UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Geovani FLORES OBANDO, A [redacted] Petitioner, v. PAMELA BONDI, Attorney General of the United States, in her official capacity; et al. Respondents.	Case No. 25-06474

PETITIONER'S REPLY BRIEF

Petitioner Geovani Francisco Flores Obando, through undersigned counsel, replies to Respondents' response in opposition to habeas relief. This case arises out of Respondents' dramatic reinterpretation of their authority to detain certain noncitizens in the interior without access to a bond hearing. This novel interpretation of Respondents' arrest and detention authority cannot be reconciled with the plain meaning of the statutes in question and as such has been rejected by nearly all of the courts that have reviewed these and related issues, including this Court. *See Patel v. McShane*, No. 25-cv-5975, 2025 WL 3241212 (E.D. Pa. Nov. 20, 2025).

At least 282 decisions from district courts have found that the application of Section 1225(b)(2)(A) to noncitizens residing in the United States is unlawful. Additionally, this Court has soundly rejected the Respondents position. *See Patel v. McShane*, No. 25-cv-05975, ECF Nos. 13 & 14 (Nov. 20, 2025); *Ndiaye v. Jamison*,

No. 25-cv-6007, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025, *Demirel v. Fed. Det. Ctr. Phila., et al.*, No. 25-5488, 2025 U.S. Dist. LEXIS 226877 (E.D. Pa. Nov. 18, 2025) (attaching an appendix citing 282 decisions rejecting Respondents' interpretation of the INA); *see also Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025); *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025). There is no need to stray from the line of cases.

This Court has jurisdiction to hear this matter and that jurisdiction is not barred by statute. Further, this Court should find that Petitioner has exhausted all available administrative remedies. In the alternative, exhaustion is not required here because such exhaustion would be futile based on the near-certainty that the Board of Immigration Appeals (BIA) will rule, in line with their own recent precedential decisions, in Respondents' favor. Finally, regarding the merits of this matter, Petitioner asserts that he was detained and is being unlawfully held without bond under 8 U.S.C. §1226, and that §1225 does not apply to him based on the fact that he was present in the United States at a routine ICE supervision appointment at the time of his arrest and the plain reading of the statute favors release and access to a bond hearing. For these reasons, the Court should grant relief.

Statement of Facts

A full statement of facts appears in the original petition for relief. See E.C.F. No. 1. Petitioner is a citizen and native of Nicaragua. He entered the United States

without inspection on September 6, 2022, and was apprehended by immigration authorities near the border. He was subsequently released on his own recognizance to pursue relief before immigration authorities. Petitioner left Nicaragua, with his wife and children, due to political persecution after he and his wife participated in pro-democracy protests and were targeted for retaliation by Government forces. Petitioner and his wife timely, and together, filed their asylum application as a family. That application remains pending. Petitioner is a *bona fide* asylum seeker who is awaiting adjudication of his asylum application with his family.

As part of his release on recognizance, Petitioner was required to appear at routine supervision appointments, which he did to a fault. Petitioner did not miss a single appointment and did not fail to comply at any point. Despite Petitioner's cooperation with Respondents and his regular attendance at supervision check-in appointments, Respondents detained Petitioner at a regular check-in at the Philadelphia office of Immigration and Customs Enforcement on November 7, 2025. Petitioner was not informed of the reason of his detention. Petitioner has been denied access to bond proceedings despite not being a flight risk or in any way presenting a danger to the community.

Additionally, Petitioner is diagnosed with an incurable, chronic medical condition that requires consistent life-sustaining medication and clinical follow-up to manage the condition and prevent complications associated with the illness.

Reports evidencing Petitioner's condition was provided in his habeas action. Petitioner informed Respondents of his condition, as well as maintained an updated letter of his diagnosis and treatment for authorities. On November 7, 2025, he demonstrated such a medical letter to immigration authorities. The detention has interfered with Petitioner's regular medical care and medicine regimen, which has increased the risk of complications from his illness. Considering his good character, medical vulnerability, and demonstrated respect for lawful process, the Petitioner's continued detention is excessive, unjustified, and inconsistent with constitutional principles of due process and humane treatment. The equities of this case, as well as humanitarian and public interest considerations, weigh heavily in favor of his immediate release or conditions of an immigration bond.

Argument

Petitioner argues that he is being unlawfully held without the ability to seek release on bond pursuant to 8 U.S.C. §1226. A federal district court is authorized to grant a writ of habeas corpus under 28 U.S.C. § 2241 where the petitioner is "in custody under or by color of the authority of the United States … in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §§ 2241(c)(1), (3). The burden is on the petitioner to show that he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Goins v. Brierley*, 464 F.2d 947, 949 (3d Cir. 1972).

As a threshold matter, Respondents claim that this Court is statutorily barred from hearing this case because the Immigration and Nationality Act ("INA") contains a variety of jurisdiction stripping provisions, codified at 8 U.S.C. § 1252. Respondents argue that three such provisions, 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a)(2)(B)(ii), prevent this Court from reviewing the petitioner's claims. However, none of these provisions are applicable to this case for the reasons stated herein. There is no jurisdictional bar to this petition. *See Patel v. McShane, No. 25-cv-05975, ECF Nos. 13 & 14 (Nov. 20, 2025); Ndiaye v. Jamison, No. 25-cv-6007, 2025 WL 3229307 (E.D. Pa. Nov. 19, 2025, Demirel,* 2025 U.S. Dist. LEXIS 226877, at *5-8; *Cantu-Cortes*, 2025 WL 3171639, at *1; and *Kashranov*, 2025 WL 3188399, at *3-4.

Additionally, Respondents claim that Petitioner has failed to exhaust his administrative remedies, but these arguments are also unavailing as several exceptions to the exhaustion doctrine apply in this case. Importantly, this includes the doctrine of futility, as the Board of Immigration Appeals ("BIA") has recently issued a precedential ruling on similar matters in a manner contrary to Petitioner's claims. The BIA is highly unlikely to reconsider its erroneous legal interpretation on account of this Petitioner's appeal nor can it address the constitutional issues here. As such, the exhaustion requirement should not apply to this case. Further, as a matter of pure statutory interpretation, exhaustion is not applicable. *See Demirel,*

2025 U.S. Dist. LEXIS 226877, at *8-9; *Cantu-Cortes,* 2025 WL 3171639, at *1; and *Kashranov*, 2025 WL 3188399, at *4.

Regarding the merits of his claim, Petitioner argues that he has been present in the United States with legal authorization for more than two years. He has applied for asylum protection and has lived without any criminal contacts or circumstances that would suggest that he and his family are flight risks or pose a danger to the community. He asserts that the government's authority to detain him flows from 8 U.S.C. §1226 not §1225, and as such he is entitled to a hearing on bond or immediate release. As Respondents have denied him the possibility of as bond hearing, his detention is unlawful and is a gross violation of his due process rights. This court should order his immediate release and/or direct the Respondents to hold a bond hearing before a neutral adjudicator.

1. The Court has jurisdiction over this matter, and it is not statutorily barred.

At the outset, Respondents have broadly asserted that this Court should not hear this matter on account of potential interference with the executive branch's authority over immigration. ECF No. 4, p. 3. Notwithstanding Respondent's attempt to marshal the plenary power doctrine[1] by arguing for a presumption of

[1] Petitioner notes that Respondents are Article II components of the executive branch but are attempting to justify their actions by asserting Congress' power to regulate immigration under Article I, Section 8. The extent of the executive's authority is at best an open question and at worst, an impermissible delegation of legislative and judicial authority and a violation of the major questions doctrine. *See generally Youngstown Sheet Tube Co v. Sawyer*, 343 U.S. 579, 585 (1952) (J. Jackson concurring).

Constitutionality, there is *also* a strong history and tradition of a presumption of liberty standing against unreasonable pre-trial detention. *See generally United States v. Salerno*, 481 U.S. 739, 756 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."); and *Coffin v. U.S.*, 156 U.S. 432, 454 (1895) (tracing the presumption in American common law of innocence of the accused from its genesis in Deuteronomy to the laws of Sparta and Athens and the Roman Empire). Though these traditions arose in the criminal law context, there is little reason to discard them in the immigration context. Given these long-held values, indefinite imprisonment without a hearing is immediately suspect, even where the government's immigration powers are concerned. This is especially true where there is no risk of flight or threat to other members of the community, and the government has not established these facts on the record before a neutral adjudicator. In these cases, imprisonment cannot reasonably be said to be a legitimate exercise of executive authority that is rationally related to a legitimate state interest, and as a matter of law, it should be rejected under our Constitution's inherent limits on executive authority. The Respondent's policy argument should not influence the decision of this court.

Next, Respondents raise three statutory provisions to assert that this court is barred from asserting jurisdiction over this matter: 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a). None of these provisions apply in this case.

a. Section 1252(g) does not bar jurisdiction in this case.

Respondents first point to 8 U.S.C. § 1252(g), arguing it strips this Court of jurisdiction to review the decision to detain the petitioner. ECF No. 4, p. 5. The relevant provision states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g).

Despite these assertions, Petitioner does not, at any point in his Petition or these proceedings, challenge the Attorney General's authority to commence or adjudicate proceedings. It is important to note that Petitioner's removal proceedings have commenced, and the Petitioner remains actively in the adjudication process in immigration court. Petitioner has not challenged that. At issue is not a removal proceeding, it is the interpretation of the statutory authority behind Respondent's decision to detain Petitioner without bond.

To the contrary, Respondents' argument cannot be reconciled with the Supreme Court's analysis of this provision. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) ("AADC"). In *AADC*, the Supreme Court held that § 1252(g) did not apply to anything beyond those "three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. 471, 482

(1999) (emphasis added); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret [the language in § 1252(g)] to sweep in any claim that can technically be said to "arise from" the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."). The *AADC* Court stated that it made sense for Congress to target these three stages because at each stage the former INS has discretion to abandon the endeavor, and at the time § 1252(g) was enacted, the former INS routinely had been defending suits challenging its exercise of discretion in deportation cases. *DeSousa v. Reno*, 190 F.3d 175, 182 (3d Cir. 1999) (internal citations omitted).

Interpreting § 1252(g) beyond those three discrete actions, as Respondents ask this Court to do, would treat § 1252(g) as an extremely broad provision that would apply to *every* deportation-related challenge, because every such challenge could be deemed a suit related to the commencement or adjudication of removal proceedings. *Id.* The Supreme Court and the Third Circuit have explicitly rejected such a broad interpretation of § 1252(g), instead finding that it is "a narrow" provision. *Id.*

Petitioner does not, at any point in his Petition or these proceedings, challenge the three specific decisions made by the executive that are covered by § 1252(g): decisions to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." Petitioner's detention pursuant to § 1225(b)(2) may occur during his removal

proceedings, but § 1252(g) does not strip this Court of habeas jurisdiction to review the legality of his detention without access to bond proceedings.

b. Section 1252(b)(9) does not bar jurisdiction in this case.

Respondents also argue that § 1252(b)(9), deprives this Court of jurisdiction because Petitioner's claims arise from Respondents' actions taken to remove him from the United States. ECF No. 4, p. 6. This argument is also unavailing.

Section 1252(b)(9) states:

> "Judicial 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.... [N]o court shall have jurisdiction ... to review such an order or such questions of law or fact."

Respondents contend this section means that *all* detention-related decisions are unreviewable except through a petition for review ("PFR") to a circuit court at the conclusion of the removal proceeding. However, Respondents admit that this provision "may not bar claims challenging the conditions or scope of detention of aliens in removal proceedings," which deeply undercuts their argument that *all* detention-related decisions are unreviewable by this court. ECF No. 4, p. 7.

To overcome this admission, Respondents cite to *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), in support of their claim. However, Respondents' reliance on

J.E.F.M. is misplaced. On the very next page following the page Respondents cited, the *J.E.F.M.* Court goes on to "distinguish[] between claims that 'arise from' removal proceedings under § 1252(b)(9)—which must be channeled through the PFR process—and claims that are collateral to, or independent of, the removal process." *J.E.F.M.*, 837 F.3d at 1032. The *J.E.F.M.* Court goes on to re-affirm the long-standing principal "that § 1252(b)(9) *does not apply to federal habeas corpus provisions* that do not involve final orders of removal." *Id.* (emphasis added).

Indeed, the Supreme Court also held later in *Jennings v. Rodriguez* that § 1252(b)(9) did not bar it from hearing a petition alleging that the plaintiff's detention was overly prolonged in violation of due process. 583 U.S. 281, 291–95 (1999). Just like the petitioner in *Jennings*, Petitioner here is not "challenging the decision to detain [him] in the first place or to seek removal; and [he is] not even challenging any part of the process by which [his] removability will be determined." *Id.* at 294. Rather, Petitioner is challenging the statutory interpretation of his detention under § 1225 and his entitlement to a bond hearing under § 1226. *Jennings* holds that § 1252(b)(9) does not bar this Court from hearing his claim.

c. Section 1252(a)(2)(B)(ii) does not bar jurisdiction in this case.

Finally, Respondents attempt to argue lack of jurisdiction under 8 U.S.C. §1252(a)(2)(B)(ii), on account of Petitioner being barred from challenging discretionary decisions by the Attorney General or the Secretary of Homeland

Security.[2] ECF No. 4, p. 9. However, Petitioner is not challenging any discretionary decisions, as described above, so §1252(a)(2)(B)(ii) plainly does not apply in this matter. Petitioner is challenging the statutory interpretation holding that he is detained under § 1225 and his entitlement to a bond hearing under § 1226. This question is "not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

2. Petitioner has not failed to exhaust remedies, or in the alternative, the court should excuse exhaustion because the issues are solely matters of statutory interpretation, the doctrine of futility, and because the BIA's lacks the ability to review constitutional questions.

Next, Respondents argue that Petitioner has failed to exhaust his administrative remedies. ECF No. 4, p. 9. Exhaustion is a prudential doctrine that requires a Petitioner to have fully exercised any procedure available under the agency's adjudicatory structure. "The principal reasons for requiring exhaustion of administrative remedies relate to efficient management and orderly procedure, use of the agency's specialized understanding, adequacy of legal remedies, exclusive jurisdiction, and statutory requirement of final order." Kenneth Culp Davis, *Administrative Law* §182, 615–16 (West Publ'g Co. 1951). The doctrine is primarily prudential in nature and can be set aside by the court should it find a compelling reason to do so.

[2] This argument is curious, as Respondents have argued extensively that their decision to withhold bond hearings is *mandatory* and *not discretionary* under 8 U.S.C. § 1225.

It is important to note at the outset of this discussion that there is no statutory requirement in the INA that states that administrative remedies must first be exhausted in a habeas proceeding. *See* 28 USC §§2241 et seq.; *see also Moscato v. Federal Bureau of Prisons*, 98 F.3d 757, 760 (3d Cir. 1996); *Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000); and *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). Though the INA does require exhaustion in some instances, habeas relief from detention is not one of them. *See, e.g.,* 8 USC §1252(d) (regarding removal orders); 8 USC §1421(c) (regarding naturalization cases).

Statutory exhaustion aside, in determining whether exhaustion should apply, the Supreme Court has explained that the determination of whether to require exhaustion of administrative remedies "should also be guided by the policies underlying the exhaustion requirement." *Bowen v. City of New York*, 476 U.S. 467, 484 (1986). These policies include: preventing "premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise[3], and to compile a record which is adequate for

[3] The rule of exhaustion is supported by a belief that agencies are the appropriate body for reviewing a case within the agency's wheelhouse. However, despite the longstanding doctrine, the exact nature of agency expertise has recently come under criticism. This criticism culminated in the Supreme Court striking down the long-standing *Chevron* doctrine, which required reviewing courts to defer to agency expertise where an enabling statute is ambiguous. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2023). In doing so, the Court noted that "agencies have no special competence in resolving statutory ambiguities." Though exhaustion is not a doctrine about statutory ambiguity, the Court's reasoning attacks the foundation of the exhaustion doctrine, and helps reach the proposition that a reviewing habeas court sits in better position to judge the legality of a detention framework than the agency itself charged with administering that detention program. Petitioner also notes that Respondents do not have any special expertise regarding bond decisions, as federal courts routinely make decisions about bond in criminal cases.

judicial review." *See Weinberger v. Salfi*, 422 U.S. 749, 765 (1975). *See also McCarthy v. Madigan*, 503 U.S. 140, 145 (1992); *McKart v. U.S.*, 395 U.S. 185, 193–95 (1969).

Exhaustion is, therefore, not about erecting procedural barriers to federal court action, but rather about ensuring that an agency can resolve the issues before judicial intervention occurs. This conclusion was reflected by the Supreme Court's decision in *Santos-Zacaria v. Garland*, 598 U.S. ___ (2023). In that case, the Court reviewed a challenge to the exhaustion rule for a noncitizen facing a removal order. The Court held that the statutory exhaustion rule in 8 U.S.C. § 1252(d)(1) is not jurisdictional and is instead a claims-processing rule meant to expedite efficient adjudication. As such, a noncitizen is only required to exhaust non-discretionary agency processes, and not those that are not available "as of right," (for example, reconsideration of a removal case by the BIA).

Even if an agency process is available "as of right," there are at least four situations where a court may waive the exhaustion requirement:

(1) Where the agency lacks the power to act;
(2) Where exhaustion of administrative remedies would be futile because the administrative agency is biased or otherwise has predetermined the issue;
(3) Where the delay for administrative action would cause irreparable injury to the plaintiff;
(4) Where constitutional questions are raised.

See, e.g., Bowen, 476 U.S. 467; *Granberry v. Greer*, 481 U.S. 129 (1987); *Mathews v. Eldridge*, 424 U. S. 319 (1976); *McKart v. U. S.*, 395 U.S. 185 (1969).

Respondents are arguing, in essence, that Petitioner is barred from seeking habeas relief because he has not appealed the denial of bond proceedings to the BIA. However, exhaustion is unnecessary if the issue presented is one that consists purely of statutory construction, as it is here. *Vasquez v. Strada*, 684 F.3d 431, 433–34 (3d Cir. 2012). The crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226.

Further, such an appeal would be futile. The BIA will rely on precedent from the recently decided case *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and is unlikely to diverge from its recent precedent regarding detention authority for this matter. It would be futile to require Petitioner to first go to the BIA before seeking relief from this Court, when the result is all but certain. *See Houghton v. Shafer*, 392 U.S. 639, 640 (1968) (where the attorney general (AG) took the position that challenged prison rules were applied validly and correctly to the petitioner and requiring the exhaustion of administrative remedies by appealing to the AG "would be to demand a futile act"); and *Mathews*, 424 U.S. at 319 (even where the administrative agency has the authority to change the challenged procedures, exhaustion is not necessary when "it is unrealistic to expect that the [agency] would consider substantial changes in the current administrative [procedures] at the behest of a single [applicant] raising a constitutional challenge in an adjudicatory context"). Such a requirement "would almost certainly result in the BIA persisting in its earlier

rulings and applying those rulings to Petitioner, all while he remains in detention without the bond hearing due him." *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025).

A petition for review is insufficient to address this situation, because at that point the injury, unlawful detention, will have already occurred. A BIA appeal will take, at minimum, months before a decision will issue that will inevitably be appealed to federal court. During this time Petitioner will remain in detention unlawfully, risking further exacerbation of his medical condition. As such, there is a substantial risk of irreparable injury based on deprivations of liberty by detention and the collateral consequences of that detention. Therefore, exhaustion should not apply. *See, e.g., Bowen*, 476 U.S. at 483 (The disability benefit claimants "would be irreparably injured were the exhaustion requirement now enforced against them"); *Mathews*, 424 U.S. at 331 (Waiver of the exhaustion requirement was appropriate because an erroneous decision at the initial hearing "would damage [the plaintiff] in a way not recompensable" through a reversal at the appellate hearing).

Finally, the BIA lacks the power to hear the constitutional due process claims raised by Petitioner. *See, e.g., Mathews v. Diaz*, 426 U.S. 67, 76 (1976) (exhaustion not required where "[the] constitutional question is beyond the Secretary's competence"); and *Girard v. Klopfenstein*, 930 F.2d 738, 740–41 (9th Cir. 1991) (exhaustion of administrative remedies not required where the constitutionality or

statutory validity of regulations was challenged). Accordingly, this Court should find that the exhaustion requirement is either satisfied or excepted due to the nature of this matter.

3. Petitioner was detained pursuant to 8 U.S.C. § 1226, not § 1225.

Regarding the merits of Petitioner's claim, Respondents have argued that his is detained pursuant to 8 U.S.C. § 1225, which does not allow for bond, rather than §1226, which does. ECF No. 4, p. 11. This new assertion is not supported by decades of agency practice. Perhaps it is for that reason that despite the contention by the agency that this interpretation is correct, nearly every court that has reviewed this issue has held that the Respondents are incorrect.

Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) "mandate[s] detention of applicants for admission until [removal] proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals detained following examination § 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)).

Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Under § 1226(a), "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The government then "may continue to detain the arrested" noncitizen during removal proceedings or "may release" the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either by clear and convincing evidence that he poses a danger to the community or by a preponderance of the evidence that poses a flight risk. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 276 (3d Cir. 2018); *see also Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) (Bond should be granted unless there is a finding that the individual is a threat to public safety or national security or is likely to abscond); *Matter of Daryoush*, 18 I&N Dec. 352 (BIA 1982).

Section 1226(c), however, "'carves out a statutory category of aliens who may not be released' during removal proceedings, outside of certain limited

circumstances." *Jennings* at 289; *see* 8 U.S.C. § 1226(a) (authorizing discretionary detention "[e]xcept as provided in subsection (c)"). This mandatory detention provision applies to noncitizens who are inadmissible or deportable on certain criminal or terrorist grounds. *Id.* at 527 n.2.

Section 1225(b)(2)(A) requires mandatory detention of all "applicants for admission" if the examining immigration officer determines that "an alien seeking admission is not clearly beyond a doubt entitled to be admitted." (emphasis added). The Respondents emphasize that Petitioner falls squarely within § 1225(a)(1)'s definition of an "applicant for admission" because he was neither admitted nor paroled into the country. "Applicant for admission" is defined in the statute as an alien "present in the United States who has not been admitted." § 1225(a)(1). It is undisputed that, when Petitioner was arrested, he was present in the United States and had not been admitted.

However, the interpretation of the applicable statutes by Respondents here and by 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. Thus, the interpretive inquiry does not end here.

Notably, the statute that mandates detention does *not* state that *all* "applicants for admission" shall be detained. It narrows this mandatory detention to aliens who are "seeking admission." Had Congress intended for this subsection to apply to all

applicants for admission, it could have said so by simply replacing the phrase "an alien seeking admission" with the term "an applicant for admission," or, to be even more succinct, it could have replaced the phrase "an alien seeking admission" with the word "alien." Under either of these constructions, it would be clear that "applicant for admission" means the same thing as "alien seeking admission," which is Respondents' interpretation of the statute. But this is not the language that Congress chose.

Instead, Congress chose the phrase, "an alien seeking admission." Because this phrase is not defined in the statute, the Court must construe it based upon its ordinary everyday meaning. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 69 (2012). "Seeking admission" is a participial phrase that modifies the noun alien. It narrows the meaning of alien to one who is attempting to obtain lawful admission to the United States. "Seek" is an active verb, not a type of status. Seek, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/seek [https://perma.cc/42LS-5YMV] (defining "seek" as "to try to acquire or gain"). The Court cannot simply disregard these words as superfluous. It must assume that Congress intended for them to have a purpose. Scalia & Garner, supra, at 174 (describing the "surplusage canon": "If possible, every word and every provision is to be given effect .... None should be ignored.

None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

As numerous courts have pointed out, §1225 is tethered closely to the border and the nations ports of entry, while §1226 deals more obviously with noncitizens in the interior of the country. *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *25 (W.D. Pa. Oct. 23, 2025). 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 United States who have not been admitted ("applicants for admission" definition) ***and*** who are actively attempting to obtain lawful admission to the United States near the border.

This interpretation is consistent with the framework of § 1225, which focuses on the **inspection** and admission of aliens **upon their arrival** to the United States. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (Kennedy, J.) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, *as well as the language and design of the statute as a whole.*") (emphasis added). This so-called "whole-text canon" calls on the interpreter to consider the entire text "in view of its structure and of the physical and logical relation of its many parts." Scalia & Garner, supra, at 167. Its cousin canon counsels that the title and headings for statutory provisions may sometimes be indicators of meaning. *Id.* at 221. Section 1225 focuses on "inspection" of aliens

upon their arrival and/or when they otherwise present themselves for admission at or near a port of entry. In addition to the statutory language previously discussed, the framework of the statute and the headings within the statute are consistent with the interpretation that the statute applies to aliens who are actively seeking admission to the United States near the border.

Section 1226(a) supports and bolsters this interpretation. It must be read in conjunction with § 1225. *See Id.* at 252 ("Statutes *in pari materia* are to be interpreted together, as though they were one law."). And these provisions should be read harmoniously when possible. They should not be interpreted in a way that renders them incompatible or contradictory. *Id.* at 180. Respondent's reading would render §1226 largely superfluous. For example, there would be no need for arrest authority in §1226 if it was intended to be read into §1225. Critically, §1225 **does not** include an obvious statement of arrest authority. That is because it was meant to be read with §1226 and not separately from it.

Section 1226(a) cannot simply be ignored when interpreting the requirements for detention. *United States v. Butler*, 297 U.S. 1, 65 (1936) (Roberts, J.) ("These words cannot be meaningless, else they would not have been used."). Congress clearly intended for some aliens, who are arrested and similarly situated to Petitioner, to be provided with the opportunity for a bond. The plain language of § 1226(a)(2) can mean nothing else. The only way to reach the interpretation urged by

Respondents is to ignore the statute's plain language, which the rules of statutory construction do not countenance.

Reading §§ 1226(a)(2) and 1225(b)(2)(A) harmoniously and in context, there is only one reasonable interpretation: for an alien seeking admission upon his arrival to the United States near the border, Congress has determined that his detention is mandatory while a determination is made as to whether he is allowed entry and admission. But, for aliens who are found in the country unlawfully, they may be arrested pursuant to §1226 and an immigration officer or immigration judge has the discretion, after considering all the circumstances, not to detain such aliens and instead grant them release on bond.

Further, reading § 1226(a) as requiring an initial detention decision by DHS is the only way to make sense of the broader statutory and regulatory scheme, which provides for an opportunity to appeal a detention decision to an immigration judge who then conducts their own assessment of the noncitizens' flight risk and dangerousness, among other factors. *See* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge ... may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service."). If all noncitizens subject to § 1226(a) could simply be detained on a categorical (or arbitrary) basis without any kind of individualized assessment, it would make little sense to permit such individuals an opportunity to challenge their detention by an

appeal before an immigration judge on the basis of specific factors such as dangerousness or flight risk.

This conclusion is further confirmed by looking to § 1226(c), which carves out certain disfavored criminal non-citizens whom the Government is required to detain. 8 U.S.C. § 1226(c). There would be little need for such a carveout requiring detention of certain criminal noncitizens if § 1226(a) were intended to authorize the categorical detention of any noncitizen unlawfully present inside the country. Rather, § 1226(a) clearly requires some exercise of discretion when determining whether or not to detain a noncitizen in the first instance.

Respondents have argued in other cases that this interpretation would lead to incongruous treatment of aliens and subject the lawful applicant to more stringent requirements than the unlawful alien evader. Respondents, however, focus on the wrong question. The relevant distinction is not between "aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years" and those who appear at a port of entry. *Id.* Rather, it is between persons **inside** the United States and persons **outside** the United States. That distinction is consistent with the long history of our immigration laws and with the Constitution. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or

permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Even in cases less favorable to affording rights to noncitizens, such as *Dep't. of Homeland Sec. v. Thuraissigiam*, 591 U.S. ___, 140 S. Ct. 1959 (2020), the distinction between those at the border and those in the interior is present. *See, eg. Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 447 (3d Cir. 2016), *citing Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause]."); *Zadvydas*, 533 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But, once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* (citations omitted). It is therefore reasonable to read these statutes against that backdrop. *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025).

To be clear, Petitioner has always been treated by Respondents as subject to discretionary detention under § 1226, rather than mandatory detention under § 1225. *See* ECF No. 1, Ex. D (including a warrant of arrest under INA 236/ 8 U.S.C. § 1226, "[p]ursuant to the authority contained in section 236 of the Immigration and

Nationality Act" and his notice to appear, clearly indicating that he is "an alien present in the United States who has not been admitted or paroled" as opposed to "an arriving alien."). It was not until the BIA arbitrarily decided that the uncontested law, practice, and policy of the past thirty years was suddenly incorrect did Respondents decide to treat Petitioner differently.

For these reasons, this Court should find the BIA's recent decision in *Matter of Yajure Hurtado*, and the Respondents' arguments which largely mirror the BIA's rationale as unpersuasive, in the same manner as many of the other district courts have already found.

4. Indefinite, mandatory, pretrial detention is a violation of Petitioner's due process rights.

Respondents aver that "[i]n light of Congress's interest in regulating immigration, including by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns without engaging in the *Mathews v. Eldridge* test," citing to *Demore v. Kim,* 538 U.S. 510 (2003), generally. ECF No. 7, p. 24. *Denmore* facially challenged the constitutionality of the mandatory detention provisions of § 1226(c); but there was no dispute in *Denmore* relating to which section of the INA pertained to *Denmore*. 538 U.S. at 522–23. The *Denmore* Court noted that, "it is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation

proceedings as a constitutionally valid aspect of the deportation process." *Id.* at 523. It would be beyond a stretch to read *Denmore* as stating that the Fifth Amendment did not apply to an individual challenging what they believed was an erroneous deprivation of their liberty without due process.

The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. *U.S. CONST. amend. V.* The Due Process Clause extends to all "persons" regardless of status, including non-citizens, whether here lawfully, unlawfully, temporarily, or permanently. *Zadvydas* at 693. To determine whether detention violates procedural due process, courts apply the three-part test set forth 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." *Mathews*, 424 U.S. at 335. Further, government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances "where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas* at 690.

Respondents contend that Congress made a legislative judgment to detain *all* undocumented noncitizens during removal proceedings, and the court should respect that determination. However, Congress' authority is nevertheless limited by our nation's long-standing history and tradition of preferring liberty to detention. Indefinite, mandatory, pretrial detention is not consistent with this history and tradition and should be viewed with suspicion. Further, where there are no concerns regarding risk to the community or flight by the noncitizen, this detention becomes even more untenable.

In Petitioner's case, he suffers from a significant chronic illness that requires constant medical supervision and care. Respondent's detention has interfered with that care and has greatly increased the risk of complications of his illness. When considering the arguments above in light of Petitioner's condition, Respondents unlawful detention rises to the level of a due process violation. At minimum, Respondent should be given a bond hearing to remedy these due process concerns.

Respondent's reliance on *Demore* and the Congress's interest in regulating immigration does little to tip the scales. "It is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States,* 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (emphasis added; internal quotation marks omitted). At this stage in the *Mathews*

calculus, the Court must consider the interest of the *erroneously* detained individual. *Carey v. Piphus,* 435 U.S. 247, 259 (1978).

As to the second prong of the *Mathews v. Eldridge* balancing test, the Court should find that the risk of erroneous deprivation is particularly high here. The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Petitioner has raised significant and supported legal arguments against Respondents' detention of Petitioner under §1225(b). Further, Respondents have presented no evidence in the record suggesting that Petitioner is a flight risk or a danger to his community; only that he is subject to mandatory detention.

The final *Mathews* factor concerns the United States' interest in the proceedings, as well as any burdens associated with permissible alternatives. *Mathews*, 424 U.S. at 335. Petitioner recognizes that the United States has an interest in meaningful immigration laws that advance its stated policies. However, the United States has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied correctly.

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas,* 533 U.S. at 690, 121 S.Ct. 2491. Respondents have provided no evidence or

argument that Petitioner is either a flight risk or a danger, and the record would indicate that he is neither: he has no criminal record whatsoever, and he has attended his ICE when required, even when he understood that there was a likelihood that ICE would detain him. Respondents cannot show that their interest in detaining Petitioner without a bond hearing outweighs Petitioner's liberty interests nor that is unduly burdensome.

Petitioner's liberty interest and delicate medical condition are significant interests that can be protected by minimal additional process, that is, the process that has already been written into the statute and has been followed for decades.

Accordingly, all three *Mathews* factors weigh heavily in support of Petitioner.

Conclusion

Petitioner respectfully requests that this Honorable Court grant this petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests this court order his immediate release from custody.

Dated: 11/28/2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2025, a true and correct copy of this Response and all attached pages was filed via the Court's CM/ECF filing system and will be served on all Defendants in accordance with the Federal Rules of Civil Procedure.

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