UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MIGUEL ANGEL OSORIO HERNANDEZ, Petitioner, v. Mary De Anda-Ybarra, et al., Respondents.	Case No. 25-CV-580 **The Honorable David C. Guaderrama**

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

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

I. BACKGROUND

Carlos Osorio Hernandez is a native and citizen of Mexico. He entered the United States over 25 years ago in June 2000; he lives in Chicago, Illinois with his family and his two U.S. citizen children. On November 4, 2025, he was detained by ICE when he was working as a landscaper in Elgin, Illinois; he was then processed at the ICE correctional facility in Broadview, IL, before being transferred to El Paso, Texas. His habeas petition was filed on November 24, 2025, with the Western District of Texas; he is currently detained at the El Paso Camp East Montana detention facility.

ICE did not have any warrant to arrest Mr. Osorio Hernandez and to date have not

generated any I-213 warrant. He was placed in removal proceedings after his transfer to Texas and his master hearing is currently scheduled for February 5, 2026, before the Texas Immigration Court. Mr. Osorio Hernandez is a father of two U.S. citizen children who rely on him for financial and emotional support; his detention has caused both his children and his friends and family extreme stress and anxiety during this traumatic separation.

II. CASE DISCLAIMER

Mr. Osorio Hernandez's case does not arise in isolation. Over the past two months, ICE and the Department of Homeland Security have repeatedly advanced the same unprecedented theory of mandatory detention under § 1225(b)(2) - a theory that federal courts across multiple jurisdictions have consistently rejected. Despite uniform rulings from this Court and other districts across the United States finding that such individuals are properly detained, if at all, under § 1226(a) and entitled to bond hearings, Respondents continue to relitigate the issue as though those decisions do not exist. *See e.g., Buenrostro-Mendez v. Bondi, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (noting that "almost every district court to consider this issue" has rejected the Government's new interpretation); Lopez-Campos v. Raycraft, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); Rodriguez Cortina v. De Anda-Ybarra, No. 3:25-cv-00523-DB (W.D. Tex.); Servin Espinoza v. Noem, No. 3:25-cv-00618-DB (W.D. Tex.); Cruz Zafra v. Noem, No. 3:25-cv-00541 (W.D. Tex.); Estupinan Reyes v. Thompson, No. 5:25-cv-01590 (W.D. Tex.).* The result is a troubling pattern: immigrants are detained or re-detained without lawful authority, forced to seek habeas relief, and then the Government simply repeats the same arguments in the next case. This recycling of losing positions wastes judicial resources, undermines public confidence, and,

most critically, perpetuates unlawful arrest and unnecessary detention of individuals like Mr. Osorio Hernandez, who have families, homes, and longstanding community ties. His case is not an outlier, but part of a broader pattern of aggressive and arguably unlawful enforcement across Illinois that has upended hundreds of lives in recent weeks. Against that backdrop, and despite Respondents' effort to repackage their same losing arguments as "plain" statutory interpretation and settled precedent, Petitioner's response is as follows:

III. DISCUSSION

A district court may grant a writ of habeas corpus to any person who demonstrates he is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. §2241. The individual in custody bears the burden of proving that his detention is unlawful. *See, e.g. Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Mr. Osorio Hernandez claims violations of the Nava Settlement (Count I); Immigration and Nationality Act ("INA") (Count II); and the Due Process clause of the Fifth Amendment (Count III). *See Petition*, Pages 12-14. In opposition to Mr. Osorio Hernandez's petition, Respondents make three substantive arguments: They claim (1) this Court lacks jurisdiction under 8 U.S.C. § 1252(g) to review any challenge to immigration detention; (2) Mr. Osorio Hernandez has limited due process rights given his unlawful status and has not exhausted his administrative relief; and (3) this Court is wrong to apply §1226(a) to immigrants like Mr. Osorio Hernandez who have been in the United States for many years and he instead should be held pursuant to §1225.

A. FEDERAL JURISDICTION

As a threshold matter, this Court should assert its jurisdiction over this case.

Respondents argue that this Court lacks jurisdiction under INA 8 U.S.C. §§ 1252(g). *Resp. Br.*, Doc. 5, Page 6. This Court already rejected these arguments in a seemingly identical case where the petitioner was also challenging his detention without a bond hearing under Respondents' expansion of Section 1225(b)'s mandatory detention provision. *See Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 at *3 (W.D. Tex. Oct. 16, 2025) (rejecting jurisdictional arguments under Section 1252(g) and Section 1252(b)(9)); *Rodriguez Cortina v. De Anda-Ybarra, No. 3:25-cv-00523-DB (W.D. Tex.)*.

In their argument, Respondents fail to offer any meaningful basis for why the Court's previous analysis does not preclude their arguments here. Respondents were also advised in *Vieira* that they should "carefully consider the jurisdictional legal arguments it continues to present this Court in similar immigration habeas cases." *See Vieira*, 2025 WL 2937880 at *3.[1] Absent a decision from the Fifth Circuit or the Supreme Court of the United States, this Court retains jurisdiction over Mr. Osorio Hernandez's habeas claim.

B. ADMINISTRATIVE EXHAUSTION

Next, Respondents argue that Mr. Osorio Hernandez must first exhaust his administrative avenues before bringing a habeas petition. *Respondents' Brief* ("*Resp. Br.*"), Doc. 5, Page 6. This claim seeks to severely limit this Court's authority and Congress has imposed no statutory exhaustion requirement for petitions brought under 28 U.S.C. § 2241. "Under the INA exhaustion of administrative remedies is only required by Congress for

[1] In *Rodriguez-Cortina* (decided November 18, 2025) Respondents were also warned that any further seemingly identical arguments without any good-faith arguments for extensions, modifications, or reversals of existing law or for creation of new law may subject them to Rule 11 sanctions. *See* FED. R. CIV. P. 11(b)(2) ("Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . . (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.").

appeals on final orders of removal." *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); *see* 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies.").

Respondents rely on a single case from Minnesota in order to justify this exhaustion argument. *Resp. Br.*, Doc. 5, Page 6. (*Citing SQDC v. Bondi, et al.*, No 25-3348 (PAM/DLM), 2025 WL2617973 D. Minn. Sept. 9, 2025). Respondents' reliance on this authority is misplaced. The out-of-district decision involved a petitioner at a materially different stage of removal proceedings and turned on facts wholly absent from this case, rendering it inapplicable here. There are two reasons why this argument of administrative exhaustion fails. First, Mr. Osorio Hernandez's claims raise constitutional questions that neither an Immigration Judge nor the BIA may rule on. *See Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021). Secondly, if Mr. Osorio Hernandez attempts to appeal the Immigration Judge's bond denial to the BIA, "the appeal timeline exacerbate[s]" his alleged injury of prolonged detention. *Id.* at 672 n.14.

As in *Petgrave*, Mr. Osorio Hernandez challenges his ongoing detention as a violation of due process. *See id.* He requested a bond hearing before an Immigration Judge, who determined that he lacked jurisdiction to hold one. Requiring Mr. Osorio Hernandez to wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate his alleged constitutional injury — detention without a bond hearing. *See Petgrave*, 529 F. Supp. 3d at 672 n.14; *see also Hernandez-Fernandez v. Lyons, et al.*, No. 5:25-cv-00773-JKP-ESC (W.D. Tex. Oct. 21, 2025). "Bond denial appeals 'typically take six months or more to be resolved at the BIA.'" *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *3

(E.D. Mich. Sept. 9, 2025) (*quoting Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025)). "The prevention of six months or more of unlawful detention thus outweighs the interests the BIA might have in resolving" Mr. Osorio Hernandez's appeal of the Immigration Judge's bond dismissal. *See id.* Accordingly, Mr. Osorio Hernandez's claim is properly before the Court with no further requirement to exhaust administrative remedies.

C. STATUTORY BASIS FOR DETENTION (§ 1225 vs § 1226)

Immigration detention is governed by two statutory sections: 8 U.S.C. §§ 1225 and 1226. Section 1225 "authorizes the Government to detain certain aliens *seeking admission into the country*," while §1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings," including noncitizens "who were inadmissible at the time of entry." *Jennings*, 583 U.S. at 288-289 (emphasis added). Respondents, via their response, have declared that Mr. Osorio Hernandez is being detained under §1225(b)(2). *Resp. Br.*, Doc. 5, Page 2-4. Respondents seek to ignore years of precedent and lean into a statutory "interpretation" that seeks to upend 30 years of reasoned statutory interpretation. They regurgitate arguments already rejected by "[a]t least a dozen federal courts," who have reached the opposite conclusion upon reviewing the statutory text, statutory history, congressional intent, and statutory application for the last three decades. In recent weeks, courts across the country have held that their new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect. *See Buenrostro-Mendez v. Bondi, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (noting that "almost every district court to consider this issue" has rejected the Government's new interpretation); Lopez-Campos v. Raycraft, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting*

twelve such decisions); Rodriguez Cortina v. De Anda-Ybarra, No. 3:25-cv-00523-DB (W.D. Tex.); Servin Espinoza v. Noem, No. 3:25-cv-00618-DB (W.D. Tex.); Cruz Zafra v. Noem, No. 3:25-cv-00541 (W.D. Tex.); Estupinan Reyes v. Thompson, No. 5:25-cv-01590 (W.D. Tex.); De Jesus Aguilar, No. 3:25-cv-00898, Doc. 16; *Ceballos-Ortiz v. Olson, et al.*, Case No. 2:25-cv-00548-MPB-MJD (S.D. Ind.); *Ruiz Mejia*, No. 1:25-cv-01227 (W.D. Mich.); *De Jesus Ramirez*, No. 1:25-cv-01261 (W.D. Mich.); *Pizarro Reyes*, 2025 WL 2609425, at *3 (collecting cases); *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Martinez v. Hyde*, 1:25-cv-11613-BEM, 2025 WL 208438 (D. Mass. July 24, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Rosado v. Figueroa et al.,* No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis et al.*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv -11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Aguilar Merino v. Ripa et al.*, No. 25-23845-CIV, 2025 WL 2941609, at *3 (S.D. Case 2:25-cv-13086-SKD-DRG ECF No. 6, PageID.186 Filed 10/21/25 Fla. Oct. 15, 2025); *Sanchez Alvarez v. Noem et al.*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich.

Oct. 17, 2025).

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

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

Respondents' argument that § 1225(b)(2)(A) applies to all noncitizens present in the United States without admission, fails. It cites no binding authority and does not grapple with Jennings. As many other district courts have concluded, "Respondents' interpretation of the

statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Alejandro v. Olson*, 2025 WL 2896348, at *6 (S.D. Ind. Oct. 11, 2025); *see, e.g.*, *Lopez Benitez v. Francis*, 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system.") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

According to Respondents, § 1225(b)(2)(A) authorizes Mr. Osorio Hernandez's detention. *Resp. Br.*, Doc. 5, Page 6. They argue, as they have in countless briefs across the country, that Mr. Osorio Hernandez is an "applicant for admission" because he is "present without admission." *Id.* at page 4. Since both §§ 1225 and 1226 discuss the detention of noncitizens who have not been admitted—for instance, those who inadmissible and subject to mandatory detention under § 1226(c) as an exception to § 1226(a)—the term "applicant for admission" alone does not mean that § 1225 governs detention here. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)) ("When Congress

creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."); see also, e.g., *Gomes v. Hyde*, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) (noting that without the criminal conduct criterion, "inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except [a noncitizen] from Section1226(a)'s discretionary detention framework".

Second, and most importantly, "'seeking' implies action and that those who have been present in the country for years are not actively 'seeking admission.'" *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025); see also *Ochoa Ochoa*, 2025 WL 6324179. Here, Mr. Osorio Hernandez entered the United States in June 2000, 25 years **before** his detention in Elgin, over 1,200 miles away from the southern border.

Respondents argue that because Mr. Osorio Hernandez has not been admitted to the United States, he continues to be a noncitizen "seeking admission." *Resp. Br.*, Doc. 5, Page 4. But this interpretation would render the phrase "seeking admission" in § 1225(b)(2)(A) mere surplusage by equating it to "applicant for admission." See *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023)("[E]very clause and word of a statute should have meaning."); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). Moreover, "the phrase 'seeking admission[,]' [though] undefined in § 1225(b)(2)(A)[,] necessarily implies some sort of present-tense action." *Diaz Martinez*, 2025 WL 2084238, at *4; see *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process'"). "[O]ur immigration laws have long made a distinction between those aliens who have come to

our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Martinez v. Hyde*, 792 F.Supp.3d 211 at 222 (D. Mass. 2025) (*quoting Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). "In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Id.* (*quoting Leng May Ma*, 357 U.S. at 187).

In agreement with other district courts, this Court should reject Respondents' expanded reading of § 1225(b)(2) and the term "seeking admission." Here, under the facts and circumstances of Mr. Osorio Hernandez's case, an "examining immigration officer" did not make a determination as to whether Mr. Osorio Hernandez was not clearly and beyond a doubt entitled to be admitted when he came into the United States in June, 2000. Mr. Osorio Hernandez was not crossing the border when he was arrested and detained; instead, Mr. Osorio Hernandez was detained in early November 2025, in Elgin, while he was working as a landscaper. Because Mr. Osorio Hernandez is not, nor was he at the time he was detained, "seeking admission," § 1225(b)(2)(A)'s mandatory detention provision does not apply. Because the record shows that Mr. Osorio Hernandez has resided in the United States for over 25 years before he was arrested and detained, there is no logical reason to interpret § 1225(b)(2)(A) as applying to Petitioner.

Respondents lean on *Matter of Yajure Hurtado*, a non-binding BIA decision issued on September 5, 2025, holding that IJs lack jurisdiction to hold bond hearings or grant bond to individuals charged with entering the country without inspection as a basis for mandatory detention under § 1225. 29 I&N Dec. 216 (BIA 2025). But that decision is not binding on this

Court, nor is it particularly persuasive considering that BIA's view "has not remained consistent over time." *Loper Bright Enters.*, 603 U.S. at 386. This court's conclusion is supported by a longstanding agency practice of providing § 1226(a) bond hearings to noncitizens like Mr. Osorio Hernandez who entered without inspection and have lived in the United States for many years. *See also, e.g., Servin Espinoza v. Noem et al.*, No. 3:25-cv-00618-DB, Doc. 5 (W.D. Tex. Dec. 12, 2025). As he is neither in expedited proceedings nor a noncitizen "seeking admission," Mr. Osorio Hernandez cannot be lawfully detained under § 1225(b). Thus, under § 1226(a), Mr. Osorio Hernandez is entitled to a discretionary bond determination hearing, and his continued detention is in violation of the INA.

D. VIOLATION OF DUE PROCESS

Mr. Osorio Hernandez has a fundamental interest in liberty and being free from official restraint. By issuing its decision in *Matter of Yajure Hurtado*, the BIA has taken nearly all bond authority away from Immigration Judges. Respondents contend that Mr. Osorio Hernandez has no claim of right under the Fifth Amendment's Due Process Clause because he is only entitled to the due process provided to him under the INA. *Resp. Br.*, Doc. 5, Page 6. Respondents cite to *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) to support their position. *Id.* at 6-8. But they fail to acknowledge that this Court has already agreed with the line of other courts that have found *Thuraissigiam* is **not preclusive** on the facts of this case. *See e.g. Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC, 2025 WL 2691828, at *7–10 (W.D. Tex. Sept. 22, 2025). Petitioner is not challenging his removal, but rather his detention during removal, and he was not detained at the border on the threshold of initial entry, but rather after living in the United States since 2000. Because the effect of *Thuraissigiam* was

addressed at length in *Lopez-Arevelo*, other courts across the United States have reached the same conclusion, and Respondents present the same arguments here, this Court should adopt the view (consistent with prior holdings) that the holding in *Thuraissigiam* does not foreclose Mr. Osorio Hernandez's due process claims which seek to vindicate a right to an individualized bond hearing.

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protects." *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). The Fifth Amendment's Due Process Clause extends to all persons, regardless of status. *See A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). Thus, noncitizens such as Mr. Osorio Hernandez, are entitled to its protections. *See Id.*

If Mr. Osorio Hernandez's detention truly fell under §1225(b)(2)(A), Respondents' due process argument might carry more weight. However, for reasons outlined in the preceding sections, Mr. Osorio Hernandez is governed by § 1226(a). Section 1226(a) provides a discretionary framework for detention or release of an alien subject to that provision. The statute expressly allows the Attorney General to continue to detain the arrested alien or release the alien on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General," or "conditional parole." See 8 U.S.C. § 1226(a)(1), (2). This discretionary framework "requires a bond hearing to make an individualized custody determination." *See Lopez-Campos*, 2025 WL 2496379, at *9.

A second key point of distinction is that the petitioner in *Thuraissigiam* was stopped by Border Patrol "within twenty-five yards of the border," immediately detained, and never released. *Thuraissigiam*, 591 U.S. at 114. This stands in stark contrast to Mr. Osorio Hernandez, who lived peacefully in the United States for 25 years before his detention in Elgin, over 1,200 miles away from the southern border.

In sum, there are two reasons why *Thuraissigiam* does not prohibit Mr. Osorio Hernandez from pursuing his due process claim. First, because he challenges his detention, not his deportability. And second, because he was detained after more than two decades of presence in the United States, rather than on the threshold of initial entry.

E. **THE MATTHEWS TEST**

Lastly, when considering Mr. Osorio Hernandez's procedural due process challenge, this Court must "apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Applying the three-part balancing test set forth in *Mathews*, 424 U.S. 319, Mr. Osorio Hernandez's detention without a bond hearing violates procedural due process. Mr. Osorio Hernandez has (1) a cognizable private interest in being freed from unlawful detention without any opportunity for a bond hearing; (2) there is a severe risk of erroneous deprivation based on the factual record and explained above; and (3) the government's interest is slight insofar as Mr. Osorio Hernandez has been detained without an individualized custody determination evaluating dangerousness and flight risk.

Like many courts across the country dealing with similar circumstances, this Court should find that Mr. Osorio Hernandez possesses a strong liberty interest in his freedom from

detention because he has established a life here – albeit without authorization. *See, e.g.,, Martinez v. Noem*, No. EP-25-CV430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Sanchez Alvarez v. Noem*, No. 25-CV1090, 2025 WL 2942648, at *1, 7 (W.D. Mich. Oct. 17, 2025); *Chogllo Chafla v. Scott*, No. 25CV-437, 438, 439, 2025 WL 2688541, at *1, 10 (D. Me. Sept. 22, 2025). This is especially true given the fact that Mr. Osorio Hernandez has lived peacefully in the United States for more than 25 years, has two U.S. citizen children, and worked hard to provide for his family. Additionally, if he remains in custody as Respondents argue he should, that would keep him behind bars at least through February 2026. As other courts have concluded in cases involving similar factual circumstances, his detention without a bond hearing amounts to a due process violation. *See, e.g., Buenrostro-Mendez v. Bondi, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (noting that "almost every district court to consider this issue" has rejected the Government's new interpretation); Lopez-Campos v. Raycraft, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); Rodriguez Cortina v. De Anda-Ybarra, No. 3:25-cv-00523-DB (W.D. Tex.); Servin Espinoza v. Noem, No. 3:25-cv-00618-DB (W.D. Tex.); Cruz Zafra v. Noem, No. 3:25-cv-00541 (W.D. Tex.); Estupinan Reyes v. Thompson, No. 5:25-cv-01590 (W.D. Tex.).* In light of the Matthews factors, it is clear that Mr. Osorio Hernandez possesses a cognizable interest in his freedom from detention that deserves great weight and gravity. Because all Mathews factors weigh in his favor, Section 1225(b)(2) as applied to him violates his Fifth Amendment Due Process rights.

F. **IMPLICATIONS OF CASTANON NAVA**

The Northern District of Illinois has already found, in *Castanon Nava et al v. Dep't of*

Homeland Sec. et al, No. 1:2018cv03757, Doc. 214 (N.D. Ill. 2025), that ICE's pattern of unlawful arrests in the Seventh District violates both the Fourth and Fifth Amendments and cannot serve as a lawful basis for detention. If, as Mr. Osorio Hernandez and numerous other courts hold, he cannot be subject to mandatory detention under § 1225, then Respondents are in violation of the *Nava* agreement. Mr. Osorio Hernandez's arrest in Illinois, unsupported by a signed warrant or NTA, places him squarely within the unlawful practices *Nava* sought to remedy. It is true that the Seventh Circuit has held, an "arrest made pursuant to an invalid warrant" may nonetheless be a "valid arrest if probable cause justifies the arrest as though it were warrantless." *Taylor v. Henson*, 61 F.3d 906, 1995 WL 411879, at *4 (7th Cir. 1995) (citing *United States v. Fernandez-Guzman*, 577 F.2d 1093, 1098–99 (7th Cir. 1978)); *Arrington v. Rowley*, No. 3:07-CV-27-JTC, 2009 WL 10699360, at *3–4 (N.D.Ga. Mar. 12, 2009) (citing cases). However, the Seventh Circuit has made clear that 8 U.S.C. §1357(a)(2)'s likelihood of escape limitation "is always seriously applied," *United States v. Cantu*, 519 F.2d 494, 496–97 (7th Cir. 1975), and courts have held that "'[t]he flight-risk determination is not mere verbiage.'" *Bautista-Ramos*, 2018 WL 5726236, at *8, quoting *Pacheco-Alvarez*, 227 F.Supp.3d at 889. *Nava* reaffirms that simply claiming someone is a flight risk is not sufficient justification for arrest.

The *Nava* class is a Rule 23(b)(2) injunctive class, defined as: All current **and future persons** arrested without a warrant for a civil violation of U.S. Immigration Law within the ICE Chicago Field Office's Area of Responsibility. *Castañon Nava*, 2025 WL 2842146, at 9 (emphasis added). Because that class is already certified, membership is automatic for anyone who meets the definition, and no separate judicial finding from this Court is required for class

membership. It remains in effect and continues to govern ICE's conduct within Illinois. While Respondents are correct to point out that this is under consideration before the Seventh Circuit Court of Appeals, the recent decision issued on December 11, 2025, holds that courts can make a threshold determination as to the legality of someone's arrest when there is no warrant. *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050 (7th Cir.). Furthermore, the court of appeals made a preliminary determination that the Government's application of § 1225 to petitioners such as Mr. Osorio Hernandez is unlikely to succeed on the merits, marking the first appellate court to reach that conclusion.

This Court need only review the extent that Mr. Osorio Hernandez's arrest mirrors those already adjudicated in *Nava* to determine if his detention falls within the scope of that ongoing injunctive relief. Mr. Osorio Hernandez was never issued an I-213 either at or after his arrest. When he was apprehended by ICE, he admitted he was a foreign national; he had entered the United States illegally; and had minimal criminal history; and there is no strong justification for likelihood of escape. None of these facts constitute probable cause that he would have been likely to escape before a warrant could be obtained for his arrest. Accordingly, this Court should find that Mr. Osorio Hernandez was subjected to a warrantless arrest in violation of the *Nava* Agreement. The remedy for this violation is prompt release or, if Mr. Osorio Hernandez is released on bond and no longer in ICE custody, bond payment is to be promptly reimbursed, and all imposed conditions of release should be lifted. *Castañon Nava*, 2025 WL 2842146, at 42. This is reiterated by relief being expanded to additional arrests from the recent ICE raids in Chicago, although Mr. Osorio Hernandez is not listed in the first wave of detainees being afforded relief.

III. REMEDY AND CONCLUSION

Many courts grappling with the appropriate remedy in similar cases have ordered immediate release. If this Court instead orders a bond hearing before an immigration judge, the government shall bear the burden of justifying Petitioner's continued detention during the pendency of his removal proceedings by clear and convincing evidence. Several courts have followed this course of action in similar habeas cases. *See e.g. Lopez-Arevelo*, 2025 WL 2691828 at *12–13; *Velasquez Salazar v. Dedos*, No. 25-CV835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-CV-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-CV-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14. In light of Mr. Osorio Hernandez's prior bond denial under *Yajure Hurtado*, the risk of the Immigration Judge simply re-applying this in his bond redetermination hearing, and his current separation from his children, family, and his community, the more appropriate remedy is immediate release.

For the reasons stated above, Mr. Osorio Hernandez's petition for writ of habeas corpus should be granted.

(1) Defendants should immediately release Mr. Osorio Hernandez from custody, or in the alternative, provide his with a bond redetermination hearing under 8 U.S.C. § 1226(a) within 5 days.

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

(3) Respondents should bear the burden by clear and convincing evidence, that Mr.

Osorio Hernandez is a flight risk or a danger to the community if they do pursue a new bond redetermination;

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

Dated: December 16, 2025
Chicago, Illinois

/s/William A Quiceno
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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the CM/ECF system. All parties to this case are registered CM/ECF users and will be served through the CM/ECF system.

Dated: December 16, 2025
Chicago, Illinois

Respectfully submitted,

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