UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
El Paso Division

VIJAYSINH RAMANJI CHAUHAN, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	)	Civ. No. 3:25-cv-00574

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner first encountered immigration officials in 2024, at which time Respondents arrested him and conducted a custody determination, ultimately finding authority under the discretionary detention statute, 8 U.S.C. § 1226(a), to release Petitioner on his own recognizance. That determination stands. A year later, and without rescinding or revisiting that prior determination, Respondents have rearrested Petitioner, and now aver for the first time that Petitioner is actually subject to mandatory detention pursuant to a different statute, 8 U.S.C. § 1225(b). Respondents will continue to deprive him of a the most basic process, a bond hearing, without intervention by this Court. Respondents' recent legal reinterpretation of the mandatory detention statute has been rejected by the vast majority of District Courts,[1] including other jurists in this District.[2] This Court should reject Respondents' unlawful reinterpretation as well.

FACTS AND PROCEDURAL HISTORY

The parties generally agree as to the relevant facts of this case. Petition ¶¶ 40, 42, 44, ECF No. 1; Response 2, ECF No. 5.

ARGUMENT

I. THIS COURT RETAINS JURISDICTION TO GRANT RELIEF IN THIS CASE.

Petitioner challenges solely the legal basis of his detention, not the removal proceedings

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[1] The Eastern District of Pennsylvania found that as of November 18, 2025, at least 288 district court decisions had addressed this same issue, and 282 of these decisions have rejected Respondents' statutory interpretation of the INA. *Demirel v. Fed. Det. Ctr.*, No. 25-cv-5488, Dkt. No. 11-1 (E.D. Pa. Nov. 18, 2025), attached hereto as Ex. A. Only six of these decisions have adopted the Government's interpretation, and none of them are in this District.

[2] *See Lopez-Arevalo v. Ripa*, -- F.Supp.3d --, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sep. 22, 2025); *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Alves v. U.S. Dep't of Justice*, No. EP-25-CV-306-KC, 2025 WL 2629763 (W.D. Tex. Sep. 12, 2025).

against him, and as such this Court maintains habeas jurisdiction. *See Lopez-Arevalo*, 2025 WL 2691828, *3-5. District courts are prohibited by 8 U.S.C. § 1252(g) from reviewing an immigration challenge only when it arises from a decision to "commence proceedings, adjudicate cases, or execute removal orders." However, notwithstanding 8 U.S.C. § 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges" to detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). The Supreme Court clarified in *Jennings v. Rodriguez* that the § 1252(g) bar is limited to "those three specific actions themselves." 583 U.S. 281, 294 (2021). As the Fifth Circuit explained in *Texas v. United States*, the Supreme Court "rejected the unexamined assumption that § 1252(g) covers the universe of deportation claims—that it is a sort of 'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review.'" 126 F.4th 392, 417 (5th Cir. 2025). Recently, in *Lopez-Arevalo*, another jurist from this district found that because Petitioner challenged his mandatory detention under § 1225(b), as here, § 1252(g) did not bar jurisdiction. 2025 WL 2691828 *5.

Nor does 8 U.S.C. § 1225(b)(4) strip this court of jurisdiction, or channel Petitioner's challenge into 8 U.S.C. § 1229a removal proceedings. Response 11-12. Subsection 1225(b)(4) applies only to "challenges by any other immigration officer" of a decision "favorable to the admission of any alien." Recently, the court in *Granados* rejected Respondents' arguments based on the plain language of the statute. 2025 WL 3296314, *3. Here, the same reasoning applies.

While Respondents argue that "[t]his is consistent with the channeling provision at 8 U.S.C. § 1252(b)(9)," (Response 12), they are mistaken that the "zipper clause" would bar review either. The Supreme Court explained that, just as with § 1252(g), 8 U.S.C. § 1252(b)(9) also does not strip habeas jurisdiction over challenges to detention. *Jennings*, 583 U.S. at 292-93. *See also Santiago v. Noem*, 2025 WL 2792588, *4. The *Jennings* plurality opinion expressly rejected the

concurrence by Justice Thomas which had argued that § 1252(b)(9) applied because "detention is an action taken to remove an alien." *Id.*

II. RESPONDENTS DETERMINED PETITIONER WAS SUBJECT TO CUSTODY UNDER 8 U.S.C. § 1226(a), WHICH THEY HAVE NEVER RESCINDED OR CORRECTED, AND STILL APPLIES TODAY.

Petitioner was originally encountered in 2024 and was subject to ICE's discretionary arrest and detention authority pursuant to 8 U.S.C. § 1226(a) at that time. Pet. ¶ 40. He was released pursuant to 8 U.S.C. § 1226(a) on an Order of Release on Recognizance. *Id.* Pet. Ex. 2, ECF No. 1 at 26. This initial assessment shows ICE's current detention authority. This District recently decided a similar matter and held that a petitioner previously detained and released under § 1226(a) was again subject to that same detention authority. *Lopez-Arevalo*, 2025 WL 2692818, *1. The authority for a release on recognizance only arises after a warrant for arrest has been issued under § 1226(a). 8 C.F.R. 236.1(c)(8). *See also Jennings*, 583 U.S. at 287 ("[s]ection 1226(a)'s default rule permits the Attorney General to issue warrants for the arrest and detention of these aliens pending the outcome of their removal proceedings."). ICE has the authority to issue such a warrant prior to, but also after, a physical arrest. *See* 8 C.F.R. § 287.3(d) (following a warrantless arrest, ICE may issue a warrant for arrest for an individual already in custody, following determination of proceedings and detention authority). Contrary to Respondents' claim that Petitioner merely "benefited from the prior administration's policy" regarding catch-and-release (Response 3), Petitioner's 2024 custody determination was entirely according to regulation.

Here, Petitioner was released on his recognizance under § 1226(a), and scheduled for an alternative to detention: Intensive Supervision Appearance Program (ISAP). Pet. Ex. 3, ECF No. 1 at 28. No violations of this conditional program have ever been alleged. Regarding the re-arrest in 2025, Respondents have failed to provide any documentation that identifies under what authority that arrest was conducted or even a declaration by an immigration official outlining the

authority under which the agency believes it acted. *See* Response, *generally.* Today, nearly a year later, Respondents do not aver that the 2024 determination was made in error or show any records purporting to correct or rescind that determination. *Id.* This is more than a question of correcting old paperwork: Respondents previously determined that their authority to detain was discretionary, and have never revisited that legal determination. While ICE certainly has the authority to revoke Petitioner's conditional parole, any rearrest must then take place "under the original warrant," as required by statute. 8 U.S.C. § 1226(b).

Instead, a year later, Respondents' re-arrest would treat Petitioner as if his 2024 custody determination and release had never happened, and aver – without a single document to support the assertion – that he is in fact now detained pursuant to § 1225(b)(1). However, "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission and those who are within the Unites States after an entry, *irrespective of its legality*," this Court should not subject Petitioner to less process now than he was afforded at the time of his entry. *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added). Without any record to the contrary, this Court should hold that Petitioner's re-arrest is pursuant to the original, valid warrant, and his detention therefore remains subject to § 1226(a).

III. PETITIONER HAS NEVER BEEN SUBJECT TO § 1225(b)(1) DETENTION.

There is not a single document in the record which supports the assertion that Petitioner is subject to mandatory detention under § 1225(b). Respondents argue that Petitioner is detained pursuant to § 1225(b)(1)(A)(iii)(II). Response 3-5. This is not correct. Seeking to disregard their own prior custody determination without having rescinded it, Respondents cite primarily to *Florida v. United States*, 660 F. Supp. 3d 1239, 1270–77 (N.D. Fla. 2023) – which is a nonbinding, out-of-district decision. While Respondents are correct that an individual present in the United States less than two years may be subject to § 1225(b)(1)(A)(iii), and therefore ICE would have

the discretion to choose expedited removal under (b)(1) or traditional removal proceedings under (b)(2), there is nothing in the record to suggest an expedited removal process *actually occurred* in 2024, especially in the face of actual ICE records directly to the contrary. Moreover, there is nothing in the record to suggest that even his 2025 re-arrest is subject to ICE authority under § 1225(b)(1)(A)(iii). Unlike the petitioner in *DHS v. Thuraissigiam*, 591 U.S. 103 (2020),, who had remained in ICE custody the entire time subject to § 1225(b)(1), Petitioner is no longer at the border, but residing inside the United States pursuant to a release from custody under § 1226(a). *See Lopez-Arevalo*, 2025 WL 2691828 at *9 (following a release on recognizance, petitioner is no longer legally standing at the border); *see also Hernandez-Fernandez*, 2025 WL 2976923, at *8.

Respondents gloss over Petitioner's procedural history (Response 5), but the fact that ICE necessarily issued a warrant for Petitioner's arrest under § 1226(a), and on that authority released him from custody, is dispositive. Respondents and the *Florida* decision, 660 F. Supp. 3d at 1277, overlook that whether the warrant for arrest was issued prior to the arrest or after, the authority to do so is derived from the same statute – 8 U.S.C. § 1226(a) – as is the subsequent release.

IV. PETITIONER IS NOT SUBJECT TO § 1225(b)(2) DETENTION TODAY.

Respondents' new interpretation of § 1225(b)(2) is fundamentally flawed: it ignores key statutory language, renders whole sections of Section 1226(c) nugatory, and ignores decades of settled practice without good reason. Mandatory detention under 8 U.S.C. § 1225(b)(2) applies to an applicant for admission when "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." The statute defines "admission" as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

Respondents argue that Petitioner is subject to mandatory detention because, they claim,

Petitioner is an applicant for admission. Response 5-9. Respondents' argument necessarily requires that *all* applicants for admission present in the U.S. are necessarily "seeking admission," thereby rendering that requirement superfluous.

However, the textual requirement of "seeking admission" must do some work or it is rendered mere surplusage in the statute and interpreted out of meaning. *Corley v. United States*, 556 U.S. 303, 314 (2009). First, the statute defines an applicant for admission as an individual present who has not been admitted. All applicants for admission are already subject to § 1225(b)(2), therefore "seeking admission" must require something different. The definition of an admission requires an entry, lawful means, and "inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). This means mandatory detention under § 1225(b)(2) is required for those applicants for admission who are "seeking [lawful entry of into the U.S. after inspection and authorization by an immigration officer] and not clearly entitled to be admitted." As explained in *Bethancourt Soto*, "[t]he phrase 'seeking admission' in § 1225(b)(2)(A) necessarily connotes some affirmative, present-tense action. The verb 'seeking' is a present participle, and the 'present participle is used to signal present and continuing action.'" --- F.Supp. 3d ---, 2025 WL 2976572, at *5. Accordingly, to be seeking admission means to be presently seeking lawful entry.

Second, individuals (like Petitioner) already present in the United States are not seeking *another* entry. Many are simply seeking lawful status, without transiting the border anew. Several lawful statuses available to individuals present in the United States do not require an admission (or entry) as part of their eligibility requirements yet would still result in lawful status in the United States. *See, e.g.*, 8 U.S.C. § 1158(a)(1) (the asylum statute); or 8 U.S.C. § 1229b(b)(1)(A) (cancellation of removal statute). These applications involve lawful means and authorization by an immigration official, but do not require *entry*. So it must be possible under the statute to be an

"applicant for admission" yet not necessarily "seeking admission" if they are already present.

Despite their assertion otherwise, Respondents' re-interpretation of 8 U.S.C. § 1225(b)(2) would also render meaningless other bases for mandatory detention under 8 U.S.C. § 1226, including the recently enacted § 1226(c)(1)(E). Because of this, Respondents' re-interpretation cannot be correct. "One of the most basic interpretive canons is that a statute should be construed so that effect is given to all its provisions, and no part will be inoperative or superfluous, void or insignificant." *Hasan*, 2025 WL 2682255, at *8, citing *Corley v. United States*, 556 U.S. 303, 314 (2009). "If an interpretation of one provision 'would render another provision superfluous, courts presume that interpretation is incorrect.'" *Id.*, citing *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). This presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386, (2013).

Section 1226(c) requires for mandatory detention of various classes of criminal aliens and was recently amended by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). "The LRA amendments mandate detention for noncitizens charged as inadmissible under Sections 1182(a)(6)(A) (the inadmissibility ground for a noncitizen "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (the inadmissibility ground for misrepresentation), or 1182(a)(7) (the inadmissibility ground for lacking valid documentation) *and* if the noncitizen has been arrested for, charged with, or convicted of certain crimes. *Id.*" *Rodriguez*, 779 F. Supp. 3d at 1246. "This mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Hasan*, 2025 WL 2682255, at *8.

Respondents deny that their interpretation would nullify of § 1226(c)(1)(E) under their interpretation. Response 10-11. However, the Laken Riley Amendment adding subsection (E) was

passed just this year, and requires detention of individuals who are *first* inadmissible because they are present have not been admitted (under 8 U.S.C. § 1182(6)(A) - i.e. "applicants for admission") and *then* go on to commit criminal acts. While the drafters may have otherwise allowed for redundancies in repetition or include words without substance, it defies common sense that Congress would pass an amendment to enact a new mandatory detention subsection that is redundant in its very purpose. If individuals present without having been admitted are already subject to mandatory detention under § 1225(b)(2)(A) as applicants for admission, regardless of any subsequent criminal acts, then an amendment to § 1226(c) to require mandatory detention for those individuals was entirely unnecessary. Moreover, if § 1225(b)(2) already applied, then the Attorney General would already lack the very discretion that the LRA was intended to remove.

"Another 'customary interpretive tool' is the principle that '[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,' courts 'generally presume the new provision should be understood to work in harmony with what has come before.'" *Rodriguez*, 779 F.Supp.3d at 1259, citing *Monsalvo Velazquez v. Bondi*, 604 U.S. --, 145 S.Ct. 1232 (2025). Because Respondents' interpretation of § 1225(b)(2) would render important subsections of § 1226(c) superfluous, it should not be adopted by this Court.

V. RESPONDENTS' DEPRIVATION OF BOND HEARINGS FOR PETITIONER VIOLATES CONSTITUTIONAL DUE PROCESS.

In *Lopez-Arevalo*, the court also considered the due process rights of an individual who had been apprehended shortly after arriving, and distinguished *Thuraissigiam*, 591 U.S. at 103, because the petitioner challenged his detention (not his removal) and because he was detained years after entry "rather than on the threshold of his initial entry." 2025 WL 2691828, *10. This Court should also apply *Mathews v. Eldridge*, 424 U.S. 319, 96 (1976), to the due process claim.

On the first prong, private interest, the *Lopez-Arevalo* court noted that "the Fifth

Amendment entitles noncitizens to due process of law in the context of removal proceedings," and "the interest in being free from physical detention by [the] government" is "the most elemental of liberty interests[.]" 2025 WL 2691828, *10, quoting *Martinez v. Noem*, 2025 WL 2598379, at *2 and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "[A]s other courts have noted in considering this issue, 'Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance *prior to the manifestation of this interpretation.*'" *Id.* at 11, citing *Espinoza*, 2025 WL 2581185, at *10. Petitioner has also developed a similar liberty interest in the interim between his release and arbitrary re-arrest.

On the second prong, risk of erroneous deprivation, the very purpose of immigration detention is to reduce flight risk and danger to the community, *see Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), it seems self-evident that a review hearing before an administrative law judge would reduce the risk of erroneously confining a noncitizen who in fact poses neither risk. The *Lopez-Arevalo* court had the benefit of an immigration court record, wherein the immigration judge had declined jurisdiction to afford the petitioner a bond hearing. *Id.* Therefore, the immigration court (and by extension the Board of Immigration Appeals) are failed to provide the necessary individualized assessments that would afford due process and mitigate an risk of erroneous deprivation (as in a standard § 1226(a) bond hearing). *Id.*, citing *Espinoza*, 2025 WL 2581185, at *10. *See also Choglo Chafla*, 2025 WL 2688541, at *10 (explaining that "these types of factual determinations are properly decided by an Immigration Judge after a detention hearing, and only highlight the need for a hearing with properly allocated burdens to explore the risk, or lack thereof, that a noncitizen may pose to flight or dangerousness."); *Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025) ("The purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to

provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people are ultimately detained.").

And on the third prong, government interest, the *Lopez Arevalo* court explained that the government's core interest (ensuring that noncitizens appear for hearings and do not endanger others) has already been achieved via their prior custody determination. "But the decision to release Lopez-Arevelo on his own recognizance three years ago, in and of itself, "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." 2025 WL 2688541, *11, citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd*, 905 F.3d 1137 (9th Cir. 2018). Nor can the government claim excessive burden when it is merely being asked to provide a procedure that it routinely provided in cases of this nature for decades without complaint. *Id.* at 12. All *Mathews* factors militate in favor of Petitioner.

In the end, Respondents do not dispute that if Petitioner is subject to Section 1226(a), he is entitled to an Immigration Judge bond hearing under the statute and regulations. Even taking at face value the statement of the Supreme Court in *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," it is clear that Congress intended Petitioner to have access bond pursuant to 8 U.S.C. § 1226(a); that is the process that Petitioner is due.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus should issue. This Court should declare that Petitioner is properly detained by Respondents (if at all) pursuant to 8 U.S.C. § 1226(a), and should order Respondents to provide Petitioner with a bond hearing in front of an Immigration Judge within 15 days.

Respectfully submitted,

Date: December 3, 2025

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

Date: December 3, 2025

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