IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

MICAELA DE CORRAL Petitioner, vs. JASON WOOSELEY, Grayson County Jailer KRISTI NOEM, Secretary of the United States Department of Homeland Security, And SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, PAMELA BONDI, U.S. Attorney General Respondents.	)	Case No. 4:25-CV-00145-BJB-HBB Honorable Benjamin Beaton U.S. District Judge

REPLY MEMORANDUM IN SUPPORT OF HABEAS CORPUS AND IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

I. INTRODUCTION

Mrs. Micaela De Corral, who entered the United States without inspection in 1994 and has resided here for three decades, challenges her mandatory detention during the pendency of removal proceedings as unlawful. This challenge arises out of a new policy which significantly alters the plain and long-standing interpretation of Respondents' detention authority during the pendency of removal proceedings under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a). More specifically, the Department of Homeland Security ("DHS") through Immigration and Customs Enforcement ("ICE") has taken the position that noncitizens such as Mrs. De Corral who are present in the United States without inspection and generally eligible to seek release on bond under Section 1226(a) are now covered by Section 1225(b)(2)

(A) and, thus, subject to mandatory detention. DHS-ICE adopted this new policy by issuing an internal memorandum on July 8, 2025.[1] The U.S. Attorney General adopted this new police through the Board of Immigration Appeals' publication of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which erroneously holds that immigration judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission. Immigration judges are bound by *Matter of Yajure Hurtado* and, thus, are now precluded from considering Mrs. De Corral for bond under 8 U.S.C. § 1226(a). The consequences flowing from this unlawful policy are grave; mandatory detention for thousands of noncitizens like Mrs. De Corral who have resided in the United States for decades and have deep family ties in this country. As noted in Mrs. De Corral's *Habeas Corpus* Petition, Dkt. 1, the overwhelming majority district courts which have considered this new mandatory detention framework under *Matter of Yajure Hurtado*, have rejected it as unpersuasive because it ignores: (1) the plain language of Section 1225; (2) the interaction between Sections 1225 and 1226 (3) recently enacted statutory provisions; and (4) the long-standing application of the statute.[2]

In an attempt to defend their unlawful policy, Respondents first argue that this court should constrict its jurisdiction under the habeas corpus statute, 28 U.S.C. §2241, by mischaracterizing Mrs. De Corral's challenge as one relating to a final order of removal. Second, Respondents argue that Mrs. De Corral is properly detained under Section 1225(b)(2)(A) by

[1] The DHS-ICE Policy Memorandum can be found at https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited Oct. 16, 2025).

[2] A spreadsheet detailing the over 280 district court cases which support Petitioner's decision can be found at https://ailassoc.sharepoint.com/:x:/s/legalteam/ETbJeNF7whFKjedlZi4f-L0BLqBvPhDAf5Fan6xh3q9ltA?rtime=2XHmhFkT3kg (last visited Nov. 16, 2025).

mischaracterizing her as a recently "arriving" noncitizen "seeking admissions," which is patently inaccurate and contradicted by Respondents' own charging document. Lastly, Respondents argue that Mrs. De Corral does not have due process rights despite having been present and within the jurisdiction of the United States for over three decades. However, Respondents' arguments are meritless as further discussed below.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner entered the United States without inspection in 1994 and has resided here ever since. Petitioner has a daughter, a brother, and eighteen (18) nieces and nephews who are U.S. citizens. She has no criminal record.

DHS-ICE detained Petitioner pursuant to an Administrative Warrant. While Petitioner's Warrant and her Notice to Appear ("NTA") were seemingly prepared post arrest, the Warrant cites to the Respondents' detention authority under Section 236(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226(a). *See* Dkt. 1-1. Petitioner's NTA was issued on November 2, 2025, and classifies her as being present in the United States without having been admitted or paroled. *See* Dkt. 1-2.

Mrs. De Corral's immigration proceedings are currently pending before the Cleveland Immigration Court, which has administrative control over the female Annex of Grayson County Jail. She is scheduled for a second appearance before the Immigration Court on December 9, 2025. While Mrs. De Corral is unlawfully subjected to mandatory detention, she is additionally prejudiced with having to defend her removal proceedings in an expedited manner. Thus, she prays that to the degree of possibilities, this Court issue a decision in this case by December 8, 2025, before her next immigration hearing.

On November 20, 2025, the U.S. District Court for the Central District of California presiding over the *Maldonado Bautista* class action partially granted Petitioners' Motion for Summary Judgement thereby rejecting Respondents' unlawful mandatory detention policy and *Matter of Yajure Hurtado*. *See Maldonado Bautista* MSJ Order, attached hereto as Exhibit "A." In so doing, the *Maldonado Bautista* Court granted declaratory judgement finding that Petitioners were entitled to be considered for release under Section 1226(a). Yesterday, on November 25, 2025, the *Maldonado Bautista* Court certified the following nationwide class: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *Maldonado Bautista* Class Cert. Order, attached hereto as Exhibit "B." Mrs. De Corral is a member of this class because: (1) she entered without inspection: (2) she was not apprehended upon arrival but over 30 years later; and (3) she is not otherwise subject to mandatory detention under the aforementioned provisions. "When considering this determination with the MSJ Order, the Court extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Id.* at *14. The recent developments in the *Maldonado Bautista* class action further support the issuance of a Writ of Habeas Corpus on behalf of Mrs. De Corral forthwith.[3]

III. ARGUMENT

A. This Court Has Jurisdiction Over Mrs. De Corral's Habeas Corpus Petition.

[3] At this point, it is unclear whether that ruling will be challenged by the Government. And, thus, the only way to ensure that Ms. De Corral is considered for release under Section 1226(a) is by granting her Petition for Writ of Habeas Corpus forthwith.

This court has jurisdiction to consider the issuance of a writ of habeas corpus in this case pursuant to 28 U.S.C. §2241. Section 2241 states that "district courts" may grant writs of habeas corpus within their respective jurisdictions to a person who "is in custody under or by color of the authority of the United States" or "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §2241(a),(c)(1)-(3). The only expressed exception relates to a noncitizen who is determined to be an "enemy combatant", which is not applicable here.[4] Moreover, Article 1 of the Constitution mandates that the "[p]rivilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it", which underscores the importance of federal courts continued duty to exercise jurisdiction over habeas corpus petitions. U.S. Const. art. I, § 9, cl. 2. Accordingly, Congress has granted this court with jurisdiction to consider Mrs. De Corral's habeas petition because she is currently detained under the color of authority of the United States and in violation of our laws and Constitution. Under constitutional mandate, that jurisdiction may not be suspended under current circumstances and, thus, this Court has an obligation to exercise the jurisdiction it has been granted by law.

Respondents erroneously argue that this Court should constrict its *habeas corpus* jurisdiction by looking at 8 U.S.C. §1252(g), which grants circuit courts exclusive jurisdiction to review final orders of removal. Section 1252(g) states, in relevant part:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and

[4] Under the cannon of statutory interpretation *expressio unius est exclusio alterius* which means "[t]he expression of one thing implies the exclusion of others", noncitizen enemy combatants provide the only jurisdictional exception to habeas corpus relief. A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 107 (2012) (Scalia & Garner).

> sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the *decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal* orders against any alien under this chapter.

8 U.S.C. §1252(g)(emphasis added).[5] This provision's scope is limited to the three named actions —commencement of proceedings, adjudication of cases, and execution of removal orders. *See also Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999); *Sharif ex rel. Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002). To state the obvious, Mrs. De Corral is not challenging the fact that removal proceedings were commenced against her, how her removal case will be adjudicated, or the execution of a final order of removal. Indeed, Mrs. De Corral is not subject to a final order of removal. Through this petition, Mrs. De Corral is only challenging her unlawful detention by DHS-ICE which falls squarely within the scope of Section 2241. Moreover, bond and removal proceedings are separate and apart from one another before the immigration courts. 8 C.F.R. § 1003.19(d)(stating that bond proceedings are "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding."); *see also Al-Siddiqui v. Achim*, 531 F.3d 490, 494-5 (7th Cir 2008)(finding that "the regulations separate bond and removal proceedings").

Respondents also point to Section 1252(b)(9) which states that challenges to "proceeding[s] brought to remove an alien from the United States. . . shall be available only in judicial review of a final order." 8. U.S.C. 1252(b)(9). The Supreme Court has held, however, that "§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which

[5] The powers of the Attorney General are delegated to the immigration courts and the Board of Immigration Appeals.

removability will be determined." *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020); *see also Gonzalez v. U.S. Immig. and Cust. Enf't*, 975 F.3d 788, 810 (9th Cir. 2020) ("Section 1252(b)(9) is also not a bar to jurisdiction ... because claims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process."). Moreover, it is well settled that provisions barring judicial review of discretionary determinations do not preclude a challenge of the "statutory framework that permits the alien's detention without bail" or "the Government's detention authority under the statutory framework as a whole." *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (citing to *Demore v. Kim*, 537 U.S. 510, 516 (2003)).

Because Mrs. De Corral challenges the extent to which Respondents' new mandatory detention policy is authorized under the INA, none of the aforementioned provisions bar this Court's jurisdiction under the *habeas corpus* statute.

B. Mrs. De Corral is Entitled to a Writ of Habeas Corpus Because Respondents Are Unlawfully Detaining Her and Subjecting Her to Mandatory Detention Under § 1225(b)(2)(A) in Violation of the INA.

i. Plain Meaning of 8 U.S.C. §§1225 and 1226

Mrs. De Corral challenges the misapplication of 8 U.S.C. § 1225(b)(2)(A)(covering arriving noncitizens seeking admissions) to her as opposed to § 1226(a)(covering the apprehension, detention and release of all other noncitizens), which results in her unlawful mandatory detention. Respondents erroneously assert that Mrs. De Corral is "lawfully detained by operation of 8 U.S.C. § 1225(b)(2)(A)." Govt's Res at 11. However, as explained in detail below, Mrs. De Corral can only be detained pursuant to Respondents' authority under § 1226(a) because she is not an "arriving" noncitizen "seeking admissions" at "inspection" before an

"examining immigration officer." Respondents have conceded as much by detaining Mrs. De Corral with a warrant "authorized pursuant to section[] 236 [] of the Immigration and Nationality Act," 8 U.S.C. 1226. *See* Dkt. 1-1

Statutory interpretation must begin with the text of the statute. *See Consumer Fin. Prot. Bureau v. Townstone Fin., Inc.*, 107 F.4th 768, 776 (7th Cir. 2024)("We begin with the text of the statute."). The relevant statutory provision must be considered in context of the statutory framework as a whole. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997)("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

Looking at the statutory framework of Section 1225, its title indicates that it covers "inspection by immigration officers," and "expedited removal of inadmissible *arriving* aliens." 8 U.S.C. § 1225 (emphasis added). Paragraph (b)(1) of that Section sets forth the procedure for inspection of noncitizens who may be subject to expedited removal including "an alien ... who is arriving in the United States," and other "certain other aliens" designated by the Attorney General "who [have] not been admitted or paroled into the United States" and "who [have] not affirmatively shown ... that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the determination of inadmissibility." 8 U.S.C. § 1225(b)(1); *See Jennings*, 583 U.S. at 297 (finding that the INA provides for mandatory detention of certain categories of noncitizens "seeking entry into the United States" under 8 U.S.C. § 1225(b)). In *Jennings*, the Supreme Court explained that this mandatory scheme applies "at the Nation's borders and ports of entry, where the Government must

determine whether a[] [noncitizen] seeking to enter the country is inadmissible." *Jennings*, 583 U.S. at 287 (emphasis added). Noncitizens subject to mandatory detention under Section 1225 may not be released except "for urgent humanitarian reasons or significant public benefit" under the parole authority provided by 8 U.S.C. § 1182(d)(5)(A). *See id.* at 300. Parole "into the United States," under 8 U.S.C. §1182(d)(5)(A), permits an "arriving" non-citizen to physically enter the country, subject to a reservation of rights by DHS that it may continue to treat the non citizen "as if stopped at the border." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215, 73 S.Ct. 625, 97 L.Ed. 956 (1953)).

Section 1225(b)(2)(A), states:

> (2) *Inspection* of other aliens
> (A) In general
> Subject to subparagraphs (B) and (C), in the case of an alien who is an *applicant for admission*, if the *examining immigration officer* determines that an *alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C.A. § 1225(b)(2)(A)(emphasis added). "By its plain text, § 1225(b)(2) thus applies where several conditions are met: (1) an 'examining immigration officer' in the context of 'inspection' (2) determines that an individual is an 'applicant for admission' who is (3) 'seeking admission.'" *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *12 (D. Nev. Sept. 17, 2025). It is important to understand the legal meaning of the terminology used in Section 1225(b)(2)(A). Section 1225(a)(1) defines "aliens treated as applicants for admission" for purposes of "inspection" under this Section as follows:

> An alien present in the United States who has not been admitted or

> who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C.A. § 1225(a)(1)(West). In turn, "inspection" is defined as noncitizens "who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers."8 U.S.C.A. § 1225(a)(3)(West). The term "admission" is defined 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). "Entry" is understood to mean "a crossing into the territorial limits of the United States." *Matter of Ching and* Chen, 19 I&N Dec. 203, 205 (BIA 1984) (citing Matter *of Pierre,* 14 I & N Dec. 467, 468 (BIA 1973)). However, "an immigrant submits an 'application for admission' at a distinct point in time" and "stretching the phrase" to continue "potentially for years or decades" "would push the statutory text beyond its breaking point." *U.S. v. Gambino-Ruiz*, 91 F.4th 981, 988-89 (9th Cir. 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922-26 (9th Cir. 2020) (en banc)). Accordingly, Section 1225(b)(2)(A) plainly proscribes mandatory detention solely for recently arrived noncitizens who are *actively* "seeking admission"in the context of an "inspection" before an "examining immigration officer". *See e.g.*, *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 at *7 (S.D.N.Y. Aug. 13, 2025). This is consistent with Supreme Court precedent interpreting Section 1225(b) and finding it "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297. Thus, Section 1225 is split into two categories. Section 1225(b)(1) provides for

mandatory detention of noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). Meanwhile, Section 1225(b)(2) applies only to recently arrived noncitizens seeking entry into the United States at a border or port of entry.

Respondents' argument that Mrs. De Corral is properly detained under Section 1225 because she is currently "seeking admissions" is meritless. *See* Govt's Res. at 11-12. In essence, Respondents are asking this Court to impermissibly ignore several statutory requirements such as that Mrs. De Corral be "seeking admissions" and that the application be in the context of an "inspection" before an "examining immigration officer" as well as the tense of the statutory terminology. As previously explained, Mrs. De Corral is not actively seeking admissions because he has already been here for over three decades. Contrary to what the Government argues, the phrases "applicant for admissions" and "seeking admissions" are separate and distinct phrases within Section 1225(b)(2)(A), both of which must be given meaning. There is simply no legal support for the proposition that the two phrases "are one and the same". Govt's Res. at 12.

The Government's argument heavily relies on the framework for "arriving" noncitizens. It is undisputed that Mrs. De Corral is not an "arriving" noncitizen but rather one "who is present" in the United States. *See* Dkt 1-2 at 1. This distinction is important because Section 1225 does apply to "arriving" noncitizens. An "arriving alien means an applicant for admission coming or attempting to come into the United States." 8 C.F.R. § 1.2; *see also* 8 C.F.R. §1001.1(q). In other words, an "arriving alien" is an "applicant" who is also doing something: "coming or attempting to come into the United States." *Id.* This mirrors the text of section 1225(b)(2)(A),

which applies where an individual is an "applicant" who is also doing something: "seeking admission." "The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit." *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020). Here, Mrs. De Corral, who has undisputedly been present in the United States for over three decades, is not within those limits. As the Supreme Court has found, the INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301.

This plain reading of Section 1225(b)(2)(A) is consistent the Supreme Court's decision in *Jennings* as well as over 280 district court decisions across the county including multiple in this district. This district has held that "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already. . . This is supported by the text of the statute itself, which is focused on inspections for noncitizens when they arrive via 'crewman' or as 'stowaways' . . This limited, and more specific methods of entry suggest that Section of 1225 is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States." *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025)(internal citations omitted); *see also Patel v. Tindall*, 2025 WL 2823607, at *2-4 (W.D. Ky. Oct. 3, 2025); *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763, at *3 (W.D. Ky. Oct. 27, 2025); *Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772, at *6 (W.D. Ky. Oct. 27, 2025). Similarly, multiple courts in this district have rejected the Government's attempt to eviscerate the phrase "seeking admissions" reasoning as follows:

The phrase 'seeking admission,' though not defined in the statute,

> 'implies action—something that is currently occurring, and in this instance, would most logically occur at the border upon inspection.' And not all applicants for admission are automatically seeking admission. For example, a petitioner like Alonso may be an applicant for admission because he did not lawfully enter the country following inspection and authorization by an immigration officer. But *it does not follow that he is 'seeking' admission given that he has been in the United States for more than a decade.*

Alonso v. Tindall, No. 3:25-CV-652-DJH, 2025 WL 3083920, at *4 (W.D. Ky. Nov. 4, 2025) (emphasis added)(internal citations omitted). Respondents do not offer anything different to warrant a departure from there in-district well reasoned decisions. While a handful of courts have ruled differently, hundreds of decisions support the analysis in *Barrera*, *Orellana*, *Patel Martinez-Elvir*, and *Alonso*.

In contrast to Section 1225(b)(2)(A), Section 1226(a) covers generally the apprehension, detention, and release of noncitizens present in the United States. Section 1226(a) states as follows:

> (a) Arrest, detention, and release
>
> On a warrant issued by the Attorney General[6], an alien *may be arrested and detained* pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--
> (1) may continue to detain the arrested alien; and
> (2) *may release* the alien on--
> (A) *bond* of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
> (B) conditional parole. . .

8 U.S.C.A. § 1226(a) (West) (emphasis added). Under this framework, DHS-ICE may arrest and detain a noncitizen present in the United States. However, if DHS-ICE determines that a

[6] This particular provision now refers to DHS.

noncitizen should remain detained, that determination may be reviewed by an immigration judge who, in turn, may release a noncitizen on bond or conditional parole. At a bond hearing, the immigration judge considers whether the noncitizen presents a danger to the community or a flight risk. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 50 (BIA 2006).

Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated … criminal offenses [or] terrorist activities." *Jennings*, 583 U.S. at 289 (citing §1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens who are present in the United States without inspection or admission. § 1226(c)(1)(A), (D), (E). Reference to such inadmissible noncitizens makes clear that, by default, people who are applicants for admission but encountered in the interior are afforded a bond hearing under subsection 1226(a). Courts have recently confirmed this understanding of Section 1226. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); *see also, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section 1226(a)'s discretionary detention framework"). Section 1226(c) carves out a very specific exception to Section 1226(a) mandating detention for unadmitted noncitizens only when they have committed certain crimes. Thus, Section 1226(c) supports the general applicability of 1226(a) for inadmissible or unadmitted noncitizens who are encountered in the

interior of the country.

ii. The Laken Riley Amendments Should Not Be Rendered Superfluous.

The recently enacted Laken Riley Act, 8 U.S.C. § 1226(c)(1)(E), requires mandatory detention for noncitizens who were charged as being (1) inadmissible under § 1182(a)(6)(A)(i) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the U.S.) and who (2) have been arrested, charged with, or convicted of certain crimes not relevant here. 8 U.S.C. § 1226(c)(1)(E). The Laken Riley amendments otherwise continue to authorize discretionary release determinations of noncitizens charged with being inadmissible who do not fall into those enumerated exceptions. Respondents' new policy would render the Laken Riley amendments meaningless because there would be no need to make an exception for mandatory detention of noncitizens present without inspection who have been arrested, charged with, or convicted of certain crimes if all noncitizens who are present without inspection were subject to mandatory detention under Section 1225(b)(2)(A). Rendering related statutory provisions meaningless is an impermissible way to interpret the INA. "[O]ne part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together." Thomas M. Cooley, *A Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union 58* (1868).

Respondents' example of the noncitizen "in *Jennings,* Alejandro Rodriguez" is inapposite to the superfluidity of Section 1226(c)(1)(E) resulting from their misinterpretation of the INA. *See* Govt. Res. at 16. Rodriguez was a previously admitted noncitizen who was removable or deportable pursuant to Section 1226(c)(1)(B) "by reasons of having committed any offense

covered in [8 USC § 1227(a)(2)(A)(iii), A(iii), (B), (C), or (D)]," specifically a drug offense. 8 U.S.C. § 1226(c)(1). If Rodriguez had been not inspected or admitted, he would have been covered by Section 1226(c)(1)(A) for being "inadmissible by reasons of having committed any offense covered in [8 USC § 1182(a)(2)]," which also includes a drug offense. This underscores that Section 1226(c) as a whole contemplates application to both inadmissible (unadmitted) or deportable (previously admitted) noncitizens.

iii. History and Longstanding Practice.

Legislative history supports congressional intent to treat noncitizen "present" in the United States differently from recently "arriving" ones. Prior to the enactment of the IIRIRA, noncitizens arrested in the interior and charged with entering the U.S. without inspection were entitled to a custody hearing before an immigration judge or other hearing officer, while those stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994) (authorizing detention of noncitizens "arriving at ports of the United States"). Congress clarified that the IIRIRA amendment of § 1226(a) simply "restate[d]" the detention authority previously found at § 1252(a) "to arrest, detain, and release on bond a[ ] [noncitizen] who is not lawfully in the United States." *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.). Congress has consistently maintained the existing mandatory detention scheme for noncitizens arriving in the U.S. without a clear right to admission and expanded the scope of that detention scheme to include certain recently arrived noncitizens. Compare 8 U.S.C. § 1225(b) (1994 ed.), with 8 U.S.C § 1225(b)(1)-(2). These amendments were designed to address the perceived problem of noncitizens arriving in the U.S. *See* H.R. Rep. No. 104-469, p. 1, at 157-58, 228-29.

In distinguishing between noncitizens arriving versus noncitizens residing in the U.S., Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving. *Id.* at pt. 1, at 163-66 (recognizing the "constitutional liberty interest[s]" of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing *Knauff v. Shaughnessy*, 338 U.S 537 (1950)); *see also Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001)(holding that the Due Process Clause under the Fifth Amendment to the United States Constitution applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.").

Since its enactment, Respondents interpreted 8 U.S.C. §1226(a) as applying to noncitizens present in the United States without inspection or admission such as Mrs. De Corral. This resulted in the U.S. Attorney General through the Executive Office for Immigration Review drafting of new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section 1225 and that they were instead detained under Section 1226(a) and eligible for bond and bond redetermination. *See* 62 Fed. Reg.10312, 10323 (Mar. 6, 1997). In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals recognized that "for years Immigration Judges have conducted [§ 1226(a)] bond hearings for [noncitizens] who entered the United States without inspection." *Id.* at 216 n.6. "[T]he longstanding practice of the Government'—like any other interpretive aid—'can inform [a court's] determination of what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024) (quoting *NLRB v. Noel Canning*, 573 U.S.

513, 525 (2014)). Respondents' longstanding practice of treating noncitizens such as Mrs. De Corral as detained under Section 1226(a) rather than 1225(b)(2)(A) is probative of the statute's true application.

For these reasons, Mrs. De Corral asks this Court to find that she is not subject mandatory detention under Section 1225(b)(2)(A) but, rather, eligible for release pursuant to Section 1226(a).

iv. The District Court Decision Cited by the Government is Flawed.

The district court's decision in *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025), was not properly reasoned. In *Mejia Olalde*, the court determined that petitioner Francisco Mejia Olalde was detained under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention. *Id.* at *2. The *Mejia Olalde* Court reasoned that Mejia Olalde was an "applicant for admission" because he is an "alien," who is "present in the United States," who "has not been admitted … because he did not lawfully enter the country after inspection and authorization by an immigration officer." *Id.* at *3 (cleaned up).

Mejia Olalde goes against "the consensus of the judges" across the country. *See Guartazaca Sumba v. Crowley,* 2025 WL 3126512, at *2 (N.D. Ill. Nov. 9, 2025); *see also Soto-Garcia v. Olson*, 2025 WL 3204594, at *1 n. 2 (N.D. Ill. Nov. 17, 2025) (noting disagreement with Mejia Olalde); *Demirel, v. Federal Detention Center Philadelphia*, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) ("[T]here are 288 district court decisions addressing this issue. In all but six, the Government's interpretation of the INA—the same interpretation it urges here—was rejected."). The *Mejia Olalde* Court brushed aside this contrary authority, concluding that this consensus was unpersuasive based on federal district courts' widespread use of universal

injunctions prior to *Trump v. CASA*, Inc., 606 U.S. 831 (2025), but it failed to grapple with the reasoning in any of these decisions. *See Mejia Olalde*, 2025 WL 3131942, at *1. But the remedies the Judiciary Act of 1789 authorizes has no bearing on the statutory interpretation question currently before the Court. Instead, what matters is the statutory text, statutory framework, Congressional intent, and decades of agency practice—all of which is reflected in the nearly three hundred decisions from across the nation rejecting the Government's proposed interpretation.

Mejia Olalde's contrary reading of the statute makes little sense. Most importantly, it conflates the categories of "applicant for admission" and "applicant seeking admission." See 8 U.S.C. § 1225(b)(2). As courts have repeatedly explained, the two categories are different. *See, e.g., Ochoa Ochoa v. Noem*, 2025 WL 2938779, at *6 (N.D. Ill. Oct. 16, 2025). The statutory definition of "application for admission," 8 U.S.C. § 1225(a), "doesn't require an application of any sort. All that's needed is presence without admission—in other words, it applies to the great number of undocumented immigrants who currently live here. By contrast … 'seeking admission' requires an alien to continue to want to go into the country." *J.G.O. v. Francis*, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025). So, labeling someone who is already inside the United States as someone who is "seeking admission" runs into a clear logical problem: "you can't go into a place where you already are." *Id.* Once the categories of "applicant for admission" and "applicant seeking admission" are given their appropriate meaning, the legs come out from under *Mejia Olalde's* reading of the statute. In *Mejia Olalde*, the court observed "[I]t makes no sense to describe an active applicant for admission as somebody who is not 'seeking' admission." 2025 WL 3131942, at *3. But as the prior paragraph pointed out, the

opposite is true—what makes no sense is referring to someone who is already inside the United States as someone who seeks entry. Indeed, the *Mejia Olalde* Court added the adjective of "active" in an attempt to imply action associated with the phrase "applicant for admission." *Id.* Similarly, the *Mejia Olalde*'s court's parsing of the phrase "applicants for admission or otherwise seeking admission," *see* 8 U.S.C. § 1225(a)(3), elsewhere in the statute run contrary to the statute's plain meaning. *See Mejia Olalde*, 2025 WL 3131942, at *3 (reasoning that "all 'applicants for admission' are 'seeking admission' because [the phrase 'or otherwise seeking admission'] recognizes that there are other ways to seek admission besides being an 'applicant for admission.'" (cleaned up)). As other courts have explained, reading the categories as equivalent misunderstands "how lists work [and] how the word 'or' works." *J.G.O.*, 2025 WL 3040142, at *3. The "ordinary use [of 'or'] is almost always disjunctive, that is, the words it connects are to be given separate meanings." *Loughrin v. United States*, 573 U.S. 351, 357 (2014). "Similarly, 'otherwise' means 'something or anything else.'" *J.G.O.*, 2025 WL 3040142, at *3 (quoting Otherwise, Merriam Webster's Collegiate Dictionary (10th ed. 2001)). "Taken together, 'or otherwise' is 'used to refer to something that is different from something already mentioned.'" *Id.* (quoting Or otherwise, Merriam Webster Online, https://www.merriam-webster.com/dictionary/or%20otherwise (last visited October 27, 2025)). Reading the words of the statute with their ordinary meaning—as this Court must—Congress's inclusion of the phrase "or otherwise seeking admission" implies that it is a distinct category from "applicants for admission." Consequently, the Government's reliance in the *Mejia Olalde* decision is misplaced.

C. Subjecting Petitioner to Mandatory Detention Under Section 1225(b)(2)(A) Violates the Due Process Clause of the 5th Amendment.

Noncitizens are entitled to due process of law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993). To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following 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." 424 U.S. at 335.

As to the first *Mathews* factor, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner is currently being detained in conditions that are indistinguishable from criminal incarceration. This detention prevents her from seeing her family and deprives her of any privacy and freedom of movement.

As to the second *Mathews* factor, the Government's current procedure, unlawfully subjecting Petitioner to mandatory detention under Section 1225(b)(2)(A), creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement. The alternative procedure of a bond under Section 1226(a) can ameliorate this risk.

As to the third *Mathews* factor, the Government's interest in maintaining the current procedure is minimal here. The new interpretation of Section 1225(b)(2)(A) – that people like

Petitioner who have resided in the United States for decades are now subject to mandatory detention – disregards the statutory text, statutory framework, Congressional intent, almost three decades of prior practice, and the decisions of hundreds of federal courts across the nation. Any Government interest in public safety or ensuring that Petitioner attends future immigration proceedings would be satisfied through proper application of Section 1226(a), which requires a bond redetermination hearing where an immigration judge would consider Petitioner's individualized facts and circumstances to determine whether she is a danger to the community or a flight risk.

Lastly, the Government's reliance on *Thuraissigiam* is misplaced because that case dealt with an "arriving" noncitizen who did not have the same due process rights as Mrs. De Corral. *Thuraissigiam*, 591 U.S. at 107(explaining that "[w]hile aliens who have established connections in this country have due process rights in deportation proceedings, [but] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause. [that Petitioner]. . . was apprehended just 25 yards from the border).

D. This Court May and Should Order Petitioner's Immediate Release.

Several courts in this district have ordered the immediate release of unlawfully detained noncitizens with a subsequent bond hearing before a neutral Immigration Judge. *Orellana*, at *6. Courts in other districts have come to the same conclusion. For example, in *Alejandro v. Olson et al*, 25 CV 020270-JPH-MKK, Judge Hanlon ordered Petitioner's immediate release given that Respondents did not argue Petitioner was a danger to the community or a flight risk. *See* Judge Hanlon's 25 CV 02027 Order, attached hereto as Exhibit "C." Other courts have ordered an individualized bond hearing in which the Government bears the burden of proof. In

so doing, the courts have underscored that "[a]lthough noncitizens typically bear the burden of proof at bond hearings before EOIR [Immigration Judges], *see* 8 C.F.R. § 236.1(c)(8), shifting the burden reflects the concern that a noncitizen 'should not have to share the risk of error equally' in the context of a due process violation and his 'loss of liberty.'"*Ochoa Ochoa v. Noem et al*, 25 C 10865 at *17-18. (citing to *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020).

IV. CONCLUSION

The plain meaning of the statute, the statutory framework, recent amendments, legislative history and longstanding agency practice demonstrate that Respondents' new mandatory detention policy violates the INA and the Due Process Clause of the 5th Amendment to the Constitution. For these reasons, Mrs. De Corral asks this Court to grant her Petition for Writ of Habeas Corpus and order her release or, alternatively, an individualized bond hearing.

Dated: November 26, 2025
Aurora, Illinois

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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Western District of Kentucky by using the CM/ECF system. All parties to this case are registered CM/ECF users and will be served through the CM/ECF system.

Dated: November 26, 2025
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Respectfully submitted,

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