UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

JAIME HERNANDEZ SARMIENTO, Petitioner, v. KEVIN RAYCRAFT, Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	Case No. 25-cv-13486 Hon. Robert J. White Mag. Judge Elizabeth A. Stafford

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

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ISSUES PRESENTED

1. Before dismissing all Respondents other than the ICE Field Office Director, should the Court ensure that it can grant the requested relief?

2. Are Respondents unlawfully detaining Petitioner without a bond hearing under 8 U.S.C. § 1225(b)(2)(A), which applies only to the inspection and detention of recent arrivals at or near the border?

3. Is Petitioner entitled to a bond hearing conducted by an Immigration Judge under 8 U.S.C. § 1226(a), which all courts to consider the question have found applies to noncitizens like Petitioner who were residing in the United States when they were apprehended and charged with inadmissibility, and which Respondents themselves have historically applied to such noncitizens?

4. Have Respondents violated the Due Process Clause by detaining Petitioner, who is a long-time resident of the United States, without any individualized determination that his civil detention is necessary to facilitate removal because he is a flight risk or danger?

5. Should this Court, like all others that have considered such claims, exercise its discretion to waive prudential exhaustion requirements and proceed to the merits of Petitioner's habeas corpus petition, which raises urgent statutory and constitutional claims regarding his ongoing unlawful detention?

INTRODUCTION

Petitioner Jaime Hernandez Sarmiento has lived in the United States for over 25 years. He has three U.S. citizen children who are 11, 15, and 23 years old. The Respondents have advanced a new statutory interpretation that defies the text, structure, and purpose of the Immigration and Nationality Act (INA), and reverses decades of consistent agency practice. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As a result, the Respondents will deny him an individualized bond hearing in Immigration Court.

For nearly thirty years, Respondents and the federal courts recognized that noncitizens who entered the United States without inspection and were apprehended years later were eligible for a bond hearing before an immigration judge under 8 U.S.C. § 1226(a). The government's novel position mandates the detention, without a bond hearing, of millions of longtime residents of the United States. It is contrary to the plain language of the statute; Congress's intent and understanding of the detention statutes, expressed most recently in January 2025; long-standing agency practice; and the agency's conduct in this case. It is no surprise that, to the best of counsel's knowledge, this new interpretation has been squarely rejected by every federal court to address this issue, including in *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, 2:25-cv-12546 (E.D. Mich. Sept. 9, 2025); *Contreras-Cervantes v. Raycraft*, No. 25-cv-13073 (E.D.

Mich. Oct. 17, 2025); *Sandoval v. Raycraft*, No. 25-cv- 12987 (E.D. Mich. Oct. 17, 2025); *Mayen v. Raycraft*, No. 25-cv-13056 (E.D. Mich. Oct. 17, 2025); *Contreras-Lomeli v. Raycraft*, No. 25-cv-12926 (E.D. Mich. Oct 21, 2025); *Santos-Franco v. Raycraft*, 25-cv-13188 (E.D. Mich. Oct. 21, 2025); *Casio-Mejia v. Raycraft*, 25-cv-13032 (E.D. Mich. Oct. 21, 2025); *Garcia v. Raybon*, 25-cv-13086 (E.D. Mich. Oct. 21, 2025); *Gimenez Gonzalez v. Raycraft*, No. 25-cv-13094 (E.D. Mich. Oct. 27, 2025); *Morales-Martinez v. Raycraft*, No. 25-cv-13303 (E.D. Mich. Nov. 7, 2025).[1] As court after court has held, § 1225 is a border inspection scheme that does not apply to noncitizens who were already residing in the United States when they were apprehended. Instead, § 1226(a) plainly applies. And those courts all rejected the government's argument that exhaustion is a barrier to habeas relief. This Court should grant Mr. Hernandez Sarmiento's petition and order Respondents to either immediately release him or hold a new bond hearing.

I. Petitioner Will Not Oppose Dismissal of All Respondents Except the ICE Field Office Director if the Court Retains Jurisdiction to Grant the Requested Relief

[1] A partial list of cases is included at ECF No. 1-3, PageID.26-28. One apparent exception, *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025), denied an ex parte temporary restraining order but has not issued a final judgment on the merits.

Respondent seeks dismissal of all Respondents except for the ICE Field Office Director. Petitioner will not oppose this request if the Court retains jurisdiction to grant the requested relief.[2]

II. Section 1226, not Section 1225(b)(2)(A) Applies to Mr. Hernandez Sarmiento.

A. Respondents Ignore Both Section 1226 and the INA's Structure

Respondents invite this Court to read § 1225 in isolation, ignoring not just § 1226, but the INA's overall structure. Section 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 v. Rodriguez*, 583 U.S. 281, 289 (2018).[3] 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 do not respond to the fact that the plain text of § 1226(a) applies here: Petitioner was arrested "on a warrant . . . pending a decision on whether [they

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[2] Petitioner will address the Court's jurisdiction and the proper Respondent in his response to the Court's Order to Show Cause, ECF No. 5.

[3] 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* "made clear" that § 1226(a) applies only to those both present and admitted. ECF No. 6, PageID.94-95. 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.

are] to be removed from the United States." Respondents also 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 v. Bostock*, 779 F.Supp.3d 1239, 1256 (W.D. Wash., Sept. 30, 2025).

Congress just amended § 1226(c) in the Laken Riley Act. If Respondents' interpretation of § 1225(b)(2) were correct, that "would render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Cordero Pelico v. Kaiser*, 2025 WL 2822876, *12 (N.D. Cal., Oct. 3, 2025). Respondents' only answer to that point is to say the Court should ignore Laken Riley because it does not apply to Petitioner. ECF No. 6, PageId.95. But the fact that *Petitioner* cannot be detained under Laken Riley doesn't alter the fact that Respondents' reading renders Laken Riley meaningless.

The government tries to explain away the conflict between their reading of § 1225(b)(2)(A)—that it mandates detention for *all* non-admitted non-citizens—and § 1226—which mandates detention for *some but not all* non-admitted non-citizens—as a mere redundancy. ECF No. 6, PageID.95. But,

> even allowing for some redundancy in statutory drafting, it is a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." Defendants' expansive reading of section 1225 … would render section 1226(c)(1)(E) "entirely redundant."

Rodriguez, 2025 WL 2782499, *19 (citing *Kungys v. United States*, 485 U.S. 759, 778 (1988)). *See Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, *6 (D. Mass., Oct. 3, 2025) (§ 1226(c) "implies that there are no other circumstances under which a noncitizen detained under § 1226 is subject to mandatory detention").

B. Respondents Misunderstand How Section 1225 Works

Respondents say that Section 1225 distinguishes "between recently arrived noncitizens ('arriving aliens') and those like Mr. Hernandez Sarmiento who were successfully able to evade apprehension for many years ('applicants for admission')." ECF No. 6, PageId.92-93. Respondents assert that § 1225(b)(1) covers "arriving aliens", while § 1225(a) and (b)(2) apply to "applicants for admission." Not so.

First, the distinction Respondents invent between "arriving aliens" (i.e. people at the border) and "applicants for admission" (i.e. people already in the U.S.) is entirely divorced from the statutory text. Section 1225(a)(1) defines "applicants for admission" to *include* non-citizens arriving in the U.S. Meanwhile, in describing "arriving aliens," Respondents themselves cite provisions in *§ 1225(b)(2)* about "crewmen, "stowaways" and people arriving from contiguous territory, even though Respondents contend that § 1225(b)(2) only concerns "applicants for admission."

ECF No. 6, PageId.90. There is no plausible way to read § 1225(b)(2) as covering only people who have lived in the U.S. for years.

Second, 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)).

Recognizing that § 1225 is a border inspection scheme—as dozens of courts have done—does not nullify § 1225(b)(2), which continues to apply to non-citizens arriving at the border who are not subject to expedited removal. In other words:

> § 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than … the grounds that put an arriving noncitizen on the track for expedited removal[]. The statute governing inadmissibility lists ten grounds for inadmissibility…. There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1).

Cordero Pelico, 2025 WL 2822876, at* 13; *see also Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J., Sept. 26, 2025) (examples of non-citizens at border not subject to expedited removal, such as certain lawful residents returning

from abroad who must be inspected by immigration officials). The argument that § 1225(b)(2) is meaningless unless applied to Petitioner is wrong.

C. Respondents Misinterpret Section 1225(b)(2)

Even if one reads § 1225(b)(2) in complete isolation without regard to the statutory structure, it does not support Respondents' reading. Respondents entirely ignore § 1225(b)(2)'s requirement for a determination by an "examining immigration officer." Instead, Respondents focus on whether Petitioner is an "applicant for admission" who is "seeking admission." Oddly, Respondents point to the definition of "admission"—which is "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." ECF No. 6, PageID.86 (citing 8 U.S.C. § 1101(a)(13)(A)). Not only does this definition take us right back to inspections by immigration officers, but "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definition[]." *Chafla v. Scott*, 2025 WL 2688541, *6 (D. Me., Sept. 22, 2025).

Respondents—constrained by the present tense nature of "seeking admission"—engage in verbal gymnastics to obfuscate the obvious: "the active language implies that the noncitizen is actively engaged in the exercise of being admitted to the United States, rather than currently residing here and seeking to stay." *Id.* Respondents say seeking immigration relief that would allow Petitioner to *remain* is the same as seeking to *enter*. ECF No. 6, PageID.88. But Petitioner is not seeking

permission to enter from an immigration officer, but rather adjustment of status from and immigration judge. For example, if Petitioner obtains cancellation of removal (which is a form of relief available both to people who were and were not lawfully admitted, 8 U.S.C. § 1229b(a)(1)), that would result in adjustment of their legal status, not an entry into the U.S., which is where Petitioner already is.

D. Congressional Intent Shows That Section 1226(a) Applies to Mr. Hernandez Sarmiento

Congress intended for § 1226 to govern the detention on noncitizens who entered the U.S. without inspection. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There is no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b). *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).

Congress most recently expressed this understanding earlier this year in the Laken Riley Act. This act added a subsection to § 1226 that specifically mandated detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present without being admitted or paroled, like Petitioner), 1182(a)(6)(C)

(misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025).

Respondents' interpretation of the statutes renders this recently amended section superfluous. *Lopez-Campos*, *supra*, ECF No. 14, PageID.173-74. If Congress intended or understood § 1225 to govern the detention of noncitizens like Mr. Hernandez Sarmiento, who were apprehended years after entering the country, it would have placed these amendments within § 1225, not § 1226.

E. Long-standing Agency Practice Shows That Section 1226(a) Applies to Mr. Hernandez Sarmiento

Petitioner's position is not a novel interpretation of the INA. It has been *Respondents*' own understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course two months ago in a policy ICE issued "in coordination with the Department of Justice." *See* ECF No.1, PageID.10-11.

Following IIRIRA, the agency drafted new regulations that provided: "[a]liens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The relevant regulations restrict only "arriving

aliens" from an immigration court bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). An "arriving alien" is, as relevant here, "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q).

In fact, as recently as August 4, the Attorney General designated for publication a decision in which the BIA reviewed under § 1226(a) the merits of a bond request by a noncitizen who unlawfully entered the United States. *Matter of Akhmedov*, 29 I&N Dec. 166, 166 n.1 and 166-67 (BIA 2025). "The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper Bright Enters v. Raimondo*, 603 U.S. 369, 385-86 (2024).

III. Due Process Entitles Mr. Hernandez Sarmiento to a Bond Hearing

Respondents do not even try to show a special justification for detaining Petitioner without an individualized bond hearing. Nor weigh the factors of *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Nor identify 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 argue that because procedural protections exist in *removal* proceedings (i.e., hearings on immigration relief), Petitioner has no right to due process on *detention*. But Petitioner has a liberty interest in freedom from detention that is distinct from their liberty interest in remaining in the U.S. Deprivation of either requires due process.

Respondents also point to inapposite cases concerning the more limited due process protections for people apprehended upon entry or with significant criminal history. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), concerned the "due process rights of an alien seeking initial entry" and governmental control over who crosses our borders. *Id.* at 107; *see id.* at 139 (discussing the due process rights of "an alien at the threshold of initial entry" who lack "established connections in this country"). Petitioner is not "at the threshold of initial entry," and has "established connections" here. *See Cordero Pelico*, 2025 WL 2822876, at *6 (distinguishing government's cases on exactly this basis).

Respondents' reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is similarly off base. *Demore* rejected a facial challenge to 8 U.S.C. § 1226(c), which requires mandatory detention of certain noncitizens with criminal convictions. Based on the presumption that such people are a danger/flight risk, the Court found the government's interest in detaining them for "a very limited time" outweighed their interest in liberty. *Id.* at 529, n.12. *Demore* does not create an irrebuttable presumption of dangerousness/flight risk even for people with significant criminal history[4], much less for people who—as here—have been living law-abiding lives in the community. And *Zadvydas v. Davis*, 533 U.S. 678 (2001), contrary to Respondents'

[4] Non-citizens detained under § 1226(c) remain free to bring as-applied constitutional challenges to their detention. *See Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Black v. Decker*, 103 F.4th 133, 151-155 (2d Cir. 2024).

depiction, emphasizes that immigration detention must be tied to the civil purposes of preventing flight and protecting the public. *Zadvydas* held that even where non-citizens (unlike here) had already been ordered removed (such that the government had specific interests around accomplishing removal), there were "serious constitutional problem[s]" with reading the INA to allow for prolonged detention. *Id.* In short, Respondents' cited cases do not support their claim. *Id.*, at 690.

IV. The Court Should Waive Any Prudential Exhaustion Requirement

The exhaustion of administrative remedies is not a statutory or jurisdictional requirement for a habeas petitioner but is instead a prudential matter of this Court's discretion. There are many circumstances where courts do not require exhaustion of administrative remedies, including when "[1] delay means hardship . . . or when [2] exhaustion would prove 'futile'." *Shalala v. Illinois Council*, 529 U.S. 1, 13 (2000); *see also Fazzini v. Ne. Ohio Corr. Ctr.*, 473 F.3d 229, 236 (6th Cir. 2006). Exhaustion is futile because the BIA has issued a decision, binding on the agency, mandating the detention without a bond hearing of the millions of noncitizens who are present in the United States without having been inspected and admitted. *Yajure Hurtado*, 29 I&N Dec. 216; *see also* ECF No. 6, PageID.83-84.

The Sixth Circuit has also previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006);

accord Bangura v. Hansen, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.") (citation omitted).

Finally, this Court and many others have waived exhaustion in similar proceedings. *See e.g. Lopez-Campos v. Raycraft*, ___ F.Supp.3d___.

Dated: November 12, 2025

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Certificate of Service

I hereby certify that on November 12, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

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