

IV. THE UNLAWFULNESS OF PETITIONER'S DETENTION REQUIRES HER IMMEDIATE RELEASE

Despite the government's previous finding that she is neither a danger nor a flight risk and ordering her release on an Order of Recognizance (OREC) (ECF No. 1-3), Petitioner is now unlawfully detained in violation of statute, regulation, policy, and the 5th Amendment's due process clause.

A. Respondents' failure to provide proof of an immigration detainer or arrest warrant render Petitioner's continued detention unlawful.

Petitioner's arrest and continued detention are unlawful because they were executed in the interior of the United States years after her entry, without a valid warrant supported by probable cause, and without any individualized finding of dangerousness, flight risk, or national security concern. The record is clear: Petitioner has no criminal history, no record of violence, and was arrested solely for a minor traffic violation (driving without a license). Specifically, on November 8, 2025, while traveling to visit her sick father, Petitioner's vehicle was stopped during a traffic operation for driving

without a license and speeding, and ICE subsequently took Petitioner into custody. Petitioner was detained without notice or the opportunity to be heard, in violation of agency rules. Her detention was conducted under false pretenses and was a violation of both procedural and substantive due process rights, as no findings were made regarding her compliance with the OREC or any danger she posed.

In their response to the OSC, Respondents have failed to provide a copy of the alleged immigration detainer. Respondents provided a declaration from Deportation Officer David Bush (ECF 12-1), which references Exhibits A-E within, but no such exhibits were attached to the as-filed declaration or otherwise provided to Petitioner or the Court. This legal deficiency and omission of the alleged immigration detainer or any evidence or individualized assessment of Petitioner's danger or flight risk underscores the unlawfulness of her arrest and detention.

Moreover, federal law and DHS policy require that immigration detainers and interior arrests be supported by probable cause and, where public safety or national security is invoked, by specific, articulable facts. The absence of any such facts here renders the alleged detainer facially deficient and unlawful. As numerous courts have recognized, the use of a detainer to hold a noncitizen in the interior based on a boilerplate assertion of risk—without any criminal predicate or individualized finding—violates both

statutory and constitutional requirements. *See, e.g.*, *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at 10 (D. Ariz. Aug. 11, 2025) (granting immediate release where detention was based on an unlawful arrest and unsupported detainer); *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (immediate release ordered for unlawful detention under § 1225(b)); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (immediate release as the only effective remedy for egregious constitutional violations).

Next, under 8 U.S.C. § 1357(a)(2), ICE officers may only arrest without a warrant if they have probable cause to believe the individual is unlawfully present *and* is likely to escape before a warrant can be obtained. This is not a mere formality; it requires a particularized, individualized inquiry into flight risk, considering factors such as family, employment, and community ties. The "reason to believe" language is interpreted as equivalent to the constitutional probable cause standard. Arrests based solely on unlawful presence, without individualized flight risk assessment, do not meet this standard. Furthermore, the Fourth Amendment requires a prompt judicial determination of probable cause following a warrantless arrest. Extended detention without such a determination is unconstitutional (*Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

Where a person is arrested without a warrant and without probable cause, and no prompt judicial review is provided, the

remedy is immediate release. Issuing a post hoc warrant after the arrest does not cure the initial violation. ICE's practice of issuing administrative warrants after the fact does not retroactively legitimize an unlawful arrest. The statutory requirement is for probable cause of flight risk *before* arrest. *Id.*

Related, 8 U.S.C. § 1357(a)(2) authorizes ICE to arrest and detain noncitizens believed to be in violation of immigration laws but expressly limits such detention to "not more than 48 hours" (excluding weekends and holidays), unless a warrant is issued or removal proceedings are commenced. Here, Petitioner was taken into custody on October 14, 2025. Thus, as of today, December 1, 2025, Petitioner has been detained for a month and a half without the issuance of a warrant— far exceeding the statutory forty-eight (48)-hour limit for warrantless detention set forth in 8 U.S.C. § 1357(a)(2). Notably, Respondents have not even alleged the existence of a warrant or suggested any emergency or extraordinary circumstance to justify continued detention beyond the statutory limit. Respondents' brief utterly fails to address Petitioner's unlawful and prolonged deprivation of liberty. *See generally*, ECF 12.

Therefore, this Court should order Petitioner' s immediate release or other appropriate relief. The Supreme Court and lower courts have repeatedly held that, where the government's actions have already frustrated judicial

"The unknown-custodian exception is critical because a detainee must always have an available forum for a habeas petition, even if the government doesn't disclose their location." *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *5 (4th Cir. July 1, 2025); *accord Ozturk v. Trump*, 136 F.4th 382, 392 (2d Cir. 2025). Thus, when "the government moves a detainee from a district and their attorney cannot discover their location with reasonable inquiry, that attorney must be able to file a habeas petition in the detainee's **last-known location** against their ultimate custodian." *Suri*, 2025 WL 1806692, at *6. Without this critical exception, detainees such as Petitioner "would lack the ability to seek habeas relief as long as the government kept their location and custodian a secret, thus granting the political branches the power to switch the Constitution on or off at will, leading to a regime in which the President, not the Supreme Court, says what the law is." *Id.* (cleaned up) (quoting *Boumediene v. Bush*, 553 U.S. 723, 765 (2008)). See also *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2476524, at *6-7 (D.N.J. Aug. 28, 2025) (holding exception applied when "the information on where [the petitioner] was certainly was not available to either petitioner or her attorney until after the fact").

Finally, in a concurring opinion in *Padilla*, Justice Kennedy, joined by Justice O'Connor, outlined another situation warranting an exception: where

would have been in this case. *See* ECF No. 12 at 9 ("Petitioner was in transit" "leaving the question of habeas jurisdiction in something of a limbo.").

cv-00898-DRL-SJF in the Northen District of Indiana granted to a client of undersigned counsel's ordering his immediate release. Judge Leichty goes into the 1225-1226 analysis, statutory interpretation and other arguments in detail, rejecting similar arguments Respondents are making here. **Therefore, immediate release is warranted for any noncitizen arrested in the interior such as Petitioner without a warrant and without individualized probable cause of flight risk.**

B. Respondents' failure to revoke Petitioner's OREC render her continued detention unlawful.

The statutory, regulatory, and delegation framework requires that any deprivation of liberty for a noncitizen in Petitioner's position—released on an OREC and in pre-final order proceedings—must be justified by individualized findings, executed only by officials with proper authority as specified in 8 C.F.R. § 236.1(c)(9) and 8 C.F.R. § 1236.1, and accompanied by the procedural protections required by law. 8 C.F.R. § 236.1(c)(8)-(9) strictly limits the authority to revoke an Order of Release on Recognizance (OREC) to a narrow group of high-level officials. Section 236.1(c)(9) provides: "When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for

investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled." Similarly, DHS Delegation Order 7030.2 expressly prohibits redelegation of OREC revocation authority beyond those high-level officials named in the regulation, and any attempt to expand this authority by internal order or general delegation is legally ineffective.

These requirements are not mere formalities—they are substantive safeguards designed to ensure that any deprivation of liberty is based on accurate, individualized information and is subject to fair and reliable adjudication. Failure to comply with these procedures—including providing contemporaneous notice, individualized assessment, and an opportunity to be heard before a neutral and lawfully authorized decisionmaker—renders any revocation of OREC by an unauthorized official ultra vires and invalid.

Courts have consistently held that such actions violate both the regulatory scheme and due process, and have ordered immediate restoration of release in OREC-specific contexts. *See, e.g.*, *Santamaria Orellana v. Baker*, No. 1:25-cv-02841 (D. Md. Oct. 7, 2025) (holding that "Respondent's ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his

and bond eligibility under § 1226(a). To interpret "seeking admission" to encompass long-term residents apprehended in the interior would not only disregard the statutory definition of "admission," but also collapse the deliberate distinction Congress drew between border and interior cases, rendering § 1226(a) superfluous and contrary to decades of agency and judicial practice.

IV. THE UNLAWFULNESS OF PETITIONER'S DETENTION REQUIRES HER IMMEDIATE RELEASE

Despite the government's previous finding that she is neither a danger nor a flight risk and ordering her release on an Order of Recognizance (OREC) (ECF No. 1-3), Petitioner is now unlawfully detained in violation of statute, regulation, policy, and the 5th Amendment's due process clause.

A. Respondents' failure to provide proof of an immigration detainer or arrest warrant render Petitioner's continued detention unlawful.

Petitioner's arrest and continued detention are unlawful because they were executed in the interior of the United States years after her entry, without a valid warrant supported by probable cause, and without any individualized finding of dangerousness, flight risk, or national security concern. The record is clear: Petitioner has no criminal history, no record of violence, and was arrested solely for a minor traffic violation (driving without a license). Specifically, on November 8, 2025, while traveling to visit her sick father, Petitioner's vehicle was stopped during a traffic operation for driving

renders her re-detention unlawful under the Due Process Clause and the controlling regulations. Immediate release is the only adequate remedy to restore Petitioner's liberty and prevent further irreparable harm.

Furthermore, Petitioner maintains that even if Respondents provided Exhibit D, an after-the-fact revocation, which occurred on November 20, 2025, 12 days after she was arrested and already detained contrary to law since her OREC was not cancelled during those 12 days, is unlawful. The controlling regulations pertaining to OREC revocation require notice to the noncitizen upon an OREC revocation AND upon revocation, a hearing and a meaningful opportunity to respond to the revocation by the appropriate official outlined in the regulations, the District Director or Assistant District Director. None of this was done in this case in contravention of DHS's own regulations and therefore the OREC revocation is unlawful and this court should order full restoration of the OREC.

V. CONCLUSION

Respondents' arguments fail to overcome the fundamental defect in this case: Petitioner's arrest and detention were unlawful from the outset because they were executed in the interior of the United States years after her entry, without a valid detainer or warrant supported by probable cause, and without any individualized finding of dangerousness, flight risk, or national security

concern. Petitioner's established residence, deep family and community ties, and lack of criminal history further underscore the absence of any lawful basis for her initial or continued detention. The government has not demonstrated that Petitioner is a flight risk or danger to the community, and her continued detention based on a deficient arrest warrant is unsupported by any legitimate purpose.[8]

Further, the government's contrary position—relying on the July 2025 ICE memo and *Matter of Yajure Hurtado* to subject Petitioner to mandatory detention as an "arriving alien"—is unlawful, arbitrary, and capricious as applied to her circumstances. The statutory and regulatory framework, as well as controlling precedent, require that her detention be governed by § 1226(a), entitling her to individualized process and bond eligibility, had she been properly arrested by ICE pursuant to a warrant. However, since the government has not provide proof of a detainer or a warrant in her case, let

[8] The government's assertion that a bond hearing is the only appropriate remedy is unavailing in this context, where further administrative process would be futile and continued detention would perpetuate ongoing statutory and constitutional violations. Courts have repeatedly recognized that when a petitioner's detention is based on an unlawful arrest, a facially deficient detainer, or where agency policy categorically forecloses meaningful review—as is the case under the current ICE and BIA policy classifying interior arrestees as "arriving aliens"—the only adequate remedy is immediate and unconditional release, not a bond hearing or further process. For example, in *Rosado v. Figueroa*, the court granted habeas relief and ordered immediate release where detention was based on an unlawful arrest and unsupported detainer, finding that a bond hearing would not cure the underlying violation or provide effective relief. Under these circumstances, and given the agency's current policy foreclosing meaningful review, only immediate and unconditional release can remedy the ongoing statutory and constitutional violations and prevent further irreparable harm.

alone proof that they were executed properly, she must be granted full and unconditional release.

Based on all the above, this Court should therefore enter the following judgement:

1. DECLARE that Petitioner's detention under § 1225(b)(2) is unauthorized and unconstitutional;
2. ORDER Petitioner's unconditional and immediate release;
3. ENJOIN Respondents from re-detaining Petitioner under 8 U.S.C. § 1225(b) or any other statute absent a valid, individualized finding of flight risk or danger to the community, supported by clear and convincing evidence and a lawfully issued warrant;
4. ENJOIN Respondents from rearresting Petitioner unless she has committed a new violation of any federal, state or local law, or has failed to attend a properly notice immigration or court hearing, or is subject to detention pursuant to a final order of removal;
5. ORDER Respondents to fully restore Petitioner's OREC unlawfully revoked and release her pursuant to the OREC conditions; and
6. Grant such other and further relief as the Court deems just and proper, including attorneys' fees and costs.

If the Court still cannot grant Petitioner the relief she is requesting based on all these overwhelming authorities, Petitioner requests the Court to

set a hearing for oral arguments for as soon as practicable during the week of December 1, 2025.

Respectfully Submitted,

This 1st day of December, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Century Schoolbook, 13 point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2025, this document was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge R. Brooke Jackson

Civil Action No. 1:25-cv-03183-RBJ

REFUGIO RAMIREZ OVANDO,
CAROLINE DIAS GONCALVES,
J.S.T, and
G.R.R.,

Plaintiffs,

v.

KRISTI NOEM,
TODD LYONS,
ROBERT G. HAGAN[1]
in their official capacities,

Respondents.

ORDER

I. Introduction

Immigration officials are entrusted with enforcing the immigration laws and are authorized to pursue an aggressive deportation agenda. They may arrest and initiate removal proceedings against individuals they believe are present without

[1] Pursuant to Fed. R. Civ. P. 25(d), Robert G. Hagan has automatically been substituted as a party in his official capacity as Director of the Denver Field Office, U.S. Immigration and Customs Enforcement.

lawful status. But in carrying out these responsibilities, they must follow the law. This case arises out of U.S. Immigration and Customs Enforcement's ("ICE") alleged practice in Colorado of arresting individuals suspected of being unlawfully present without a warrant and without making the individualized flight-risk determination required by 18 USC § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii).

Plaintiffs are four individuals who were subjected to this unlawful practice. Although they lacked legal status, each had deep and longstanding ties to their communities—including parents, spouses, children, stable employment histories, and active participation in their local churches. No reasonable officer could have reasonably concluded that these plaintiffs were likely to flee before a warrant could be obtained. Yet ICE nonetheless arrested each one immediately and detained them for significant periods, causing severe hardship and loss. Plaintiffs seek to represent a class of similarly situated individuals who are not targets of ICE's removal operations but have been arrested without a warrant or remain at risk of warrantless arrest in violation of the statute's individualized-flight-risk-assessment requirement.

Before the Court are plaintiffs' motions for a preliminary injunction and provisional class certification (ECF Nos. 13 and 14), and defendants' motion to restrict electronic access to the case file (ECF No. 46).[2] For the reasons stated herein,

[2] For clarity, record citations in this Opinion appear inside the text, i.e. (Pl. Ex. 1); in some cases, for readability, short-form citations are used in the main text with full citations provided in footnotes.

plaintiffs' motion for provisional class certification is GRANTED to the extent that this Court will provisionally certify a class under the definition provided in Part V of this Opinion; plaintiffs' motion for a preliminary injunction is GRANTED in part and DENIED in part, as described in Part V; and defendants' motion to restrict electronic access is GRANTED in part and DENIED in part, without prejudice to renew, as described in Part V.

II. Background

A. ICE's Warrantless Arrest Power

The federal government has "broad, undoubted power over the subject of immigration and the status of aliens," and its "power to determine immigration policy is well settled."[3] *Arizona v. United States*, 567 U.S. 387, 394 (2012). To that end, Congress has passed comprehensive legislation regulating the apprehension, arrest, detention, and removal of persons unlawfully present in the United States; and the Executive branch, through its agencies, including the Department of Homeland Security (DHS), and its subcomponent, ICE, is tasked with carrying out the legislature's design. *See id.* at 396 ("Congress has specified which aliens may be removed from the United States and the procedures for doing so"); 8 U.S.C.

[3] Throughout this opinion, the term "alien" is used where it appears in a statute, regulation, judicial opinion, or ICE internal document. Otherwise, unless a more specific term is necessary, this opinion interchangeably refers to individuals or persons "without lawful status," "unlawfully present," or "undocumented persons," or some similar expression, when discussing people in the United States in violation of the immigration laws.

§ 1103(a) (charging DHS "with the enforcement of … laws relating to the immigration and naturalization of aliens").

Under the framework established by Congress, removal proceedings typically begin when a suspected removable person is served with a charging document known as a "Notice to Appear" ("NTA"). *See* 8 U.S.C. § 1229(a). At the time an NTA is issued, or anytime thereafter until the conclusion of removal proceedings, immigration officers may issue a "Warrant of Arrest," known as Form I-200, and under this authority, "arrest[ ] and take[ ] into custody" the subject of the proceedings. *See* 8 C.F.R. §§ 236.1, 1236.1. Thus, ICE officers possess extremely broad authority to arrest persons suspected of violating the immigration laws upon the issuance of an NTA *and* a valid arrest warrant.

However, where "no federal warrant has been issued," Congress has granted immigration officers "more limited authority" to make arrests. *Arizona*, 567 U.S. at 408. This authority is governed by 8 U.S.C. § 1357(a)(2), and its corresponding regulation, 8 C.F.R. § 287.8(c)(2)(ii), which permit arrest only where the officer "has reason to believe" that the individual "is in the United States in violation of [the immigration laws]" and "is likely to escape before a warrant can be obtained for his arrest[.]" § 1357(a)(2); § 287.8(c)(2)(ii). This two-pronged requirement precedes the 1952 passage of the INA and has never been amended. *See* Act of Aug. 7, 1946, ch. 768, 60 stat. 865 (adopting the language of § 1357(a)(2) in a predecessor statute).

The "reason to believe" language in § 1357(a)(2) is the equivalent of the constitutional requirement of probable cause. *See, e.g.*, *Roa-Rodriguez v. United States*, 410 F.2d 1206, 1209 (10th Cir. 1969) (adopting the "probable cause" standard in finding that a warrantless arrest violated § 1357(a)(2)); *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (collecting cases interpreting "reason to believe" in § 1357(a)(2) as the equivalent of probable cause).[4]

This statutory requirement, that an immigration officer must have probable cause of flight risk, "is not mere verbiage." *United States v. Pacheco-Alvarez*, 227 F.Supp.3d 863, 889 (S.D. Ohio 2016) (citing *Arizona*, 567 U.S. 387); *see also United States v. Cantu*, 519 F.2d 494, 496-97 (7th Cir. 1975) (explaining that the likelihood of escape limitation is "always seriously applied"). Before effecting a warrantless arrest, ICE officers must make a "particularized inquiry" that the subject is likely to abscond. *Moreno v. Napolitano*, 213 F.Supp.3d 999, 1007-08 (N.D. Ill. 2016); *see also United States v. Kahn*, 324 F.Supp.2d 1177, 1186-87 (D. Colo. 2004) (considering defendant's traditional flight risk factors, including ties to the community, in finding that his warrantless arrest violated § 1357(a)(2)); *Pacheco-*

[4] Defendants' suggestion in their response brief that the probable cause standard applies only to the first prong of § 1357(a)(2), that is, the officer's reason to believe that the subject is unlawfully present in the United States, and not the second, flight-risk prong, rests on an unreasonable reading of *Roa-Rodriguez*, 410 F.2d at 1208-09, is otherwise unsupported, and is rejected (ECF No. 34 at 31 n. 11).

Alvarez, 227 F.Supp.3d at 889-90 (same); *United States v. Bautista-Ramos*, No. 18-cr-4066-LTS, 2018 WL 5726236, at *7 (N.D. Iowa Oct. 15, 2018) (same).

B. The Castañon-Nava Litigation and ICE's Broadcast Statements of Policy

In May 2018, ICE conducted "large-scale immigration sweeps" in Chicago, Illinois. *See Nava v. DHS*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020). By ICE's own account, 106 of the 156 arrests made during this operation, known as "Operation Keep Safe," were "at-large collateral arrests," meaning people who were not ICE targets and for whom ICE lacked a warrant. *Id.*

Five of these individuals, all of whom had lived in Chicago for between 4 and 30 years, filed a putative class action under the Administrative Procedure Act (APA), 5 U.S.C. §§ 101-913, alleging that ICE violated § 1357(a)(2) by arresting them "without...individualized determination[s]" of flight risk, and that their arrests reflected ICE's "widespread policy and practice of violating the INA in this manner." *Nava*, 435 F.Supp.3d at 885-86.

After the district court denied defendants' motion to dismiss, the parties settled. *See Castañon Nava v. DHS*, No. 18-cv-3757, 2025 WL 2842146, at *1 (N.D. Ill. Oct. 7, 2025). Under the terms of the settlement, ICE issued a nationwide "Broadcast Statement of Policy" ("Broadcast I"), setting out "how ICE officers are to conduct warrantless arrests in a manner consistent with 8 U.S.C. § 1357(a)(2)."

Id. at *4, *22. In other words, ICE has articulated what the law requires of its officers and established protocols to ensure compliance.

Specifically, Broadcast I provided, in relevant part, that: (1) to make a warrantless arrest, an ICE officer is required "to have probable cause that an individual is in the United States in violation of U.S. immigration laws *and* probable cause that the individual is likely to escape before a warrant can be obtained for the arrest" (emphasis in original); (2) when determining "likelihood of escape," an officer "must consider" the totality of the circumstances known to them before the arrest; (3) relevant factors include whether the officer can "determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances" weighing in favor or against flight risk; and (4) "mere presence within the United States in violation of U.S. immigration law" is not, on its own, evidence of flight risk (Def. Ex. E, Broadcast Statement of Policy, Final Draft, Nov. 23, 2021).

Importantly, Broadcast I also dictated that, "as soon as practicable," ICE officers are required to "document the facts and circumstances" of a warrantless arrest in the narrative section of the subject's Form I-213, including, the subject's "ties to the community, if known at the time of arrest, including family, home, or

employment," and "the specific, particularized facts supporting the conclusion that the alien was likely to escape before a warrant could be obtained" (*id.*).[5] Additionally, ICE officers were instructed that information "learned post-arrest relevant to custody determination should be documented separately from the information relevant to likelihood of escape known at the time of the warrantless arrest" (*id.*).

Earlier this year, plaintiffs' counsel for the *Nava* settlement brought a motion to enforce the agreement, alleging that during largescale immigration operations at the beginning of the second Trump Administration, ICE committed "repeated, material violations" of the agreement by warrantlessly arresting 26 class members without possessing probable cause of flight risk. *Castañon Nava*, 2025 WL 2842146, at *6. On June 11, 2025, while the motion was pending, Charles Wall, ICE's Principal Legal Advisor ("PLA"), sent out another nationwide "Broadcast" policy statement ("Broadcast II"). *Id.* at *22. This statement declared that the *Nava* had expired, and that ICE was no longer bound by it. Accordingly, it purported to rescind Broadcast I (*see* Def. Ex. F, "Termination of Castañon-Nava Settlement Agreement," Jun. 11, 2025).

[5] Form I-213, entitled "Record of Deportable/Inadmissible Alien" is an "official record prepared by immigration officials when initially processing a person suspected of being in the United States without legal permission." *Castañon Nava*, 2025 WL 2842146, at *4 n. 4 (cleaned up) (citing *Punin v. Garland*, 108 F.4th 114, 119 (2d Cir. 2024)).

Broadcast II reiterated that, to make a warrantless arrest under § 1357(a)(2), ICE officers must have "probable cause" of flight risk under the "totality of the circumstances." It included the same list of "relevant" factors, but it also made a number of significant amendments to Broadcast I (*id.*). Gone was the unequivocal language that unlawful presence, by itself, is *insufficient* to justify warrantless arrest, replaced by a softer statement that, "[n]otably, courts have found that an alien's mere presence in violation of U.S. immigration law may not serve as a basis for a warrantless arrest" (*id.*). It dispensed with the documentation requirements from Broadcast I (*id.*). Instead, it merely "encouraged" ICE officers and agents "to document in Form I-213 the basis for determining that an alien was likely to escape before a warrant could be obtained" without elaboration (*id.*).

After plaintiffs filed notice of numerous additional alleged violations during more largescale enforcement operations in late September, the district court found that ICE had, in fact, warrantlessly arrested 22 class members without probable cause of flight risk. *Castañon Nava*, 2025 WL 2842146, at *21. Furthermore, finding that Mr. Wall's "agency-wide directive" purporting to unilaterally terminate the settlement and rescind Broadcast I violated the agreement, the court extended the duration of the settlement by six months. *Id.* at *23.

Accordingly, "[p]ursuant to the order of the district court," on October 22, 2025, ICE sent a third nationwide "Broadcast" policy statement ("Broadcast III"),

repeating, word-for-word, the legal standards and documentation protocols for warrantless arrests in Broadcast I, and informing its officers that they remained in effect until the expiration of the settlement on February 2, 2026 (Def. Ex. G, "Effective Immediately: *Castañon-Nava* Broadcast Statement of Policy," Oct. 22, 2025).

C. Procedural History and the Parties' Positions

In the instant matter, plaintiffs filed their initial "Class Complaint for Declaratory and Injunctive Relief," "Motion for Preliminary Injunction," and "Motion for Class Certification" on October 9, 2025 (ECF Nos. 1, 13, and 14). They contend that, in Colorado, "ICE agents are ignoring the law's clear requirement to assess flight risk before making a warrantless arrest," and they seek to "enjoin Defendants' ongoing pattern and practice of flouting federal law in connection with their mass immigration arrests" (ECF No. 1 at ¶3). They state two causes of action under the APA, asking this Court to "hold unlawful and set aside" this alleged pattern and practice as "final agency action" that is ultra vires and "in excess of statutory jurisdiction, authority, or limitations" under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) (*see id.* at ¶¶202, 209). 5 U.S.C. §§ 704, 706(2)(C). Plaintiffs also seek to represent a class under Federal Rule of Civil Procedure 23(b) consisting of:

> All persons since January 20, 2025, who have been arrested or will be arrested in this District by ICE without a warrant and without a pre-arrest, individualized

> assessment of probable cause that the person poses a flight risk (ECF No. 1 at ¶188; ECF No. 14 at 2).

In their proposed preliminary-injunction order, plaintiffs request that the Court: (1) enjoin immigration officers from effecting warrantless arrests in this District absent probable cause of both unlawful presence and risk of flight; (2) require that any officer making a warrantless arrest comply with the standards set out for individualized flight-risk determinations in Broadcasts I and III; (3) require officers to document in the arrestee's I-213 the facts and circumstances supporting the arrest, consistent with those Broadcasts; (4) order defendants to provide plaintiffs' counsel with documentation of warrantless arrests in the District every 60 days, and to produce records of specific arrests within seven days upon request; (5) ensure that all officers authorized to execute immigration arrests in this District are trained on these requirements; and (6) provide ongoing documentation of that training until its completion (ECF No. 13-1).[6]

On October 27, 2025, defendants filed their response brief, arguing that: (1) plaintiffs lack standing; (2) the complaint fails to state a claim under the APA; (3) plaintiffs fail to show that their warrantless arrests violated § 1357(a)(2), let alone

[6] Plaintiffs also request, in their motion for a preliminary injunction, that the Court appoint the named plaintiffs as Class Representatives, appoint plaintiffs' counsel as Class Counsel, and provisionally certify the class, and separately, not require plaintiffs to post a bond (ECF No. 13-1).

that ICE has a pattern or practice of disregarding the statute; (4) the Court lacks authority to issue a "universal" injunction extending beyond the named plaintiffs; and (5) the plaintiffs have not demonstrated a likelihood of irreparable harm or that the equities favor granting a preliminary injunction (ECF No. 34). Plaintiffs replied on October 29, 2025 (ECF No. 40).

On October 30 and 31, 2025, this Court held a hearing on plaintiffs' motions (ECF No. 43 and 45). The facts below are drawn from the testimony and exhibits admitted at the hearing.[7]

III. Findings of Fact

A. The Warrantless Arrests of the Named Plaintiffs

1. *Refugio Ramirez Ovando*

Mr. Ramirez Ovando has lived near Grand Junction, Colorado for more than 20 years (ECF No. 47, H. 10/30/25, at 50). He and his wife have four U.S.-citizen children, ages 8 to 18, whom they raise together (*id.* at 51-52). They attend church every Sunday (*id.* at 53). Mr. Ramirez Ovando has worked for the same construction company for 19 years and has no criminal history (*id.* at 52, 68-69).

[7] Some of the exhibits the Court considered were declarations sworn under the penalty of perjury from non-testifying witnesses and media reports. By and large, defendants objected to the former but not the latter. It is well-established that, at the preliminary injunction stage, courts may consider evidence that may not otherwise be admissible at trial under the Federal Rules of Evidence, including evidence containing hearsay. *See, e.g., DigitalGlobe, Inc. v. Paladino*, 269 F.Supp.3d 1112, 1119 (D. Colo. 2017) (citing *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003)). "The fact that evidence might be excludable goes to the weight of that evidence, not necessarily its admissibility." *Id.*

On the morning of May 19, 2025, while driving to work, he was stopped by two armed plainclothes ICE officers (*id.* at 53-55). He later learned that they had stopped him by mistake—the officers believed he was someone else (*id.* at 66-67). He provided his SB-251 Colorado driver's license when asked for identification (*id.* at 56).[8] When asked for another form of ID, he offered to have his daughter bring his passport from home (*id.*).

The officer then asked Mr. Ramirez Ovando whether he had any "papers" or permission to be in the country (*id.* at 58). When Mr. Ramirez Ovando repeatedly requested to know if he was under arrest or free to leave, the officer took him into custody (*id.* at 58-59). Only after he was taken into custody—both on the way to and at the ICE field office—did officers ask questions related to his family, community ties, and other flight risk factors (*id.* at 60-62).

His I-213 corroborates his account (*see* Def. Ex. A, I-213 for Mr. Ramirez Ovando). The "Encounter" section contains no information indicating that ICE made any individualized flight-risk determination before arresting him (*id.*). A later section notes that he lives with his wife and four-U.S. born children, a factor that ICE's assistant director for the Denver field office testified would cut *against* flight

[8] An SB-251 license is an identification issued by the state of Colorado to individuals who are not citizens of the United States or lawful permanent residents (ECF No. 47 at 207-08). It is easily distinguished from a standard Colorado license because it contains a black horizontal stripe on the top, includes the inscription, "not valid for federal purposes," and lacks a star in the top right-hand corner denoting a "REAL ID" (*id.* at 185-86, 207-08).

risk, but this information was collected only during processing (ECF No. 48, H. 10/31/25, at 354).

Mr. Ramirez Ovando was in detention for nearly 100 days before an immigration judge granted him lawful permanent resident status and he was released (ECF No. 47 at 64, 66). He testified to atrocious conditions inside the facility, including extreme temperature fluctuations, inappropriate sleeping conditions, and inadequate medical care (*id.* at 63-65). His arrest and detention also caused significant financial hardship for his family and severely impacted his children's mental health, all of whom started attending therapy (*id.* at 67-68).

2. *Caroline Dias Goncalves*

Ms. Dias Goncalves is a 20-year-old scholarship student at the University of Utah and also works as a restaurant hostess (*id.* at 28-30). She has lived in Utah with her family, active members of the Church of Jesus Christ of Latter-day Saints, since she was seven years old (*id.* at 28-29, 45). At the time of her arrest, she had a pending asylum application with United States Customs and Immigration Services (USCIS) and valid work authorization (*id.* at 30, 127).

On June 5, 2025, while driving alone on highway I-70 in western Colorado to visit a friend, she was stopped for an alleged traffic infraction by a sheriff's deputy, who checked her ID, issued a warning, and then contacted Homeland Security Investigations (HSI), a division of ICE (*id.* at 31-33). Minutes later, armed

plainclothes HSI agents pulled her over (*id.* at 33-34). They immediately told her that she was "under arrest for violating the immigration law," handcuffed her, and transported her to the DHS field office in Grand Junction (*id.* at 34-35).[9]

Her I-213 fully corroborates her account (Def. Ex. B, I-213 for Ms. Dias Goncalves). The "Encounter" section is entirely bereft of any information regarding her community ties or flight risk (*id.*). A later section notes her pending asylum application and work authorization, but the agents appear not to have known, or at least not considered, this information during the arrest decision (*id.*).

Ms. Dias Goncalves was detained for 15 days before she was released on bond, an ankle monitor, and check-ins with a case officer in Utah (ECF No. 47 at 37, 40-41). Her detention caused her to lose one job, move back in with her parents nearly an hour from campus, drop all but one of her courses, and begin therapy for her stress and anxiety (*id.* at 41-43).

3. *J.S.T.*

J.S.T. is a 36-year-old man who has lived in the United States for over 15 years, and at the same Aurora, Colorado apartment for the last seven (*id.* at 80; Pl. Ex. 4, J.S.T. Aff., at ¶ 1). He has worked for a small family-owned grocery store for nine years (ECF No. 47 at 82). He has two brothers and a sister-in-law nearby and

[9] There, Ms. Dias Goncalves was told by an unknown ICE officer that "under this president and under this presidency, [we're] arresting anyone that is not a U.S. citizen" (ECF No. 47 at 36).

is extremely close with two of his teenage nieces, whom he helped raise from when they were toddlers (*id.* at 81-82). J.S.T. has no criminal record and is active in his church, participating in weekly prayer group and volunteer activities (*id.* at 82-83, 88; Pl. Ex. 4 at ¶¶4-5).

On February 5, 2025, as J.S.T. was leaving for work, an armed ICE officer in a military-green uniform stopped him as part of a large-scale immigration enforcement operation at his apartment complex (ECF No. 47 at 84-86). J.S.T. provided his SB-251 license (*id.* at 85). Another officer asked him whether he had any prior legal problems, including with immigration (*see id.* at 86; Pl. Ex. 4 at ¶11). Although he had been voluntarily returned to Mexico at the border in 2006, he said "no" (ECF No. 47 at 80-81, 86). He was immediately taken into custody (*id.* at 87).

His I-213 substantially mirrors the others (Def. Ex. C, I-213 for J.S.T.). The "Encounter" section contains no information related to his perceived flight risk. Rather, the narrative suggests that once he admitted that he lacked lawful status, his warrantless arrest was a *fait accompli* (*see id.*) ("An administrative warrant was unable to be obtained at the time of arrest, so Officers conducted a warrantless arrest"). Although a later section references J.S.T.'s voluntary return, it is unclear when ICE learned this information, and viewing the document in totality, it appears to have played no role in the arrest decision (*id.*).

J.S.T. spent nearly a month in detention (ECF No. 47 at 92). He was later released on bond, an ankle monitor, and regular ICE check-ins (*id.* at 92-93). As a result of his arrest and detention, he lost his apartment and possessions and had to move into a small room in a relative's mobile home (*id.* at 94-95). His relationship with his nieces has suffered, as he no longer has the ability to host them (*id.* at 95-96). He also suffers from anxiety and fears going out in public (*id.* at 96).

4. *G.R.R.*

G.R.R. is a 32-year-old man who has lived continuously in Colorado Springs for 10 years (*id.* at 173). He owns a remodeling business and lives with his fiancé and their 10-year-old son, both U.S. citizens (*id.* at 173; Pl. Ex. 3, G.R.R. Aff., at ¶¶2-3). He is active in a close-knit church community (ECF No. 47 at 173-74).

On April 27, 2025, G.R.R. went to pick up a friend who had been drinking at a nightclub (*id.* at 174). Within minutes, he heard loud booms and breaking glass, and the club began to fill with smoke from tear gas (*id.* at 175-76). Believing the club was under attack, he ran outside along with others to find "a lot of police officers with long guns pointing them at people" and shouting (*id.* at 176). Unbeknownst to him, ICE and other federal law enforcement agencies were conducting a joint task-force operation at the club (ECF No. 48 at 281-82). Amid the chaos, he hid underneath a car (ECF No. 47 at 176). An officer approached G.R.R., shoved him to the ground, badly cutting his hand, and removed his wallet (*id.* at 176-78). Upon

discovering his SB-251 license and Mexican consular ID, ICE officers immediately zip-tied his hands, placed him on a bus with roughly 60 others, and transported him to detention with no further inquiry (*id.* at 178-79).

His I-213 follows the same pattern (Def. Ex. D, I-213 for G.R.R.). The scant information in the "Encounter" section tends to show that as soon as ICE determined he did not have lawful status, he was arrested as a matter of course. A later section notes that G.R.R. has a prior misdemeanor assault conviction that was dismissed upon successful completion of a two-year suspended sentence, but there is no indication that ICE knew this information at the time or relied upon it in deciding to arrest him.

G.R.R. was detained for nearly two months before being released on bond, an ankle monitor, and regular ICE check-ins (ECF No. 47 at 183-84). His son began struggling in school during the detention and now refuses to leave his father's side for fear that he will be taken again (*id.* at 184; Pl. Ex. 3 at ¶31). G.R.R. likewise fears being rearrested and avoids going out in public (ECF No. 47 at 184; Pl. Ex. 3 at ¶37).

B. Additional Evidence of Warrantless Arrests without Individualized Flight Risk Assessments

The Court received additional evidence tending to show that ICE has a practice of conducting warrantless arrests in Colorado without considering flight risk on an individual basis.

First, the Court considers relevant numerous public statements by senior immigration officials, nationally and locally, declaring in unequivocal and unqualified terms that ICE *will* arrest anybody it encounters who is unlawfully present. For example, ICE's acting director, Todd Lyons, has stated that, while the agency prioritizes the "worst of the worst," "non-criminals living in the U.S. without authorization will also be taken into custody during arrest operations" (Pl. Ex. 35).[10] Tom Homan, former ICE deputy director and "Border Czar," echoed this, stating that if ICE officers encounter people in the country illegally while pursuing their targets, "they're going to get arrested too" (Pl. Ex. 42).[11] Robert Guadian, Denver's former ICE field office director, similarly confirmed in a local news interview that

[10] Pl. Ex. 35, Camilo Montoya-Galvez, "ICE head says agents will arrest anyone found in the U.S. illegally, crack down on employers of unauthorized workers," CBS News (Jul. 20, 2025).

[11] Pl. Ex. 42, The Source with Kaitlin Collins, "Trump DOJ Fires Officials Who Prosecuted Him; Homan on Mass Deportation Efforts: 'There's No Safe Haven'; Trump Calls DeepSeek A.I. 'Positive Development' But Also A 'Wake-Up Call For U.S. Tech Industry,'" (originally aired Jan. 27, 2025), *available at* https://transcripts.cnn.com.

"if we encounter someone who is illegally present during the course of our operations, we're going to take those people into custody" (Pl. Ex. 80).[12] These statements and others sing with one voice and do not bespeak of a commitment to scrupulously comply with § 1357(a)(2)'s requirement that warrantless arrests be based on individualized flight-risk determinations supported by probable cause.

These statements are of a piece with the Trump Administration's publicly confirmed minimum daily quota of 3,000 immigration arrests (*see, e.g.*, Pl. Ex. 116),[13] and the command from White House deputy chief of staff, Stephen Miller, to "just go out there and arrest illegal aliens," whoever and wherever they are (Pl. Ex. 25).[14] Meeting or coming anywhere close to this quota necessarily requires the arrest of substantial numbers of undocumented immigrants without pending criminal charges or records, in other words, non-targets (*see id.*). Unsurprisingly, ICE's own statistics confirm that this category of individuals accounts for, by far, the largest percentage increase in immigration arrests nationally and in Colorado this year (*see,*

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[12] Pl. Ex. 80, Denver 7 ABC, "Denver7 Investigates: Embedding with ICE during a 'high-stakes' operation," (originally aired Jul. 29, 2025), *available at* https://www.denver7.com/news/investigations/denver7-investigates-embedding-with-ice-during-a-high-stakes-operation.

[13] Pl. Ex. 116, The Sean Hannity Show, "Stephen Miller reveals Trump admin's 'daily goal' for illegal migrant arrests." Fox News (originally aired May 29, 2025), *available at*: https://www.youtube.com/watch?v=MJNXsOqFSZs.

[14] Pl Ex. 25, Elizabeth Findell, et al., "The White House Marching Orders That Sparked the L.A. Migrant Crackdown," The Wall Street Journal (Jun. 9, 2025).

e.g., Pl. Exs. 24, 30, 32, 45, 64).[15] Although there will be exceptions, members of this group are far less likely to present a risk of flight where the relevant factors are seriously applied.

The Court also takes note of ICE's predominant enforcement strategies in Colorado, including vehicle stops of the kind that led to the arrests of Mr. Ramirez Ovando and Ms. Dias Goncalves, and the large-scale, militarized raids of apartment buildings and other locations known to host large Latino populations, such as those that swept up J.S.T. and G.R.R (*see, e.g.*, Pl. Exs. 26, 34, 57).[16] These enforcement methods, especially the latter, are guaranteed to bring many nontargets without lawful status—who nonetheless have strong ties to the community and are not flight risks—face-to-face with ICE. Beyond anecdotal evidence, the manner of these raids, and the volume of resulting arrests, strongly support the conclusion that ICE is not

[15] Pl. Ex. 24, David J. Bier, "65 Percent of People Taken by ICE Had No Convictions, 93 Percent No Violent Convictions," CATO Institute (Jun. 20, 2025); Pl. Ex. 30, Albert Sun & Allison McCann, "What the Data Shows About Trump's Immigration Enforcement So Far," The New York Times (Mar. 4, 2025); Pl. Ex. 32, Sandra Fish, et al., "Most people arrested by ICE in Colorado and Wyoming this year did not have criminal history," The Colorado Sun (Jul. 21, 2025); Pl. Ex. 45, Seth Klamann, "Immigration arrests in Colorado have surged under the Trump administration. Now we know how much." The Denver Post (Jul. 9, 2025); Pl. Ex. 64, "Detention FY 2025 YTD," U.S. Immigration and Customs Enforcement, *available at* https://www.ice.gov/detain/detention-management.

[16] Pl. Ex. 26, Janet Oravetz, et al., "ICE raids target at least 7 locations in Denver, Aurora, Thornton, Denver 9 News (Feb. 5, 2020); Pl. Ex. 34, Max Levy, "18 of 104 detained in Colorado Springs nightclub raid already had deportation orders, ICE says," The Denver Post (May 9, 2025); Pl. Ex. 57, "ICE detains longtime Colorado father after fake traffic stop," Voces Unidas (Aug. 28, 2025).

conducting individualized flight risk assessments before executing warrantless arrests.

To be sure, ICE could choose to arrest every undocumented person it encounters even where there is no probable cause of flight risk to authorize a warrantless arrest. It could do this by obtaining an administrative warrant after the initial encounter and then finding and arresting them. But again, the record does not suggest that this is what's happening.

In addition to the named plaintiffs, the Court received evidence, albeit through some hearsay, about the arrests of four other individuals, as well as the experience of a local immigration attorney, illustrating a consistent pattern of warrantless arrests under similar circumstances:

1. *J.C.C.*

J.C.C has lived in the United States for nearly 25 years, lives with his wife and their four U.S.-citizen children, owns a home, and operates a concrete and landscaping business (Pl. Ex. 5, J.C.C. Aff., at ¶¶1-4).

On July 18, 2025, he was stopped by ICE while driving to a job site and arrested without a warrant (*id.* at ¶¶5-12). Plainclothes officers demanded his identification, asked about his legal status, and arrested him without inquiring into his community ties (*id.* at ¶¶9-12). Although he was later granted bond, ICE is

appealing that decision, and he remains detained, causing significant financial and emotional hardship for him and his family (*id.* at ¶¶16-18).

2. *O.M.R.*

O.M.R. was arrested during a traffic stop, while getting a ride to his job at the University of Colorado medical complex from a friend who was the target of an enforcement operation (ECF No. 48 at 230-31; Def. Ex. L, I-213 for O.M.R.). At the time, O.M.R. had a pending Temporary Protected Status application and valid work authorization (ECF No. 48 at 230; Def. Ex. L.). He had previously been issued an NTA by Border Patrol and released on recognizance (ECF No. 48 at 247-48). There is no indication that he violated the terms of his release, failed to appear for proceedings, or had been ordered removed.

3. *J.P.P.*

J.P.P. was arrested during the same February 5, 2025, sweep of Denver-area apartment complexes that resulted in J.S.T.'s arrest (*see id.* at 234-35; Pl. Ex. 4 at ¶¶4-20). The veracity of their accounts is generally supported by the wide reporting on the conduct of these operations (*see, e.g.*, Pl. Exs. 26-28).[17]

[17] Pl. Ex. 26, *supra*, fn. 15; Pl. Ex. 27, Sam Tabachnik, et al., "ICE raids hit apartment buildings in Aurora and Denver; feds say they targeted Tren de Aragua gang," The Denver Post (Feb. 5, 2025); Pl Ex. 28, Chase Woodruff, "ICE agents conduct operations in multiple Denver, Aurora locations," Colorado Newsline (Feb. 5, 2025).

He observed heavily armed federal officers moving through his complex and shouting (ECF No. 48 at 235). J.P.P., his wife, and their two daughters (ages 12 and 16) hid under the bed (*id.* at 236). After ICE and other officers burst into the apartment, deploying flash bang grenades to gain entry, J.P.P. went out and tried to speak with them (*id.* at 236-37). After providing his name and date of birth, he was taken into custody without inquiry (*id.* at 237-38). At the time, he had a pending asylum application and had checked in with USCIS three months prior (*id.* at 241). There is no indication that J.P.P. was a target of the raid or was otherwise wanted by or even known to ICE (*id.* at 238).

4. *F.J. and his children*

F.J., his wife, and their two children (ages 12 and 15) are asylum seekers living in Durango, Colorado (*id.* at 378-79). On October 27, 2025, as F.J. was driving the children to school, they were stopped by ICE, apparently by mistake, and arrested without warrants (*id.* at 380-81). ICE did not inquire about F.J.'s residence, employment, or other community ties until after his arrest (*id.* at 381-82). Like J.P.P. and J.S.T., local reporting corroborates the basic circumstances of F.J.'s stop and arrest, as well as his family's status as asylum seekers with no criminal records or prior problems with immigration (*see id.* at 379-80; Pl. Exs. 132 and 134).[18]

[18] Pl. Ex. 132, Katie Langford & Seth Klamann, "ICE arrest of father, two children in Durango spark local protests," The Denver Post (Oct. 28, 2025); Pl. Ex. 134, Olivia Prentzel, "Hundreds

5. *Testimony of attorney Arturo Vazquez*

Finally, Mr. Vazquez is an immigration attorney with approximately 10 years of experience, who specializes in representing individuals in removal proceedings on the "detained docket" at the Aurora detention center (ECF No. 47 at 192-93).

Mr. Vasquez testified that until this year, virtually all his clients were arrested by ICE pursuant to an administrative warrant and had some type of criminal conviction (*id.* at 194-95). However, between June and the end of October, he has consulted with between 15 and 20 individuals who were arrested by ICE during traffic stops following the same "general pattern" (*id.* at 195-99, 199). He testified that, in each instance, plainclothes officers in unmarked cars stopped the car and demanded to see the occupants' licenses or other ID (*id.* at 199). If the driver or passenger provided a SB-251 license, the officers would arrest them, temporarily hold them while they continued to make more arrests, and then transport them to the detention center (*id.* at 195-96, 199-201). According to Mr. Vasquez, none of these individuals were provided a warrant, had any criminal history or prior removal order, and they were not asked any questions pertaining to their community ties (*id.* at 201-202, 204-06, 210-11).

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protest outside ICE building in Durango after 2 children, father detained, The Colorado Sun (Oct. 28, 2025).

Collectively, the record supports the conclusion that ICE is routinely conducting warrantless arrests in Colorado without making the statutorily required individualized assessment of flight risk.

IV. Discussion

A. Jurisdiction

Article III establishes that federal courts can only hear cases and controversies. U.S. Const. art. III, § 2, cl. 1. Standing is a jurisdictional requirement. To have standing, plaintiffs must show that (1) they suffered an injury in fact; (2) the injury is fairly traceable to the challenged conduct, in other words, causation; and (3) redressability. *See Spokeo Inc. v. Robins,* 578 U.S. 330, 338 (2016).

The injury-in-fact requirement demands that the injury or threat of injury be "concrete and particularized and actual or imminent," *id.*, as opposed to "conjectural" or "hypothetical." *O'Shea v. Littleton,* 414 U.S. 488, 495-96 (1974); *see also Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 409 (2013) ("allegations of possible future injury are not sufficient.") (citations omitted). Furthermore, plaintiffs must show that they have "sustained or [are] immediately in danger of sustaining some direct injury as the result of the challenged official conduct." *City of Los Angeles v. Lyons,* 461 U.S. 95, 101-102 (1983). If a plaintiff alleges a future harm, that harm must be "certainly impending." *Clapper,* 568 U.S. at 416. The fact that plaintiffs were injured in the past is not enough, by itself, to satisfy standing. *See*

O'Shea, 414 U.S. at 495-96 ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief... if unaccompanied by any continuing present adverse effects."). But courts can consider past wrongs as "evidence bearing on whether there is a real and immediate threat of repeated injury." *Lyons*, 461 U.S. at 102.

Here, plaintiffs Dias Goncalves, J.S.T., and G.R.R. can establish standing because the injuries they suffered from the illegal arrest and detention are ongoing.[19] Plaintiffs' arrests and detention were, and *remain*, warrantless. Defendants argue that plaintiffs have not alleged an injury that confers standing because, while the initial detention was accomplished without a warrant, their continued detention was later supported by I-200 warrants ICE issued for all the plaintiffs in the field office during processing (*see* ECF No. 34 at 20; Def. Exs. A-D). Defendants claim those after-the-fact warrants legitimized plaintiffs' arrests, ending any period of illegal detention. But issuing *post hoc* warrants once plaintiffs had already been unlawfully arrested does nothing to cure the initial statutory violation. Under the defendants'

[19] Plaintiff Ramirez Ovando cannot establish standing. When the complaint was filed, he had already obtained legal permanent residency (*see* ECF No. 47 at 51, 66). Although he has not received physical documentation of his changed status, ICE has access to this update, and it is unlikely that he will be subject to the same injury because he is no longer unlawfully present in the United States (*see id.* at 66; ECF No. 48 at 278-80). Also, there is little concern that he will be rearrested without either a probable cause determination or arrest warrant because ICE agents can and do conduct identity checks for collaterals (*see* ECF No. 48 at 283-84). Mr. Ramirez Ovando is also not subject to the same monitoring protocols as the other three plaintiffs. He does not wear an ankle monitor, and he is not required to report to an immigration officer. His harm is exclusively backward looking, and thus, he lacks standing to seek the relief in this lawsuit.

reasoning, ICE could simply stop any suspected undocumented person, conduct a warrantless arrest with no probable cause of flight risk, and *then* bring the arrest within the color of law by issuing a warrant at the field office. This view effectively vitiates § 1357(a)(2)'s two-pronged probable cause requirement, which is aimed precisely at preventing such unrestrained immigration enforcement actions.

To give Congress's words meaning and force, the Court rejects these *post hoc* warrants as a vehicle for depriving plaintiffs of standing. Rather, the Court finds that the *post hoc* warrants had no legal effect. Plaintiffs' warrantless arrests have not been "fixed." The *Nava* court has twice rejected the notion that an I-200 warrant issued either *after* or *concurrent* with an arrest made without an assessment of individual flight risk transforms an unlawful warrantless arrest into a lawful, warranted one. *See Nava*, 435 F.Supp.3d at 888, 904 (denying defendants' motion to dismiss where ICE "executed arrest warrants for the Individual Plaintiffs after they took them into custody"); *Castañon Nava*, 2025 WL 2842146, at *12-17 (concluding, after thorough analysis, that I-200 warrants issued to collaterals in the field during their arrests were "invalid," and treating these arrests as warrantless). This Court reaches the same conclusion.

This case is not *Lyons*. 461 U.S. 95. In *Lyons*, the Supreme Court held that the plaintiff's past harm and fear of being placed in an illegal chokehold by the police again was insufficient to confer standing for prospective, injunctive relief, absent a

showing of a "real and immediate threat of repeated injury." *Id.* at 102, 102-13. Here, by contrast, plaintiffs' injuries are not past—they are present. This case is instead akin to *County of Riverside v. McGlaughlin*, 500 U.S. 44 (1991), where a group of felony arrestees who were held in jail without a judicial determination of probable cause for a constitutionally unreasonable period of time were permitted to sue for injunctive relief on behalf of a class of similarly situated individuals, including future detainees. *Id.* at 44, 49-52. There, the Supreme Court found that, at the time of the complaint, plaintiffs "were suffering a direct and current injury as a result" of their unlawful detention, fairly traceable to the actions of defendants, and redressable by the court. *Id.* at 51.

Even though plaintiffs Dias Goncalves, J.S.T., and G.R.R. are no longer detained, they are still "suffering [ ] direct and current" injuries as a result of their unlawful arrests and detention, *i.e.*, bond, ankle monitors, and adherence to strict reporting requirements, all on the pain of being returned to immigration jail at ICE's election. *Id.* Their liberty interests are still impacted due to the initial warrantless arrest. Unlike in *Riverside*, where some of the class representatives eventually received probable cause determinations or were released after the filing of the complaint, obviating their constitutional injury, the invalid administrative warrants issued after-the-fact by ICE in no way affect the status or position of the plaintiffs

here.[20] *Id.* They do not blunt or nullify plaintiffs' ongoing injuries stemming from their arrests in violation of § 1357(a)(2).

Plaintiffs request that this Court issue an injunction to hold ICE to the law and their own procedures: either issue an I-200 warrant before effecting an arrest or follow the flight risk inquiry of § 1357(a)(2)'s second prong. This remedy would directly redress the harm plaintiffs have suffered. Because plaintiffs' injuries from the warrantless arrest are ongoing, they must be returned to their original pre-detention position: to wit, no ankle monitors, or reporting requirements, or other release conditions, and their bonds refunded. If ICE chooses to pursue these plaintiffs again, this time in compliance with the law, they must obtain a valid administrative or judicial warrant before arrest.[21] Furthermore, absent a material change in circumstances, ICE may not detain plaintiffs for any period of time or impose conditions that are any more onerous than the present conditions.

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[20] The Supreme Court found that there was still standing under the well-established principle that "the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Id.* at 51 (internal citation omitted).

[21] As discussed in Section IV.C.2.a., *infra*, the Court finds that these three individuals did not pose a "substantial probability" of flight at the time of their arrests, and nothing in the intervening period has altered that conclusion. Thus, absent a material change of circumstances, ICE may not rearrest these plaintiffs without a warrant under § 1357(a)(2).

B. Plaintiff's Motion for Class Certification

Plaintiffs seek provisional class certification for purposes of issuing preliminary relief. Plaintiffs' proposed class, under Fed. R. Civ. P. 23(b)(2), consists of:

> All persons since January 20, 2025, who have been arrested, or will be arrested in this District by ICE without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk (ECF No. 1, at ¶188; ECF No. 14 at 2).

In order to certify a class, the party seeking the provisional certification bears the burden of showing that the threshold requirements of Rule 23(a) have been met. *Rex v. Owens,* 585 F.2d 432, 435 (10th Cir. 1978). These threshold requirements are numerosity, commonality, typicality, and adequacy of representation, and they "effectively limit the class claims to those fairly encompassed by the named plaintiff's claims." *General Telephone Co. v. EEOC,* 446 U.S. 318, 330 (1980). Plaintiffs have satisfied all four requirements within Rule 23(a). The Court addresses each requirement in turn:

1. *Numerosity*

Numerosity requires that "the class is so numerous that joinder of all members is impractical." Fed. R. Civ. P. 23(a). To satisfy numerosity, the delineation between class members and non-class members must be identifiable. Plaintiffs must show "some evidence of established, ascertainable numbers constituting the class in order

to satisfy even the most liberal interpretation of the numerosity requirement." *Rex*, 585 F.2d at 436. The Tenth Circuit considers "ascertainability" as a sub-requirement of numerosity. *Id.* It has not explicitly adopted specific standards for ascertainability. "District courts [may] consider [out-of-circuit standards] as part of their discretion to grant or deny class certification." *Evans v. Brigham Young Univ.*, No. 22-4050, 2023 WL 3262012, at *8 (10th Cir. 2023) (unpublished).

The Third and Seventh Circuits provide helpful multi-factor tests. Under the Third Circuit's two-element test, the class must be objectively defined and there must be "a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition." *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 353 (3rd Cir. 2013) (citations omitted). The Seventh Circuit similarly requires that a plaintiff show ascertainability by "defining classes clearly and with objective criteria." *Mullins v. Direct Digit., LLC*, 795 F.3d 654, 672 (7th Cir. 2015).

Plaintiffs' proposed class satisfies the numerosity requirement because it captures an ascertainable, defined class based on objective criteria, with the number of class members being so numerous that joinder becomes impracticable. There are approximately 169,000 persons without lawful status in Colorado, some of whom have already been arrested without a warrant or probable cause determination, and others who are likely to be arrested under similar circumstances based on ICE's

continued practice of disregarding the § 1357(a)(2) inquiry (ECF No. 1 at ¶¶7, 14). This number has not been contested by defendants. The proposed class defines a subset of the 169,000 undocumented persons, namely, those persons in Colorado without lawful status who are arrested by ICE without the prior issuance of a valid arrest warrant or a finding of probable cause that they are likely to escape if not arrested without a warrant. Thus, this proposed class is numerous and identifiable.

2. *Commonality and Typicality*

The inquiries made into commonality and typicality "tend to merge." *General Tel. Co. v. Falcon,* 457 US. 147, 157 (1982). Commonality requires the class to share common questions of law or fact. Fed. R. Civ. P. 23(a)(2). The class representatives must "demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Typicality demands that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The class members "must depend upon a common contention," and that common contention "must be of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes,* 564 U.S. at 350.

Plaintiffs satisfy the commonality and typicality requirements. All class members, by virtue of being in Colorado without lawful status, are subject to ICE's

continued illegal practices. The harm suffered by the named plaintiffs has been shared by all class members who have similarly been arrested without a valid warrant or a particularized finding of probable cause that they are likely to escape. Once this order is issued the Court would not expect others to be similarly arrested without a valid warrant or a particularized finding of probable cause that they are likely to escape; but if such arrests are made notwithstanding this order, those individuals would likewise share the harm suffered by the plaintiffs.

3. *Adequacy of Representation*

Rule 23(a) demands that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on the behalf of the class?" *Rutter v. Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Plaintiffs adequately represent the class because they share a strong interest in ensuring ICE's compliance with the law. Plaintiffs are part of a larger community of undocumented persons living in Colorado or temporarily in the state. The willingness of these three people to publicly hold themselves out as representative of this community, despite the risk of further exposure and potential targeting,

indicates that they are willing to prosecute the case vigorously on behalf of the class. In addition, nothing in the record indicates that plaintiffs or their counsel have any conflicts of interest with other class members. Plaintiffs' counsel are experienced in class action, civil rights, and immigrants' rights litigation and have the requisite level of experience and resources to adequately prosecute this case on plaintiffs' behalf (ECF No. 1 at ¶193).

4. *Rule 23(b) Certification*

Once a proposed class satisfies the prerequisites of Rule 23(a), the court must then determine whether the class is maintainable under the two requirements within Rule 23(b). *Amchem Prods. v. Windsor,* 521 U.S. 591, 614 (1997). Plaintiffs seek to certify the class under 23(b)(2) which provides that a class action is appropriate if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Rule 23(b)(2). "Put differently, Rule 23(b)(2) demands a certain cohesiveness among class members with respect to their injuries, the absence of which can preclude certification." *Shook v. Bd. of Cnty. Comm'rs*, 543 F.3d 597, 604 (10th Cir. 2008).

Plaintiffs seek an injunction and declaratory relief from ICE's practice of arresting so-called "collaterals" without a warrant or probable cause determination. Those practices are generally applicable to the class as a whole, namely,

undocumented Coloradans that are not ICE targets (ECF No. 1 at ¶199). Plaintiffs have adequately shown that ICE has engaged in a practice of disregarding the probable cause determination required under § 1357(a)(2) when conducting warrantless arrests (*see infra* Section IV.C.2). Plaintiffs were not ICE targets. They were not the "worst of the worst." But when encountered, often by happenstance, they were flagged as persons unlawfully present, minimally questioned (if at all), and arrested (ECF No. 1 at ¶¶55, 75, 100, 124). Their I-213 forms are devoid of evidence that the officer had the requisite probable cause to arrest them without a warrant (*see infra* Section IV.C.2). Despite its own proclaimed policies (Def. Ex. E-G), ICE continues to engage to this day in the practice of arresting collaterals without inquiring into their flight risk or documenting any plausible reason to support their warrantless detention (*see, e.g.,* Pl. Exs. 132, 134).[22] Therefore, there is sufficient cohesiveness among class members under Rule 23(b)(2).

The Court finds that the requirements for provisional certification of the class proposed by the plaintiffs have been satisfied.

C. Plaintiff's Motion for a Preliminary Injunction

1. Standard of Review

A preliminary injunction is "an extraordinary remedy never awarded as of right." *DTC Energy Group, Inc. v. Hirschfeld*, 912 F.3d 1263, 1269 (10th Cir. 2018)

[22] Pl. Ex. 132, *supra*, fn. 18; Pl. Ex. 134, *supra*, fn. 18.

(internal citations omitted). However, a preliminary injunction is necessary where "the right to relief is clear and unequivocal" and "monetary or other traditional legal remedies are inadequate" to protect the positions of the parties "before a trial on the merits can be held." *Id.* (internal citations and alterations omitted).

"The party seeking a preliminary injunction must prove four factors: (1) the party is likely to succeed on the merits; (2) the party will likely suffer irreparable injury without the injunction; (3) the balance of equities favors the injunction, meaning the moving party's threatened injury without the injunction outweighs the nonmoving party's injury with the injunction; and (4) the injunction does not harm the public interest." *Nat'l Assn. of Industrial Bankers v. Weiser*, ___ F.4th ___, 2025 WL 3140623, at *6 (10th Cir. Nov. 10, 2025). Where "the government opposes the preliminary injunction, the last two factors merge, such that any harm to the public interest affects the balance of the equities." *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

As a preliminary matter, defendants contend that, in this case, plaintiffs bear an "even heavier burden on the likelihood-of-success-on-the-merits and the balance-of-harms factors" because they seek a "disfavored injunction," one that would mandate ICE to adopt a new warrantless arrest policy and grant them all the relief they could obtain at trial (ECF No. 34 at 17) (citing *McDonnell v. City & Cnty. of Denver*, 878 F.3d 1247, 1257 (10th Cir. 2018)).

The Court rejects this view. Plaintiffs primarily ask that defendants be "enjoined from future violations of established … statutory rights," a "classic form of prohibitory injunction." *United Farm Workers v. Noem*, 785 F.Supp.3d 672, 732 (E.D. Ca. 2025) (concluding, in a similar context, that plaintiffs' request for an injunction directing DHS to comply with § 1357(a)(2) and § 287.8(c)(2)(ii) was "prohibitory" rather than "mandatory"); *see also* 42 Am. Jur. 2d *Injunctions* § 5 (2017) ("An injunction is considered prohibitory when the thing complained of results from present and continuing affirmative acts and the injunction merely orders the defendant to refrain from doing those acts"). The remainder of the plaintiffs' requested relief is simply designed to ensure compliance with that prohibition.

Furthermore, defendants' argument that plaintiffs "seek to mandate that ICE adopt a new warrantless arrest policy" is at odds with their position that, under Broadcast III, this policy *is already in place*, obviating the need for any injunction (*compare* ECF No. 34 at 17 *with* ECF No. 26 at 3) (arguing that a "preliminary injunction hearing may not be necessary" as the "prospective relief requested by [p]laintiffs … is largely coextensive with DHS' Statement of Policy issued on October 22, 2025").

Therefore, plaintiffs bear the ordinary (though still significant) burden for obtaining a preliminary injunction. The Court now considers each factor in turn.

2. Success on the Merits

a. Plaintiffs have shown that their warrantless arrests likely violated § 1357(a)(2) and § 287.8(c)(2)(ii).

Initially, the Court finds that each of the named plaintiffs have sufficiently shown that they were arrested without probable cause that they were "likely to escape before a warrant" could be obtained. § 1357(a)(2); § 287.8(c)(2)(ii).

"Probable cause depends upon all of the facts and circumstances known to the arresting officer … at the time of the arrest," *Gibson v. Brown*, No. 16-cv-2239-MSK-STV, 2020 WL 1815911, at *4 (D. Colo. Apr. 9, 2020), and is assessed from the "standpoint of an objectively reasonable officer." *Luethje v. Kyle*, 131 F.4th 1179, 1193 (10th Cir. 2025). Probable cause requires a "substantial probability" based on facts related to the individual. *Storey v. Taylor,* 696 F.3d 987, 992 (10th Cir. 2012). "Mere suspicion" is not enough. *U.S. v. Valenzuela*, 365 F.3d 892, 896 (10th Cir. 2004) (internal citation omitted).

The Court's conclusion is reinforced by the nearly identical manner in which the plaintiffs' arrests unfolded. In each instance, the immigration officers took plaintiffs into custody upon confirming their identities and their lack of lawful status. The officers asked no questions—until after their arrests—bearing on flight risk, including about plaintiffs' families, employment, or other community ties. *See, e.g.*, *Kahn*, 324 F. Supp. at 1187 (finding a warrantless arrest unlawful under § 1357(a)(2)

where immigration agents failed to consider such factors); *UFW*, 785 F.Supp.3d at 684-92, 735 (describing arrests conducted without any inquiry into flight risk and concluding such arrests violated the statute). While neither § 1357(a)(2) nor § 287.8(c)(2)(ii) mandates any particular inquiry before a warrantless arrest, and community ties are just one relevant factor, the total absence of questions on these topics strongly indicates that the officers did not seek what they did not wish to find.

Also, in each case, the Court is unable to discern from the plaintiffs' I-213 forms any evidence that the arresting officers developed probable cause of flight risk prior to their arrests (*see* Def. Exs. A-D). Under defendants' own Broadcast statements, officers must document the "specific, particularized facts" relied upon to determine that the subject was a flight risk (*see* Def. Exs. E, G; *see also* ECF No. 47 at 120-22; ECF. No. 48 at 303-05); however, none of the officers did that here. This omission does not, standing alone, show that the plaintiffs' arrests violated the statutory requirement. But when considered alongside plaintiffs' uncontroverted testimony regarding their encounters, it weighs heavily in favor of that conclusion.

Defendants argue, in essence, that ICE did not need to ask plaintiffs questions about their community ties because, for each of them, there were independent grounds demonstrating flight risk. Defendants are wrong. No objectively reasonable officer could have found that these plaintiffs posed a "substantial

probability" of flight risk based on the limited information they possessed at the time of the arrest. *Storey*, 696 F.3d at 992. The Court considers each of them in turn:

i. Mr. Ramirez Ovando

Defendants contend there was probable cause to arrest Mr. Ramirez Ovando because: (1) he was stopped in a car; (2) he described himself as "very nervous" in his affidavit; and (3) "after initially cooperating," he stopped answering the officer's questions about his immigration status (ECF No. 34 at 33; *see also* ECF No. 48 at 412-13).

Under the totality of the circumstances, none of these facts, alone or in combination, support a finding of flight risk. First, according to the I-213, he candidly admitted he was unlawfully present (*see* Def. Ex. A). Thus, when the officer continued to question him about his status, it was reasonable for him to ask whether he was under arrest or free to leave. He was neither evasive nor dishonest, factors which ICE may consider for flight risk (*see* ECF No. 48 at 285-87). *See, e.g.*, *Castañon Nava*, 2025 WL 2842126, at *17 (collecting cases). Second, there is no evidence that the officer *perceived* Mr. Ramirez Ovando as "nervous." Third, the fact that Mr. Ramirez Ovando was stopped in a car minutes away from his home adds nothing to the calculus. *Cf. United States v. Quintana*, 623 F.3d 1237, 1241 (8th Cir. 2010) (finding flight risk where a noncitizen was stopped while speeding in a car belonging to someone else in a distant state and provided false information

to the arresting officer). Furthermore, the officers *knew* Mr. Ramirez Ovando was near his home because they had observed him leaving *and* he offered to call his daughter to bring his passport to the scene (ECF No. 47 at 53-54, 56).[23]

ii. Ms. Dias Goncalves

Defendants justify this plaintiff's warrantless arrest solely on the basis that, as a Utah resident, she was driving a car on a Colorado highway (ECF No. 47 at 45-46; ECF No. 48 at 199).

This argument fails for two reasons. First, Mr. Guadian testified that ICE in Colorado routinely communicates and coordinates with their counterparts in Utah (ECF No. 47 at 135-36). He agreed that ICE can and does share information so that officers in one state can effectuate an arrest in the other, undercutting any argument that Ms. Dias Goncalves had to be taken into custody upon contact with HSI (*id.*). Second, as discussed above, *Quintana*, where the Eighth Circuit upheld a warrantless arrest for an unlawfully present person driving cross-country, presented additional aggravating circumstances absent here. 623 F.3d at 1241. Probable cause for flight

[23] At the close of hearing, defendants also argued that Mr. Ramirez Ovando was dishonest because he did not explicitly state that he had a foreign passport (ECF No. 48 at 412). This argument is meritless. The record shows that the officer only asked Mr. Ramirez Ovando whether he had another form of identification, including a Mexican consular ID (ECF No. 47 at 56). In this context, where the officer affirmatively asked about a foreign identification, there is no legitimate argument that Mr. Ramirez Ovando was being anything less than forthright.

risk is not established anytime a person without status is stopped on the interstate.[24] *Cf. Cantu*, 519 F.3d at 495, 497 (finding probable cause of flight risk where officers received and verified a tip concerning driver for a human trafficking operation spanning Mexico and Illinois). Such a hard-and-fast rule is antithetical to probable cause's "flexible, common sense standard." *United States v. Biglow*, 562 F.3d 1272, 1282 (10th Cir. 2009).

Here, officers knew that Ms. Dias Goncalves, a 20-year-old visa overstay with no criminal history, had already cooperated with and provided her information to the deputy sheriff. Furthermore, she was not avoiding the immigration authorities; she had applied for asylum and recently obtained work authorization through USCIS. Under these circumstances, the mere fact that she was driving a car in a neighboring state was insufficient to conclude that she posed a flight risk.

iii. G.R.R.

The only fact that defendants argue supplied probable cause for G.R.R. is that he hid under a car after law enforcement emptied the nightclub with flash bang grenades and teargas (*see* ECF No. 34 at 34).

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[24] Defendants also rely on a single district court case upholding an arrest under § 1357(a)(2) where the subject was apprehended during a traffic stop, *United States v. Murillo-Gonzalez*, 524 F.Supp.3d 1139, 1151 (D.N.M. 2021), *aff'd* No. 22-2123, 2024 WL 3812480 (10th Cir. Aug. 14, 2024) (*see* ECF No. 34 at 32). However, that case provides minimal analysis and merely cites to *Quintana*. 524 F.Supp.3d at 1151. Moreover, in affirming the judgment on appeal, the 10th Circuit did not reach the question of the warrantless arrest.

Although "attempted flight" from an ICE officer may, in some circumstances, provide probable cause of flight risk (*see* Def. Exs. E-G), those circumstances are not present here. *See, cf.*, *Contreras v. U.S.*, 672 F.2d 307, 309 (2d Cir. 1982). In light of the overwhelming force used to clear the club, and the chaotic and terrifying scene that confronted G.R.R. once outside, no reasonable officer would interpret taking cover under a car as evidence of an intent to flee rather than an effort to secure his physical safety. Nor does his presence at the club bear on flight risk. *See Ybarra v. Illinois*, 444 U.S. 84, 91 (1979) ("mere propinquity to others suspected of criminal activity does not, without more, give rise to probable cause").[25]

iv. J.S.T.

For J.S.T.—and J.S.T. alone—defendants have identified a facially plausible theory of probable cause, specifically, that he told the officer that he had no prior issues or contact with immigration despite having been voluntarily removed to Mexico at the border approximately twenty years earlier (*see* ECF No. 34 at 33). Notwithstanding J.S.T.'s testimony that he did not understand being turned away at a port of entry as a "problem," a reasonable officer, had they known about his attempted entry, might have concluded that he was being deliberately evasive (ECF

[25] Defendants do not argue that G.R.R.'s vacated conviction for misdemeanor assault was evidence of flight risk. Nor could they under these circumstances. Not only was there no evidence that the ICE officers who arrested him knew this information beforehand, but even if they had, the fact that he had complied with the court process and successfully completed a form of probation over a two-year period in satisfaction of his suspended sentence would not demonstrate flight risk.

No. 47 at 101-02). *See cf.*, *Castañon Nava*, 2025 WL 2842146, at *9; *Pacheco-Alvarez*, 227 F.Supp.3d at 890; *Bautista-Ramos*, 2018 WL 5726236, at *7.

The trouble for defendants is that there is absolutely no evidence that the arresting officer actually knew of J.S.T.'s previous encounter with Border Patrol or considered it in any way when assessing flight risk. Although ICE officers in the field can access information concerning a subject's immigration history, the Court declines to speculate that they did so here (ECF No. 48 at 283-84). As discussed in Section III. A. 3, *supra*, the content and structure of J.S.T.'s I-213 strongly suggests that this information was obtained after the decision to arrest was made. Considering the totality of the circumstances, the Court finds that there was no probable cause for J.S.T.'s warrantless arrest.

At bottom, defendants' arguments for each of the named plaintiffs are *post hoc* rationalizations and guesswork. Plaintiffs have met their burden to show that ICE arrested them without a warrant and without probable cause of flight risk based on an individualized assessment. Defendants have failed to rebut that showing with any specific evidence to the contrary.

b. Plaintiffs have shown that defendants likely have a pattern or practice of ignoring the individualized flight risk determinations mandated by § 1357(a)(2) and § 287.8(c)(2)(ii).

Furthermore, plaintiffs have successfully shown that their cases are not isolated incidents, but part of a larger policy, pattern, or practice by ICE in this state.

On this question, *UFW* is instructive. 785 F.Supp.3d at 716-25. In that case, the court considered whether plaintiffs demonstrated that Customs and Border Patrol (CBP) had a policy, pattern, and/or practice of warrantlessly arresting suspected noncitizens in California's Central Valley "without the required individualized flight risk analysis," mirroring the issue before this Court. *Id.* at 723. The *UFW* court was presented with "evidence regarding 11 arrests," specifically, affidavits from three named plaintiffs, affidavits from four putative class members, and an affidavit from a labor organizer who provided information told to her by four anonymized individuals. *Id.* at 724-725. The court concluded that this "significant anecdotal evidence" was sufficient to establish a pattern or practice claim, and that plaintiffs were likely to succeed on the merits.[26] *Id.* at 724, 735.

The quantum and quality of pattern or practice evidence in this case is similar to that in *UFW*. This Court considered the testimony (and supporting documents) of the four named plaintiffs, the hearsay accounts of four putative class members (J.P.P., J.C.C., O.M.R., and F.J.), and evidence from a veteran immigration attorney regarding 15 to 20 similar warrantless arrests seemingly made without any individualized assessment of flight risk. As in *UFW*, the Court rejects the contention

[26] Other courts have found that even less is required to make a successful pattern or practice claim for violation of § 1357(a)(2). In the original *Nava* decision, the court found that the allegations of just five warrantlessly arrested individuals were enough to defeat a motion to dismiss. 435 F.Supp.3d at 900-02.

that individual differences between the plaintiffs or their arrests—such as a vehicle stop or a largescale raid—defeats this pattern or practice claim. *See id.* at 725 (finding that because plaintiffs alleged that CPB failed to perform probable cause determinations "*at all*" … "[d]efendants' assertions regarding the differences in circumstances … are unavailing") (emphasis in original)).

In concluding that there likely exists a policy, pattern, and/or practice of disregarding flight risk, this Court, as in *UFW*, "harmoniz[es]" the plaintiffs' "undisputed" anecdotal experience with the many media statements from top immigration officials, the nature of ICE's ongoing enforcement operations, and the agency's own statistics regarding the criminal histories of those it has arrested. *Id.* at 716; *see also Nava*, 435 F.Supp.3d at 901-02 (same); *Castañon Nava*, 2025 WL 2842146, at *13 (same). The Court also believes that Broadcast II, sent by ICE's top legal counsel and purporting to rescind the warrantless arrest policy outlined in Broadcast I, is substantial evidence of a *different* policy. Indeed, consistent with Broadcast II, ICE informed the *Castañon Nava* court that its agents had immediately ceased complying with the probable cause documentation requirement in the settlement agreement. 2025 WL 2842146, at *22.

Finally, the Court's conclusion is bolstered by the hearing testimony of Greg Davies, third in command at ICE's Denver field office (*see* ECF No. 48 at 270). Although Mr. Davies testified that he was trained on § 1357(a)(2) and was charged

with ensuring compliance from subordinate officers (*id.* at 272-76, 297-98), he could not seemingly recall the correct standard, stating, at one point, that he believed a warrantless arrest was authorized if "there's a possibility of that person possibly escaping" (*id.* at 273). His testimony does not imbue the Court with great confidence that ICE rigorously applies the individualized-flight-risk-assessment requirement and instead supports plaintiffs' contention that ICE has a pattern or practice of failing to make such determinations.

c. Plaintiffs have shown that defendants' policy, pattern, and/or practice likely violates the APA.

In order to state a claim under the APA, plaintiffs must show that defendants' alleged unlawful policy, pattern, and/or practice constitutes "final agency action." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890 (1990). A "final" action has two components: (1) it "must mark the consummation of the agency's decision making process," and (2) "must be one…from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). *See also Lujan*, 497 U.S. at 890 (dismissing APA claim against federal Bureau of Land Management (BLM) because it did not target an "identifiable" final action with "concrete effects").

Contrary to defendants' arguments, plaintiffs have satisfied the requirements for stating a judicially reviewable claim under § 706(2)(C) of the APA (*see* ECF No. 34 at 25-30). Under this provision, affected parties may challenge agency actions that exceed "statutory jurisdiction, authority, or limitations, or [are] short of statutory

right." §706(2)(c); *see also* § 704. Courts have consistently held that an agency policy of effecting warrantless immigration arrests under § 1357(a)(2) without regard for individualized flight risk does precisely that. *See, e.g.*, *Moreno*, 213 F.Supp.3d at 1008-09 (N.D. Ill. 2016); *Roy v. Cnty. of Los Angeles*, Case No. CV 12-09012-AB (FFMx), 2018 WL 914773, at *21 (C.D. Cal. Feb. 7, 2018); *Creedle v. Miami-Dade Cnty.*, 349 F.Supp.3d 1276, 1295 (S.D. Fla. 2018).

Defendants' attempts to distinguish *Moreno* are unavailing (*see* ECF No. 34 at 29-30). In that case, the court enjoined ICE's policy of categorically issuing detainers to local jails to prevent the release of suspected removable individuals, finding that it violated the flight risk provision of § 1357(a)(2). 213 F.Supp.3d at 1008-09. Plaintiffs allege that ICE has done something similar here; specifically, it has authorized and implemented a policy, pattern, and/or practice of wholly disregarding individualized flight risk when effecting warrantless arrests under § 1357(a)(2). Assuming there is sufficient evidence of this policy, and as discussed, there is, defendants offer no principled reason why the policy in *Moreno* is subject to judicial review, but the one at issue in this case, is not.

Additionally, the *Nava* court squarely took up the question of whether the policy alleged here constitutes "final agency action" under the APA. 435 F.Supp.3d at 900-04. In that case, the government argued, in its motion to dismiss, that plaintiffs were "asking the court to extrapolate a few individual specific allegations

into a generalized conclusion" that ICE had implemented an unlawful policy of violating § 1357(a)(2) in conducting warrantless arrests. *Id.* at 901. Noting that the finality requirement must be approached "flexibly and pragmatically," the court rejected this argument, finding that the allegations permitted "an inference that this policy exists—at least in the context of large-scale enforcement actions in the Chicago area" beginning around May 2018. *Id.* at 901-02. The court found that plaintiffs adequately pleaded that ICE "consummated its decision-making process" by making arrests in violation of the statute pursuant to agency policy. *Id.* at 903.

Likewise, in the instant matter, plaintiffs have identified an identical policy, pattern, or practice of ICE's failing to conduct individualized flight risk assessments during immigration enforcement operations throughout the state of Colorado starting with the beginning of the second Trump administration on January 20, 2025. The fact that this is not committed to writing is not dispositive. *See, e.g., R.I.L.-R v. Johnson*, 80 F.Supp.3d 164, 184 (D. D.C. 2015) ("both law and logic dictate that an unwritten agency policy is reviewable … a contrary rule would allow an agency to shield its decisions from judicial review simply by refusing to put those decisions in writing"); *Aracely, R. v. Nielsen*, 319 F.Supp.3d 110, 138 (D.D.C. 2018) (internal citations omitted). Additionally, while it is true "that generalized complaints about agency behavior" do not give rise to a claim under the APA, *see Bark v. United States Forest Service*, 37 F.Supp.3d 41, 51 (D.D.C. 2014) (internal citations omitted), to

state a claim, plaintiffs do not need to show that ICE detains each and every person without lawful status that it encounters in the field. *See, e.g.*, *R.I.L.-R*, 80 F.Supp.3d at 173-76 (reviewing the use of general immigration deterrence as a factor in custody determinations for arriving asylum seekers even though not every affected person was detained).

Furthermore, the policy, pattern, or practice plaintiffs challenge is sufficiently "discrete." *Cf. Lujan*, 497 U.S. at 891 (finding that plaintiffs failed to state a claim under the APA where it challenged a suite of actions or inactions in BLM's "land withdrawal review program"); *NTEU v. Vought*, 149 F.4th 762, 784 (D.C. Cir. 2025) (rejecting APA challenge to amalgamated agency conduct and decisions as constituting a single policy to shut down the Consumer Financial Protection Bureau). An injunction requiring ICE officers in Colorado to perform individualized flight risk assessments before conducting warrantless arrests—which is already the law—and to document the facts and findings from such assessments in an I-213, a policy ICE subscribed to as recently as last year, would not inject "the judge into day-to-day agency management," nor task the Court with making wholesale programmatic improvements to ICE's enforcement operations. *NTEU*, 149 F.4th at 785.

Finally, the policy, pattern, or practice at issue has sufficiently "direct and appreciable legal consequences" for the putative class members subject to it, satisfying the second condition of "final agency action." *U.S. Army Corps of*

Engineers v. Hawkes Co., Inc., 578 U.S. 590, 598 (2016) (internal citations omitted). Through § 1357(a)(2), Congress has said that noncitizens, even where there is no doubt that they are unlawfully present, may not be subject to arrest and detention without a warrant unless there is "reason to believe" that they will flee before one can be obtained. *Id.* Adopting a policy contrary to that statute—even where such policy is not memorialized and does not result in universal detention—affects the legal rights of the very people that statutory provision is designed to protect (and those of the immigration officers charged with enforcing it). *Cf. Independent Equipment Dealers Ass'n v. E.P.A.*, 372 F.3d 420, 427 (D.C. Cir. 2004) (finding that EPA advice letter had no "concrete impact" on plaintiffs, and thus, could not sustain an APA claim).

For the stated reasons, plaintiffs have shown that: (1) their warrantless arrests likely violated § 1357(a)(2) and § 287.8(c)(2)(ii); (2) defendants likely have a policy, pattern, and/or practice of violating these sections by effecting warrantless arrests without individualized probable cause of flight risk; and (3) their claims are likely reviewable under the APA. Therefore, they are likely to prevail on the merits, and the first preliminary injunction factor weighs in their favor.

3. Likelihood of Irreprable Harm

"The second factor of irreparable harm is the most important prerequisite for the issuance of a preliminary injunction." *DTC Energy Group, Inc.*, 912 F.3d at 1270

(10th Cir. 2018). Irreparable harm "must be both certain and great, not merely serious or substantial." *State of Colorado v. U.S. E.P.A.*, 989 F.3d 874, 884 (10th Cir. 2021) (cleaned up). If subjected to this harm, it will be "difficult or impossible" for the plaintiff "to resume their activities or restore the status quo *ex ante* in the event they prevail." *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). Once again, plaintiffs have met their burden.

The experiences of the named plaintiffs confirm that the harms wrought by defendants' unlawful conduct are both "certain and great." *Colorado*, 989 F.3d at 884. Although none of them presented a flight risk by any reasonable measure, they were each arrested and detained without warning, ultimately spending between approximately two weeks and three months in custody. On its own, this constitutes great harm. *See, e.g.*, No. 25-CV-2720-RMR, *Mendoza Guttierez v. Baltasar*, 2025 WL 2962908, at *9 (D. Colo. Oct. 10, 2025) (noting that "ICE detention is more akin to incarceration than civil confinement") (internal citations omitted); *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1037 (N.D. Cal. 2025) (recognizing the "irreparable harms imposed on anyone subject to immigration detention, including subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained") (internal citations omitted).

But even after they were released, the harms stemming from their warrantless arrests have reverberated. Mr. Ramirez Ovando's family had to sell his truck and take out $20,000 in debt (*see* Pl. Ex. 1, Ramirez Ovando Aff., at ¶35). Ms. Dias Goncalves lost her apartment, forcing her to move back in with her parents far away from her school (ECF No. 47 at 42). J.S.T. also lost his apartment, lives in small room in a family member's mobile home, and his relationship with his nieces has suffered as a result (*id.* 94-95). Three of them have ankle monitors and reporting requirements. All the plaintiffs fear rearrest, and they and their families are suffering from emotional distress. Their injuries are real, and they are irreparable in the sense it is "difficult or impossible" for them "to resume their activities or restore the status quo ex ante." *Heideman*, 348 F.3d at 1189 (10th Cir. 2003).

These and similar harms will certainly befall other members of the putative class without the requested injunction. To be sure, neither the named plaintiffs nor the putative class members have a categorical right to be free from contact with ICE, removal proceedings, or even immigration detention and other forms of monitoring. They are, after all, in the country without lawful status and thus are properly subject to apprehension, arrest, detention, and removal according to Congress' design. However, the specific harms that attend warrantless arrest without probable cause of flight are not inevitable. They are the direct result of defendants' ongoing violation of the law. As Mr. Guadian testified:

> There's different ways to get people into removal proceedings, right? Not everyone goes to a detention center for removal proceedings. You can be placed in removal proceedings and await those proceedings from home (ECF No. 47 at 147) (cleaned up).

If instead of being arrested immediately by ICE, plaintiffs were allowed to go home until summoned into immigration court or arrested on an administrative warrant, they would have had the opportunity to speak to their families, pay their rent, put their items in storage, and try to obtain representation by an immigration lawyer (*see id.* at 37, 94, 183-84). The deprivation of these opportunities is real, irreparable harm that will befall putative class members if an injunction is not ordered. Moreover, requiring ICE to release Ms. Dias Goncalves, J.S.T., and G.R.R. from their current restrictions, and obtain a proper warrant, will at least abate their ongoing harms from their unlawful arrests.

Finally, the Court rejects defendants' argument that plaintiffs cannot show a likelihood of irreparable harm in light of Broadcast III, which was issued a week before the hearing, and "already require[es] ICE officers to comply with § 1357(a)(2)" (ECF No. 34 at 37). This argument dovetails with the mootness doctrine, which imposes a "heavy burden" on the government "of persuading the court that the challenged conduct cannot be reasonably be expected to start up again." *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000). *See id.* ("Voluntary cessation of challenged conduct moots a case … only if it is *absolutely*

clear that the allegedly wrongful behavior could not reasonably be expected to recur") (emphasis in the original). Defendants have not carried that burden.

The court in *UFW* considered and rejected a similar argument. There, defendants claimed the case was mooted by a recently-issued "Muster" statement of policy, which articulated the standards for "reasonable suspicion, flight risk assessments, and documenting facts and circumstances on warrantless arrests," arguing that "there is now no reasonable expectation that the alleged wrong will be repeated." 785 F.Supp.3d at 730, 737. The court concluded that the policy statement was entitled to little weight because: (1) it was "neither broad in scope nor unequivocal in tone"; (2) it was issued just one business day before the defendants were required to respond to the request for a preliminary injunction; (3) defendants could withdraw or revise the Muster statement at any time; and (4) defendants did not "repudiate the alleged wrongful allegations." *Id.* at 739.

As in *UFW*, the circumstances in the instant matter do not warrant any confidence that ICE intends to change its practices after the most recent policy statement email. Broadcast III is hardly "unequivocal in tone," as it explicitly states that its issuance was directed by a court (after finding that the agency flagrantly violated and attempted to unilaterally terminate its settlement agreement prohibiting the very same conduct, no less). It sets an expiration date of February 5, 2026. Defendants, as in *UFW*, have not repudiated any of their prior actions and maintain

that they have not violated the law. Most importantly, plaintiffs presented evidence that even after Broadcast III was issued, ICE has continued to conduct warrantless arrests in Colorado without assessing flight risk, specifically in the case of F.J. and his two children in Durango. History and the public statements of top DHS and ICE officials reflect that, in the field, these broadcast statements are honored in the breach.

ICE has almost doubled its headcount in Colorado this year alone, is actively recruiting and hiring many more officers, and plans to open three additional detention centers in Colorado, nearly tripling its current capacity (*see* ECF No. 47 at 164-70; *see also, e.g.*, Pl. Exs. 48, 51, 52).[27] On this record, plaintiffs have shown that, without the requested injunction, there is likely to be a substantial *increase* in the number of warrantless arrests made without probable cause of flight risk.

For these reasons, the Court finds that the second preliminary injunction factor, irreparable harm, favors plaintiffs notwithstanding the most recent ICE policy statement.

[27] Pl. Ex. 48, Sara Wilson, "Three new ICE detention centers reportedly planned for Colorado," Colorado Newsline (Aug. 15, 2025); Pl. Ex. 51, Michelle Sandiford, "ICE offers up to $50,000 signing bonus for retired employees to return to the job," Federal News Network (Jul. 21, 2025); Pl. Ex. 52, Anna Alejo & Austen Erblat, "ICE recruitment ad made to lure Denver police officers faces pushback from police and city leaders," CBS Colorado (Sept. 26, 2025).

4. The Balance of the Equities

Lastly, the Court must consider whether "[plaintiffs'] threatened injury without the injunction outweighs [d]efendants' injury with the injunction," as well as the harm, if any, to the public interest. *Nat'l Ass'n of Industrial Bankers*, 2025 WL 3140623, at *23.

As should be clear by now, the harms to the plaintiffs, including putative class members, without an injunction, are substantial. At the same time, the government and the public have a strong interest in enforcing the immigration law. *See Noem v. Vasquez Perdomo*, ----S.Ct.----, 2025 WL 2585637 (Sept. 8, 2025) (Mem.) (Kavanaugh, J., concurring); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-57 (1976). "The Judiciary does not set immigration policy or decide enforcement priorities," and nothing in this Opinion should be construed to say otherwise. *Perdomo*, 2025 WL 2585367, at *5. However, the relief ordered by this Court does not enjoin the government "from effectuating statutes enacted by representatives of its people." *Id.* at *3. Rather, it compels the opposite. Neither the government nor the public can claim any legitimate interest in the systematic violation of § 1357(a)(2)'s prohibition against warrantless arrests except upon individualized probable cause of flight risk, and that is all this Court enjoins. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 756 (10th Cir. 2016) (the public interest is served by carrying out Congress' legislative design); *Andujo-Andujo v. Longshore*, 14-cv-01532-REB,

2014 WL 2781163, at * 6 (D. Colo. Jun. 19, 2024) (ICE's compliance with the law is in the public interest). Thus, the balance of the equities weighs in favor of the plaintiffs.

As plaintiffs have carried their burden, the Court will issue a preliminary injunction to the extent described in the following section.

V. Remedy

The Court grants the following remedies.

A. Plaintiffs' Motion for Class Certification (ECF No. 14)

Plaintiffs have met their burden to show by a preponderance of the evidence that the putative class ("Warrantless Arrest Class"), satisfies the requirements of Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

Accordingly, for the purposes of entering a preliminary injunction in this case, the Court provisionally certifies the Warrantless Arrest Class, defined as:

> All persons since January 20, 2025, who have been arrested or will be arrested in this District by immigration officers without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk.

Ms. Dias Goncalves, J.S.T., and G.R.R. are appointed as Class Representatives. Counsel for plaintiffs are appointed as Class Counsel.

B. Plaintiffs' Motion for a Preliminary Injunction (ECF No. 13)

"It is a well-settled principle that an injunction must be narrowly tailored to remedy the harm shown." *Davoll v. Webb*, 955 F. Supp. 110, 113 (D. Colo. 1997) (citing *Citizen Band Potawatomi Indian Tribe of Okla. v. Oklahoma Tax Comm'n*, 969 F.2d 943, 948 (10th Cir. 1992)).

Mindful of this principle, the Court grants the motion for a preliminary injunction only to the extent necessary to: (1) restore plaintiffs Dias Goncalves, J.S.T., and G.R.R. to the position they would have occupied but for ICE's unlawful conduct; (2) enjoin further violations of the individualized-assessment-of-flight-risk requirement enshrined in § 1357(a)(2) and § 287.8(c)(2)(ii); and (3) ensure compliance with this Order, as set forth in detail below.[28]

First, defendants shall refund the costs incurred by Ms. Dias Goncalves, J.S.T., and G.R.R. to obtain and post their bonds and shall remove their ankle monitors and terminate their reporting requirements and other conditions of release. Ms. Dias Goncalves, J.S.T., and G.R.R. shall not be rearrested except upon a properly obtained administrative or judicial warrant. If they are rearrested, absent a material change in circumstances, they shall not be subjected to any period of

[28] The standards for determining probable cause of flight risk for a warrantless arrest and documentation in a Form I-213 are substantially the same as those ICE has previously set out for itself in Broadcasts I and III (*see* Def. Exs. E and G) and are described in Part II.B of this Opinion, *supra*.

detention nor any additional or more onerous release conditions than they are presently subject to.

Second, defendants shall not effect warrantless arrests in this District unless, pre-arrest, the arresting officer has probable cause to believe that the individual is in the United States in violation of United States immigration laws and probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2).

In considering the likelihood of a person's escape before a warrant can be obtained for their arrest, an immigration officer must consider the totality of the circumstances known to the officer before making the arrest. These include circumstances the officer discovers between stopping a person and arresting them without a warrant. Factors relevant to the determination should include the following: the officer's ability to determine the person's identity; attempted flight from the officer; knowledge of the person's prior escapes or evasions of immigration authorities or, on the other hand, prior court attendance or other compliance with authorities; ties to the community (including family circumstances, residence, or employment); and other specific circumstances that weigh in favor of or against a reasonable belief that the person is likely to abscond. The particular circumstances before an officer are not to be viewed singly; they must be considered as a whole.

Mere presence within the United States in violation of United States immigration law is not, by itself, sufficient to conclude that a person is likely to escape before a warrant for arrest can be obtained.

Third, as soon as practicable after a warrantless arrest, the arresting officer shall document in writing the facts and circumstances surrounding that arrest in the narrative section of the detainee's Form I-213.

This documentation must include: (a) that the person was arrested without a warrant, (b) the location of the arrest and whether this location was a place of business, residence, vehicle, or public area, (c) whether the person is an employee of the business, if arrested at a place of business, or whether the person is a resident of the residence, if arrested at a residential location, (d) the person's ties to the community, if known at the time of the arrest, including family, home, or employment, (e) the specific, articulable facts supporting the conclusion that the person was present in violation of United States immigration law, (f) the specific, particularized facts supporting the conclusion that the person was likely to escape before a warrant could be obtained, and, (g) a statement describing how, at the time of the arrest, the officer identified themselves as an immigration officer who is authorized to execute an arrest and informed the person of the arrest and the reason for the arrest.

Information learned post-arrest relevant to a custody determination should be documented separately from the information relevant to the likelihood of escape known at the time of the warrantless arrest.

Fourth, in a manner, method, and at regular intervals to be agreed upon by the parties, or if no such agreement is possible, in a manner, method, and at regular intervals designated by this Court in a future Order, defendants shall provide to plaintiffs' counsel, and if necessary, this Court, a subset of randomly selected Form I-213s for warrantless arrests conducted by immigration officers in this District. Additionally, defendants shall, upon request, provide to plaintiffs' counsel the Form I-213 for a specific individual warrantless arrest no later than ten (10) days after the arrest.

The relief sought by plaintiffs in their proposed order (ECF No. 13-1) regarding training requirements and proof of compliance for the same (items five and six) is denied. Plaintiffs have not made a showing, at least at this point, that this relief is necessary to remedy the established harm. However, should compliance with the Order prove elusive, plaintiffs may renew this request.

Plaintiffs will not be required to post a bond. *See Continental Oil Co. v. Frontier Refining Co.*, 338 F.2d 780, 782 (10th Cir. 1964) (holding that the district court has "wide discretion in the matter of requiring security" for preliminary relief, and where there is no "likelihood of harm" to the adverse party, "no bond is

necessary"). There is no likelihood that ICE will be harmed by an injunction that "directs compliance with … [its] statutory obligations," and thus, bond would serve no purpose here. *UFW*, 785 F.Supp.3d at 742 (declining to impose a bond); *see also Arevalo v. Trump*, 785 F.Supp.3d 644, 668 (C.D. Cal. 2025) (noting that "courts routinely impose either no bond or a minimal bond in cases involving public interests") (internal citation omitted).

C. Defendants' Partially Unopposed Motion to Restrict Remote Electronic Access (ECF No. 46)

Finally, defendants' motion to restrict remote electronic access to the case file under Fed. R. Civ. P. 5.2(c) is granted in part and denied in part (ECF No. 46).

"Lawsuits are public events," and this is a matter of significant public import. *Luo v. Wang*, 71 F.4th 1289, 1296 (10th Cir. 2023) (internal citation omitted). "Accordingly, even if this case is one relating to immigration detention such that access is limited by default under Rule 5.2(c), the Court finds it appropriate for this case to be made … remotely accessible to class members and the public" with more limited restrictions. *Sorto-Vasquez Kidd v. Noem*, 2:20-cv-03512-ODW (JPRx), 2025 WL 1715514, at *1 (C.D. Cal. May 7, 2025).

On the consent of the parties, the Court will enter a protective order under Fed. R. Civ. P. 5.2(e)(2) restricting public access to the declaration of Mr. Davies (ECF No. 35), submitted by defendants in their response to plaintiffs' motion for a preliminary injunction (*see* ECF No. 46 at 1-2). The Court will entertain a further

protective order under Rule 5.2(e), to be discussed and agreed upon by the parties, to the extent necessary to protect additional private, personal information that appears in the electronic case file, keeping in mind that the business of the Court is done in the public eye absent good cause for restricted access.

VI. Order

1. Plaintiffs' Motion for Class Certification (ECF No. 14) is GRANTED, as set forth in the Remedy section above.
2. Plaintiffs' Motion for a Preliminary Injunction (ECF No. 13) is GRANTED in part and DENIED in part, as set forth in the Remedy section above.
3. Defendant's Partially Unopposed Motion to Restrict Remote Electronic Access (ECF No. 46) is GRANTED in part and DENIED in part, as set forth in the Remedy section above.
4. Plaintiffs are awarded their reasonable attorneys' fees, costs, and other disbursements permitted under the Equal Access to Justice Act, 28 U.S.C. § 2412, in an amount to be agreed upon by the parties or else determined by the Court.
5. The parties shall meet and confer in order to agree upon a schedule for the case.

SO ORDERED this 25th day of November, 2025.

By the Court:

R. Brooke Jackson
Senior United States District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ANTONIO PEREZ CAMACHO,

Petitioner,

v.

MIKE HOLLINSHEAD, Sheriff, Elmore County; KENNETH PORTER, Director of Boise Immigration and Customs Enforcement Field Sub-Office; JASON KNIGHT, Director of the Salt Lake City U.S. Immigration and Customs Enforcement Field Office; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAM BONDI, Attorney General of the United States, in their official capacities,

Respondents.

Case No. 1:25-cv-00593-BLW

MEMORANDUM DECISION AND ORDER

INTRODUCTION

Since the United States began restricting immigration into this country in the late 19th century, it has distinguished between those noncitizens seeking entry into the country and those already residing within it. Noncitizens "stopped at the boundary line" who have "gained no foothold in the United States," *Kaplan v. Tod*, 267 U.S. 228, 230 (1925), do not enjoy the same constitutional protections

afforded to persons inside the United States, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). But once a noncitizen enters the United States, "the legal circumstance changes," for the constitutional right to due process applies to all "persons" within our nation's borders, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. This distinction between noncitizens who have entered and reside in the United States and those who have not yet entered "runs throughout immigration law." *Id.*

The Department of Homeland Security adhered to this principle until very recently, applying two distinct statutory schemes for the detention of noncitizens: 8 U.S.C. § 1225 for noncitizens "seeking admission into the country," and 8 U.S.C. § 1226 for those "already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section 1225(b) mandates detention without bond hearings, except for narrow humanitarian parole. In contrast, § 1226 provides discretionary detention with bond hearings, allowing release for detainees who pose no danger, security threat, or flight risk. *See Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

DHS has now abandoned this approach, sweeping all noncitizens who entered without inspection into § 1225(b)(2)(A)'s mandatory detention net—regardless of how long they have lived here. This policy shift, endorsed by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216

(BIA Sept. 5, 2025), has trapped thousands in detention without bond hearings, including long-term residents with no criminal records.

Dozens of district courts across the nation – with more each day – have rejected DHS's expansion of § 1225(b)(2)(A)'s mandatory detention to noncitizens already residing here.[1] Only two courts, as far as the Court is aware, have sided with the government.[2] This Court joins the overwhelming majority and holds that § 1225(b)(2) does not apply to noncitizens like Petitioner who were apprehended and detained while already present in the country.

BACKGROUND

Petitioner Antonio Perez Camacho is a 56-year-old citizen of Mexico. On February 24, 2024, Petitioner entered the United States at or near Lukeville, Arizona. Dkt. 1 ¶ 21. Two days later, on February 26, 2024, DHS issued a Notice to Appear charging Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—

[1] *See, e.g.*, *Alvarez Ortiz v. Freden*, No. 25-CV-960, 2025 WL 3085032, at *10 (W.D.N.Y. Nov. 4, 2025); *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *13; *Lepe v. Andrews*, No. 1:25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Alejandro v. Olson*, No. 1:25-CV-02027, 2025 WL 2896348, at *8 (S.D. Ind. Oct. 11, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025); *Hyppolite v. Noem*, No. 25-CV-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Barrera v. Tindall*, No. 3:25-cv-241, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)

[2] See *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

that is, as an alien present in the United States without admission or parole. Dkt. 9-1 ¶ 4. DHS released Petitioner on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a). *Id.* Petitioner has since resided in Caldwell, Idaho.

On May 9, 2024, Petitioner filed an application for asylum with the immigration court, which remains pending. *Id.* ¶ 6. Petitioner received employment authorization valid through November 15, 2029, and an individual hearing is scheduled for September 20, 2027. *Id.* ¶ 7, 8.

More than a year and a half later while still awaiting the scheduled hearing, on October 19, 2025, Petitioner was apprehended by Immigration and Customs Enforcement (ICE) during a raid at a racetrack in Wilder, Idaho, where authorities suspected illegal gambling was taking place.[3] Petitioner was not charged with any crime related to the gambling investigation. ICE charged him under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without admission or parole and placed him in removal proceedings under 8 U.S.C. § 1229a. Petitioner is currently detained at the Elmore County Detention Center in Mountain Home, Idaho. He has no known criminal history.

The crux of this dispute centers on a recent shift in DHS and Executive Office for Immigration Review (EOIR) policy. On July 8, 2025, ICE issued

[3] Several individuals were arrested in the raid, and many sought relief in this Court. The Court is resolving multiple petitions today, in separate orders that are substantially identical to the one issued here.

"Interim Guidance Regarding Detention Authority for Applicants for Admission," instructing that all persons who entered without inspection be subject to mandatory detention under § 1225(b)(2)(A), regardless of when they were apprehended or how long they have resided in the United States. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that immigration judges lack authority to conduct bond hearings for individuals who entered without admission, as they are deemed "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A).

Petitioner filed this habeas petition on October 21, 2025, challenging his detention and seeking either immediate release or a bond hearing. Dkt. 1.

LEGAL STANDARD

Federal courts may grant writs of habeas corpus to prisoners "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). For most of the nation's history, habeas review "has remained a critical check on the Executive, ensuring that it does not detain individuals except in accordance with law." *Id.* (quotation omitted).

Court rejected an "expansive interpretation of § 1252(b)(9)," explaining that even if "[t]he 'questions of law and fact' ...could be said to 'aris[e] from' actions taken to remove the aliens in the sense that the aliens' injuries would never have occurred if they had not been placed in detention," this "expansive interpretation of § 1252(b)(9) would lead to staggering results." *Id.*

Here, Petitioner is challenging her mandatory detention under section 1225(b)(2), arguing that the government is applying the incorrect statute to detain her specifically since she was paroled into the country with an OREC, which under binding precedent from the Board of Immigration Appeals (BIA) and ICE regulations, constitute a parole under 8 U.S.C. § 1226(a). Section 1252(b)(9) clearly does not encompass challenges to the legality of detention itself which is separate and distinct from the removal process. Such detention challenges are not "questions of law or fact arising from" removal proceedings and thus are not barred or channeled by § 1252(b)(9) or § 1252(g). District courts retain habeas jurisdiction over such claims.

Related, § 1252(b)(9) does not eliminate habeas jurisdiction over challenges to detention that are "independent of challenges to removal orders" *Ozturk v. Hyde*, 136 F.4th at 399. The legislative history of the REAL ID Act of 2005, which amended § 1252(b)(9), explicitly states that "nothing in the amendment would preclude habeas review over challenges to detention that are independent of challenges to removal orders" *Kong*, 62 F.4th at 614.

judicial review of a final order under this section." In other words, an individual in removal proceedings usually may dispute the immigration court's legal conclusions only before the court of appeals after receiving a final removal order. Relatedly, under § 1252(g), "no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." Respondents argue that § 1252(b)(9) and (g) together strip this Court of jurisdiction to consider Petitioner's statutory entitlement to a bond hearing. But this reading of § 1252 runs counter to Supreme Court precedent and the conclusion of dozens of district courts that have recently considered this precise question.

Jurisdiction here hinges on whether Petitioner's question of law—his detention under § 1225 rather than § 1226(a)— "arises from" his removal proceedings and is therefore within the scope of § 1252(b)(9). The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), roundly rejected this reading of § 1252(b)(9). *Jennings*, much like the present matter, involved habeas petitions filed by individuals in removal proceedings who argued that they were entitled to bond hearings to justify their continued detention. *Id.* at 290-91. The Court noted that their habeas claims did "arise from" removal proceedings in a literal sense— "if those actions had never been taken, the aliens would not be in custody at all." *Id.* at 293. But this "staggering" interpretation of § 1252(b)(9) would "make claims of

prolonged detention effectively unreviewable" and "lead [] to results that no sensible person could have intended." *Id.* at 293-94 (internal quotation omitted). Thus, § 1252(b)(9) bars jurisdiction only in relatively narrow circumstances where a party directly or indirectly challenges removal proceedings themselves—such as "the decision to detain them in the first place" or "the process by which their removability will be determined." *Id.* at 294-95; *see U.S. Dep't of Homeland Sec. v. Regents of Univ. of Cal*, 591 U.S. 1, 19 (2020) (noting that § 1252(b)(9) "is certainly not a bar where . . . the parties are not challenging any removal proceedings"). The same is true of § 1252(g)'s jurisdictional bar for claims arising from the Attorney General's decision "to commence proceedings, adjudicate cases, or execute removal orders." *See Reno v. American-Arab Anti-Discrimination Cmte.*, 525 U.S. 471, 482 (1999).

Respondents attempt to distinguish *Jennings* by arguing that Petitioner "*does* challenge the government's decision to detain him in the first place." Dkt. 7 at 9. This is incorrect. Petitioner does not object to the initial decision to detain him, only to his continued detention without a bond hearing. As the Ninth Circuit has explained, "claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) (internal quotation omitted). The nature of the Government's detention authority—whether it stems from § 1225 or

§ 1226(a)—is precisely this sort of collateral question. *See Hernandez v. Gonzales*, 424 F.3d 42, 42-43 (1st Cir. 2005) (explaining that § 1252 does not "preclude habeas review over challenges to detention that are independent of challenges to removal orders" (quoting H.R. Cong. Rep. No. 109-72, at 2873 (May 3, 2005)).

This Court thus joins the consensus of numerous district courts that have recognized jurisdiction over this issue since DHS's policy change in July 2025. *See, e.g., Ochoa v. Noem*, No. 1:25-CV-00881, 2025 WL 3125846 at *4 (D.N.M. Nov. 7, 2025) ("[D]istrict courts across the country, have found subject matter jurisdiction over petitions challenging determinations that a petitioner was statutorily ineligible for bond under § 1226(a)."); *Chavez*, 2025 WL 2730228, at *4 ("Petitioner's challenge to his detention without a bond hearing is collateral to his removal proceedings and does not fall within § 1252(b)(9)'s jurisdictional bar."); *E.V. v. Raycraft*, No. 4:25-CV-2069, 2025 WL 3122837 at *7 (N.D. Ohio Nov. 7, 2025) (same).

Finally, Respondents contest the Court's authority to prohibit Petitioner's transfer out of the Court's jurisdiction. Ironically, they complain that this restriction—not their own policy—prevents them from giving Petitioner his requested bond hearing. It is true that 8 U.S.C. § 1231(g)(1) provides that the Attorney General "shall arrange for appropriate places of detention for aliens detained pending removal," and 8 U.S.C. § 1252(a)(2)(B)(ii) bars judicial review

of "any other decision or action" left to "the discretion of the Attorney General." But, as the Second Circuit has detailed, these statutes do not strip federal courts of jurisdiction over the transfer of detained immigrants. *Ozturk v. Hyde*, 136 F.4th 382, 394-96 (2d Cir. 2025).

"To begin with, § 1252(a)(2)(B)(ii)'s bar on jurisdiction applies only to those decisions where Congress has expressly 'set out the Attorney General's discretionary authority in the statute.'" *Id.* at 395 (quoting *Kucana v. Holder*, 558 U.S. 233, 247 (2010)). In this regard, § 1231(g) is not a discretionary statute: it "uses the obligatory 'shall' rather than a permissive 'may.'" *Id.* Moreover, the statute does not mention transfers at all, meaning that any discretion granted to the Attorney General is at best implicit. *Id.* District courts in immigration habeas actions thus retain the inherent equitable authority to restrict the transfer of petitioners during the pendency of the proceedings. *Oliveros v. Kaiser*, No. 25-CV07117-BLF, 2025 WL 2677125, at *8-9 (N.D. Cal. Sept. 18, 2025). Here, the balance of equities favors Petitioner remaining in this District to expedite resolution of the case and ensure he maintains access to counsel.

For these reasons, the Court has jurisdiction over Petitioner's claim and jurisdiction to prohibit his transfer to other districts. Although the Court has no power to review the removal proceedings themselves, Petitioner's challenge to his detention without a bond hearing is properly before the Court.

B. Exhaustion

As the final issue prior to reaching the merits, the Court must determine whether Petitioner has exhausted his administrative remedies. For habeas claims, exhaustion is prudential, rather than jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). "[A] court may waive the prudential exhaustion requirement if administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (citation and quotation marks omitted).

Because the BIA's decision in *Matter of Yajure Hurtado* categorically bars immigration judges from conducting bond hearings for individuals who entered without inspection, waiver of the exhaustion requirement is appropriate here. The Ninth Circuit makes clear it does not require exhaustion when pursuing administrative remedies would be futile. That futility exception applies, for example, when the agency has already staked out its position on the relevant question, making the outcome of any administrative process a foregone conclusion. *El Rescate Legal Servs., Inc. v. Exec. Off. of Imm. Rev.*, 959 F.2d 742, 747 (9th Cir. 1992).

As other courts have recognized in identical circumstances, the BIA clearly staked its position here when it issued *Matter of Yajure Hurtado* and held

§ 1225(b)(2)'s mandatory detention provisions apply to *any* noncitizen present in the United States "without being admitted or paroled." *See Chavez*, 2025 WL 2730228, at *3. Any attempt by Petitioner to request bond would therefore be futile. *See id.*; *Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 WL 2670875, at *8 (C.D. Cal. July 28, 2025); *Rico-Tapia v. Smith*, No. 25-00379, 2025 WL 2950089, at *4 (D. Haw. Oct. 10, 2025) Accordingly, the Court finds the prudential exhaustion requirements waived for futility. It now turns to the merits of Petitioner's claim.

C. Section 1226(a), Not Section 1225(b)(2), Governs Petitioner's Detention

The central question here is narrow but significant: whether § 1225(b)(2)(A)'s mandatory detention provision applies to a noncitizen who entered without inspection 25 years ago and was later apprehended in the interior, or whether § 1226(a)'s discretionary detention scheme governs, entitling him to a bond hearing. Because this presents a pure question of statutory interpretation, the Court begins with the two statutes at issue, 8 U.S.C. §§ 1225 and 1226—both sections part of the Immigration and Nationality Act ("INA"). *See Lackey v. Stinnie*, 604 U.S. 192, 199 (2025).

The Ninth Circuit warns that "divining the meaning of the complex provisions of the INA is ordinarily not for the faint of heart." *Rodriguez*, 779 F. Supp. 3d at 1256 (quoting *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020)

(quotation marks, brackets, and ellipses omitted). To wade through the "morass" of the INA, *Torres*, 976 at 923, "courts must 'use every tool at their disposal to determine the best reading of the statute,'" *Rodriguez*, 779 F. Supp. 3d at 1256 (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 373 (2024)). In this case, the Court not only has the benefit of these interpretive tools but also the numerous decisions from other courts that have grappled with this issue.

1. The Statutory Framework

As touched upon earlier, two statutes govern pre-removal detention. Section 1225 addresses noncitizens "seeking admission into the United States." *Jennings*, 583 U.S. at 289. Section 1225(b)(2)(A) mandates detention when "an alien who is an applicant for admission" is "seeking admission" and "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Such detention is mandatory except "for urgent humanitarian reasons or significant public benefit," § 1182(d)(5)(A). Noncitizens detained under § 1225(b) "are not entitled to a bond hearing," *Lopez Benitez v. Francis*, No. 25 Civ. 5937, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025).

In contrast, § 1226 governs detention of noncitizens "already in the country pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. Section 1226(a) establishes "the default rule"—discretionary detention with the possibility of release on bond or conditional parole. 8 U.S.C. § 1226(a). Detained individuals

may request bond hearings and can be released upon showing they pose no danger, security threat, or flight risk. *Hernandez*, 872 F.3d at 982.

2. Section 1226(a) Governs Petitioner's Detention.

Respondents argue Petitioner is subject to mandatory detention under § 1225(b) because he is "an applicant for admission." The statute 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 (whether or not at a designated port of arrival . . .)." 8 U.S.C. § 1225(a)(1). Because Petitioner is "[a]n alien present in the United States who has not been admitted," and therefore qualifies as an "applicant for admission" under § 1225(a), Respondents insist he is subject to the mandatory detention provisions for "applicants for admission" under § 1225(b)(2).

As countless courts have concluded, Respondents' proposed interpretation "(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Lepe v. Andrews*, 2025 WL 2716910, at *4 (collecting cases).

For 1225(b)(2)(A) to apply, several conditions must be met: an "examining immigration officer" must determine that the individual is (1) an "applicant for

admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Respondents' selective reading of the statute ignores the phrase, "seeking admission." This "violates the rule against surplusage and negates the plain meaning of the text." *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025) (citing *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023)). "As numerous courts have observed, if all 'applicant[s] for admission' also are 'seeking admission,' then the words 'seeking admission' would be surplusage." *Alvarez Ortiz*, 2025 WL 3085032, at *7 (collecting cases).

If Congress did not intend to distinguish between an "applicant for admission" and those "applicant[s] for admission" who are "seeking admission," it simply could have omitted the "seeking admission" language." But it did not. As "every clause and word of a statute should have meaning," this phrase, "seeking admission," must therefore mean something separate from "an applicant for admission." *Polansky*, 599 U.S. at 432. The use of the present participle "seeking" implies the present action of "asking for" or "trying to acquire or gain," and the "entry," as it has long been understood, implies "a crossing into the territorial limits of the United States." *Lepe*, 2025 WL 2716910, at *5 (citations omitted). "To piece this together, the phrase 'seeking admission' means that one must be actively seeking' 'lawful entry.'" *Id.*

While Petitioner may qualify as an "applicant for admission," the phrase "seeking admission" cannot reasonably be stretched to encompass someone who entered the country years ago, established a life here, and was living peacefully in Idaho until his arrest. At the time of his apprehension, Petitioner was not "seeking" anything—he was simply present in the United States.

This plain reading of § 1225 places it in harmony with § 1226 and the overall statutory scheme. *See Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989) (explaining the words of a statute must be read in their entire context and with a view to their place in the overall statutory scheme). The entire framework of § 1225, titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing," relates to the inspection process at or near the border: "Inspection" occurs at ports of entry, *Posos-Sanchez v. Garland*, 3 F.4th 1176, 1183 (9th Cir. 2021); "expedited removal" applies to those "arriving in the United States," § 1225(b)(1)(A); and the provision addresses "stowaways" discovered at borders, § 1225(a)(2).

Thus, as the Supreme Court explained, § 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287. Nothing in this framework contemplates interior enforcement against individuals who are already present and residing in the country.

"And just to pile on a bit," Respondents' construction of the statute "would create surplusage twice over," *Polansky*, 599 U.S. at 432, by rendering the recent amendment to 8 U.S.C. § 1226(c) meaningless. Section 1226(c)(1)(E), added in 2025 by the Laken Riley Act, mandates detention for any noncitizen (i) who is inadmissible under section 1182(a)(6)(A)(i) as an "alien present in the United States without being admitted or paroled," *and* (ii) who "is charged with, arrested for, convicted of, or admits" to committing certain crimes. 8 U.S.C. § 1226(c)(1)(E). If § 1225(b)(2)(A) already mandates the detention of *all* noncitizens who have not been admitted, as Respondents contend, then Laken Riley serves no purpose.

"This is a presumptively dubious result." *Martinez*, 792 F. Supp. 3d at 221. Courts "do not lightly assume Congress adopts two separate clauses in the same law to perform the same work." *United States v. Taylor*, 596 U.S. 845, 857 (2022). Accordingly, this Court declines to find "that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)." *Maldonado*, 2025 WL 2374411, at *12 (quoting *Taylor*, 596 U.S. at 857).

Finally, Respondents' contrary interpretation also upends decades of settled practice without clear congressional intent. Since IIRIRA's enactment in 1996, DHS has consistently applied § 1226(a) to noncitizens who entered without inspection but were apprehended while residing in the United States. *See*

Rodriguez, 779 F.Supp.3d at 1260-61. Executive Branch regulations issued contemporaneously with IIRIRA explicitly stated that noncitizens "present without having been admitted or paroled (formerly referred to as [those] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has recognized, such "longstanding practice of the government" serves as an important interpretive aid, *Loper Bright*, 603 U.S. at 386, adding an additional basis to refute Respondents' interpretation.

Respondents' most compelling argument to support their position "is really a policy argument, projected onto Congress." *Romero*, 2025 WL 2403827, at *12. They argue that interpreting the statutes this way creates an "anomaly" by treating those who entered illegally better than those who present themselves for inspection. Dkt. 5 at 11. Respondents are correct in the sense that the IIRIRA, enacted in 1996, "placed on equal footing . . . all immigrants who have not been lawfully admitted." *Torres*, 976 F.3d at 928.

But, as the district court in *Romero* recognized, "Respondents ask the wrong question." *Romero*, 2025 WL 2403827, at *12. In reality, treating the detention of noncitizens stopped at or near the border differently from noncitizens who reside within the country is not an anomaly. Instead, it reflects the long-recognized distinction in our immigration laws and the Constitution that due process

protections apply to noncitizens residing within the country but not those stopped at or near the border. *See Zadvydas*, 533 U.S. at 690.

"Civil immigration detention, which is nonpunitive in purpose and effect, is typically justified under the Due Process Clause only when a noncitizen presents a risk of flight or danger to the community." *Lepe*, 2025 WL 2716910, at *9 (quoting *Zadvydas*, 533 U.S. at 690) (quotation marks and brackets omitted). "It is therefore reasonable to read these statutes against that backdrop." *Id.* (citation, quotation marks, and brackets omitted). Moreover, policy arguments cannot override the plain meaning of the text. *Id. See also Romero*, 2025 WL 2403827, at *12.

In sum, the Court declines to credit Respondents' position that Petitioner is "seeking admission" to the United States and thus subject to mandatory detention under 1225(b)(2)(A).

D. Due Process

Petitioner's continued detention without a bond hearing also violates his Fifth Amendment due process rights. The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. As noted, these protections extend to noncitizens facing removal. *Id.*

To determine whether civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Mathews* requires courts to weigh three factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

1. Private Interest

The interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Courts also consider detention conditions, including whether a detainee is held in conditions indistinguishable from criminal incarceration. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025).

Petitioner, who has no criminal history, is detained the Elmore County Detention Center in Mountain Home, Idaho, alongside pretrial and convicted criminals. He is "experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, ... lack of privacy, and,

most fundamentally, the lack of freedom of movement." *Gunaydin*, 784 F. Supp. 3d at 1187. The first *Mathews* factor therefore strongly favors Petitioner.

2. Risk of Erroneous Deprivation

The second factor "requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Gunaydin*, 784 F. Supp. 3d at 1187. Respondents contend Petitioner is subject to mandatory detention under § 1225(b) and have provided him no bond hearing or other procedural safeguards balancing his liberty interest against the government's enforcement interest.

The Ninth Circuit has held that when a substantial liberty interest is at stake, the government must prove by clear and convincing evidence that an individual poses a danger or flight risk before depriving him of liberty. *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011). Here, Respondents have detained Petitioner without any individualized justification. A bond hearing would allow Petitioner to receive a meaningful assessment of whether he is dangerous or likely to abscond, greatly reducing the risk of erroneous deprivation.

3. Government's Interests

Civil detention comports with due process only when a "special justification" outweighs the "individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690. The government has

identified no new information specific to Petitioner's circumstances to undermine its prior determination that he poses neither a danger nor a flight risk. Petitioner has resided and worked in the community for the past year while awaiting his asylum hearing, currently scheduled for September 20, 2027, and the government has presented no basis to conclude he cannot continue to do so safely. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *14 (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). Indeed, the government's only apparent interest in detaining Petitioner—which imposes additional fiscal and administrative burdens—is to fulfill an arrest quota of 3,000 immigration arrests per day set by the current administration. *Id.* (citing *Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 868 (C.D. Cal. 2025)).

All three *Mathews* factors weigh in favor of finding Petitioner's due process rights have been violated and ordering his release.

E. Remedy

Concluding that § 1226(a) governs Petitioner's detention, the question of the proper remedy remains. Petitioner asks the Court to order his immediate release, while Respondents argue that he should merely receive a bond hearing pursuant to § 1226(a).

A district court has equitable discretion, "as law and justice require," for remedying unlawful detention in a habeas petition pursuant to § 2254. *See Brown v. Davenport*, 596 U.S. 118, 127-28 (2022). Despite this discretion, however, relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680 (9th Cir. 2021) (cleaned up). Thus, relief "must be narrowly tailored to remedy the specific harm shown." *Id.*

In many circumstances akin to the present case, a bond hearing would indeed be sufficient to rectify the violation of Petitioner's unlawful detention. *See E.C. v. Noem*, No. 2:25-cv-01789, 2025 WL 2916264, at *12 (D. Nev. Oct. 14, 2025); *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 45-46 (1st Cir. 2021). Here, however, Respondents have failed utterly to articulate a legitimate interest in the Petitioner being detained. There is no evidence that he is a flight risk or poses a danger to the community. To the contrary, Petitioner's lack of criminal record, residence in the United States in the past year without incident, and familial ties to the United States all indicate that he is neither a danger nor a flight risk.

In recent months, courts across the country have ordered the immediate release of detainees in similar situations. *E.g., Lepe*, 2025 WL 2716910, at *10; *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado*, 2025 WL 2337099, at *19; *Pinchi v. Noem*, No. 25-cv-05632, 2025

WL 1853763, at *4 (N.D. Cal. July 4, 2025). As one court explained, "[w]ithout a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention." *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025). The same is true here. Accordingly, the Court orders Petitioner's immediate release from custody.

ORDER

IT IS ORDERED that:

1. Petitioner's petition for a writ of habeas corpus (Dkt. 1) is GRANTED. Accordingly, Petitioner shall be immediately released from custody.

DATED: November 19, 2025

B. Lynn Winmill
U.S. District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JAVIER DE JESUS AGUILAR,

Petitioner,

v.

BRIAN ENGLISH, SAM OLSON, TODD LYONS, KRISTI NOEM, PAMELA BONDI, and JOSEPH B. EDLOW,

Respondents.

CAUSE NO. 3:25-CV-898 DRL-SJF

OPINION AND ORDER

Petitioner Javier de Jesús Aguilar, a Mexican citizen, is being detained at Miami Correctional Facility under United States Immigration and Customs Enforcement (ICE) authority. He petitioned for a writ of habeas corpus under 28 U.S.C. § 2241, alleging he is being detained in violation of the laws and Constitution of the United States. At issue is the government's authority to detain a noncitizen while his removal proceedings pend.

The court directed the governmental parties identified as respondents (all representatives of the federal government save for the Miami Correctional Facility's warden) to show cause why a writ of habeas corpus should not be granted. Though the proper respondent in a habeas claim may be the immediate custodian, *see Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004), the federal government has filed a collective response. Mr. De Jesús Aguilar filed a reply. For the following reasons, the court will grant the petition for a writ of habeas corpus under § 2241.

FACTS

Mr. De Jesús Aguilar is a citizen of Mexico who has been present in the United States without authorization since 2006. According to immigration records, he was arrested by the United States Border Patrol on October 26, 2006, and voluntarily removed to Mexico. The exact date of his subsequent reentry is unknown. He again encountered immigration officials on October 30, 2013, when he was arrested by ICE and served with a notice to appear.[1] The notice charged him with removability under § 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA)—that is, being inadmissible because he was "present in the United States without being admitted or paroled, or . . . arrive[d] in the United States at any time or place other than as designated by the Attorney General." 8 U.S.C. § 1182(a)(6)(A)(i). Mr. De Jesús Aguilar was released on a $5,000 bond that same day.

Years passed. A family developed. On April 3, 2024, Mr. De Jesús Aguilar was charged in state court with several crimes. *See State v. De Jesús Aguilar*, No. 49D07-2404-F3-009320 (Marion Super. Ct. decided Apr. 17, 2025). He was released from state custody on bond on April 9, 2024, and taken into ICE custody. He was released from ICE custody on a $7,500 bond on May 10, 2024.

Mr. De Jesús Aguilar's state criminal proceedings concluded on April 17, 2025, when he was sentenced to 365 days in prison on a level 5 felony for criminal confinement where a

[1] There is an apparent discrepancy in the record about the date Mr. De Jesús Aguilar was arrested by Indianapolis ICE. According to the summary of events within the Record of Deportable/Inadmissible Alien, he was arrested on October 26, 2006, and served with a notice to appear. However, the actual notice to appear is dated October 30, 2013. The court assumes the 2013 date is correct.

vehicle was used and to 365 days on a class A misdemeanor for domestic battery, with the sentences to run concurrently.

On October 2, 2025, ICE processed Mr. De Jesús Aguilar as a "back-in custody," cancelled his $7,500 bond, and notified its legal department to re-calendar immigration proceedings. He is currently being detained at Miami Correctional Facility under the custody of the Department of Homeland Security (DHS). He claims that his detention violates 8 U.S.C. § 1226(a), because no warrant for his arrest was issued and because this statute would provide for discretionary bond or release on recognizance. He adds that he is being unlawfully detained under 8 U.S.C. § 1225(b)(2) too, which does not allow for bond. The government asserts that he is validly detained under § 1225(b)(2) as an "applicant for admission" while his removal proceedings pend.

DISCUSSION

A. *Subject Matter Jurisdiction.*

The government says certain INA provisions strip the court of jurisdiction over this habeas petition. The court likewise has an independent duty to ensure its subject matter jurisdiction. *See Page v. Democratic Nat'l Comm.*, 2 F.4th 630, 634 (7th Cir. 2021).

1. *8 U.S.C. § 1252(e)(3).*

The government first argues that the court lacks subject matter jurisdiction because § 1252(e)(3), entitled "[c]hallenges on validity of the system," provides that "[j]udicial review of determinations under section 1225(b) of this title and its implementation" must be filed in the District of Columbia, with determinations then limited to the following:

> (i) whether such section, or any regulation issued to implement such section, is constitutional; or (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

8 U.S.C. § 1252(e)(3)(A).

The government says Mr. De Jesús Aguilar challenges DHS's determination that all aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). The government contends that this amounts to judicial review of a written policy or guideline implementing § 1225(b), which falls under § 1252(e)(3)(A)(ii) and must be brought in the District of Columbia. In response, Mr. De Jesús Aguilar argues that § 1252(e)(3) applies only to facial or systemic challenges to the constitutionality or legality of the expedited removal system or its implementing regulations, not to foreclose individualized habeas petitions challenging whether a particular petitioner fits the statutory criteria to be detained under § 1225(b).

The court also concludes that § 1252(e)(3) does not apply here or divest jurisdiction. By its plain language, § 1252(e)(3) concerns § 1225(b) determinations, including orders of removal, referrals for asylum, and referrals for proceedings that concern applicants for admission, including the implementation of the expedited removal provisions found there, as adopted by Congress in 1996 when it enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Notwithstanding the title that might inform an ambiguity (not present here), *see City & Cnty. of San Francisco v. Env't Prot. Agency*, 604 U.S. 334, 345 (2025); *Dubin v. United States*, 599 U.S. 110, 120-21 (2023), Congress knew how to

limit § 1252(e)(3) if in fact it wanted this statute to cover only § 1225(b)(1) decisions and not also those under § 1225(b)(2), and Congress plainly did not do so. *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), *with* 8 U.S.C. § 1252(e)(3)(A).

From there, the government reasons that Mr. De Jesús Aguilar seeks judicial review of a written policy or guideline that implements § 1225(b), thereby barring review here and permitting review only in the District of Columbia. Mr. De Jesús Aguilar at one point perhaps overcomplicates his petition by alluding to a "reinterpretation" of § 1225(b)(2) through an internal ICE memorandum and the consequent "policy shift" that, he claims, contradicts the statute and decades of agency interpretation and binding precedent. He alleges that his detention without bond "stems from a controversial policy shift by ICE in July 2025," which aligns with a recent decision from the Board of Immigration Appeals (BIA). *See In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

But, at the end of the day, his petition eludes all the trappings that would bar review. For one, whether someone falls within the category of "applicant for admission" under § 1225(b)(2) or an alien arrested or detained in the United States interior pending a removal decision under § 1226(a) is precisely a question of law designed for the court, and not seemingly barred by any provision offered by the government today. *See Demore v. Kim*, 538 U.S. 510, 517 (2003) ("Where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear. And, where a provision precluding review is claimed to bar habeas review, the [law requires] a particularly clear statement that such is Congress' intent.") (citation modified).

For another, no matter the reference to this new internal ICE memorandum in his petition, Mr. De Jesús Aguilar in his prayer for relief seeks to resolve the statutory question about his detention, not ultimately to have the court decide whether this memorandum reflects an inconsistent or illegal application of Title 8 (at most, the question reserved for the District of Columbia). For yet another and related reason, the government has not established that this internal memorandum even constitutes a written policy directive, guideline, or procedure issued by the Attorney General to implement § 1225(b)—a prerequisite to divesting the court of jurisdiction—unpublished as the internal memorandum is and offered today merely as a leaked screenshot. Nor is the BIA decision such a written policy because it lacks the authority "to promulgate rules or policies other than for its internal operations." *Ren v. Gonzales*, 440 F.3d 446, 448 (7th Cir. 2006).

And last, if § 1252(e)(3) channeled all as-applied challenges to a question of § 1225(b)(2) versus § 1226(a) detention to the District of Columbia, this section would conflict with the recent directive that challenges by detained individuals that "necessarily imply the invalidity of their confinement" "must be brought in habeas" within the district of confinement. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (decision under the Alien Enemies Act); *id.* at 672-73 ("Although judicial review under the AEA is limited, we have held that an individual subject to detention and removal under that statute is entitled to judicial review as to questions of interpretation and constitutionality of the Act as well as whether he or she is in fact an alien enemy fourteen years of age or older.") (quotations omitted); *see also Rumsfeld*, 542 U.S. at 443; *Ludecke v. Watkins*, 335 U.S. 160, 163–64 (1948). Even a statute limiting judicial review to questions of interpretation and constitutionally does not prevent

a habeas corpus petition challenging whether a petitioner does, in fact, fall within the statute of concern. This threshold classification does not come within the scope of § 1252(e)(3)'s limitation, for this judicial question isn't a "determination[] *under* section 1225(b) and its implementation." It is a determination whether an alien, so defined in the INA, even falls within that section.

In short, Mr. De Jesús Aguilar isn't so much challenging any written policy or guidance as he is presenting an individualized challenge to his detention—namely whether he has been classified properly as an "applicant for admission" under § 1225(b)(2) and subject to mandatory detention without a bond hearing, or alternatively whether he must receive a bond hearing under § 1226(a) as a long-term resident apprehended in the interior. The relief to be granted concerns neither certain barred decisions related to the removal system nor its implementing regulations or agency policies, just his particular relief from detention. Nowhere in § 1252(e)(3) is there evidence of congressional intent to provide immigration authorities unreviewable discretion to decide which noncitizens are subject to § 1225(b)(2) and which are subject to § 1226(a). The court retains jurisdiction.

2. *8 U.S.C. § 1252(g)*.

The government next argues that § 1252(g) bars review of Mr. De Jesús Aguilar's habeas petition. This section says "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252. The government contends that commencing removal

proceedings encompasses—arises from—the decision to detain a noncitizen while removal proceedings occur.

The government's position reads as though the statute were written differently—not just that the habeas petition "arises from" the Attorney General's decision but also "relates to" it—a much broader phrase, indeed one of the broadest, and one omitted by Congress. And the petition for the court's habeas review isn't because the government *commenced* proceedings, *adjudicated* a case, or *executed* a removal order, but because the government detained a nonresident alien without a bond hearing and classified him under § 1225(b)(2) rather than § 1226(a) while the rest of that might occur. *See Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018) (rejecting "uncritical literalism" and the idea that § 1252(g) "sweep[s] in any claim that can technically be said to 'arise from' the three listed actions" and instead finding that "the language [] refer[s] to just those three specific actions themselves"). The court will not add to the statute what isn't there. *See Demore*, 538 U.S. at 517. The court's job is to enforce the statute's plain language, not to legislate through interpretation.

As good company, our circuit has not read § 1252(g) as broadly as the government invites. In *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999), the court of appeals concluded that § 1252(g) does not bar a noncitizen's § 2241 petition challenging his mandatory detention under 8 U.S.C. § 1226(c) while removal proceedings occur because the petitioner was not asking the district court "to block a decision to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." *See also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-86 (1999). Instead, the petitioner in *Parra* concerned "detention while the administrative process lasts" such that "it may be resolved

without affecting pending proceedings." *Parra*, 172 F.3d at 957. Although *Parra* dealt with the mandatory detention scheme in § 1226(c) rather than this debate between § 1225(b)(2) and § 1226(a), the rationale applies with equal force under the law. Section 1252(g) thus does not strip this court of jurisdiction over this § 2241 petition.

3. *8 U.S.C. § 1252(b)(9)*.

The government last argues § 1252(b)(9) as a jurisdictional bar to Mr. De Jesús Aguilar's habeas corpus petition. This statute says "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9). This acts as a "zipper clause," funneling a noncitizen's claims about his removal to one court at the end of the removal proceedings. *See Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 483. The government contends that, working together with § 1252(a)(5), § 1252(b)(9) channels the review of all claims arising from deportation proceedings to a court of appeals in the first instance.

The government's position that § 1252(b)(9) requires Mr. De Jesús Aguilar to wait until there is a final order before challenging his detention contradicts the plurality decision in *Jennings*, 583 U.S. at 292, which concluded that § 1252(b)(9) did not prevent the court from deciding questions of law concerning whether "certain statutory provisions [in the INA] require detention without a bond hearing." The plurality assumed that an action taken to remove an alien included detention decisions. But it concluded that the legal question regarding no-bond detention would not "arise from" the actions taken to remove the alien,

so this question fell outside the scope of § 1252(b)(9). *Id.* at 292-93 (plurality). The plurality noted that "cramming judicial review of those questions into the review of final removal orders would be absurd" and "[i]nterpreting 'arising from' in this extreme way would also make claims of prolonged detention effectively unreviewable." *Id.* at 293 (plurality); *see also Nasrallah v. Barr*, 590 U.S. 573, 581-83 (2020) ("[F]inal orders of removal encompass only the rulings made by the immigration judge or Board of Immigration Appeals that affect the validity of the final order of removal[.]"); *Torres-Tristan v. Holder*, 656 F.3d 653, 658 (7th Cir. 2011) (concluding a "final order of removal" includes the actual order of removal and "all orders closely related to the deportation proceeding and entered during the proceeding" but not "ancillary determinations made outside the context of a removal proceeding" that are not "intimately associated and immediately associated with the final order" or "governed by the regulations applicable to the deportation proceeding itself, and ordinarily presented to the . . . immigration judge who entered the deportation order") (cleaned up).

The question about the lawfulness of Mr. De Jesús Aguilar's detention and his right to a bond hearing are distinct from the merits of his removability. Though likewise important, they are collateral to the removal process. Accordingly, § 1252(b)(9) does not prevent this court from deciding this habeas petition.

B. *Statutory Classification Analysis.*

1. *Statutory Overview.*

The main issue thus is whether Mr. De Jesús Aguilar's detention (during his removal proceedings) is governed by § 1225(b)(2)'s mandatory detention provision or § 1226(a)'s

detention with the prospect of bond.[2] Section 1225(b)(2) tends to govern the "inspection of other aliens" beyond the scope of § 1225(b)(1), and specific to applicants for admission:

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

8 U.S.C. § 1225(b)(2). Section 1229a governs general removal proceedings that are available when an alien is "charged with any applicable ground of inadmissibility under section 1182(a) of this title or any applicable ground of deportability under section 1227(a) of this title." 8 U.S.C. § 1229a(a)(2).

Another provision governing pre-removal-order detention is 8 U.S.C. § 1226, governing noncitizens apprehended and detained (so entitled). It says, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained" while removal proceedings pend. 8 U.S.C. § 1226(a). Section 1226(c) specifies that certain criminal aliens

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[2] A third statute, § 1225(b)(1), merely provides some helpful context to understanding this series of statutes. Section 1225 (entitled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing") concerns detention of certain noncitizens before a final order of removal. Section 1225(b)(1), which is not at issue here but may lend general understanding, governs the inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled and establishes an expedited removal process. It applies to a noncitizen who (1) "is arriving in the United States" or (2) "has not been admitted or paroled into the United States" and has been physically present in the United States for less than two years. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). And it applies only when the noncitizen "is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title." 8 U.S.C. § 1225(b)(1)(A)(i). Section 1182 lists several ways a noncitizen may be inadmissible, but the expedited removal procedure in § 1225(b)(1) singles out two: (1) misrepresentation—fraudulently procuring a visa, other documentation, or admission into the United States or falsely representing himself or herself to be a citizen of the United States—or (2) not possessing the proper documentation needed to be admitted to the United States. 8 U.S.C. §§ 1182(a)(6)(C), (a)(7). For noncitizens falling under these circumstances, the noncitizen is removed immediately, without further hearing or review, unless the noncitizen intends to apply for asylum or indicates a fear of persecution. 8 U.S.C. § 1225(b)(1)(A). If a noncitizen asserts a claim of asylum or a fear of persecution, the statute instructs that the alien "shall be detained" while the claim is being decided. 8 U.S.C. § 1225(b)(1)(B)(ii).

are subject to mandatory detention during the removal proceedings; all other aliens falling under § 1226(a) may be released on bond or conditional parole. 8 U.S.C. §§ 1226(a), (c).

2. *Mr. De Jesús Aguilar's Status.*

Mr. De Jesús Aguilar argues that his detention is not authorized by § 1225(b)(2) because this section applies only to interactions at the border whereas he was apprehended within the interior of the United States long after his arrival. He recalls that, under prior ICE practices, he would have been entitled to a bond hearing before an immigration judge because noncitizens like him, who have been apprehended in the interior years after arrival, would have been detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312-01, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."). But, he continues, a recent policy shift announced in *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), funnels all noncitizens who entered without inspection into § 1225 and its mandatory detention scheme, without the possibility for bond or parole. The court retains its independent Article III power to interpret statutes and decide whether an agency has acted within its statutory authority. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

The government says, under § 1225(b)(2)'s plain language, Mr. De Jesús Aguilar should be classified as an "applicant for admission" and made subject to mandatory detention. "As with any question of statutory interpretation, [] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). When

unambiguously plain, the court must enforce it according to its terms. *See id.* Likewise, the law "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *West Virginia v. Env't Prot. Agency*, 597 U.S. 697, 721 (2022) (citation omitted).

The government cannot be called incorrect at the start in that Mr. De Jesús Aguilar meets the definition of an applicant for admission—defined separately as (1) an alien who is "present in the United States who has not been admitted" or (2) an alien "who arrives in the United States (whether or not at a designated port of arrival . . .)[.]" 8 U.S.C. § 1225(a)(1). He is present in the United States and has not been admitted.

The government would have the court stop there. But this tends to read out of § 1225(b)(2) additional language—whether an alien is "seeking admission." Notably, Congress chose not to reuse the same defined term of art—"applicant for admission"—later in § 1225(b)(2) but chose to introduce another concept undefined by the statutory scheme—an "alien seeking admission." The question is why, and whether the two differently-worded concepts should be interpreted differently—or otherwise put, whether an "alien seeking admission" is merely the same thing as an "alien who is an applicant for admission" or really just a separate caste of aliens deemed applicants for admission.

In looking at the statute as a whole, Mr. De Jesús Aguilar has the better argument. One cannot merely look at "applicant" as necessarily meaning that the alien has sought

admission as that term might otherwise presuppose, though in the usual sense an "applicant" usually has sought permission for something. Doing so would break apart the term of art—"applicant for admission"—that has been plainly defined by the statute and gloss the singular word "applicant" with a meaning that Congress expressly never intended. *See Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from a term's ordinary meaning.") (quotations altered and citation omitted). So "applicant for admission" means, and only means, what Congress says it means.

From there, the government's position would render "alien seeking admission" superfluous—exactly what the court in interpreting the statute should not do. *See Corley v. United States*, 556 U.S. 303, 314 (2009). The government argues that "applicants for admission" include all unadmitted aliens in the United States regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to apply for admission. Insofar as that point goes, that may be true. But it wrestles not with the meaning of an "alien seeking admission." The meaningful-variation canon suggests that Congress injected the phrase "alien seeking admission"—nothing close to just generic words—in a purposeful effort to narrow the scope of the latter part of § 1225(b)(2). *See Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 279 (2018); *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017).

Notably, the statute, in introducing "alien seeking admission," avoids the use of a definite article or determiner, such as "the," or "this," or "such," to demonstrate that "alien seeking admission" necessarily means the same thing as applicant for admission; instead, it

too refers to "an" alien seeking admission—denoting another category. With rare exception, the law presumes Congress to be lettered and grammatically correct, not the opposite. And even small words have meaning of import. *See Nielsen v. Preap*, 586 U.S. 392, 407-08 (2019) (interpreting "the" in "the alien" in 8 U.S.C. § 1226(c) to be "a function word" that "a following noun or noun equivalent is definite or has been previously specified by context"); *see also United States v. Ketchum*, 201 F.3d 928, 933 (7th Cir. 2000) (the law "does not consider grammar a mere technicality").

In addition, in adopting the government's view, the phrase "seeking admission" could be entirely stricken from the statute without any loss of meaning, and thereby violate the surplusage canon. As written, the statute says as follows:

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

8 U.S.C. § 1225(b)(2)(A) (emphasis added). And as the government reads this statute, striking "seeking admission" would leave the statute saying the very same thing that Congress wrote:

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

8 U.S.C. § 1225(b)(2)(A) (modified). "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." *Corley*, 556 U.S. at 314 (citation modified). These words cannot be meaningless, else Congress would not have used them. The phrase "seeking admission" must have an independent meaning that identifies precisely which applicants for admission are covered by § 1225(b)(2).

Alvarez, 227 F.Supp.3d at 889-90 (same); *United States v. Bautista-Ramos*, No. 18-cr-4066-LTS, 2018 WL 5726236, at *7 (N.D. Iowa Oct. 15, 2018) (same).

B. The Castañon-Nava Litigation and ICE's Broadcast Statements of Policy

In May 2018, ICE conducted "large-scale immigration sweeps" in Chicago, Illinois. *See Nava v. DHS*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020). By ICE's own account, 106 of the 156 arrests made during this operation, known as "Operation Keep Safe," were "at-large collateral arrests," meaning people who were not ICE targets and for whom ICE lacked a warrant. *Id.*

Five of these individuals, all of whom had lived in Chicago for between 4 and 30 years, filed a putative class action under the Administrative Procedure Act (APA), 5 U.S.C. §§ 101-913, alleging that ICE violated § 1357(a)(2) by arresting them "without...individualized determination[s]" of flight risk, and that their arrests reflected ICE's "widespread policy and practice of violating the INA in this manner." *Nava*, 435 F.Supp.3d at 885-86.

After the district court denied defendants' motion to dismiss, the parties settled. *See Castañon Nava v. DHS*, No. 18-cv-3757, 2025 WL 2842146, at *1 (N.D. Ill. Oct. 7, 2025). Under the terms of the settlement, ICE issued a nationwide "Broadcast Statement of Policy" ("Broadcast I"), setting out "how ICE officers are to conduct warrantless arrests in a manner consistent with 8 U.S.C. § 1357(a)(2)."

Co., 941 F.3d 331, 336 (7th Cir. 2019) (calling "having" a present participle—a "nonfinite verb form ending in -ing and used in verb phrases to signal the progressive aspect").

But this too merely begs the question what "seeking admission" means, and once more tends to destabilize rather than enforce a word that Congress plainly defined within the statutory scheme—this time, the word "admission." The INA defines "admission" as "the *lawful entry* of the alien *into* the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphases added). "Entry" has long meant the right or act of entering, stressed by the statute's use of "into" the United States, *see Entry*, Oxford English Dictionary sense I.3.a (last visited Nov. 25, 2025) ("Opportunity, right, or permission to enter; access . . ."), the same meaning given to it for some time by immigration authorities, *see Matter of Ching and Chen*, 19 I&N Dec. 203, 205 (BIA 1984); *see also Alejandro v. Olson*, 2025 U.S. Dist. LEXIS 201543, 16 (S.D. Ind. Oct. 11, 2025) (Hanlon, J.). One cannot easily call Mr. De Jesús Aguilar seeking—that is, trying to gain—mere entry into the United States when he already has been in this country for 19 years (since 2006). And the government offers the court no reason to believe that an "examining immigration officer" can be found elsewhere than at the border, airport, or other port of entry into the country. 8 U.S.C. § 1225(b)(2); *see also Jennings*, 583 U.S. at 287-89 (distinguishing § 1225 as applying at the Nation's borders and ports of entry and § 1226 as applying to the detention of aliens "already in the country"). If at all, Mr. De Jesús Aguilar would need to be classified by the government under § 1226(a), not § 1225(b)(2), save for one final point to make.

Others have advanced additional arguments for the same interpretation, and indeed a vast swath of federal courts (even if not all) have considered and decided these arguments

to reach a consistent result. The court acknowledges the government's point that the IIRIRA seems to have been intended to undo the incongruous result of giving aliens who lawfully appeared at a port of entry for inspection but were deemed inadmissible fewer rights to a bond hearing when those who surreptitiously entered the country without inspection were entitled to request release on bond. An extratextual argument about intent isn't a worry today, nor when Mr. De Jesús Aguilar remains subject to ongoing removal proceedings. And whether Congress has other fixes to the immigration statutory scheme to accomplish is for the representatives of the People to decide, not the court. The court begins and ends today with the statute's plain meaning, for from there it need not take another step.

Whether a 35-year-old man, having lived in this country since 2006, now with his wife and son (both United States citizens), with two convictions to his name (given all their circumstances), recognizing that he has twice been granted bond before in 2013 and 2024, should be considered worthy of release on bond again is a matter for an immigration judge to decide under 8 U.S.C. § 1226(a). *See also* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). The court won't inject itself beyond where the law allows.

At the same time, both sides have left the punchline a bit murky. For the petitioner, he argues in part that he should be classified under § 1226(a) and should receive a bond hearing, but his arrest occurred without a warrant such that he doesn't fit squarely within this statute. For the government, it only argues § 1225(b)(2) as a basis for Mr. De Jesús Aguilar's detention, with no backup plan, whether that might include § 1226(a) (arrests with a warrant) or even 8 U.S.C. § 1357(a)(2) (arrests without a warrant). It even alludes to an

argued need for Mr. De Jesús Aguilar to exhaust a "remedy" administratively but without explaining where that is or how that might be done. Its position falls short today.

All this begs the question whether the court should order immediate release or a hearing. The court is uninclined to order a hearing consistent with the procedures under § 1226(a) and give the government a pass for not securing a warrant before Mr. De Jesús Aguilar's arrest, particularly when the government has not asserted this a basis for his continued detention. *See United States v. Sineneng-Smith*, 590 U.S. 371, 375-80 (2020) (party presentation rule). The government seems to concede it acted without a warrant. Perhaps the government could go secure a warrant and rearrest him at or after his release, but to be clear the government must then proceed under § 1226(a).

Likewise, the court is uninclined to order a hearing consistent with the procedures under § 1357 when the government has not proceeded within 48 hours or argued it remains within a reasonable time, much less argued this as basis for his continued detention today or extraordinary circumstances or some likelihood of his escape (perhaps a tough position when he has been in the country for 19 years and twice bonded in immigration proceedings). *See* 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.3(d); *Arizona v. United States*, 567 U.S. 387, 408 (2012). The simple matter is this: the government has not established a lawful basis for detention—or, otherwise put, Mr. De Jesús Aguilar has established his detention is today unlawful—and the government must live by the rules that Congress has instituted. The government's failure means that Mr. De Jesús Aguilar should not be detained any longer, all the while removal proceedings continue.

Accordingly, the court GRANTS IN PART the petition for a writ of habeas corpus; ORDERS the respondents to release Javier de Jesús Aguilar immediately from custody under the same conditions that existed before his detention and to certify compliance with this order by a filing a notice with the court by November 26, 2025, and DIRECTS the clerk to email forthwith today a copy of this order to the Warden of the Miami Correctional Facility at the Indiana Department of Correction to secure his release.

SO ORDERED.

November 25, 2025

s/ Damon R. Leichty
Judge, United States District Court