UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVENSON JOSE MENDOZA CARVAL
Petitioner,

Case No. 1:25-cv-1465

Hon. Robert J. Jonker
U.S. District Court Judge

Hon. Maarten Vermaat
U.S. Magistrate Judge

ROBERT LYNCH, Acting Field Director for U.S. Immigration and Customs Enforcement, Detroit Field Office, in his official capacity; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General.

Respondents.

PETITIONER'S REPLY IN SUPPORT OF HIS PETITION FOR HABEAS CORPUS

INTRODUCTION

Petitioner was re-detained by ICE on September 24, 2025, at the Chicago ICE field office when he appeared for his scheduled check-in. He has been detained since. This petition is one of hundreds filed across the country by detained noncitizens in the wake of the sudden decision by Respondents to re-interpret the plain text of the Immigration and Nationality Act, 8 U.S.C. §1101 *et seq*. ("INA") and reverse 30 years of agency practice. The government's novel interpretation denies bond hearings to thousands of detained noncitizens.

The government has filed their 'standard brief' – it makes no new arguments or arguments specific to the facts of Petitioner's case that have not already been reviewed and rejected by the Court.

At issue is which section of the INA governs Petitioner's detention. The Respondents argue it's the mandatory detention provision at 8 U.S.C. 1225(b)(2)(A): "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 240 [8 USCS § 1229a]." 8 U.S.C. § 1225(b)(2). This position is based on their assertion that § 1225(b)(2)(A) covers every single noncitizen in the United States that was not lawfully admitted. This understanding simply cannot be squared with the plain text and structure of the INA. It has also been rejected by nearly every district court judge in the country.

First, this Court has jurisdiction to hear this habeas petition because none of the 'jurisdiction-stripping' statutes in the INA apply where a noncitizen argues that his detention is in violation of the laws and constitution of the United States.

Petitioner is not an applicant for admission currently "seeking admission" and therefore is detained under INA § 1226(a) and is statutorily eligible for a bond hearing before an IJ.

Moreover, because he was re-detained by ICE agents without notice or a hearing, he should be released immediately, and Respondents should be enjoined from re-arresting him without notice and a hearing and a showing of changed circumstances.

Finally, Petitioner is not required to exhaust immigration remedies, and any exhaustion requirement should be waived, regardless.

Petitioner is a Colombia citizen who has been living in the United States for almost two years.

ARGUMENT & AUTHORITY

I. This Court Has Jurisdiction

a. § 1252(e) does not apply to Petitioner's claims

8 U.S.C. § 1252(e) applies specifically to "Judicial review of orders under **section 235(b)(1)** [§ 1225(b)(1), i.e. "expedited removal"]." 8 U.S.C. § 1252(e)(3) (emphasis added). That is, this provision applies only to challenges made to determinations in the *expedited removal context*, which is not an issue in Petitioner's case. *See, e.g., Shunaula v. Holder*, 732 F.3d 143, 146 (2d Cir. 2013) (§ 1252(e)(3) provides for review of constitutional challenges to the validity of the expedited removal system and statutory challenges to its implementing regulations and written policies.); *Agarwal v. Lynch*, 610 F. Supp. 3d 990, 1005 (E.D. Mich. 2022) ("That statute provides jurisdiction to the district court for the District of Columbia to review 'challenges [to the] validity of the [expedited removal] system.'") (internal quotation marks and citation omitted).

Moreover, § 1252(e)(3) limits jurisdiction to the D.C. Court of Appeals only for "[c]hallenges on the validity of the system." 8 U.S.C. § 1252(e)(3). So, even if that provision covered § 1225(b)(2) (i.e. non-expedited removal of 'applicants for admission'), Petitioner is not challenging any determinations, implementations, or written policies made under § 1225. He does not even dispute that § 1225(b) requires detention of noncitizens detained under that subsection. Instead, he is arguing that the entire section does not even apply to him at all, so § 1252(e)(3) does not bar this Court's jurisdiction. *See, J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 U.S. Dist. LEXIS 215437, at *3 (M.D. Ga. Nov. 1, 2025) (§ 1225(e)(3) does not strip court of jurisdiction to hear habeas challenge to petitioner's detention under § 1225 instead of § 1226);

Orellana v. Moniz, Civil Action No. 25-cv-12664-PBS, 2025 U.S. Dist. LEXIS 214095, at *14-15 (D. Mass. Oct. 30, 2025) (same).

b. § 1252(g) does not apply to Petitioner's claims

8 U.S.C. § 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." *Reno v. Am.-Arab Anti-Discrimination Comm.,* 525 U.S. 471, 482 (1999) (emphases in original) (cleaned up). Where a habeas petitioner challenges his detention without bond, none of those actions are implicated and there is no jurisdictional bar. *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 U.S. Dist. LEXIS 213732, at *11 (W.D. Mich. Oct. 28, 2025); *see, also, Mustata v. U.S. Dep't of Just.*, 179 F.3d 1017, 1019 (6th Cir. 1999) ("We conclude that 8 U.S.C. § 1252(g) does not eliminate jurisdiction over the Mustatas' 28 U.S.C. § 2241 habeas petition.").

Here, Petitioner does not challenge any exercise of discretion by the Attorney General related to the *commencement*, *adjudication,* or *execution* of his removal proceedings, or indeed, the exercise of any discretion. Instead, he is challenging his continued detention pursuant to the new mandatory detention policy. This is outside the "narrow scope of § 1252(g)." *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097 at *11.

c. § 1252(b)(9) does not bar Petitioner's habeas petition in this Court

8 U.S.C. § 1252(b)(9) restricts the jurisdiction and form of proceedings for "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States." *Id.*

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) confronted this exact question of law – "whether ... certain statutory provisions require detention without a bond hearing" – and held that federal courts have jurisdiction to decide that question. *Jennings v.*

Rodriguez, at 292-95 (plurality opinion). Even more recently, a majority of the Supreme Court characterized *Jennings* as holding that § 1252(b)(9) "'does not present a jurisdictional bar" where petitioners "are not asking for review of an order of removal, 'the decision . . . to seek removal,' or 'the process by which . . . removability will be determined.'" *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020).

Courts reviewing the most recent wave of immigration habeas petitions confirm there is no jurisdictional bar. *See, e.g., Ozturk v. Hyde,* 136 F.4th 382, 399 (2d Cir. 2025); *E.V. v. Raycraft*, No. 4:25-cv-2069, 2025 U.S. Dist. LEXIS 220483, at *14 (N.D. Ohio Nov. 7, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899, at *6 (E.D. Tex. Aug. 2, 2025); *Giron Reyes v. Lyons*, 2025 U.S. Dist. LEXIS 188085 (N.D. Iowa Sept. 23, 2025); *Ochoa v. Noem*, No. 25 CV 10865, 2025 U.S. Dist. LEXIS 204142, at *7 (N.D. Ill. Oct. 16, 2025).

Here, Petitioner is not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined. This court's jurisdiction is secure.

II. Administrative Exhaustion is Neither Required nor Appropriate

Petitioner should not be required to exhaust administrative remedies. No other court reviewing the post-*Yajure*[1] habeas petitions has found exhaustion necessary.

a. Exhaustion is not required

There is no rule or statute that requires administrative exhaustion in the context of immigration habeas proceedings so whether to require exhaustion is left to the court's discretion. *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (citation omitted).

[1] *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), held that all noncitizens in the United States who were not lawfully admitted are "applicants for admission" and that they are thus detained under § 1225(b)(2)(A), not § 1226(a) and so ineligible for bond. *Yajure* is binding on all immigration courts as precedent and divests those courts of jurisdiction to hold a bond hearing.

b. Exhaustion is Not Appropriate in this Case

In deciding whether to require exhaustion in a given case, come courts in this circuit apply the Ninth Circuit's test from *United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983). *See Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423, at *10-11 (E.D. Mich. Aug. 29, 2025); *Villalta v. Greene*, No. 4:25-cv-01594, 2025 U.S. Dist. LEXIS 169688, at *2 (N.D. Ohio Aug. 5, 2025).

Under *United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983), courts may require exhaustion when:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
>
> (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
>
> (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.
>
> *Id.*

First, under *Yajure,* the immigration courts do not have jurisdiction to conduct bond hearings for people detained under § 1225(b), like Petitioner, so they would not entertain any legal arguments or develop any factual record. More importantly, the Board of Immigration Appeals ("BIA"), has no special expertise regarding statutory interpretation. In fact, district courts are better suited to that task – and have overwhelmingly found the BIA's reasoning and decision in *Matter of Yajure-Hurtado* to be wrong. Moreover, there are no factual issues requiring the BIA to develop the record.

Second, the core of Petitioner's claim is that the BIA's recent interpretation of the administrative scheme *itself* violates due process. This factor cannot weigh in favor of

Respondents. Indeed, the Sixth Circuit has previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales,* 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.") (citation omitted).

Finally, the Attorney General has the power to review BIA decisions, vacate them, and issue their own decisions as precedent. 8 C.F.R. § 1003.1(d)(1)(i), 1003.1(h). In other words, the agency's "mistakes" can be corrected *sua sponte*, precluding the need for judicial review without forcing Petitioner to take an appeal to the BIA.

c. Any Exhaustion Requirement Should be Waived

Even if this court finds that prudential exhaustion is warranted in this case, the court can waive that requirement if appropriate. *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423, at *11 (E.D. Mich. Aug. 29, 2025). For example, when the "legal question is fit for resolution and delay means hardship," a court may choose to decide the issues itself. *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (citation omitted). A court may also excuse exhaustion if the "pursuit of administrative remedies would be a futile gesture." *Shearson*, 725 F.3d at 594 (citation omitted).

Here, the legal question is fit for resolution (and has been resolved scores of times in federal courts across the country) and the lengthy BIA appeals process[2] would cause significant hardship

[2] *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423, at *11 (E.D. Mich. Aug. 29, 2025) (Bond appeals before the BIA, on average, take six months to complete) (citing *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025)).

to Petitioner as he would be detained the entire time. *Reyes v. Raycraft*, No. 25-cv-12546, 2025 U.S. Dist. LEXIS 175767, at *9 (E.D. Mich. Sep. 9, 2025) (waiving exhaustion and finding that the prevention of six months of additional detention outweigh any interests the BIA might have in resolving an appeal).

Moreover, given the fact that the recent re-interpretation appears to reflect Executive policy decisions and the Attorney General has not vacated the *Yajure* decision, pursuing an appeal to the BIA would plainly be futile.

III. Petitioner is Entitled to a Bond Hearing under § 1226(a)(2) and His Continued Detention Violates the INA.

Respondents' central argument is that § 1225(b)(2)(A) applies to all noncitizens present in the United States who have not been admitted under the meaning of the act. This is incorrect. Respondents' interpretation of the statute disregards the plain meaning of § 1225(b)(2)(A) and is inconsistent with the structure, history, and purpose of the Act.

a. Mandatory Detention Under § 1225(b)(2)(A) Only Applies to Noncitizens Actively Seeking Admission into the United States – and Petitioner is not "Seeking Admission"

There is no dispute between the parties here as to who § 1225(b)(2)(A) applies[3]:

(1) an applicant for admission,

[3] Some courts have parsed this section more finely, finding:
> that "for § 1225(b)(2)'s mandatory detention regime to apply, several requirements must be met: (1) an "examining immigration officer" (2) must conclude during an "inspection" (3) of an "applicant for admission" (4) who is "seeking admission" (5) that the person "is not clearly and beyond a doubt entitled to be admitted."
> *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ, 2025 U.S. Dist. LEXIS 176165, at *19-20 (D.N.H. Sep. 8, 2025)

(2) who is seeking admission, and

(3) who is not clearly and beyond a doubt entitled to be admitted.

There is also no dispute that under § 1225(a)(1), Petitioner is "deemed" an applicant for admission as he is an "alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). Nor does Petitioner deny that he is not clearly and beyond a doubt entitled to be admitted. But Petitioner is not "seeking admission" and therefore § 1225(b)(2)(A) cannot apply to him.

First, "admission" under the INA has a specific definition:

> The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.
>
> 8 U.S.C.S. § 1101(a)(13)(A)

Respondents argue that every "applicant for admission" is inherently and necessarily "seeking admission." ECF No. 4, PageID.33. Or more specifically, "being an applicant for admission" "is a means of" "seeking admission." *Id.* This is circular logic. It ignores the entire phrase "seeking admission" altogether – reading it out of the statute completely. This negates the plain meaning of the text and violates the rule against surplusage. *See, e.g., Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724, at *12-13 (D. Mass. July 24, 2025) (citing, *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, (2023) ("'[E]very clause and word of a statute' should have meaning.")).

Nearly every court examining that plain language of § 1225(b)(2) have held that "seeking admission" requires something more of a noncitizen than just being present in the country without authorization. That is, seeking admission requires an affirmative, currently occurring, discrete act – and more specifically, an act that would logically take place at the nation's borders.

See, e.g. Alvarez v. Noem, No. 1:25-cv-1090, 2025 U.S. Dist. LEXIS 204896, at *13 (W.D. Mich. Oct. 17, 2025) ("In this Court's opinion, the phrase 'seeking admission' refers to an action that is currently occurring and that would occur at the United States' border when the alien is being inspected."); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423, at *17-18 (E.D. Mich. Aug. 29, 2025) (seeking "implies action — something that is currently occurring, and in this instance, would most logically occur at the border upon inspection"); *Garcia v. Noem*, No. 1:25-cv-1271, 2025 U.S. Dist. LEXIS 213734, at *11 (W.D. Mich. Oct. 29, 2025) ("'seeking admission' refers to an action that is currently occurring and that would occur at the United States' border when the alien is being inspected."); *Ochoa v. Noem*, No. 25 CV 10865, 2025 U.S. Dist. LEXIS 204142, at *13 (N.D. Ill. Oct. 16, 2025) ("seeking admission…necessarily implies some sort of present-tense action."); *Martinez-Elvir v. Olson*, Civil Action No. 3:25-CV-589-CHB, 2025 U.S. Dist. LEXIS 211070, at *23 (W.D. Ky. Oct. 27, 2025); *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724, at *16 (D. Mass. July 24, 2025) (reading "seeking admission" to require specific intentional act "has the added benefit of avoiding the presumptively suspect conclusion that the phrase 'seeking admission' has no separate meaning or effect at all.").

Respondents cite to *Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 U.S. Dist. LEXIS 221830, at *8 (E.D. Mo. Nov. 10, 2025), for the proposition that the statute "unambiguously provides that an alien who is an 'applicant for admission' is 'seeking admission.'" ECF No.4, PageID.32. *Olalde* is one of only a handful of cases across the country that agree with the Respondents' position.[4] There the court reasoned

[4] To date, counsel's research has revealed only a handful of other district court cases that have agreed with the government's novel and expansive legal interpretation of the INA. *See, Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, 2025 U.S. Dist. LEXIS 192940 (S.D. Cal. Sep. 24, 2025); *Lopez v. Trump*, No. 8:25CV526, 2025 U.S. Dist.

> that it makes no sense to describe an active applicant for admission as somebody who is not "seeking" admission. To "seek" is a synonym of to "apply" for. *Id.*

With respect to that court, this argument again ignores the fact that equating an "applicant for admission" with someone "seeking admission" renders that latter phrase meaningless and thus rewrites the plain text. Further, it inserts its own language into the statute – finding that § 1225(b)(2) refers to an "active" applicant for admission. Again, this is circular logic but also misconstrues the entire analysis. The question is not whether someone seeking admission is an (active) applicant for admission. Rather, what matters here is whether someone who is *not* an "active" applicant for admission (i.e. presenting at the nation's borders, seeking entry) is seeking admission. The plain text distinguishes between the two and so the answer is a resounding no.

Here, there is no evidence in the record showing that Petitioner was actively seeking admission (or was an "active" applicant for admission) when he was arrested and detained by ICE in Chicago. Because Petitioner is not "seeking admission," § 1225(b)(2)(A)'s mandatory detention provision does not apply.

b. The text and structure of the Act show that § 1225(b)(2)(A) applies at the border and § 1226(a)(2) applies to noncitizens apprehended inside the United States.

Because the plain language of § 1225(b)(2)(A) clearly does not apply to Petitioner, the Court need not engage in any statutory interpretation. Regardless, the overall text and structure support Petitioner's position.

First, the Supreme Court has described the structure of the two separate sections as accomplishing two different goals. Section 1225 is "framed [] as a part of the process that

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LEXIS 192557 (D. Neb. Sep. 30, 2025); *Sandoval v. Acuna*, 2025 U.S. Dist. LEXIS 215357 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, 2025 U.S. Dist. LEXIS 218128 (W.D. La. Nov. 4, 2025).

"generally begins at the Nation's borders and ports of entry, where the Government must determine whether [noncitizens] seeking to enter the country are admissible.'" *Rosado v. Figueroa et al.*, No. 2:25-cv-02157, 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099, at *8 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018)); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 U.S. Dist. LEXIS 169423 at *7 (E.D. Mich. Aug. 29, 2025).

Thus, courts have consistently found that the statute's references to noncitizens "seeking admission" places "temporal limits on its reach… and § 1225 clearly establishes an inspection scheme for when to let noncitizens into the country" and "governs the entrance of noncitizens to the United States," but no more. *E.g., Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, at *5; *Barrera v. Tindall*, No. 25-541, 2025 U.S. Dist. LEXIS 184356, at *4 (W.D. Ky. Sept. 19, 2025) (holding the text of § 1225 is focused "on inspections for noncitizens when they arrive" and "suggest[s] [it] is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States.").

Respondents' fail to grapple with *Jennings* at all (or, indeed, the hundreds of cases holding that § 1226, not §1225 applies to people like petitioner). Instead, they baldly assert that "Congress intended for the detention of aliens like Petitioner under § 1225(b)(2)." ECF No. 4, PageID.38. But this argument is supported only by their citation to *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA Sept. 5, 2025), which has not binding on this Court and is not entitled to any deference.

Second, accepting Respondents' interpretation would ignore recent amendments to § 1226 and render Congress' those additions superfluous or at a minimum, insignificant. This violates a central canon of statutory interpretation. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that a 'statute ought, upon the whole, to be so

construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" (quoting Duncan v. Walker, 533 U.S. 167, 174 (2001)); *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 U.S. Dist. LEXIS 213732, at *24-25 (W.D. Mich. Oct. 28, 2025).

Congress enacted the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025), earlier this year. The act amended § 1226 to define a new group of noncitizens who are subject to mandatory detention. Specifically, the Act added a subsection that explicitly mandates detention for those noncitizens who are inadmissible under §§ 1182(a)(6)(A), 1182(a)(6)(C), and 1182(a)(7), and who have been arrested for, charged with, or convicted of certain crimes. See 8 U.S.C. § 1226(c)(1)(E).

Notably, § 1182(a)(6)(A) refers to "[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General . . .", in other words, someone like Petitioner. If all individuals like Petitioner, "present in the United States without being admitted or paroled," were already subject to mandatory detention under § 1225, then there would have been no need for Congress to amend the INA to provide for mandatory detention of individuals who were "present in the United States without being admitted or paroled" and who were arrested, charged with, or committed certain crimes. Respondents' interpretation of §§ 1225 and 1226 thus nullifies Congress's intent and makes § 1226(c)(1)(E) entirely superfluous (or at a minimum insignificant). *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 U.S. Dist. LEXIS 213732, at *24-35 (W.D. Mich. Oct. 28, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423, at *23 (E.D. Mich. Aug. 29, 2025) ("If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here,

then adding § 1226(c)(1)(E) to the statutory scheme was pointless" and this Court, too, "will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2).")

Respondents argue that their reading of § 1225(b)(2)(A) would not render the Laken Riley Act's amendment at § 1226(c)(1)(E) completely superfluous – that it "has substantial independent effect beyond aliens that entered without admission." ECF No. 4, PageID.33. In particular, Respondents argue that § 1226(c)(1)(E) can be read as only applying to visa overstayers because they are not covered by § 1225(b)(2)(A). *Id.* Additionally, they argue that the Laken Riley Act amendment can be read as only applying only to noncitizens "admitted in error." *Id.* at PageID.36. Therefore, their reading of § 1225(b)(2)(A) as covering all noncitizens present without admission does not render that section totally superfluous.

With due respect, this argument requires an extraordinary exercise of of mental and linguistic gymnastics. Here, the plain reading of the text, and the obvious reading of § 1226 and its recent amendments make clear that Respondents' position is contrary to the structure of the Act and cannot be correct.

IV. Petitioner's Detention Without Bond Violates Due Process

a. Respondent's Denial of a Bond Hearing is a Due Process Violation

Respondents argue that in the immigration context, the Supreme Court has held that the process due under the constitution is coextensive with the removal procedures provided by Congress. ECF No. 4, PageID.40-41, *citing Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020). Thus, in Respondents view, because the statute allows for mandatory detention during removal proceedings, Petitioner has received all the process he is due. *Id.* This is circular logic as it relies on their assumption that Petitioner is properly held under § 1225.

Thus, should this Court find he is properly detained under § 1226 because he is not an arriving alien *seeking admission*, then being denied his statutory right to a bond hearing is necessarily a procedural due process violation.

b. Regardless, Petitioner is Entitled to Full Due Process Protections

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 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protects." *See Zadvydas v. Davis*, 533 U.S. 678, 690, (2001).

The Fifth Amendment's Due Process Clause extends to all persons, regardless of status. See *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). Thus, noncitizens such as Petitioner are entitled to its protections. *See id.*; *see also, Bangura v. Hansen*, 434 F.3d 487, 496 (6th Cir. 2006).

Respondents argue, "aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the border." ECF No. 4, PageID.35 citing *Thuraissigiam,* 591 U.S. at 139. Respondents misunderstand the Court's decision and fail to apply it to the case at hand, regardless.

In *Thuraissigiam*, a noncitizen asylum-seeker (Thuraissigiam) was detained "25 yards" into the United States and issued an expedited order of removal. 591 U.S. at 114. After his asylum claim was deemed non-credible, Thuraissigiam filed a habeas petition, arguing, in part, that his expedited removal and the disposition of his asylum application violated the Due Process Clause. Id. at 114-15.

The Supreme Court held, however, that "an alien in [Thuraissigiam's] position has only those rights *regarding admission* that Congress has provided by statute," i.e., no constitutional due-

process protections. *Id.* at 140 (emphasis added). In reaching this result, the Court relied on the longstanding "entry fiction" doctrine in immigration law. "This narrowly-tailored legal fiction exists to accommodate the political branches' broad prerogative to exclude." *Al-Thuraya v. Warden, Orange County Correctional Facility*, No. 25-cv-2582 (AS), 2025 U.S. Dist. LEXIS 200607, at *9 (S.D.N.Y. Oct. 9, 2025) (citing *Thuraissigiam*, 591 U.S. at 139). The entry fiction doctrine provides an exception to the usual rule that the Fifth Amendment's Due Process Clause applies anywhere within the "geographic borders" of the United States. *See, Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (discussing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)).

Respondents read *Thuraissigiam* and indeed the entire entry fiction doctrine too broadly and its application here is limited. First, in *Thuraissigiam,* petitioner was apprehended 25 yards across the border – a "cartographic rounding error." *Rincon v. Hyde*, Civil Action No. 25-12633-BEM, 2025 U.S. Dist. LEXIS 220058, at *12 (D. Mass. Nov. 7, 2025). Thus, the Supreme Court gave no weight to the fact that there the petitioner was physically inside the country. Second, the petitioner was not challenging the fact or conditions of his detention, but rather the decision to remove him from the country based on a negative credible fear review by an asylum officer at the border after he was apprehended (through expedited removal proceedings under § 1225(b)(1)). That is, Thuraissigiam was challenging the decision to not admit him into the country, or more specifically the *process* by which that decision was made. Here, Petitioner had been in the country for approximately 18 months before he was re-detained.

Here, petitioner is not challenging his removal proceedings or any decision regarding lawful admission into the country at all. The distinction is critical because the entry fiction "exists to accommodate the political branches' broad prerogative to exclude instead." *Al-Thuraya,* 2025

U.S. Dist. LEXIS 200607, at *9 (citing *Thuraissigiam*, 591 U.S. at 139). Here, that prerogative is not implicated at all – Petitioner is simply arguing that his continued detention does not comport with the constitution. He simply wishes to be free from detention as his immigration case proceeds.

The Sixth Circuit held long ago that while, "we respect the historical tradition of the 'entry fiction,' we do not believe it applies to deprive aliens living in the United States of their status as 'persons' for the purposes of constitutional due process." *Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003) (en banc). In *Rosales-Garcia* the Court found that there was no question that the Fifth Amendment applied to two Cuban noncitizens who were paroled into the Country under the same statute as Petitioner here. *Rosales-Garcia* is still good law in this Circuit, and Respondents make no argument to overrule it.

More recently, the majority of courts confronting this question have found that Respondents' interpretation of *Thuraissigiam* and the entry fiction itself generally don't apply in cases like this where a noncitizen physically present in the country challenges their *detention* rather than any aspect of *removal* or *admission*. *See, Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, at *28 (W.D. Tex. Sep. 21, 2025) (*Thuraissigiam* does not bar due process, "First, because he challenges his detention, not his deportability. And second, because he was detained after years of presence in the United States, rather than on the threshold of initial entry"); *E.V. v. Raycraft*, No. 4:25-cv-2069, 2025 U.S. Dist. LEXIS 220483, at *23 (N.D. Ohio Nov. 7, 2025) ("such cases concern due process challenges to deportability—that is, removal proceedings and orders—not detention." And proceeding to merits of due process claim for two humanitarian parolees); *Rincon v. Hyde,* Civil Action No. 25-12633-BEM, 2025 U.S. Dist. LEXIS 220058, at *15 (D. Mass. Nov. 7, 2025) (Indeed, to apply the entry fiction doctrine to a

case like Petitioner's is to set aside the plain meaning of the Fifth Amendment altogether.); *Al-Thuraya v. Warden, Orange County Correctional Facility*, No. 25-cv-2582 (AS), 2025 U.S. Dist. LEXIS 200607, at *11-12 (S.D.N.Y. Oct. 9, 2025)("Because the entry-fiction exception is inapplicable in the context of Al-Thuraya's request for a bond hearing, what's left is the general rule: '[A]ll persons, aliens and citizens alike, are protected by the Due Process Clause.'"); *Perez v. Larose*, No. 3:25-cv-02620-RBM-JLB, 2025 U.S. Dist. LEXIS 223769, at *11-12 (S.D. Cal. Nov. 13, 2025) ("Here, Petitioner is not an 'arriving' noncitizen but one that has been present in the United States for 11 months.")

c. Petitioner's Detention Without Bond Violates Due Process Regardless of Which Statutory Provision Applies to His Detention

The Sixth Circuit has held that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention. *See United States v. Silvestre-Gregorio*, 983 F.3d 848, 852 (6th Cir. 2020).

Courts balance three factors to determine whether a due process violation has occurred:

(1) the private interest at stake;
(2) second, the risk of erroneous deprivation and the value, if any, of additional procedural safeguards;
(3) and third, the government's countervailing interests.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)).

Each factor supports Petitioner's claim. There is no dispute that Petitioner has a significant private interest in avoiding detention, as one of the "most elemental of liberty interests" is to be free from detention. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner has been separated from his family, unable to work, and unable to attend church.

Second, an individualized bond hearing ensures that an immigration judge can assess whether Petitioner poses a flight risk or a danger to the community, reducing the risk that Petitioner will suffer an "erroneous deprivation" of her rights. *Escobar-Ruiz v. Raycraft*, No. 1:25-cv-1232, 2025 U.S. Dist. LEXIS 215434, at *18 (W.D. Mich. Oct. 31, 2025).

Finally, while the government has a legitimate interest in ensuring noncitizens appear during their immigration proceedings and pose no harm to their community, that interest is sufficiently protected by the bond hearing process itself. Similarly, there is no evidence that a bond hearing for Petitioner would create substantial cost or burden to the government. *See, id.*

Absent a "special justification," Petitioner's detention without a bond hearing violates due process. *Zadvydas*, 533 U.S. at 690 (government detention violates the Due Process Clause in civil cases unless "a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" Thus, as many other district courts have found, Petitioner's detention without a bond hearing violates his constitutional rights. *E.g., Escobar-Ruiz v. Raycraft*, No. 1:25-cv-1232, 2025 U.S. Dist. LEXIS 215434, at *20 (W.D. Mich. Oct. 31, 2025) (the Court concludes that Petitioner's current detention under the mandatory detention framework set forth in § 1225(b)(2)(A) violates Petitioner's Fifth Amendment due process rights); *Arizmendi v. Noem*, No. 25 C 13041, 2025 U.S. Dist. LEXIS 218000, at *10-12 (N.D. Ill. Nov. 5, 2025) ("Arizmendi's detention without a bond hearing violates due process"); *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *34 (S.D.N.Y. Aug. 8, 2025); *Doe v. Moniz*, Civil Action No. 1:25-cv-12094-IT, 2025 U.S. Dist. LEXIS 173360, at *27 (D. Mass. Sep. 5, 2025) ("In sum, the Mathews factors weigh in favor of Petitioner, and the court finds that his detention without a bond hearing violates his Due Process rights.").

d. Petitioner was Entitled to a Pre-Detention Notice and Hearing and is Entitled to Immediate Release

Petitioner gained a cognizable and significant liberty interest after he was released by DHS following his initial arrest and detention in 2023. *Patel v. Tindall*, Civil Action No. 3:25-cv-373-RGJ, 2025 U.S. Dist. LEXIS 196325, at *12 (W.D. Ky. Oct. 3, 2025) ("Patel was released on his own recognizance, which is understood to be a conditional parole.") A protected liberty interest arises upon a conditional release from physical restraint. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) ("the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others."). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. *See id.* (due process requires pre-deprivation hearing before revocation of preparole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

Moreover, the Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals. *See United States v. Salerno*, 481 U.S. 739, 750-51(1987); *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 360, 364 (1997).

In the immigration context, courts routinely find that release from an initial detention by DHS, such as through parole or release on recognizance, creates a separate and weighty liberty interest. *Patel v. Tindall*, Civil Action No. 3:25-cv-373-RGJ, 2025 U.S. Dist. LEXIS 196325, at *14 (W.D. Ky. Oct. 3, 2025) ("Additionally, when ICE has initial discretion to detain or release a

noncitizen pending removal proceedings, after the initial release, the petitioner has a protected liberty interest in remaining out of custody.") (internal quotation marks omitted); *Trejo v. Warden of the Ero El Paso East Montana*, No. EP-25-CV-401-KC, 2025 U.S. Dist. LEXIS 212821, at *20 (W.D. Tex. Oct. 24, 2025) ("Many courts, including this one, have found that ICE's decision to release a noncitizen confers a significant liberty interest that cannot be revoked without an individualized determination by a neutral adjudicator." and collecting cases.); *Materano v. Arteta*, 2025 U.S. Dist. LEXIS 179608, at *34 (S.D.N.Y. Sep. 9, 2025); *Guillermo M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 U.S. Dist. LEXIS 138205, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025) (recognizing that "the liberty interest that arises upon release [from immigration detention] is inherent in the Due Process Clause"); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 U.S. Dist. LEXIS 121997, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (collecting cases finding that noncitizens who have been released have a strong liberty interest).

These cases also almost uniformly hold that *prior* to re-detaining a noncitizen, they must be provided with notice and an opportunity to be heard – the hallmarks of due process. *See, e.g.*, *Patel v. Tindall*, Civil Action No. 3:25-cv-373-RGJ, 2025 U.S. Dist. LEXIS 196325, at *14 (W.D. Ky. Oct. 3, 2025) (due process "requires a hearing before an immigration judge before re-detention."); *Trejo v. Warden of the Ero El Paso East Montana*, No. EP-25-CV-401-KC, 2025 U.S. Dist. LEXIS 212821, at *20 (W.D. Tex. Oct. 24, 2025).

While the due process analysis under *Mathews* is essentially the same as outlined above, courts reviewing re-detention habeas claims have found that the proper remedy is an order of immediate release, followed by a bond hearing on the merits before any re-detention by ICE. *Salinas v. Woosley*, Civil Action No. 4:25-cv-121-DJH, 2025 U.S. Dist. LEXIS 228539, at *9 (W.D. Ky. Nov. 20, 2025) (discussing immediate release versus bond hearing, collecting cases

and ordering immediate release); *Patel,* 2025 U.S. Dist. LEXIS 196325, at *16; *see, also, Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 U.S. Dist. LEXIS 164108, at *15 (D. Minn. Aug. 25, 2025) (collecting cases).

Here, Petitioner was apprehended and released into the United States almost two years before he was re-arrested by ICE agents in Chicago as he attended his scheduled ICE check-in. Respondents do not argue or present evidence that there was any change in circumstances specific to Petitioner's case or other factors that would warrant their sudden decision to detain Petitioner and arrest him. The Court should order his immediate release and notice and a hearing prior to any re-detention.

V. The Court Should Decline to Dismiss Respondents Bondi and Noem.

Respondents argue that an order preventing the transfer of Petitioner out of the Western District of Michigan is unnecessary because the Court will maintain jurisdiction regardless of where DHS holds him. They also ask the Court to dismiss Secretary Noem and Attorney General Bondi because the Detroit ICE Field Director is Petitioner's immediate custodian and thus the only proper respondent. They cannot have it both ways.

Courts in this district and elsewhere have generally declined to prohibit the transfer of the petitioner in similar habeas cases but have also declined to dismiss either Secretary Noem or Attorney General Bondi, or both to assure the Respondents have authority to enforce the habeas relief (i.e. a bond hearing or immediate release). *De Jesus Ramirez v. Noem*, No. 1:25-cv-1261, 2025 U.S. Dist. LEXIS 215421, at *24-25 (W.D. Mich. Oct. 31, 2025); *Rodriguez Serrano v. Noem*, No. 1:25-cv-1320, 2025 U.S. Dist. LEXIS 220620, at *23-24 (W.D. Mich. Nov. 7, 2025); *Alvarez v. Noem*, No. 1:25-cv-1090, 2025 U.S. Dist. LEXIS 204896, at *25 (W.D. Mich. Oct. 17, 2025); *Gonzalez v. Raycraft*, No. 25-cv-13094, 2025 U.S. Dist. LEXIS 211250, at *12-13 (E.D.

Mich. Oct. 27, 2025); *Carmona v. Noem*, No. 1:25-cv-1131, 2025 U.S. Dist. LEXIS 209629, at *24 (W.D. Mich. Oct. 24, 2025); *but see, Diego v. Raycraft*, No. 25-13288, 2025 U.S. Dist. LEXIS 222614, at *6 (E.D. Mich. Nov. 12, 2025)(dismissing Noem and Bondi but allowing petitioner to amend her petition if "she can allege facts that lead her to believe she could be transferred to avoid the Court's jurisdiction.")

Petitioner requests this Court allow the Petition to continue with all named Respondents, and in the alternative, reserves his right to amend the Petition should any Respondent be dismissed.

VI. The Government Should Bear the Burden of Proof at any Bond Hearing

Finally, if the Court orders a bond hearing prior to his relief, Petitioner is entitled to a hearing before an immigration judge where the government bears the burden of proof by clear and convincing evidence that he is a flight risk or danger to the community. *See, e.g., M.T.B. v. Byers*, Civil Action No. 2: 24-028-DCR, 2024 U.S. Dist. LEXIS 148118, at *11 (E.D. Ky. Aug. 20, 2024) (government should bear burden of proof at § 1226(a) bond hearing); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, at *35 (W.D. Tex. Sep. 21, 2025) ("vast majority"—an "overwhelming consensus"—of courts have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.).

Respondents did not address this argument in their Response brief, and any objection is therefore waived.

VII. Conclusion

Petitioner respectfully requests this Court grant his petition and issue a writ of habeas corpus requiring that Respondents release Petitioner from custody immediately and provide him with notice and a hearing prior to any re-detention; or, in the alternative, provide Petitioner with a

bond hearing pursuant to 8 U.S.C. § 1226(a) within 3 days where the government bears the burden of proof by clear and convincing evidence that Petitioner is a flight risk or danger to the community and for any other relief the Court finds appropriate.

Dated: December 10, 2025 Respectfully submitted,

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