UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Hector Geovanny Rivera Munoz, Petitioner, Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Mary De Anda-Ybarra, El Paso Field Office Director; Warden of the El Paso Camp East Montana Respondents.	**Civil Case No. 3:25-cv-571**

REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION

In *Maldonado Bautista v. Santacruz*, the U.S. District Court for the Central District of California granted partial summary judgment to the petitioners on November 20, 2025, finding that the government's interpretation of the Immigration and Nationality Act (INA) is inconsistent with the statute's plain language. No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). On November 25, 2025, the court certified a nationwide class and extended declaratory relief to all class members. *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The court held that members of the Bond Denial Class are detained under 8 U.S.C. § 1226(a)—not § 1225(b)—and therefore may not be categorically denied consideration for release on bond. *Maldonado Bautista*, 2025 WL 3289861, at *11. Petitioner in this case is clearly a member of the bond class as his most recent apprehension was within the United States, and he is in removal proceedings under 8 U.S.C. § 1229a.

However, class counsel reports that "the government appears to have instructed IJs not to abide by the order." As a result, IJs have continued to deny bond requests on the grounds that they

are not bound by *Maldonado Bautista*. *See* Exh. A. In light of the government's refusal to comply with that ruling, Petitioner respectfully asks this Court to grant his temporary restraining order along with his habeas petition and order his immediate release. In the alternative, Petitioner requests that the Court direct the Respondents to provide him a bond hearing within five days of the Court's order, at which the Government must prove by clear and convincing evidence that he is a danger or a flight risk. *See Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, --- F. Supp. 3d ----, 2025 U.S. Dist. LEXIS 217585, at *11 (W.D. Tex. Oct. 30, 2025) ("The weight of authority also holds that when ordering a bond hearing as a habeas remedy, the burden of proof should be on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.").

In their Response, Respondents fail to grapple with Petitioner's clear bond eligibility under 8 U.S.C. § 1226(a) by providing a fallacious interpretation of 8 U.S.C. § 1225(b), conflating the statutory terms "applicant for admission" and "seeking admission," incorrectly alleging the Court lacks jurisdiction, and providing an erroneous application of the Due Process Clause. The Court should follow the growing avalanche of other district court opinions made on this issue and grant the Petitioner's Writ of Habeas Corpus. *See* ECF No. 1 at 2–4 (collecting cases).

I. FACTUAL STATEMENT

The facts of this case are fully provided in the Petitioner's Verified Petition for Writ of Habeas Corpus. *See* ECF No. 1. He fully adopts those facts in this reply.

II. ARGUMENT

The sole issue in this case is whether the Petitioner's continued immigration detention is lawful. The Court should (A) reject Respondents' erroneous contention that the Court lacks

jurisdiction; (B) determine that Petitioner's detention violates the governing statutes and the U.S. Constitution; and (C) order the Petitioner's immediate release.

A. This Court has jurisdiction over the Petitioner's Habeas petition.

This Court has jurisdiction over the legal claims brought in this habeas corpus proceeding under 28 U.S.C. § 2241(c)(3), which authorizes federal courts to grant habeas relief to individuals held "in custody in violation of the Constitution or laws or treaties of the United States." Petitioner challenges the legality of his detention under federal immigration law—specifically, whether 8 U.S.C. § 1226 or § 1225 governs his custody. That question falls squarely within the jurisdiction conferred by § 2241. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). Courts across the country have repeatedly held that habeas petitions contesting the statutory basis of immigration detention remain reviewable under § 2241. Accordingly, the Court should find that it has jurisdiction over this habeas petition and determine that Petitioner is detained under § 1226, not § 1225.

1. Section 1252(g) does not bar jurisdiction over Petitioner's habeas claim.

8 U.S.C. § 1252(g) provides,

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, ... no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

The Supreme Court has made clear that 1252(g) is a "narrow" jurisdictional bar that "applies only to three discrete actions that the Attorney General make 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) (emphasis in original). Indeed, the Supreme

Court has "rejected as 'implausible' the Respondents' argument that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (citing *Reno*, 525 U.S. at 42)); *see also Aguilar Maldonado v. Olson*, 795 F.Supp.3d 1134, 1141 (D. Minn. Aug. 15, 2025). Here, Petitioner's claims fall outside of § 1252(g)'s narrow jurisdictional bar. He does not challenge the Respondents' decision to commence proceedings, adjudicate his case, or execute a removal order. Rather, he challenges his continued detention without bond in violation of the federal immigration laws and the Fifth Amendment's right to due process. As numerous courts have held, detention pending removal does not "arise from" the Attorney General's decision to commence removal proceedings. *See, e.g.*, *Hernandez Marcelo v. Trump*, No. 3:25-CV-00094-RGE-WPK, 2025 WL 2741230, at *5 (S.D. Iowa Sept. 10, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *4 (D. Mass. Oct. 3, 2025). Thus, because Petitioner is not challenging any of the three "discrete actions" identified in *Reno*, § 1252(g) poses no bar to this Court's jurisdiction.

2. Section 1252(b)(9) does not preclude jurisdiction over the Petitioner's claims.

Section 1252(b)(9) provides that:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.

8 U.S.C. § 1252(b)(9). This provision channels challenges to removal proceedings and final orders of removal into the courts of appeals. *See INS*, 533 U.S. at 313. It has absolutely no application to challenges to detention that are entirely separate from the challenge to a final removal order. As the district court in *Maldonado* emphasized that "§ 1252(b)(9) is aimed at challenges to removal

proceedings," and "is a judicial channeling provision, not a claim-barring one." 795 F.Supp.3d at 1146 (citing *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007)).

The Supreme Court confirmed this narrow reading in *Jennings*, explaining that the phrase "arising from" in § 1252(b)(9) does not cover all claims merely related to or resulting from the fact of removal. 583 U.S. at 293–94. Interpreting it otherwise, the Court cautioned, would lead to "staggering results." *Id.* at 293. It "would also make claims of prolonged detention effectively unreviewable. By the time a final order of removal was eventually entered, the alleged excessive detention would have already taken place." *Id.* Because the respondents in *Jennings* did not seek review "of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined," the Court held that § 1252(b)(9) did not apply. *Id.* at 294. Similarly, the Petitioner is not challenging a final order of removal or any part of the removal process, therefore, the case falls outside the scope of § (b)(9). Numerous courts have reached the same conclusion. *See, e.g.*, *Santiago Santiago, v. Kristi Noem, et al.*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *4–5 (W.D. Tex. Oct. 2, 2025); *Cerritos Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *3 (D. Ariz. Oct. 3, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *7 (D. Nev. Sept. 17, 2025).

3. Section 1225(b)(4) does not preclude jurisdiction.

Section 1225(b)(4) provides:

> The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under § 1229a of this title.

This provision is plainly inapplicable. The examining officer did not admit the Petitioner, thus, there has been no "decision . . . favorable to the admission" of Petitioner.

B. **The Respondents' construction of the detention statutes runs contrary to the provisions' plain language, their legislative history, and decades of practice.**

The Supreme Court considered 8 U.S.C. §§ 1225(b) and 1226 and the classes of individuals to whom they apply in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The Court explained that § 1225(b) "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. In contrast, the Court explained that § 1226 "applies to aliens already present in the United States." *Id.* at 303. The Court further noted that "Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings," and also "permits the Attorney General to release those aliens on bond." *Id.* Contrary to the Respondents' claims, § 1225(b) does not require the Petitioner's detention; rather, § 1226(a) plainly allows for his release from custody.

The Respondents erroneously assert that all noncitizens charged as inadmissible under 8 U.S.C. § 1182 are categorically subject to mandatory detention under § 1225(b), while removable noncitizens fall under § 1226(a). *See* ECF No. 5 at 2–3. This argument is unsupported by the statutory scheme. First, the INA does not equate a charge of inadmissibility with mandatory detention under § 1225(b)(2)(A). Section 1225(b) applies only to a defined subset of noncitizens—namely, "applicants for admission" who are "seeking admission" into the United States. The statute states:

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

(Emphasis added). The plain language of § 1225(b)(2)(A) thus limits its application to individuals who are presently "seeking admission into the United States," a phrase that implies an affirmative,

ongoing attempt to gain entry. *See Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) ("One who is 'seeking admission' is presently attempting to gain admission into the United States."). "Admission" itself refers to "lawful entry . . . into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

When Respondents detained Petitioner decades after he entered the United States, he was not seeking entry, much less "lawful entry . . . after inspection and authorization by an immigration officer." *See Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), as amended (June 5, 2008) ("Under th[e] statutory definition, 'admission' is the lawful entry of an alien after inspection, something quite different, obviously, from post-entry adjustment of status." (emphasis in original)).[1] Once an individual has entered the United States, there is no longer any ongoing act of seeking admission; the process is complete. *See Bethancourt Soto v. Soto et al.*, No. 25-CV-16200, 2025 WL 2976572, at *6 (D.N.J. Oct. 22, 2025). Accordingly, by the time Respondents detained Petitioner in 2025, he was an "alien[] already present in the United States," rather than an "alien[] seeking entry." *Jennings*, 583 U.S. at 297. Under *Jennings*, detention authority over such noncitizens arises under § 1226, not § 1225(b).

The Respondents' attempt to equate "seeking admission" with being an "applicant for admission" is unavailing. *See* ECF No. 5 at 1. As multiple courts have explained, this interpretation contravenes basic canons of statutory construction—namely, that different terms within a statute are presumed to have different meanings, and that no word should be rendered superfluous. Section 1225(b)(2)(A) expressly requires that a noncitizen be both an "applicant for admission" and

[1] The Respondents' contention that Petitioner is "seeking admission" because he seeks release from custody so that he may remain in the United States misconstrues these statutory definitions. *See* ECF No. 5 at 4. Moreover, Petitioner seeks release because his continued detention is unlawful and unconstitutional.

"seeking admission." Reading these terms as synonymous would nullify the latter phrase entirely. *See, e.g.*, *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025); *Guerrero Orellana*, 2025 WL 2809996, at*7 ("After all, § 1225(b)(2)(A) requires that the noncitizen be both an 'applicant for admission' and 'seeking admission.' If the provision 'were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute.'") (alterations in original)). As such, the plain text of statute supports the Petitioner's position that he is detained under § 1226(a) and is entitled to release on bond. That is the end of the inquiry.

By contrast, § 1226(a) governs detention of noncitizens "pending a decision on whether the alien is to be removed from the United States," and expressly authorizes release on bond or conditional parole. The government's position improperly reads § 1225(b) as swallowing § 1226(a) whenever DHS elects to lodge an inadmissibility charge, a result the statute does not permit. The Respondents' interpretation would render § 1226(a) largely superfluous for a wide class of noncitizens present in the United States. DHS frequently charges inadmissibility under § 1182 against individuals who are physically present in the country and placed in removal proceedings. If inadmissibility charges alone triggered § 1225(b), then § 1226(a)'s bond and discretionary release framework would be meaningless for those individuals—contrary to basic principles of statutory construction requiring courts to give effect to all provisions of the INA.

Respondents further contend that Congress enacted IIRIRA to correct an "inequity" in the prior law by substituting the term "admission" for "entry." ECF No. 5 at 4. Yet, there is no "inequity" in treating a recent arrival differently from one who, like the Petitioner, has resided in the United States for decades and has substantial ties to this country. Congress did not act

unreasonably by allowing IJs to consider these very different classes of nonimmigrants differently—allowing bond for those with demonstrable equities but not for new arrivals.

The critical distinction is between individuals who are inside the United States and those who are not. *See Romero v. Hyde*, 795 F. Supp. 3d 271, 287 (D. Mass. 2025). As the Supreme Court explained, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Hernandez Marcelo*, 2025 WL 2741230, at *8 ("Federal Respondents' argument as to congressional intent would allow anyone located in the United States to be examined by an immigration officer and detained without bond as if at the border, eschewing due process rights."). It is therefore appropriate to interpret the detention statutes with that constitutional backdrop in mind. *See Romero*, 795 F.Supp.3d at 297 (quoting *Hewitt v. United States*, 605 U.S. ——, 145 S. Ct. 2165, 2173 (2025)). Under that framework, Respondents' interpretation not only conflicts with statutory text, it violates due process of law.

Finally, Respondents claim that their interpretation does not render the Laken Riley Act (LRA) superfluous simply because it appears "redundant." ECF No. 5 at 5. Respondents' claim is unpersuasive. Section 1226(c) requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D). In January 2025, Congress enacted the LRA, which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain

crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Pub. L. No. 119-1, 139 Stat. 3. Petitioner does not argue mere redundancy, but argues that the LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2). Thus, the Respondents' construction runs contrary to the statutes' plain language and Congressional intent as manifested in the recent passage of the LRA. *See Stone v. I.N.S.*, 514 U.S. 386, 397 (1995), *abrogation on other grounds recognized by Riley v. Bondi*, 606 U.S. 259, 276 (2025) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."); *see also Mejia v. Noem, et al*, 4:25-cv-04812 (S.D. Tex. Nov. 17, 2025) ("The respondents' argument that all undocumented immigrants are subject to mandatory detention would render § 1226(c)(1)(E) redundant. Such a reading violates the canons of statutory construction as set out by Justice Scalia and Bryan A. Garner in their seminal work READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012).").

C. **Respondents' recent interpretation of the detention statutes changes the legal landscape and therefore cannot be applied retroactively.**

"The *ex post facto* clause of the United States Constitution prohibits the retrospective application of criminal laws that materially disadvantage the defendant." *United States v. Yacoubian*, 24 F.3d 1, 9 (9th Cir. 1994) (quoting U.S. Const. art. I, § 9, cl. 3, § 10, cl. 1.). However, it only applies to criminal laws. Petitioner does not contend that § 1225(b) criminally punishes past conduct. Rather, he challenges the retroactive application of a new agency interpretation that attaches more legal consequences—mandatory detention without bond—to past conduct, in violation of due process and settled retroactivity principles.

In opposing the retroactivity claim, Respondents assert that they have merely "interpreted" the mandatory detention statutes differently than in the past. *See* ECF No. 5 at 10. However, DHS's current position represents a departure from its longstanding agency practice, under which

individuals in Petitioner's posture were detained pursuant to § 1226(a) and afforded bond hearings. A change in agency practice may not be applied retroactively where it alters settled legal consequences. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) ("As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.").

Indeed, even agency interpretations may be impermissibly retroactive when they "change[ ] the legal landscape." *Arkema Inc. v. E.P.A.*, 618 F.3d 1, 7 (D.C. Cir. 2010); *see also Edwards v. U.S. Att'y Gen.*, 97 F.4th 725, 736 (11th Cir. 2024) ("[A] Department of Interior adjudicatory rule could not be given retroactive effect because the Department's new interpretation reversed well-established agency practice to 'the extreme prejudice' . . . of the plaintiffs."). A new rule or policy changes the legal landscape if it "is 'substantively inconsistent' with a prior agency practice and attaches new legal consequences to events completed before its enactment." *Arkema*, 618 F.3d at 7 (citation omitted). Thus, DHS' recent interpretation of the detention statutes changes the legal landscape and imposes new legal consequences to prior conduct. Therefore, the new interpretation cannot be applied retroactively.

D. **Petitioner's detention violates his right to due process under the Fifth Amendment.**

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "[T]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Id.* at 690. The Petitioner has a weighty liberty interest in his freedom even if the

"government wields significant discretion." *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133, at *11 (D. Ariz. Aug. 13, 2025). When the government, as here, is detaining a noncitizen in violation of the plain language of a statute, the detention violates procedural due process.

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. As explained in the petition, these factors all favor a determination that the Petitioner is being held without due process of law. *See* ECF No. 1 at 14. The deprivation of the Petitioner's liberty interest based on their erroneous interpretation of the detention statutes carries a high risk that the Petitioner's liberty is being erroneously deprived that is not outweighed by any valid governmental interest.

Critically, Respondents fail to address the *Mathews* factors. Instead, they rely on *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) for their contention that applying § 1225(b) to the Petitioner does not violate due process. As multiple courts have determined, however, *Thuraissigiam* is distinguishable. *See, e.g.*, *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3463682, at *4 (N.D. Tex. Dec. 2, 2025). In *Thuraissigiam*, the petitioner was detained under § 1225 and placed in expedited removal proceedings. *Thuraissigiam*, 591 U.S. at 114. An asylum officer determined that he did not establish a credible fear, and he attempted to

challenge that negative fear determination through a writ of habeas corpus. *Id.* at 114–15. Here, by contrast, the Petitioner is not challenging an asylum claim; he is challenging his detention in immigration custody.

As this Court explained in *Lopez-Arevalo*:

> The Court centered its analysis on the scope of habeas relief, which permits challenges to unlawful detention, but cannot provide another "opportunity to remain lawfully in the United States." *Id.* at 117–20, 140 S.Ct. 1959. For purposes of his application for admission, Thuraissigiam had already received his due process through the credible fear interview and was subject to immediate removal and deportation thereafter. It was in this context that the Court determined that "an alien in [his] position has only those rights *regarding admission* that Congress has provided by statute." *Id.* at 140, 140 S.Ct. 1959 (emphasis added). The Court did not address whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention, as Lopez-Arevelo does here.

Lopez-Arevelo, 2025 WL 2691828, at *8.

Many courts have likewise agreed that *Thuraissigiam* is limited to "circumscribing an arriving alien's due process rights to *admission*, rather than limiting that person's ability to challenge detention." *See, e.g.*, *Sadeqi v. LaRose*, No. 25-CV-2587-RSH-BJW, 2025 WL 3154520, at *2 (S.D. Cal. Nov. 12, 2025) (emphasis in original); *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025) (collecting cases). Courts have also limited *Thuraissigiam* to noncitizens arriving at the border for initial entry into the country and distinguished those noncitizens who are found within the interior of the United States. *Id.* Indeed, *Thuraissigiam* itself recognized that "aliens who have established connections in this country have due process rights in deportation proceedings." 591 U.S. at 107.

E. The Respondents waived filing a response to the Petitioner's claim that they failed to follow their own regulations by failing to brief the issue.

The Respondents also have no response to the Petitioner's claim that their refusal to follow their own regulations constitutes a violation of the *Accardi* doctrine. In his petition, the Petitioner

alleged that in 1997, following the enactment of IIRIRA, EOIR and the then-INS jointly issued interim regulations stating that individuals who entered without inspection—although applicants for admission—would nonetheless be eligible for bond and bond redetermination. *See* 62 Fed. Reg. 10312, 10323. These regulations, which remain binding, have long been implemented through 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Such protection is not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 514 (2003). Yet, in this case, Respondents are detaining Petitioner under § 1225(b)(2) without bond, based on *Matter of Yajure Hurtado*, which directly contradicts the agency's own published interpretation. Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down."). A violation of this doctrine can also rise to the level of a constitutional due process violation, particularly when liberty is at stake. *See, e.g.*, *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

CONCLUSION

For the foregoing reasons, the Court should grant the Petitioner's writ of habeas corpus and order his release from custody immediately. In the alternative, the Court should order the Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within five days of this Court's order, at which DHS bears the burden to justify her redetention by demonstrating, by clear

and convincing evidence, that Petitioner is not a danger to the community or a flight risk. *See, e.g.*, *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262, at *4 (W.D. Tex. Oct. 30, 2025) (holding that "when ordering a bond hearing as a habeas remedy" the burden shifts to the Government); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *7 (D.N.M. Sept. 17, 2025).

Respectfully submitted,

/s/ Lance Curtright
Lance Curtright
Texas Bar No. 24032109
Lance@dmcausa.com

/s/ Alejandra Martinez
Alejandra Martinez
Texas Bar No. 24096346
Alejandra.martinez@dmcausa.com

De Mott, Curtright, Armendariz, LLP
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210) 590-1844 (telephone)
(210) 212-2116 (facsimile)

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2025, I electronically filed the foregoing with the Clerk using the CM/ECF system, which will send notification of such filing to opposing counsel.

/s/ Alejandra Martinez
Alejandra Martinez