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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

Ignacio Borjas Rios

Petitioner,

v.

Kevin Raycraft, Director, Detroit Enforcement and Removal Operations Field Office at Immigration and Customs Enforcement; Todd M. Lyons, Acting Director, Immigration and Customs Enforcement; Kristi Noem, Secretary, U.S. Department of Homeland Security; Sirce Owen, Acting Director, Executive Office for Immigration Review; Pam Bondi, Attorney General of the United States.

Respondents.

No: 2:25-cv-13726

Honorable Laurie J. Michelson

Mag. Judge Anthony P. Patti

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner has been unlawfully detained since October 30, 2025. In their response brief, Respondents make four main arguments: 1) that this Court should dismiss all Respondents except Petitioner's immediate physical custodian, 2) that Petitioner has no cognizable right to due process, 3) that Petitioner has not exhausted administrative remedies, and 4) that Petitioner is lawfully detained under the Immigration and Nationality Act (INA) pursuant to 8 U.S.C. § 1225(b)(2), in accordance with the statute's text, structure, and history. *See* ECF No. 8. Respondents do not dispute that Petitioner has lived in the United States for three decades, that Petitioner has no criminal history, or that Petitioner is not a flight risk warranting his mandatory detention.

Petitioner hereby files this brief to reply to the Respondents' allegations and respectfully requests that the Court forthwith issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and § 2243 for his immediate release or order Respondents to schedule a bond hearing, to which he is constitutionally and statutorily entitled. 8 U.S.C. § 1226(a).

BACKGROUND

Petitioner entered the United States around October 1995 at or near El Paso, Texas, without inspection. ECF No. 1, PageID.2.

On October 30, 2025, Petitioner was arrested by Immigration and Customs Enforcement (ICE) officials in River Grove, Illinois, without an arrest warrant. ECF No. 1, PageID.2. He was subsequently transported to the North Lake Correctional Facility in Baldwin, Michigan, which falls under purview of the Detroit ICE Enforcement and Removal Operations (ERO) Field Office. ECF No. 1-1, PageID.30. To this day, Petitioner has yet to be placed in removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a.

On November 21, 2025, Petitioner filed a petition with this Court, seeking a writ of habeas corpus to review his unlawful detention in violation of his constitutional and statutory rights. *See* ECF No.1. It is Petitioner's claim that Respondents' policy and statutory interpretation is in violation of the INA and due process. 8 U.S.C. § 1226(a). *See* Pet., ECF No. 1, PageID.4-9.

On December 5, 2025, Respondents filed a brief in support of their response to Petitioner's petition for a writ of habeas corpus. Respondents primarily contends that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A), which provides for mandatory detention. ECF No. 8, PageID.113-130. Additionally, Respondents argue that the Court should dismiss all Respondents except the ICE Enforcement and Removal Operations (ERO) Field Office Director because Petitioner does not have a valid habeas claim against other Respondents. ECF No. 8, PageID.109-110. Respondents further challenge Petitiner's due process claim. ECF No. 8,

PageID.110-112. Finally, Respondents argue that Petitioner should be required to exhaust administrative remedies to provide the Court with a better record to review. ECF No. 8, PageID.112-113. Petitioner respectfully asserts that Respondents' arguments have been repeatedly rejected by courts and have no merit because they contravene the INA and Fifth Amendment's due process clause.

ARGUMENT

I. Respondents are Properly Named and Should Not Be Dismissed

A. This Court Has Habeas Jurisdiction Over Petitioner's Suit

Respondents allege that this Court does not have jurisdiction over Respondents because Petitioner is detained in the Western District of Michigan and his immediate physical custodian (i.e., the jail warden, according to Respondents) is in the Western District under *Rumsfeld v. Padilla*, 542 U.S. 426, 435–42 (2004). ECF No. 8, PageID.109-110. Petitioner respectfully asserts that Respondents' reliance on *Padilla* is misplaced.

The Petitioner's detention falls under the jurisdiction of Detroit ICE Enforcement and Removal Operations (ERO) Field Office, which is a properly named Respondent in this case under the Sixth Circuit's interpretation of the immediate custodian rule. A writ of habeas corpus is directed to the person having custody of the person detained. 28 U.S.C. § 2243. Although some courts interpret a

detained noncitizen's immediate custodian as the warden of the facility where the noncitizen is detained, this interpretation is rejected by the Sixth Circuit in *Roman v. Ashcroft*, 340 F.3d 314, 320-321 (6th Cir. 2003).

In *Roman*, the Sixth Circuit held that although the warden technically has day-to-day control over noncitizen detainees, the "INS District Director" for the district where the detention facility is located has power over the noncitizen habeas corpus petitioners because the District Director is the only individual with authority to actually release the noncitizen detainee. *Id.* at 320-321. The District Director directly oversees detention facilities in their area of responsibility and the confinement of noncitizens detained at those facilities. *Id.* at 320-321. Wardens are considered agents of the District Director as their control is limited to the direction of Department of Homeland Security (DHS). *Id.* at 321. This Court has previously found Detroit ERO Field Office Director Kevin Raycraft a proper respondent in a habeas corpus case filed by a noncitizen detained petitioner. *Robledo Gonzalez et al., v. Raycraft*, No. 25-13502, 2025 WL 3218242, at *1 (E.D. Mich. Nov. 17, 2025). *See also Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *8 (E.D. Mich. Sept. 9, 2025); *Contreras-Lomeli v. Raycraft*, No. 2:25-CV-12826, 2025 WL 2976739, at *3 (E.D. Mich. Oct. 21, 2025).

In the present case, because the Detroit ERO Field Office exercises primary control over Petitioner and his continued detention, the Director of the Detroit ERO

Field Office is the immediate custodian of the Petitioner and is a proper Respondent. Because the Director is properly named as a Respondent in this action and because the Detroit ERO Field Office is located in the Eastern District of Michigan, this Court has habeas jurisdiction over Petitioner's suit.

This case is not governed by *Padilla*, as the Supreme Court did not address the jurisdiction issue in noncitizen detained cases in *Padilla*. *Roman* remains controlling in the Sixth Circuit, under which the Petitioner's immediate custodian is the ICE ERO Field Office Director. District courts within the Sixth Circuit, including this Court, have found the ERO Field Office Director, not the jail warden, to be the proper respondent in an overwhelming number of cases. *See, e.g., Robledo Gonzalez et al.*, 2025 WL 3218242, at *1; *Gimenez Gonzalez v. Raycraft*, No. 25-CV-13094, 2025 WL 3006185, at *5 (E.D. Mich. Oct. 27, 2025); *Woldeghergish v. Lynch*, No. 1:25-cv-461, 2025 U.S. Dist. LEXIS 167079, at *2 (S.D. Ohio Aug. 27, 2025). Petitioner respectfully asserts that the minority opinion cases cited in Respondents' brief (ECF No. 8, PageID.110) have misconstrued *Padilla* and *Roman*, making new law in the circuit, and do not have controlling authority over this Court. A Court of Appeals decision remains binding on lower courts in its jurisdiction and *Roman* should be followed by this Court. *United States v. Wehunt*, 230 F. Supp. 3d 838, 846 (E.D. Tenn. 2017).

Nowhere in *Padilla* did the Supreme Court overturn *Roman*. To the contrary, the Supreme Court acknowledged the circuit split on the question, specifically citing to *Roman* as an example of how a Court of Appeals could define the "immediate custodian" in the context of habeas petitions filed by detained noncitizens. The Supreme Court's explicit deferral of the proper custodian in immigration detention cases is indicative of the fact that the Supreme Court allowed the holding in *Roman* to stand. Furthermore, the Sixth Circuit has had opportunities to overrule or limit *Roman* but in the few instances the Court has addressed it, it has done so favorably. *See Stanifer v. Brannan*, 564 F.3d 455, 458 (6th Cir. 2009); *Enriquez-Perdomo v. Newman*, 149 F.4th 623, 634 (6th Cir. 2025). District Courts in all the districts within the Sixth Circuit have also found the ERO Field Office Director, not the jail warden, to be the proper respondent, often at the government's request and over the objection of the habeas petitioner. Although these cases do not have binding authority, they hold value in understanding the application of the controlling law. *See*, e.g., *Woldeghergish*, U.S. Dist. LEXIS 167079, at *2 (adopting report and recommendation dismissing the wardens as respondents and proceeding only against the ICE Field Office Director); *Hango v. McAleenan,* 2019 U.S. Dist. LEXIS 211687, 2019 WL 7944352, at *2-3 (N.D. Ohio Nov. 13, 2019) (granting motions to dismiss by DHS Secretary, USAG, and County Sheriff because only the Director of the Detroit ERO Field Office is the proper respondent).

As these cases show, the warden of the detention facility merely takes directions from the relevant ERO Field Office Director. This Court has previously agreed with the former set of cases filed in this District and found it more convincing that *Roman* was not overruled by *Padilla* and remains binding law in this circuit; no new facts or law are advanced here to change that conclusion. *See Kadagan v. Raycraft, et. al.*, No. 25-13602, 2025 WL 3268895, at *2 (E.D. Mich. Nov. 24, 2025) (citing *Romero Garcia v. Raycraft*, No. 25-CV-13407, 2025 WL 3252286, at *2 (E.D. Mich. Nov. 21, 2025)). Because *Roman* remains good and binding law in this district and in the Sixth Circuit, this Court should employ the immediate custodian rule as clarified in *Roman*.

The ICE ERO Field Office Director is properly named as a Respondent in this action because Petitioner's detention is directly overseen by the Detroit ERO Field Office, which is located in the Eastern District of Michigan. This Court has habeas jurisdiction over petitioner's suit and should assume jurisdiction over Respondents.

B. Petitioner Has a Valid Habeas Claim Against All Respondents

Respondents further argue that even if the Court retains jurisdiction over the case, ICE ERO is the only proper Respondent and that Petitioner does not have a viable claim against other Respondents. ECF No. 8, PageID.110. The Court should reject the Respondents' arguments.

First, Petitioner seeks not just habeas relief but also declaratory relief, injunctive relief preventing transfer and ordering a bond hearing, attorney fees, and any other just and proper relief. ECF No. 1, PageID.9-10. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); United States Constitution Article I, Section 9 (Suspension Clause). It can grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. Under these statutes, the relief granted by this Court extends to all Respondents. Petitioner has a viable habeas claim against all Respondents, not only the Detroit ERO Field Office Director, and the Court should not dismiss those Respondents.

Second, Petitioner is detained as a result of the unlawful statutory interpretation and practices pursued by ICE and DHS. Respondents Todd M. Lyons, Acting Director of ICE, and Kristi Noem, DHS Secretary, have supervisory authority over the policies that led to Petitioner's detention. They also have the ultimate authority over Petitioner's transfer. Furthermore, Petitioner is denied bond eligibility due to current policies of the Department of Justice (DOJ) and Executive Office for Immigration Review (EOIR), which houses both the Board of Immigration Appeals (BIA) and immigration judges. Respondents Sirce Owen, Acting Director of EOIR, and Pam Bondi, Attorney General of the United States has the power to rescind these agencies policies as well as to ensure a bond hearing for Petitioner. Therefore,

besides the Detroit ERO Field Office Director Kevin Raycraft, Respondents Todd M. Lyons, Kristi Noem, Sirce Owen, and Pam Bondi are proper Respondents for declaratory and injunctive relief.

Courts have allowed a noncitizen habeas corpus detainee to name Respondents in addition to the noncitizen's immediate custodian, including Attorney General and other higher-level officials to ensure that the habeas case "could be adjudicated without interruption in the event of a transfer." *Roman*, 340 F.3d at 326. *See also Gimenez Gonzalez*, 2025 WL 3006185, at *5 (denying Respondents' motion to dismiss Attorney General Bondi as a Respondent because she maintains the authority to enforce relief that Petitioner receive a bond hearing); *Hernandez Capote v. Sec. of U.S. Dept. of Homeland Sec.*, No. 25-13128, 2025 WL 3089756, at *3 (E.D. Mich. Nov. 5, 2025) (finding Attorney General a proper Respondent); *Puerto-Hernandez v. Lynch*, No. 1:25-CV-1097, 2025 WL 3012033, at *12 (W.D. Mich. Oct. 28, 2025) (refusing to dismiss Acting Director Lyons and Secretary Noem as Respondents because they maintain the authority to enforce the Court's order in the event of a transfer); *Garcia v. Noem*, No. 1:25-CV-1271, 2025 WL 3017200, at *8 (W.D. Mich. Oct. 29, 2025) (concluding that Secretary Noem is a proper Respondent to habeas proceedings).

In light of these decisions, because the additional relief Petitioner seeks would run against additional Respondents in the present case as well, this Court should not

dismiss any of the named Respondents. The high-level officials in this case, including Attorney General, DHS Secretary, Acting ICE Director, and Acting EOIR Director, retain the authority to end Petitioner's unlawful detention and they are properly named as Respondents.

II. Petitioner's Detention Does Violate the Due Process Clause, Which Requires a Bond Hearing

Next, Respondents contend that Petitioner does not have a plausible due process claim because he is detained under 8 U.S.C. § 1225(b)(2) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which is binding on the agency. ECF No. 8, PageID.111. According to Respondents, Petitioner has already received due process because he has access to counsel and has the right to request bond, and the fact that Petitioner does not wish to pursue the available administrative remedies does not make those procedures constitutionally deficient. ECF No. 8, PageID.110-111. Respondents add that even if Petitioner's detention is unlawful, it is not unconstitutional. ECF No. 8, PageID.112.

Petitioner strongly disagrees with Respondents' position. The Fifth Amendment guarantees the right to be free from deprivation of life, liberty or property without due process of law. U.S. Const. amend. V. Liberty is one of the most basic and fundamental rights and "the freedom from imprisonment—

government custody, detention, and other forms of physical restraint —lies at the heart of the very liberty that [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Fifth Amendment's Due Process Clause applies to noncitizens, "whether their presence is lawful, unlawful, temporary, or permanent." Id. at 679. *See also A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025).

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). *Mathews* identified three factors to be balanced: (1) the private interest at stake; (2) the risk of erroneous deprivation and value of additional procedures; and (3) the government's fiscal and administrative burdens. *Mathews*, 424 U.S. at 334-335.

Here, all three factors weigh in Petitioner's favor. First, Petitioner has cognizable private in interest in being freed from unlawful detention without any individualized bond determination because his liberty is at stake. See *Pacheco Mayen v. Raycraft*, No. 2:25-CV-13056, 2025 WL 2978529, at *10 (E.D. Mich. Oct. 17, 2025). Second, there is a severe risk of erroneous deprivation of freedom because Petitioner is not given an opportunity for an individualized custody determination evaluating dangerousness and flight risk. Third, the government has not and cannot

show that it has a significant interest in Petitioner's continued detention, which is detrimental to Petitioner's life and well-being.

Under *Mathews*, Petitioner's detention without a bond hearing is unconstitutional. 424 U.S. at 334. Respondents contend that Petitioner is due no further process at this time because, according to Respondents, because he was given notice of the charges against him, he has attended a hearing with an Immigration Judge, and he has the right to request bond and appeal any bond decision by the Immigration Judge. ECF No. 8, PageID.111. Respondents' assertions are contradicted by their own policies and position on the case, as well as the evidence submitted in support of the petition. Despite being detained for over a month, Petitioner has yet to receive a charging document (i.e., Notice to Appear (NTA)) from the Department of Homeland Security (DHS). Under 8 U.S.C. § 1229a, removal proceedings begin when DHS files a NTA with the Immigration Court after is served on the noncitizen. 8 C.F.R. § 1003.13, 1003.14. Petitioner has not yet been served with a NTA. Although ICE has a general authority to detain individuals who are subject to removal proceedings, Respondents have not even placed Petitioner into removal proceedings. ECF No. 10-1, PageID.170.

Although Respondents have included a "Notice of Referral to Immigration Judge" in their response as proof of his alleged status as an applicant for admission 8 U.S.C. § 1225(b)(2), a Notice of Referral (Form I-863) is not a proper charging

document in Petitioner's case. *See* Exh. 1 of Response to Petition for a Writ of Habeas Corpus, ECF No. 8-1, Page.ID134 .Other than being used to initiate expedited removal proceedings against a noncitizen claiming to be a lawful permanent resident, refugee, asylee, or U.S. citizen under § 1225(b)(1)(C), Form I-863 is used to refer an alien to an Immigration Judge for review of their credible fear of persecution or torture, or to initiate asylum-only proceedings against a noncitizen. 8 C.F.R. § 235.6. It is clear that Petitioner falls into neither of these categories. The Form I-863 issued for Petitioner indicates that he as Visa Waiver Program (VWP) applicant and has requested asylum in the United States. *See* ECF No. 8-1, PageID.133. This allegation is factually incorrect. VWP is a DHS program enables citizens or nationals of participating countries to travel to the United States for up to 90 days without a visa. Petitioner cannot be a VWP applicant because Mexico is not a designated country for participation in the VWP and he has never presented himself for inspection and admission as a VWP entrant nor has he ever held a U.S. visa or other entry documents. **Exh. A** (DHS informational printout on "U.S. Visa Waiver Program"). Petitioner's prolonged detention despite not being in removal proceedings is unlawful. Petitioner is being held in detention without being formally and properly notified of the charges against him. Respondents' reliance on this incorrect and poorly prepared document to substantiate their allegations indicates a

lack of review and disregard by Respondents for Petitioner's rights, due process, as well as U.S. immigration law.

Respondents' allegation that Petitioner has attended a hearing with an Immigration Judge and that he can request bond are similarly untrue. *See* ECF No. 8, PageID.111. Petitioner is unable to appear before an Immigration Judge because he is not in removal proceedings. Although Petitioner attempted to seek bond before the Honorable Immigration Judge Katherine Hansen at the Detroit Immigration Court while his habeas case is pending, the Immigration Judge declined to assume jurisdiction and to hold a hearing for Petitioner because no charging documents for him were filed with the Immigration Court. ECF No. 10-1, PageID.170,172-173. Judge Hansen advised that Petitioner withdraw his request for bond and attempt to refile when he is placed in removal proceedings by DHS. Petitioner remains in detention without access to immigration relief. Respondents have failed to provide Petitioner with a hearing and notice of the charges and continue to deprive him of liberty without any due process.

Petitioner respectfully asserts that even if he were placed in removal proceedings, under the Respondents' current policy and practices, he would not be deemed eligible for bond. Respondent subject individuals who entered the without inspection to mandatory detention without bond under § 1225(b)(2) and *Matter of Yajure Hurtado*. As established in Section IV of this brief, Petitioner's detention is

governed by 8 U.S.C. § 1226(a). Because Petitioner is entitled to a bond hearing under § 1226(a) and because Respondents continue to detain Petitioner under the mandatory detention framework under § 1225(b)(2), Petitioner's detention without a bond hearing amounts to a due process violation. This conclusion has been affirmed by courts in cases involving similar circumstances. *See Pacheco Mayen*, 2025 WL 2978529, at *10; *Casio-Mejia, v. Raycraft, et al.*, No. 2:25-CV-13032, 2025 WL 2976737, at *20-22 (E.D. Mich. Oct. 21, 2025); *Santos Franco v. Raycraft*, No. 2:25-CV-13188, 2025 WL 2977118, at *10 (E.D. Mich. Oct. 21, 2025); *Mendoza v. Noem*, No. 1:25-CV-1252, 2025 WL 3077589, at *8-9 (W.D. Mich. Nov. 4, 2025); *Alvarez v. Noem*, No. 1:25-CV-1313, 2025 WL 3151948, at *7-8 (W.D. Mich. Nov. 12, 2025).

Respondents have not identified a single case where courts have found it constitutional to deprive long-time residents of their liberty without any consideration of flight risk, dangerousness, or criminal history. Rather, Respondents cite cases concerning limited due process protections for people apprehended upon entry or with significant criminal history. These cases do not apply here.

To support their argument, Respondents rely on *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–140 (2020), where the Supreme Court held that a petitioner who was still "at the threshold of initial entry," though technically in the country, could still be treated as "an alien seeking initial entry." *Id.* at 114 (holding

that a noncitizen detained "within 25 yards of the border" is treated as if stopped at the border and had not acquired due process protections). Contrary to Respondents' position, *Thuraissigiam* held only that noncitizens detained close to the border "shortly after unlawful entry" have not yet "effected an entry." *Id.* at 140. Here, Petitioner had been "already in the country" when he was unlawfully detained by ICE. Petitioner has substantial established connections to the United States, including his three decades of residence, gainful employment, as well as ties to his U.S. citizen and lawful permanent resident family members, all of which can only be effectuated after a person has already entered and established a residence. Thus, Respondents' reliance on *Thuraissigiam* is misplaced because Petitioner is not an "alien at the threshold of initial entry." *Id.* at 139.

Respondents' reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is similarly off base. *Demore* rejected a facial challenge to § 1226(c), which mandates detention of noncitizens with criminal convictions. Based on the presumption such people pose danger and flight risk, the Court found the government's interest in brief detention outweighed their liberty interest. *Id.* at 529 n.12. But *Demore* does not create an irrebuttable presumption even for people with criminal history, much less for law-abiding long-term residents. Noncitizens detained under § 1226(c) remain free to bring as-applied constitutional challenges. See *Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Black v. Decker*, 103 F.4th 133, 151-55 (2d Cir. 2024).

Finally, *Zadvydas*, contrary to Respondents' depiction, supports Petitioner. *Zadvydas* emphasizes that detention must be tied to preventing flight and protecting the public. *Zadvydas,* 533 U.S. at 690. Prolonged detention without connection to those purposes violates due process. Here, Petitioner has been detained without any individualized determination—precisely what *Zadvydas* condemns.

Respondents' arguments regarding Petitioner's due process rights are unfounded. Their practices and statutory interpretation under 8 U.S.C. § 1225(b)(2) and *Matter of Yajure Hurtado* violate due process and prolong Petitioner's detention. Petitioner respectfully request that this Court grant him a writ of habeas corpus and order his immediate release.

III. Requiring Administrative Exhaustion Would Be Futile

Despite arguing that the Court should require that Petitioner exhaust administrative remedies, Respondents admit that administrative exhaustion would be futile. ECF No. 8, PageID.112-113 ("the agency acknowledges that petitioner is ultimately unlikely to obtain the relief he seeks through the administrative process based on [...] *Matter of Yajure Hurtado*"). Petitioner is not required to exhaust his administrative remedies before the Immigration Court or BIA before addressing his claim to the District Court because the determination of Petitioner's claim relies upon a purely legal question of statutory interpretation and does not require the

agency to develop a record. *See Contreras-Cervantes v. Raycraft*, 2025 WL 2952796, at *5 (E.D. Mich. Oct. 17, 2025); *Casio-Mejia*, 2025 WL 2976737, at *5 (collecting cases). Furthermore, it would be futile for Petitioner to request bond again or seek further relief before the EOIR because the BIA has predetermined the statutory issue surrounding Petitioner's detention in *Yajure Hurtado. Casio-Mejia*, 2025 WL 2976737, at *4. *See also Shearson v. Holder*, 725 F.3d 588, 594 (6th Cir. 2013). Additionally, requiring Petitioner to wait for months for a decision from the BIA would mean that he would have to remain in detention, further depriving him of his liberty. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wa. 2025). Therefore, this Court should not apply prudential exhaustion requirements, especially when there is no statutorily imposed administrative exhaustion requirement and doing so would subject Petitioner to hardship. *See Mauricio Diego v. Raycraft, et al.*, No. 25-13288, 2025 U.S. Dist. LEXIS 222614, at *8-9 (E.D. Mich. Nov. 12, 2025).

IV. Petitioner's Detention Under § 1225(b)(2) is Improper and Unlawful

Finally, Respondents argue that Petitioner is properly detained under § 1225(b)(2) in light of statutory text as well as the structure and the history of the statute. ECF No. 8, PageID.113. Respondents' argument fails on the very basis of the statutory text, legislative history and the structure of the INA. The plain language of § 1225(b)(2)(A), read in context with the broader statutory scheme, establishes

that this provision applies only to noncitizens seeking admission at the border—not to individuals like Petitioner who have entered without inspection and resided in the United States for decades.

A. Plain language of the INA Indicates that Petitioner's Detention is Governed by 8 U.S.C. § 1226(a), Not § 1225(b)(2)(A)

8 U.S.C. § 1225(b)(2) provides for mandatory detention of arriving noncitizens seeking admission. 8 U.S.C. § 1226(a) provides for a discretionary detention framework. Individuals who are apprehended within the United States and placed in removal proceedings are generally detained under 8 U.S.C. § 1226(a). 8 U.S.C. § 1226(a) grants immigration authorities discretion to release a noncitizen on bond or conditional parole pending proceedings, and individuals detained under this provision may seek a custody determination. *See* 8 C.F.R. § 1003.19(a), 1236.1(d).

The text of 8 U.S.C. § 1225(a)(1) describes an "applicant for admission" as "an alien present in the United States who has not been admitted or who arrives in the United States." § 1225(b)(2)(A) allows an immigration officer to detain an "applicant for admission" if the examining officer determines that an alien "seeking admission" is not clearly and beyond a doubt entitled to be admitted. § 1226(a), on the other hand, is less specific and authorizes detention of a noncitizen "[o]n a warrant issued by the Attorney General" pending removal proceedings.

In *Jennings v. Rodriguez*, the Supreme Court analyzed the statutory sections in question. *See Jennings v. Rodriguez*, 583 U.S. 281, 287-303 (2018). The Court held that § 8 U.S.C. 1225(b)(2) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Id.* at 297. The Supreme Court's conclusion pertaining to the limited temporal and geographical scope of § 1225(b)(2) is supported by the text of the statute. The titles of § 1225(b)(1) and § 1225(b)(2) refer to "inspection," which term is discussed in the context of admission processes at ports of entry. *See* § 1225; § 1225(b)(1)-(2); § 1225(d)(1); § 1187. Several recent decisions held by this Court and district courts within the Sixth Circuit and across the country also affirm that the term "inspection" implies physical entry and § 1225(b)(2) is limited to those in the process of "seeking admission." *Robledo Gonzalez et al.*, 2025 WL 3218242, at *4 (finding that § 1225 deals with detention of newly arrived noncitizens at the border or ports of entry (and not noncitizens living in the country for years)); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (holding that the use of "arriving" to describe noncitizens strongly indicates that the statute governs the *entrance* of noncitizens to the United States, which reading is bolstered by the fact that § 1225 establishes an inspection scheme for when noncitizens are seeking entry into the country); *Contreras-Lomeli v. Raycraft*, No.

2:25-CV-12826, 2025 WL 2976739, at *6 (E.D. Mich. Oct. 21, 2025) (finding that § 1225 is limited to noncitizens detained at a port of entry, whereas § 1226 is a catchall provision governing noncitizens who have already been present in the United States); *Sanchez Alvarez v. Noem, et al.*, No. 1:25-CV-1090, 2025 WL 2942648, at *5 (W.D. Mich. Oct. 17, 2025) (noting that he 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).

As affirmed by these cases, the plain language of § 1225(b) applies to immigrants currently seeking admission into the United States at the nation's border or at a point of entry. It does not apply to noncitizens who entered without admission and who are already present in the United States. These individuals fall under the scope of § 1226(a). In Petitioner's case, Petitioner is not "arriving" to the country. Quite the contrary, his detention occurred while he had been in the country for thirty years. Thus, as a noncitizen who entered the United States without admission and was arrested while present and already in the country, Petitioner's detention is governed by § 1226(a). *Robledo Gonzalez et al.*, 2025 WL 3218242, at *5; *Contreras-Cervantes, et al.*, No. 2:25-CV-13073, at *21.

Respondents contend that Petitioner is an "applicant for admission" because he is a noncitizen, he did not have a lawful entry, and he was present in the United States when he was apprehended. ECF No. 8, PageID.114. Respondents' argument

entirely ignores the requirement for a determination by an "examining immigration officer." This language reflects the border inspection context in which § 1225(b)(2) operates. Section 1225(b)(2)(A)'s use of the term "examining immigration officer" gives further weight to the structural argument that § 1225 obviously sets out a scheme for inspections at or near the border, where arriving noncitizens will typically be examined by an "immigration officer," such as when they are apprehended by a border patrol agent during entry. *Pizarro Reyes*, No. 25-CV-12546, at *5. Petitioner was not at the border nor was being inspected by a border agent at the he was detained on October 30, 2025. Petitioner was working outside a residential building by Concordia University in River Grove, Illinois, when he was arrested by ICE officials without a warrant. This is not the circumstance contemplated by § 1225(b)(2)(A).

As discussed in Section II of this brief, Respondents rely on a Form I-863, Notice of Referral to Immigration Judge, to show that Petitioner' s detention is governed by §1225(b)(2). ECF No. 8, PageID.116,133-134. This document contains factually incorrect allegations and cannot serve as a basis for initiation of Petitioner's removal proceedings. Petitioner is not an asylum seeker nor a VWP entrant. He had never had contact with any immigration officials until his detention by ICE on October 30, 2025. ECF No. 1, PageID.7. He was nowhere near the border when he

was arrested. Under the text and statutory structure of the INA, Petitioner cannot be deemed an "arriving alien" or an alien "seeking admission."

Respondents' current position and broad reading of §1225(b)(2), as well as BIA's interpretation in *Matter of Yajure Hurtado* have been rejected by courts. *Matter of Yajure Hurtado* has unlawfully created a new rule that strips most individuals of bond eligibility, which is inconsistent with the Supreme Court's statutory interpretation in *Jennings* and with decades of the Respondents' own agency practices. The Court is not required, and should not, give deference to *Yajure Hurtado*. Petitioner's detention is governed by § 1226(a). Petitioner respectfully requests that his Court declare Respondents practices and interpretation of § 1225(b)(2)(A) unlawful. Petitioner further asks this Court to order his immediate release or find him entitled to a bond hearing under § 1226(a).

By way of reference, Petitioner also incorporates his argument in his response to the Court's order to show cause and asserts that he is eligible for declaratory relief under *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Petitioner requests that this Court forthwith award a writ of habeas corpus or order a bond hearing for him. Should the Court find that Petitioner is not qualified for relief under *Bautista*, Petitioner remains eligible for release and a writ of habeas corpus for the reasons discussed in this brief.

B. Respondents Ignore INA's Overall Structure and Misinterpret § 1225(b)(2)

Respondents invite this Court to read § 1225 in isolation, ignoring not just §1226, but the INA's overall structure. ECF No. 8, PageID.118. § 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," while § 1225 authorizes detention of "certain aliens seeking admission into the country." *Jennings*, 583 U.S. at 289. As their titles state, § 1226 relates to "[a]pprehension and detention" of noncitizens living in the U.S., while § 1225 covers procedures at the border, including "[i]nspection by immigration officers" and "expedited removal of inadmissible arriving aliens."

Respondents cannot explain why §1226 does not render bond-eligible most people who reside here but have not been admitted when it specifically carves out "inadmissible" non-citizens charged or convicted of certain crimes for mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D)-(E). A "plain reading of this exception implies that the default discretionary bond procedures in section 1226(a) apply to noncitizens who [...] are 'present in the United States without being admitted or paroled'" unless § 1226(c) applies. *Rodriguez*, 779 F. Supp. 3d at 1258-59.

Respondents say that Section 1225 distinguishes "between recently arrived noncitizens ('arriving aliens') and those like Petitioners who were successfully able

to evade apprehension for many years ('applicants for admission')." ECF No. 8, PageID.121. Respondents assert that § 1225(b)(1) covers "arriving aliens", while § 1225(a) and (b)(2) apply to "applicants for admission." Respondents misunderstand the structure of § 1225. Section 1225(b)(1) provides for expedited removal and detention of certain non-citizens. Section 1225(b)(2) applies to other "applicants for admission" who are "seeking admission" who are *not* subject to expedited removal but instead are in full removal proceedings. Depending on their circumstances, people arriving at the border may fall under either (b)(1) or (b)(2). *See Jennings*, 583 U.S. at 287 ("applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," with (b)(2) serving "as a catchall provision" that applies to those not covered by (b)(1)).

Respondents take the position that the Petitioner's argument seeks to alter § 1225(b)(2) to exclude the Petitioner despite the Petitioner clearly meeting the definition of arriving alien and falling squarely within the meaning of § 1225(b)(2). ECF No. 8, PageID.121-122. The Court should reject this assertion by Respondents; the distinction between recently arrived noncitizens ("arriving aliens") and those like Petitioner who were released by Respondents under §1226 and have remained free from apprehension for many years ("applicants for admission") is apparent in the plain language of the statute and cannot and should not be ignored by this Court. Petitioner relies on the plain text of § 1225(b)(2) itself—particularly the

requirements that the noncitizen be "seeking admission" and that an "examining immigration officer" make the admissibility determination.

These textual requirements are not "imported" from elsewhere—they appear in § 1225(b)(2) itself. *See* ECF No. 8, PageID.121. What Respondents request is that the Court ignore critical statutory language. Respondents' reading would collapse the definitions of "arriving aliens" and "applicants for admission," effectively erasing Congress's definition of "applicant for admission" and rendering half the statute meaningless. *See Pulsifer v. United States*, 601 U.S. 124, 143 (2024) (rejecting interpretation that "render[s] an entire subparagraph meaningless").

Petitioner's interpretation of §1226(a) is consistent with Congress's intent and the recent passage of the Laken Riley Act. *See* ECF No. 8, PageID.122-124. If Congress had intended for § 1225(b) to govern all noncitizens present in the country who had not been admitted, then it would not have adopted an amendment to § 1226 that prescribes a subset of noncitizens to be exempt from the discretionary bond framework. *Casio-Mejia, v. Raycraft, et al.*, 2025 WL 2976737, at *18; *Pizarro Reyes*, 2025 WL 2609425, at *5. As stated by a court ruling, "[i]f § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here," Congress would not have passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)."

Maldonado v. Olsen, ---F. Supp.3d----, No. 0:25-cv-03142, 2025 WL 237441, at*12 (D. Minn. Aug. 15, 2025).

Respondents further argue that *Jennings* does not support Petitioner's interpretation because *Jennings* characterized § 1225(b)(2) as a broad "catchall" provision. ECF No. 8, PageID.124. Petitioner respectfully contends that the Supreme Court's use of "catchall" in *Jennings* referred to § 1225(b)(2) covering applicants for admission not covered by § 1225(b)(1). *Jennings*, 583 U.S. at 287, 297. It did not refer to § 1225(b)(2) covering all unadmitted noncitizens regardless of where or when they are in the United States. *Id.* Respondents admit that *Jennings* described § 1226(a) as applying to noncitizens "present" in the U.S. but claim that by citing § 1227(a) (referring to admitted noncitizens), *Jennings* concluded that § 1226(a) applies only to those both present and admitted. *See* ECF No. 8, PageID.125. Respondents conveniently ignore that the Court cited § 1227(a) just as an "example" of people who are present and can be detained under § 1226(a) pending removal proceedings. *Jennings*, 583 U.S. at 288-289. *See also Rodriguez*, 779 F. Supp. 3d at 1258-59 (noting that in *Jennings* the Court describes § 1226 "as governing 'the process of arresting and detaining' noncitizens who are living 'inside the United States' but 'may still be removed,' including noncitizens 'who were inadmissible at the time of entry.'").

Pursuant to the holding in *Jennings*, Petitioner is not an arriving alien and cannot be governed by the mandatory detention provision in § 1225(b). Petitioner's detention falls under the default rule set forth in § 1226(a), which applies to individuals who entered without inspection and are present within the United States. 8 U.S.C. § 1226.

C. Respondents Misunderstand the Legislative History

1. Legislative History Supports a Limited Reading of § 1225(b)(2)'s Reach

Respondents ignore the legislative history and contemporaneously-issued regulations showing that § 1226(a) applies here. Instead, they argue that in enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 302, 110 Stat. 3009-546, Congress wanted to ensure that people seeking to enter lawfully are not treated worse than those who entered without inspection. ECF No. 8, PageID.126. But the government "err[s] in its analysis by identifying *one* of Congress's concerns in enacting IIRIRA and then treating it as Congress's sole concern driving the statute." *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876, at *13 (N.D. Cal. Oct. 3, 2025). While Congress was concerned about "placing noncitizens on equal footing in *removal* proceedings" (and IIRIRA thus imposes a greater burden of proof on non-citizens in the U.S. in

defending against removal), that "says nothing about detention." *Rodriguez*, 2025 WL 2782499, *24 (cleaned up).

The predecessor statute to § 1226(a) prior to Congress' enaction of IIRIRA governed removal proceedings for all noncitizens who were apprehended within the United States and provided for discretionary release on bond. Upon passing IIRIRA, Congress declared that the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a [...] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-828, pt. 1, at 229. *Pizarro Reyes*, 2025 WL 2609425, at *7 (citing *Rodriguez*, 779 F. Supp. 3d at 1260). Congress never intended to eliminate bond eligibility for noncitizens who entered without admission, and Respondents ignore the House reports and decades of case law interpreting IIRIRA and misconstrue Congress' legislative intent.

As reviewed and relied upon by numerous courts, including this Honorable Court, the legislative history behind § 1226(a) indicates that the statute applies to noncitizens that "reside in the United States but previously entered without inspection." *Pizarro Reyes*, 2025 WL 2609425, at *7 (citing *Rodriguez*, 779 F. Supp. 3d at 1260). The legislative history supports a narrow reading of § 1225's reach. Respondents' novel interpretation of the statute would create a transformation of the immigration detention system that requires detention of millions of people who have

lived and worked in the United States. If it were Congress's intention to upend lives of millions, it would have said so more clearly. *Id.*; *See also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). Petitioner respectfully requests that this Court reject the Respondent's incorrect allegations about legislative history and adopt a statutory interpretation consistent with § 1226(a) and *Robledo Gonzalez et al.*, 2025 WL 3218242, at *4-5.

2. The Agency's Practice Undermines Its Interpretation

Finally, Respondents argue that "there is no evidence indicating that the agency interpreted the scope of § 1225(b)(2) differently in the past." ECF No. 8, PageID.127. Petitioner strongly disagrees with this argument. Prior to change in DHS policy in July 2025 and the BIA's holding in *Yajure Hurtado*, DHS applied § 1225(b)(2)(A) to new arrivals who were being inspected at the border, and § 1226(a) to noncitizens who were already present in the country. The BIA's decision to pivot from three decades of consistent statutory interpretation and call for Petitioner's detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation. As of the time of drafting this brief, there are hundreds of district court cases which the BIA's interpretation of 8 U.S.C. §1225(b)(2) as inconsistent with the statutory text and legislative intent. *Pizarro Reyes*, 2025 WL 2609425, at *7 (collecting cases with which *Yajure Hurtado* contradicts); *Lopez-Campos v. Raycraft*, 2025 WL 2496379

(E.D. Mich. Aug. 29, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025).

In making the argument that the agency's statutory interpretation practices have not changed, Respondents misplaced their reliance on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which is premised on an entirely different set of facts from Petitoner's. *See* ECF No. 8, PageID.128. In *Matter of Q. Li*, the noncitizen was arrested at the border upon entry and was subsequently granted parole. While on parole, she was arrested again by DHS after her parole was terminated because DHS had discovered that she had prior criminal history involving human smuggling, which made her eligible for parole. *Matter of Q. Li* has no bearing on Petitioner's case. Petitioner was not apprehending at the border and was never granted parole. In fact, he had no encounters with immigration officials for thirty years until his arrest on October 30, 2025. Petitioner's detention falls within the scope of § 1226(a), which entitles him to a bond hearing.

Respondents' "sudden interpretation of the INA" has been rejected by courts around the country and in the Eastern District of Michigan, *Robledo Gonzalez et al.*, 2025 WL 3218242, at *3. Petitioner respectfully requests that the Court make arrive

at a conclusion consistent with these ruling and award him with a writ of habeas corpus.

D. The Court Should Not Give Deference to *Matter of Yajure Hurtado*

Respondents cannot identify any federal court case that has adopted their novel reading of § 1225(b)(2)(A) as applying to noncitizens like Petitioner. Instead, they contend that this Court should not rely on district court cases because they are not binding, but that it should give *Yajure Hurtado* more weight than this district court opinions on the issue. ECF No. 8, PageID.130. This argument is self-contradictory. Respondents cannot provide a persuasive reason for why this Court should ignore hundreds of district court cases across the country and instead rely on a non-binding administrative decision. *Matter of Yajure Hurtado* is premised on an unsupported interpretation of § 1225(b)(2)(A), which clearly contradicts Supreme Court precedent, Congress' intention, years of agency practice as well as case law dynamically created by district courts in the United States and within the Sixth Circuit. Petitioner's detention by Respondents violates the INA, 8 U.S.C. § 1226(a), and the Fifth Amendment Due Process Clause.

Petitioner requests this Court to declare Respondent's actions to deny Petitioner bond eligibility and detain him under the mandatory detention framework unlawful, issue a writ of habeas corpus, and grant him equitable relief.

CONCLUSION

Petitioner respectfully request that the Court grant his petition for a writ of habeas corpus because he is unlawfully detained in violation of federal law and the Constitution.

Respectfully submitted,

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Dated: December 9, 2025

CERTIFICATE OF SERVICE

I, Esma R. Tedik, hereby certify that on this day, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to the parties of record.

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