UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OLGA Y. DELEON ORTIZ, Petitioner, v. Kevin RAYCRAFT, et al., Respondents.	Case No. 25-CV-1467 Hon. Hala Y. Jarbou Chief, U.S. District Judge

PETITIONER'S REPLY IN SUPPORT OF THEIR PETITION FOR *HABEAS CORPUS*

Petitioner, **OLGA Y. DELEON ORTIZ**, by and through counsel, **WILLIAM A. QICENO**, is a noncitizen detained by Immigration and Customs Enforcement ("ICE"), petitions this Honorable Court for a Writ of *Habeas Corpus* under 28 U.S.C. §2241, alleging her arrest and subsequent detention is illegal and that defendants have violated her right to due process guaranteed by the Fifth Amendment.

I. BACKGROUND

Olga Y. Deleon Ortiz is a native and citizen of Guatemala. She entered the United States in the late 1990s and has lived here for over 25 years. She lives in Michigan with her husband and four U.S. citizen children, one of whom suffers from a cognitive impairment. On October 30, 2025, she was detained by ICE while commuting to work. ICE did not have any warrant to arrest her and presented her with a Notice to Appear ("NTA") to initiate 8 U.S.C. §1229(a) only after she had been detained and processed. Her family relies on her for financial and emotional support; her detention has caused both her husband and their children extreme stress and anxiety during this traumatic separation from their father and husband.

II. CASE DISCLAIMER

Ms. Deleon Ortiz's case does not arise in isolation. Over the past several months, ICE and the Department of Homeland Security have repeatedly advanced the same unprecedented theory of mandatory detention under § 1225(b)(2) - a theory that federal courts across multiple jurisdictions have consistently rejected. Despite uniform rulings from this Court and other districts finding that such individuals are properly detained, if at all, under § 1226(a) and entitled to bond hearings, Respondents continue to relitigate the issue as though those decisions do not exist even while this Court has already granted several habeas petitions on similar grounds. *See Hernandez Franco v. Raycraft et al.*, No. 1:2025cv01274 (W.D. Mich. Nov. 19, 2025)(Jarbou, J.); *Ruiz Mejia v. Noem*, No. 1:25-cv-01227 (W.D. Mich. Oct. 31, 2025)(Maloney, J.); *De Jesus Ramirez v. Noem*, No. 1:25-cv-01261 (W.D. Mich. Oct. 31, 2025)(Maloney, J.).

The result is a troubling pattern: immigrants are detained or re-detained without lawful authority, forced to seek habeas relief, and then the Government simply repeats the same arguments in the next case. This recycling of losing positions wastes judicial resources, undermines public confidence, and, most critically, perpetuates unlawful arrest and unnecessary detention of individuals like Ms. Deleon Ortiz, who have families, homes, and longstanding community ties. Her case is not an outlier, but part of a broader pattern of aggressive and arguably unlawful enforcement across the country that has upended hundreds of lives in recent weeks. Against that backdrop, and despite Respondents' effort to repackage their same losing arguments as "plain" statutory interpretation and settled precedent, Petitioner's response is as follows:

III. DISCUSSION

A district court may grant a writ of habeas corpus to any person who demonstrates she is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C.

§2241. The individual in custody bears the burden of proving that her detention is unlawful. *See, e.g. Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Ms. Deleon Ortiz claims violations of the Nava Settlement (Count I); Immigration and Nationality Act ("INA") (Count II); and the Due Process clause of the Fifth Amendment (Count III). *See Petition*, Doc. 1, PageID 12-13. In opposition to Ms. Deleon Ortiz's petition, Respondents make three substantive arguments: The claim (1) Ms. Deleon Ortiz has not exhausted her claims before the Board of Immigration Appeals ("BIA") following her initial denial of bond under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 229 (2025) and as such, her due process rights have not been limited; (2) this Court is wrong to apply §1226(a) to immigrants like Ms. Deleon Ortiz who have been in the United States for many years; and (3) because of her legal status, Ms. Deleon Ortiz has limited (if any) due process rights.

A. EXHAUSTION OF REMEDIES

Respondents first argue that Ms. Deleon Ortiz should apply for a bond and if she is denied, as is almost certainly the case, she should then appeal to the Board of Immigration Appeals ("BIA"); thus first exhausting her other administrative opportunities before raising any plea with this court. *See Government Respondents' Response in Opposition to Petition for Writ of Habeas Corpus ("Resp. Br.")*, ECF No. 4, PageID 25. However, contrary to their claims, there is no applicable statute or rule that mandates administrative exhaustion under these circumstances. *Jimenez Garcia v. Dep't of Homeland Sec.,* No. 2:2025cv13086, Doc. 6 (E.D. Mich. 2025). Sec., No. 1:25-cv-1621, 2025 WL 2444114, at *8 (N.D. Ohio Aug. 25, 2025)). While the Sixth Circuit has not conclusively ruled on way or the other, all parties agree that courts within the Sixth Circuit "have applied the three-factor test, set forth in *United States v. California Care Corp.*, 709 F.2d 1241 (9th Cir. 1983), to determine whether prudential exhaustion should be required." *See Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL

2496379, at *4 (E.D. Mich. Aug. 29, 2025). Thus, courts may require prudential 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. (citing *Shweika v. Dep't of Homeland Sec.*, No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015)).

Respondents argue that the three-factor test favors Ms. Deleon Ortiz exhausting her administrative remedies. *Resp. Br.* ECF No. 4, PageID 27. But the arguments are unconvincing and upon consideration of those factors, prudential exhaustion should not be required in Ms. Deleon Ortiz's case. First, the central question presented by Petitioner's § 2241 petition is whether 8 U.S.C. § 1225 or 8 U.S.C. § 1226 applies to Petitioner. That determination relies upon a purely legal question of statutory interpretation and does not require the record that would be developed should the Court require Ms. Deleon Ortiz to exhaust her administrative remedies. Moreover, this Court is not bound by and is not required to give deference to any agency interpretation of a statute. *See Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 413 (2024) (noting that "courts need not and under the [Administrative Procedure Act (APA)] may not defer to an agency interpretation of the law simply because a statute is ambiguous.").

Second, Ms. Deleon Ortiz's constitutional challenge to her detention does not require exhaustion. The Sixth Circuit has noted that due process challenges, such as the one raised by Ms. Deleon Ortiz, generally do not require exhaustion because the BIA cannot review constitutional challenges. See *Sterkaj v. Gonzalez*, 439 F.3d 273, 279 (6th Cir. 2006).

Third, Respondents claim that relaxing the exhaustion requirement would "encourage

deliberate bypass" of the administrative scheme. *Resp. Br.* ECF No. 4, PageID 27. (*quoting Himnandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *10 (N.D. Ohio Aug. 25, 2025). However, the petitioner's habeas petition at issue in that case was raised during a process known as "expedited removal" which can be carried out under § 1225 under certain circumstances. They were only treated as applicants for admission if they were "encountered within **14 days of entry** without inspection **and within 100 air miles** of any U. S. international land border." "Designating Aliens for Expedited Removal," 69 Fed. Reg. 48879, 2004 WL 1776983 (2004)(emphasis added). *See also Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 140, Fn.2, S. Ct. 1959(2020); *Torrealba v. United States Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 LX 396297, at *11 (N.D. Ohio Aug. 25, 2025). Ms. Deleon Ortiz, on the other hand, has been here for over twenty five years and was detained thousands of miles away from any border and her case does not qualify for an expedited removal of the kind that was at issue in *Himnandez*.

Finally, the fact that Respondents have clearly set forth their belief that § 1225(b)(1)(A) applies to all aliens who have resided within the United States prior to their arrest and detention makes it is doubtful that BIA review of Ms. Deleon Ortiz's custody would preclude the need for judicial review. The BIA recently proclaimed that any individual who has ever entered the United States unlawfully and was later detained is no longer eligible for bond and is subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 229 (2025). Because any pursuit of administrative remedies by Ms. Deleon Ortiz would be futile in light of *Yajure Hurtado*, this Court can choose to waive the exhaustion requirement. *See Sanchez Alvarez v. Noem et al.*, No. 1:25-CV-1090, 2025 WL 2942648, at *3 (W.D. Mich. Oct. 17, 2025) (finding that because "[i]t is unlikely that any administrative review by the BIA would lead to the Government changing its position" regarding the question

of which statutory framework applies to the petitioner, exhaustion was not required).

Moreover, the waiver of exhaustion here should be warranted because bond denial appeals "typically take six months or more to be resolved at the BIA." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wa. 2025). And such a timeline for an administrative remedy is unreasonable or indefinite such that courts may waive the exhaustion requirement. *See Pizarro Reyes*, 2025 WL 2609425, at *3 (citing *United States v. Alam*, 960 F.3d 831, 836 (6th Cir. 2020)). Indeed, the "delays inherent" in the BIA's administrative process "would result in the very harm that the bond hearing was designed to prevent[:]" prolonged detention without due process. *Jimenez Garcia*, Doc. 6, at 7 (citing *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation omitted)). Requiring Ms. Deleon Ortiz to exhaust her administrative remedies through a BIA appeal would force her to spend unnecessary months in prison. It is unmistakable that "depriving [Petitioner] of [her] liberty while awaiting a BIA appeal decision certainly equates to hardship. And any delay results in the very harm [Petitioner] is trying to avoid . . . –detention." *Sanchez Alvarez*, Doc. 8, at 7 (quoting *Lopez-Campos*, 2025 WL 2496379, at 5). As such, this Court should waive any exhaustion requirements and review the merits of Ms. Deleon Ortiz's habeas petition.

B. **BASIS FOR DETENTION § 1225 vs § 1226**

Immigration detention is governed by two statutory sections: 8 U.S.C. §§ 1225 and 1226. Section 1225 "authorizes the Government to detain certain aliens *seeking admission into the country*," while §1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings," including noncitizens "who were inadmissible at the time of entry." *Jennings*, 583 U.S. at 288-289 (emphasis added). Respondents, via their response, have declared that Ms. Deleon Ortiz is being detained under §1225(b)(2). *Resp. Br.*, ECF No. 4, PageID 28. Respondents seek to ignore years of precedent

and lean into a statutory "interpretation" that seeks to upend 30 years of reasoned statutory interpretation. They regurgitate arguments already rejected by "[a]t least a dozen federal courts," who have reached the opposite conclusion upon reviewing the statutory text, statutory history, congressional intent, and statutory application for the last three decades. This also stands in direct opposition to what this Court has already determined. *See Hernandez Franco v. Raycraft et al.,* No. 1:2025cv01274 (W.D. Mich. 2025); *Ruiz Mejia*, No. 1:25-cv-01227 (W.D. Mich.); *De Jesus Ramirez*, No. 1:25-cv-01261 (W.D. Mich.)*; Pizarro Reyes*, 2025 WL 2609425, at *3 (collecting cases); *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Martinez v. Hyde*, 1:25-cv-11613-BEM, 2025 WL 208438 (D. Mass. July 24, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Rosado v. Figueroa et al.,* No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis et al.*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv -11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Aguilar Merino v. Ripa et al.*, No. 25-23845-CIV, 2025 WL 2941609, at *3 (S.D. Case 2:25-cv-13086-SKD-DRG ECF No. 6, PageID.186 Filed 10/21/25 Fla. Oct. 15, 2025); *Sanchez Alvarez v. Noem et al.*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025).

Section 1226(a) sets out a "default rule" for the discretionary detention of noncitizens "already present in the United States." *Jennings*, 583 U.S. at 303. Under §1226(a), immigration authorities may make an initial determination as to detention, but noncitizens may then request a bond hearing before an Immigration Judge. 8 C.F.R. §1236.1(c)(8), (d)(1). At that hearing, the noncitizen "may secure her release if she can convince the officer or immigration judge that she poses no flight risk and no danger to the community." *Nielsen v. Preap*, 586 U.S. 392, 397-98 (2019)(citing 8 C.F.R. §§1003.19(a), 1236.1(d); *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006)).

By contrast, § 1225 governs the detention of those "seeking admission." An applicant for admission is defined as a noncitizen "present in the United States who has not been admitted or who arrives in the United States," § 1225(a)(1), and "fall[s] into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 288. The second category creates a catchall mandatory detention provision: "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 [full removal proceedings under § 1229]." 8 U.S.C. § 1225(b)(2)(A). Unlike noncitizens detained under § 1226(a), those detained under § 1225 may only be released "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

Respondents' argument that § 1225(b)(2)(A) applies to all noncitizens present in the United States without admission, fails. It cites no binding authority and does not grapple with Jennings. As many other district courts have concluded, "Respondents' interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Alejandro v.*

Olson, 2025 WL 2896348, at *6 (S.D. Ind. Oct. 11, 2025); *see, e.g.*, *Lopez Benitez v. Francis*, 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system.") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

According to Respondents, § 1225(b)(2)(A) authorizes Ms. Deleon Ortiz's detention. They argue, as they have in countless briefs across the country, that Ms. Deleon Ortiz is an "applicant for admission" because she is "present without admission." *Resp. Br.*, ECF No. 4, PageID 28-30. Since both §§ 1225 and 1226 discuss the detention of noncitizens who have not been admitted—for instance, those who inadmissible and subject to mandatory detention under § 1226(c) as an exception to § 1226(a)—the term "applicant for admission" alone does not mean that § 1225 governs detention here. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); see also, e.g., *Gomes v. Hyde*, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) (noting that without the criminal conduct criterion, "inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section1226(a)'s discretionary detention framework".

Second, and most importantly, "'seeking' implies action and that those who have been present in the country for years are not actively 'seeking admission.'" *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025); see also *Ochoa Ochoa*, 2025 WL 6324179. Here, Ms. Deleon Ortiz entered the United States in the late 1990s, 25 years **before** her detention in Michigan, over 1,200 miles away from the southern border.

Respondents argue that because Ms. Deleon Ortiz has not been admitted to the United States, she continues to be a noncitizen "seeking admission." *Resp. Br.*, ECF No. 4, PageID 30. But this interpretation would render the phrase "seeking admission" in § 1225(b)(2)(A) mere surplusage by equating it to "applicant for admission." See *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."); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). Moreover, "the phrase 'seeking admission[,]' [though] undefined in § 1225(b)(2)(A)[,] necessarily implies some sort of present-tense action." *Diaz Martinez*, 2025 WL 2084238, at *4; see *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process.'") In agreement with other district courts, this court rejects Respondents' expanded reading of § 1225(b)(2) and the term "seeking admission." *See, e.g., Escobar-Ruiz v. Raycraft*, No. 1:25-cv-01232, Doc. 7 (W.D. Mich. Oct. 31, 2025); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 WL 2992222, at *6 (W.D. Mich. Oct. 24, 2025); *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648, at *6 (W.D. Mich. Oct. 17, 2025). *See also, Ochoa Ochoa v. Crowley*, No. 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880, at *3 (D. Colo. Sept. 16, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 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. *Escobar-Ruiz*, No. 1:25-cv-01232, Doc. 7, at 8. Here, under the facts and circumstances of Ms. Deleon Ortiz's case, an "examining immigration officer" did not make a determination as to whether Ms. Deleon Ortiz was not clearly and beyond a doubt entitled to be admitted when she came into the United States at some point in the late 1990s. Ms. Deleon Ortiz was not crossing the border when she was arrested and detained. Instead, Ms. Deleon Ortiz was detained on October 30, 2025, in Michigan, while she was commuting to work. This Court has already concluded that § 1225(b)(2)(A) applies to aliens undergoing inspection, which generally occurs at the United States' border, when they are seeking lawful entry into the United States. Because Ms. Deleon Ortiz is not, nor was she at the time she was detained, "seeking admission," § 1225(b)(2)(A)'s mandatory detention provision does not apply. Because the record shows that Ms. Deleon Ortiz has resided in the United States for approximately 25 years before she was arrested and detained, there is no logical reason to interpret § 1225(b)(2)(A) as applying to Petitioner. *See Escobar-Ruiz*, No. 1:25-cv-01232, Doc. 7; *De Jesus Ramirez*, No. 1:25-cv-01261, Doc. 7.

Respondents cite *Matter of Yajure Hurtado*, a non-binding BIA decision issued on September 5, 2025, holding that IJs lack jurisdiction to hold bond hearings or grant bond to individuals charged with entering the country without inspection. 29 I&N Dec. 216 (BIA 2025). But that decision is not binding on this Court, nor is it particularly persuasive considering that BIA's view "has not remained consistent over time." *Loper Bright Enters.*, 603 U.S. at 386. This court's conclusion is supported by a longstanding agency practice of providing § 1226(a) bond hearings to noncitizens like Ms. Deleon Ortiz who entered without inspection and have lived in the United States for many years. *See also, e.g., Alejandro*, 2025 WL 2896348; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025). As she is neither

in expedited proceedings nor a noncitizen "seeking admission," Ms. Deleon Ortiz cannot be lawfully detained under § 1225(b). Thus, under § 1226(a), Ms. Deleon Ortiz is entitled to a discretionary bond determination hearing, and her continued detention is in violation of the INA.

C. VIOLATION OF DUE PROCESS

Ms. Deleon Ortiz has a fundamental interest in liberty and being free from official restraint. By issuing its decision in *Matter of Yajure Hurtado*, the BIA has taken nearly all bond authority away from Immigration Judges. Respondents, on the other hand, argue that Ms. Deleon Ortiz has received due process because she "received notice of the charges against her, has access to counsel, may appear before an immigration judge, can request bond at any time, has the right to appeal the denial of any request for bond, and has been detained by ICE for a short time." *Resp. Br.*, ECF No. 4, PageID 42-43

"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 Ms. Deleon Ortiz, are entitled to its protections.[1] *See id.*; *see also Chavez-Acosta v. Garland*, No. 22-3045, 2023 WL 236837, at *4 (6th Cir. Jan. 18. 2023).

If Ms. Deleon Ortiz's detention truly fell under §1225(b)(2)(A), Respondents' due process argument might carry more weight. However, for reasons outlined in the preceding sections, Ms. Deleon Ortiz is governed by § 1226(a). Section 1226(a) provides a discretionary

[1] Respondents invoke *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), to claim that Ms. Deleon Ortiz lacks Fifth Amendment protections and that her detention under § 1225 is lawful. That comparison fails. The petitioner in *Thuraissigiam* was apprehended only 25 yards from the border - unlike Ms. Deleon Ortiz, whose circumstances place her squarely within the protections recognized for individuals already inside the United States.

framework for detention or release of an alien subject to that provision. The statute expressly allows the Attorney General to continue to detain the arrested alien or release the alien on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General," or "conditional parole." See 8 U.S.C. § 1226(a)(1), (2). This discretionary framework "requires a bond hearing to make an individualized custody determination." *See Lopez-Campos*, 2025 WL 2496379, at *9.

Respondents also reference *Yamataya v. Fishim*, 189 U.S. 86, 100 (1903) to argue that Ms. Deleon Ortiz should not have full due process protections; implying that affording him the requested relief would give him more protections than those lawfully admitted. *Resp. Br.*, ECF No. 4, PageID 44. This grossly misrepresents *Yamataya,* which recognized that someone who has, "entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here" could not be "taken into custody and deported without giving him all opportunity to be heard upon the questions involving her right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized." *Yamataya*, 189 U.S. at 614-15.

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). Thus, under *Mathews*, this Court must consider the following three factors: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *See Lopez-Campos*, 2025 WL 2496379, at *9 (citing Mathews, 424 U.S. at 335).

The first Mathews factor weighs strongly in favor of Ms. Deleon Ortiz. There is no

dispute that she has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). This Court may also consider her conditions of confinement, i.e., "whether a detainee is held in conditions indistinguishable from criminal incarceration." *See Günaydin v. Trump*, No. 25-CV-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021) and *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)). Ms. Deleon Ortiz, through counsel, represents that she has four U.S. citizen children, one of whom suffers from cognitive disabilities. Ms. Deleon Ortiz and her family reside in Michigan, and Ms. Deleon Ortiz contributes financially to the family. Ms. Deleon Ortiz now finds herself detained at a processing center away from her children, for weeks now, and she is certainly "experiencing [many of] the deprivations of incarceration, including loss of contact with friends and family, loss of income earning . . . lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin*, 2025 WL 1459154, at *7.

The second Mathews factor also weighs in Ms. Deleon Ortiz's favor. An individualized bond hearing historically ensured that an immigration judge could assess whether she posed a flight risk or a danger to the community, reducing the risk that Ms. Deleon Ortiz would suffer an "erroneous deprivation" of her rights. *See Lopez-Campos*, 2025 WL 2496379, at *9. Given the unprecedented decision in the *Matter of Yajure Hurtado*, she no longer can receive an individualized bond hearing on the merits of her case.

Under the third Mathews factor, the Government "does, indeed, have a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community." *See Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025). However, given the record presented to the Court, Respondents have not established a significant interest in potentially "detaining someone who [could convince] a

neutral adjudicator, following a hearing and assessment of the evidence, that her ongoing detention is not warranted." *See id.*[2] Furthermore, Respondents' position "requires the government to continue funding and overseeing [Petitioner's] detention[.]" *See id.*

In sum, the Court's balancing of the Mathews factors weighs in Ms. Deleon Ortiz's favor. Accordingly, this Court should conclude that Ms. Deleon Ortiz's current detention under the mandatory detention framework set forth in § 1225(b)(2)(A) violates her Fifth Amendment due process rights.

III. CONCLUSION

For the reasons stated above, Ms. Deleon Ortiz's petition for writ of habeas corpus should be granted.

(1) Defendants should immediately release Ms. Deleon Ortiz from custody, or in the alternative, provide her with a bond redetermination hearing under 8 U.S.C. § 1226(a) within 3 days.

(2) If Respondents intend to pursue a new bond redetermination, this Court should expressly preserve Ms. Deleon Ortiz's due process claim to permit renewal should bond again be denied.

(3) Furthermore, Ms. Deleon Ortiz requests that this Court order Respondents to file a status report within six business days of the date of this Court's opinion and accompanying order and judgment to certify compliance with this opinion. The status report shall include if and when the bond hearing occurred, if bond was granted or denied, and if bond was denied, the reasons for the denial.

In light of Ms. Deleon Ortiz's prior bond denial under *Yajure Hurtado*, the risk of the

[2] As noted above, of particular concern is the Respondents' failure to produce any signed documentation supporting Ms. Deleon Ortiz's arrest or continued detention. Neither a NTA nor a signed warrant of arrest has been provided to this Court or to Petitioner's counsel, which raises serious questions about the legal basis for her custody.

Immigration Judge simply re-applying this in her bond redetermination hearing, and her current separation from her citizen children, her husband, and her community, the more appropriate remedy is immediate release.

Dated: November 26, 2025
Chicago, Illinois

/s/William A Quiceno
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Attorney for Petitioner

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CERTIFICATE OF SERVICE

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

Dated: November 26, 2025
Chicago, Illinois

Respectfully submitted,

/s/ William A. Quiceno
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