UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALBERTO CHAVEZ-PEREZ, Petitioner, v. KEVIN RAYCRAFT, in his official capacity as Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, in her official capacity as U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	Case No. 2:25-cv-13645 Honorable Robert J. White Mag. Judge Kimberly G. Altman

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

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ISSUES PRESENTED

1. 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?

2. Is Petitioner entitled to a bond hearing under 8 U.S.C. § 1226(a), which virtually every court to consider the question has found applies to noncitizens who, like Petitioner, were residing in the United States when they were apprehended and charged with inadmissibility?

3. 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 Petitioner is a flight risk or danger such that their civil detention is necessary to facilitate removal?

4. 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 Petitioner's ongoing unlawful detention?

INTRODUCTION

Petitioner Alberto Chavez-Perez came to United States over 20 years ago. Since then, he has built a good life for himself, supports his four U.S. citizen children, and contributes positively to his community. But on October 7, 2025, Petitioner was taken into immigration custody.

Had immigration authorities arrested Petitioner at any point before July 2025, the government would have provided him with a bond hearing, as it has to millions of detained noncitizens since at least the 1990s. But because of a newly announced policy flipping the prevailing understanding of the immigration statutes on its head, the government is now forcing longtime U.S. residents like Petitioner to remain in detention for the many months, or years, it will take for their immigration case to conclude—all while being separated from family, friends, community. The government's drastic reinterpretation of our immigration laws violates Petitioner's statutory and constitutional rights. Petitioner now urgently seeks a writ of habeas corpus to secure his prompt release.

BACKGROUND

This habeas corpus action stems from the federal government's new policy, announced on July 8, 2025, to subject noncitizens apprehended in the interior of the United States and charged with inadmissibility to mandatory detention without bond under 8 U.S.C. § 1225(b)(2)(A), no matter how long they have resided in the United

States (hereinafter the "Policy"). *See* Pet. at ¶¶ 37-38. This new Policy suddenly rejected the well-established understanding of the immigration laws—not to mention the government's own decades-old practice—that those same noncitizens were entitled to a bond hearing under 8 U.S.C. § 1226(a). *Id.* at ¶¶ 4-5. This Policy has affected many thousands of noncitizens who, at any point before July 2025, would have had the opportunity to be released on bond while their immigration cases proceeded. If left in place, the Policy has the potential to affect millions. *See* Kyle Cheney & Myah Ward, *Trump's new detention policy targets millions of immigrants. Judges keep saying it's illegal*, Politico (Sept. 20, 2025).[1]

Respondents' sudden decision to detain noncitizens without bond under § 1225(b)(2)(A) was quickly met with a tsunami of habeas litigation across the country. And in virtually every single case that directly addresses the question, federal courts nationwide have flatly rejected the government's attempt to apply § 1225(b)(2)(A) to longtime residents who were apprehended in the interior of the country and charged with inadmissibility. *See* Pet. At Exh. C (citing non-exhaustive list of federal district court decisions granting habeas relief to petitioners in identical habeas corpus actions). That includes decisions in habeas actions filed in the Eastern District of Michigan. *See, e.g., Lopez-Campos v. Raycraft*, --- F.Supp.3d. ---, 2025

[1] https://www.politico.com/news/2025/09/20/ice-detention-immigration-policy-00573850.

WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, No. 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); *Diego v. Raycraft*, No. 25-cv-13288 (E.D. Mich. Nov. 12, 2025).

Undeterred by this unrelenting wave of defeat, Respondents continue to unlawfully detain thousands of noncitizens apprehended in the interior of the country without any possibility of bond. Petitioner is among those many thousands. Petitioner allegedly entered the U.S. without inspection over 20 years ago. After Respondents detained Petitioner in 2019, an Immigration Judge released him on a bond. Petition at Exh. B. In 2024, the Immigration Judge dismissed his removal proceedings at ICE's request because he was a low priority for enforcement.

Petitioner was taken into immigration custody again on October 7, 2025. Petitioner was charged with allegedly entering the country without having been inspected or admitted at some point in the past. Petitioner does not have any crimes

on his] record that would result in mandatory detention under 8 U.S.C. § 1226(c). *See* Petition at Exh. A.

After apprehending Petitioner, Respondents detained Petitioner at North Lake Detention Center in Baldwin, Michigan, which is under the jurisdiction of the ICE Detroit Field Office. *Id.* at ¶ 1. ICE either decided to continue detention under the Policy or did not conduct a custody determination at all. *Id.*

Petitioner then filed this habeas corpus petition alleging (1) that Petitioner's continued detention without a bond hearing violates the Immigration and Nationality Act (INA), which clearly provides that Petitioner's detention should be governed by § 1226(a)'s discretionary detention scheme; and (2) that Petitioner's detention violates his due process rights because Petitioner is being detained without any individualized determination of flight risk or danger such that his civil detention is necessary to facilitate removal.

ARGUMENT

The structure, text, and legislative history of the INA make clear that § 1225 applies only to the inspection of recent arrivals at or near the U.S. border, and was never meant to encompass people like Petitioner who have been residing in the interior of the country for years. Instead, § 1226 was intended to provide the proper process for detaining those latter individuals. Additionally, parsing the specific text of § 1225(b)(2)(A) further demonstrates that the provision clearly does not apply to

Petitioner, since he is not "applicants for admission" who is "seeking admission" before an "examining immigration officer."

I. The Structure, Text and Legislative History of the INA Make Clear that § 1225 Applies Only to the Inspection of Recent Arrivals, While § 1226 Governs the Detention of Residents Like Petitioner.

The text, structure, and purpose of the INA all support Petitioner's argument that § 1226(a) governs their detention, and not § 1225(b)(2)(A). As Petitioner explained in the petition, § 1226(a) and § 1225(b)(2)(A) work in tandem to cover different categories of noncitizens: § 1226 provides a discretionary detention scheme for individuals who are arrested while "already in the country" and detained "pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while § 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *id.* at 287. *See* Pet. at ¶¶ 29-49. Indeed, there is a "line historically drawn between these two sections" and the categories of noncitizens they respectively cover. *Martinez v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

This understanding situates each detention provision "in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted). *See also Biden v. Texas*, 597 U.S. 785, 799-800

(2022) (looking to statutory structure to inform interpretation of INA provision). Placing a provision in its larger context is especially important where the provision "may seem ambiguous in isolation" but can be "clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). And the one meaning which permits a logical and compatible effect here is that § 1225 and § 1226 each cover *different* categories of noncitizens.

Section 1225's plain text shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)–(b), (d). That section sets out procedures for "inspection[s]" of people "arriving in the United States," 8 U.S.C. § 1225(a)(3), (b)(1), (b)(2), (d); repeatedly refers to "examining immigration officer[s]," *id.* § 1225(b)(2)(A), (b)(4); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id.* § 1225(a)(2), (b)(2)(B), (b)(2)(C). Even the title of § 1225 refers to the "inspection" of "inadmissible *arriving*" noncitizens (emphasis added), and the title of subsection 1225(b)(2) likewise refers to "inspection." *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute . . . especially . . . [where] it reinforces what the text's nouns

and verbs independently suggest.") (cleaned up); *Merit Mgmt. Grp., LP v. FIT Consulting, Inc.*, 583 U.S. 366, 380 (2018) (similar). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the U.S. border. Petitioner, of course, arrived at the border years ago and has been residing in the United States since.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested "on a warrant . . . pending a decision on whether [they are] to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226(a) thus applies to those "already in the country" who are detained "pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. On its face, the provision plainly applies to Petitioner, who was arrested "on a warrant" while already in the U.S. and is now detained "pending a decision on" his removal. *Id.* Thus, § 1226(a), and not § 1225(b)(2)(A), is the proper detention authority for Petitioner.

The legislative history and implementing regulations likewise make clear that Section 1226(a) was always intended to apply to people who entered without inspection and are residing in the United States. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting Congress's intent for § 1226(a) to simply "restate" its predecessor statute, which provided "the authority of the Attorney General to arrest, detain, and *release on bond* a[ ] [noncitizen] who is not lawfully in the United

States") (emphasis added); 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) (explaining that "[noncitizens] 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[,]" and "[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge . . . . This procedure maintains the status quo.").

This 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 in July. Indeed, Respondents' own understanding of § 1226(a) as covering people in the interior was so uncontroversial for so long that it is now deeply entrenched in DHS's operations. For example, the Notice to Appear form used to initiate removal proceedings against Petitioner distinguishes between noncitizens "arriving" into the United States and those already "present in the United States." (Here, DHS deliberately chose *not* to select the "arriving" option, instead only designating that Petitioner was "present in the United States." *See,* Pet. at Exh. A).

But now, Respondents suddenly contend that § 1226(a) does not apply to people like Petitioner who are charged with inadmissibility but have long resided in

the United States, thus denying bond hearings to Petitioner and thousands like him. Respondents' new reading defies the plain text of § 1226, which expressly applies to "inadmissible" noncitizens. Section 1226(a) states that noncitizens detained via a warrant while facing removal proceedings may be released on bond or parole "[e]xcept as provided in subsection (c)." 8 U.S.C. § 1226(a). Subsection (c), in turn, exempts certain "inadmissible" noncitizens from § 1226(a)'s discretionary detention scheme. *See* Pet. at ¶ 30, 46. These "statutory exceptions would be unnecessary" if Congress did not intend for § 1226(a) to cover noncitizens alleged to be inadmissible, like Petitioner here. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). *See also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (discussing § 1226 and explaining that "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." (quoting *Shady Grove*, 559 U.S. at 400)).

Moreover, Congress added one of these references to inadmissibility just this year. In the Laken Riley Act, Congress added subsection § 1226(c)(1)(E), which mandates detention for noncitizens who have been arrested for, charged with, or convicted of certain crimes and who are also inadmissible under various provisions of the INA, including § 1182(a)(6)(A)—the statute under which Petitioner here is charged, and which applies to "aliens present in the United States without being

admitted or paroled." *See* Pub L. No. 119-1, 139 Stat. 3 (2025). By classifying these inadmissible noncitizens as ineligible for bond under § 1226(c) *if* they satisfy additional conditions regarding their criminal history, Congress reaffirmed that § 1226 encompasses the detention of inadmissible noncitizens. Indeed, "when Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995). *See also Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025) ("[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.") (internal quotation marks omitted).

Respondents' preferred reading of the INA, which categorically places noncitizens charged with inadmissibility under § 1225(b)(2)(A), "'would largely nullify a statute Congress enacted this very year, [and] must be rejected.'" *Pizarro Reyes*, 2025 WL 2609425, at *5 (quoting *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)). *See also Lopez-Campos*, 2025 WL 2496379, at *8 ("Respondents' interpretation of the statutes would render this recently amended section superfluous."). That, again, is so because, if *every* noncitizen who entered without inspection was already subject to mandatory detention under § 1225(b)(2)(A), there would be no need for a separate provision (i.e., § 1226(c)) mandating detention if they also satisfied additional conditions.

In sum, the only reading of § 1226 that gives meaning to all of its parts is that it encompasses people like Petitioner who were apprehended in the interior and are charged with being inadmissible because they entered the country without inspection. Thus, because § 1226(a) clearly governs Petitioner's detention, granting his habeas petition would uphold the INA's text, structure, and intent.

II. Section 1225(b)(2)(A) Also Cannot Apply to Petitioner Because Petitioner Is Not an "Applicant For Admission" Who Is "Seeking Admission" Before an "Immigration Officer."

Respondents' attempt to subject Petitioner to mandatory detention under § 1225(b)(2)(A) defies the plain text of that provision. Congress made clear that to fall under Section § 1225(b)(2)(A), noncitizens must satisfy three criteria: that they be (1) an "applicant for admission" who is (2) "seeking admission" to the United States (3) before an "immigration officer." By using these three unique terms in the same provision, Congress meant for each of them to introduce *distinct* requirements that must all be satisfied before the provision applies. *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." (internal quotations omitted)); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (similar); *Pulsifer v. United States*, 601 U.S. 124, 141 (2024) (similar). Petitioner does not satisfy any of these three criteria, let alone all of them. Thus, § 1225(b)(2)(A) cannot govern Petitioner's detention.

A. *Section 1225(b)(2)(A) Cannot Apply to Petitioner Because Petitioner Is Not an "Applicant for Admission."*

At the outset, it is questionable whether Petitioner is an "applicant for admission" as that term is used in § 1225(b)(2)(A). Section 1225(a)(1) defines an "applicant for admission" as a person who is

> . . . present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).

In a vacuum, the first clause of this definition might appear to encompass Petitioner. But it is an axiomatic principle of statutory interpretation that "we must (as usual) interpret the relevant words not in a vacuum, but with reference to the statutory context, structure, history, and purpose." *Abramski v. United States*, 573 U.S. 169, 179 (2014) (citation modified). *See also King*, 576 U.S. at 486 (statutory terms must be understood "in their context and with a view to their place in the overall statutory scheme") (citation omitted); *Kentucky v. Biden*, 23 F.4th 585, 603 (6th Cir. 2022) (each word must be given "'its ordinary, contemporary, common meaning, while keeping in mind that statutory language has meaning only in context.") (cleaned up). This is the case even when a statutory term seems unambiguous, such as when it is defined in the statute. *See Yates v. United States*, 574 U.S. 528, 537 (2015).

Under any reasonable and context-sensitive understanding of these terms, Petitioner is not an "applicant for admission." When viewed in its statutory context,

this term cannot be understood without acknowledging Congress's choice to deploy the term within § 1225's border inspection scheme. *See* Section I. That context underscores that the definition in (a)(1) is limited by other aspects of the statute to those who undergo an initial inspection at or near the border shortly after arrival. *See Pizarro Reyes*, 2025 WL 2609425, at *5 ("The Court finds that the overall context of § 1225 limits the scope of the terms 'applicant for admission' and 'seeking admission.'"). Moreover, the term "applicant for admission" appears nowhere in § 1226, the "default" detention statute applying to those "already" in the country. *Jennings*, 583 U.S. at 288, 301. This comparative context further clarifies that the term refers to a specific category of "arriving" noncitizens being "inspected" at or near the border. *See* 8 U.S.C. § 1225. And Petitioner, of course, is not at the border applying for admission. Thus, Petitioner cannot be detained under § 1225(b)(2)(A).

B. *Section 1225(b)(2)(A) Cannot Apply to Petitioner Because Petitioner Is Not "Seeking Admission" to the United States.*

But whether or not Petitioner is an "applicant for admission," § 1225(b)(2)(A) also requires an independent and separate showing that Petitioner is "seeking admission" to the United States—which Petitioner very clearly is not. The term "seeking admission" is not defined anywhere in the INA,[2] making the structure and

[2] At most, the INA provides a definition only for the word "admission": "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). But this partial definition does not help clarify what the affirmative act of "*seeking* admission" entails in the context

context of § 1225 even more instructive. Interpreting the INA properly shows that "seeking admission" describes a narrow class of recent arrivals who are presenting themselves for admission at or near the border. Petitioner clearly does not fall within that class.

Again, the structure, text, and legislative history of § 1225 clearly show that it deals with inspections of recent arrivals at or near the border. *See* Section I. By deploying "seeking admission" within § 1225's border inspection scheme—and not § 1226—Congress intended to limit this term to covering just the detention of noncitizens seeking admission *at or near the border*. *See Pizarro Reyes*, 2025 WL 2609425 at *5; *Martinez*, 2025 WL 2084238, at *8. That is why the statute's implementing regulations, which were "promulgated mere months after passage of the statute and have remained consistent over time," *Lopez Benitez v. Francis*, --- F. Supp. 3d. ---, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025) (cleaned up), describe those seeking admission as "arriving aliens," 8 C.F.R. § 235.3(c)(1), who are "*coming or attempting to come into* the United States," 8 C.F.R. § 1.2 (emphasis added). *See Martinez*, 2025 WL 2084238 at *6 (the regulations' use of "arriving alien" is "roughly interchangeable with an 'applicant . . . seeking admission'" as used in § 1225(b)(2)(A)). *See also Salcedo Aceros v. Kaiser*, No. 25-CV-06924,

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of § 1225(b)(2)(A). And in any event, it does not describe what Petitioner is doing here: Petitioner is not before an "immigration officer." *See* Section II.c., *infra*.

2025 WL 2637503, at *10 (N.D. Cal. Sept. 12, 2025) (same). Thus, only those who take affirmative steps to seek admission while "coming or attempting to come into the United States" can reasonably be said to be "seeking admission" under § 1225(b)(2)(A). *See Lopez-Campos*, 2025 WL 2496379 at *7 ("seeking admission" refers to "when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country").

Petitioner is not presenting himself for admission at the border; he arrived at the border years ago and has been residing in the United States since. Petitioner simply wishes to *remain* in the country he has long called home—not to enter it. Thus, Petitioner cannot be considered to be "seeking admission" in any reasonable way, rendering § 1225(b)(2)(A) wholly inapplicable to Petitioner's detention.

C. *Section 1225(b)(2)(A) Cannot Apply to Petitioner Because Petitioner Is Not Being "Examined" by an "Immigration Officer."*

Third, even if Petitioner was somehow found to be an "applicant for admission" who is "seeking admission," Section 1225(b)(2)(A) would only authorize Petitioner's mandatory detention if an "immigration officer" "examin[ed]" Petitioner and "determine[d]" that he was clearly inadmissible. Petitioner is currently in removal proceedings before an immigration judge, with the opportunity for further review by the BIA and the federal courts, who are tasked with determining whether Petitioner is inadmissible and subject to removal, or whether Petitioner is

entitled to any relief from removal. But immigration judges are not *immigration officers* as that term is used in the statute. Nor are federal judges.

The term "immigration officer" is defined in the statute's implementing regulations as "the following employees of the *Department of Homeland Security*," such as asylum officers, deportation officers, and Border Patrol agents. 8 C.F.R. § 1.2 (emphasis added). Notably, the definition does not encompass immigration judges and appellate immigration judges, who are employees of the *Department of Justice* (the parent agency for the Executive Office for Immigration Review (EOIR), Board of Immigration Appeals (BIA), and immigration courts) and are covered under a *separate* definition for "immigration judge." *See* 8 C.F.R. § 1.2. Thus, even if Petitioner was somehow an "applicant for admission" who is also "seeking admission" into the United States, Petitioner still would not fall within § 1225(b)(2)(A) because his removal proceedings are before an immigration judge, not an immigration officer.

Section 1225(b)(2)(A)'s use of the term "examining immigration officer" gives further weight to the structural argument that § 1225 obviously sets out a scheme for inspections at or near the border, where arriving noncitizens will typically be examined by an "immigration officer"—such as when they are apprehended by a Border Patrol agent or interviewed by an asylum officer. Petitioner, however, is not being examined by immigration officers at or near the

border. Instead, Petitioner is charged by a warrant with having entered the country without authorization and has now been placed in removal proceedings before an immigration judge, where he is seeking various forms of relief from removal. This is clearly not the circumstance contemplated by § 1225(b)(2)(A). Instead, it is the circumstance contemplated by § 1226 (covering people who are "pending a decision [by the immigration courts] on whether [they are] to be removed from the United States").

In sum, under any reasonable interpretation of § 1225, Petitioner is not an "applicant for admission" who is "seeking admission" before an "examining immigration officer." The simple reality is that Petitioner is not trying to enter the United States; he is already here. Thus, § 1225(b)(2)(A) has no role in Petitioner's ability to be detained pending a decision on their removal.

D. *The BIA's Recent Decision Upholding the Respondents' Practice is Unavailing.*

Finally, the fact that the BIA recently affirmed Respondents' practice does not change this conclusion. In *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), the BIA ruled that people who "surreptitiously cross into the United States" qualify as "applicants for admission" under § 1225(b)(2)(A), and thus Immigration Judges "have no authority to redetermine the custody conditions of a [noncitizen] who crossed the border unlawfully without inspection," even if that noncitizen has lived in the United States for years. *Id.* at 228. Not only is the BIA's misguided reasoning

in *Yajure Hurtado* out of step with virtually every federal court to treat the same issue, but this Court is not bound by the BIA's interpretation of federal statutes.

First, a multitude of federal courts—including in decisions issued after *Yajure Hurtado*—have addressed the exact same question and explicitly rejected the reasoning underlying the BIA's ruling as unpersuasive and at odds with INA's text and structure. *See, e.g., Pizarro Reyes*, 2025 WL 2609425, at *6–7; *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541, at *7–8 (D. Me. Sept. 21, 2025). As the Northern District of California explained, the BIA's "strained interpretation" "treats the phrases 'applicant for admission' and 'seeking admission' as synonymous, which renders the phrase 'seeking admission' in section 1225(b)(2) superfluous." *Valencia Zapata v. Kaiser*, No. 25-CV-07492, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025). *See also Beltran Barrera*, 2025 WL 2690565, at *5 ("it [is] difficult to find that an individual is 'seeking admission' when that noncitizen never attempted to do so.").

Second, federal courts are "not bound by the BIA's interpretation" of the INA. *Pizarro Reyes*, 2025 WL 2609425 at *6. To the contrary, federal courts "must exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 412 (2024). A court's decision of whether to find an agency interpretation persuasive depends on "the thoroughness

evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). And here, the BIA's reasoning in *Yajure Hurtado* fails to explain why or how dozens of federal courts have gotten the answer wrong. And it fails to explain why the agency itself held the contrary position for decades. "Realistically speaking, if Congress's intention was so clear, why did it take thirty years to notice?" *Romero v. Hyde*, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025).

Thus, like every federal court to consider the persuasiveness of *Yajure Hurtado*, this Court should decline to follow the superficial reasoning of the BIA and instead exercise its "independent judgment in determining the meaning of statutory provisions." *Loper Bright*, 603 U.S. at 394.

III. Due Process Entitles Petitioner to a Bond Hearing.

Petitioner's ongoing detention without bond also violates his due process rights.[3] At the "heart" of the Fifth Amendment's due process clause is "the freedom from imprisonment—government custody, detention, and other forms of physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Depriving a person of their

[3] Interpretations of the detention provisions of the INA that raise serious constitutional doubts must be rejected whenever it is "fairly possible" to do so, such as when reasonable statutory interpretation resolves a question about the applicability of a statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

liberty is only permissible as punishment for crimes, or in "certain special and narrow nonpunitive [i.e. civil] circumstances." *Id.* (quotation omitted). That due process guarantee extends to noncitizens regardless of "whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.[4]

Civil immigration detention is not punishment for a crime. Thus, it can only be justified "where a special [non-punitive] justification . . . outweighs the individual's constitutionally protected interest" in liberty—usually only by a finding that such detention is necessary to prevent their flight or protect against dangers to the community. *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also United States v. Salerno*, 481 U.S. 739, 750 (1987). A hearing on whether such a special justification necessitates civil detention is the most basic protection required by the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Addington v. Texas*, 441 U.S. 418, 428 (1979). And the nature of that hearing is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). That test

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[4] While the government may argue that due process protections are diminished for some people who are apprehended while crossing the border, *see DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020), that is not true for people like Petitioner who have resided in the U.S. and "develop[ed] the ties that go with" longtime residence. *Landon v. Plasencia,* 459 U.S. 21, 32 (1982). Indeed, there has long been a legal "distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, *irrespective of its legality*." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added).

weighs (1) the nature of "the private interest" being deprived; (2) "the risk of erroneous deprivation" and (3) the "fiscal and administrative burdens" posed by providing additional process. *Id.* All three *Mathews* factors favor Petitioner.

As to the private interest, Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Petitioner is limited to ensuring their appearance at their future immigration proceedings (i.e., "flight risk") and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690. But because Respondents denied Petitioner a proper bond hearing, "there is nothing in the record demonstrating that [Petitioner] is a flight risk or a danger to the community." *Lopez Benitez*, 2025 WL 2371588, at *12. Therefore, the risk of erroneously depriving Petitioner of physical freedom is unbearably high. *See Lopez-Campos*, 2025 WL 2496379, at *9 ("the risk of erroneously depriving [petitioner] of his freedom is high if the IJ fails to assess his risk of flight and dangerousness."). Without the bond hearing that he is entitled to under § 1226(a), Petitioner will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Nor can the government complain about the administrative burden of providing hearings that it has provided for decades.

IV. This Court Should Waive Any Prudential Exhaustion Requirement.

Respondents are likely to ask this Court to require Petitioner to first seek a

bond hearing in immigration court, or to appeal their jurisdictional bond denials to the BIA, before seeking habeas relief. But for a habeas corpus petition under § 2241, the exhaustion of administrative remedies is not a statutory or jurisdictional requirement, but rather a prudential matter of this Court's discretion. *See Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). In identical petitions, courts around the country have consistently waived prudential exhaustion requirements. *See Lopez-Campos*, 2025 WL 2496379, at *5; *Pizarro Reyes*, 2025 WL 2609425, at *4.[5] This Court should exercise its discretion to do the same here.

Petitioner briefly runs through the four primary circumstances when courts waive prudential exhaustion requirements—all of which strongly favor waiver here. First, courts consider whether "pursuit of administrative remedies would be a futile gesture." *Shearson*, 725 F.3d at 594. Here, requiring Petitioner to wait for an immigration judge to deny a bond hearing or for the BIA to deny a bond appeal would be futile. Waiver based on futility is especially appropriate when the administrative agency "has predetermined the disputed issue" by having a "clearly stated position" that the petitioner is not eligible for the relief sought. *Cooper v. Zych*, No. 09-CV-11620, 2009 WL 2711957, at *2 (E.D. Mich. Aug. 25, 2009). *See also McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (same). Because the BIA

[5] *See also* Pet. at ¶ 7 (citing decisions in identical habeas corpus actions, all of which waived prudential exhaustion requirements if presented with the issue).

recently issued a precedential, binding decision holding that all noncitizens who entered without admission or parole are ineligible for § 1226(a) bond hearings, *see Yajure Hurtado*, 29 I&N Dec. 216, the BIA and IJ will undoubtedly deny Petitioner's bond request. Thus, seeking bond is futile because Respondents have "predetermined the disputed issue." *Cooper*, 2009 WL 2711957, at *2.

Second, courts waive prudential exhaustion requirements when the "legal question is fit for resolution and delay means hardship." *Shalala v. Illinois Council on Long Term Care*, 529 U.S. 1, 13 (2000) (cleaned up). On average, the BIA took over six months to decide bond appeals in 2024, with hundreds of cases taking a year or longer to resolve. *See Rodriguez*, 779 F. Supp. 3d at 1245. Here, the "delays inherent in the administrative process . . . would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (cleaned up). Meanwhile, "the legal question" of which detention statute properly applies "is 'fit' for resolution." *Shalala*, 529 U.S. at 13. The legality of Petitioner's detention is a pure question of statutory interpretation and constitutional due process analysis. Thus, because the Court can decide these purely legal questions now, Petitioner "could be released within a few weeks as compared to the anticipated half-year wait through the BIA appeal route." *Pizarro Reyes*, 2025 WL 2609425, at *4.

Third, waiver is appropriate when a petitioner raises "non-frivolous"

constitutional questions that cannot be adequately addressed through the administrative process. *Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006). Petitioner's due process arguments, *see* Section III, are far from frivolous. In fact, this Court has already ruled that the mandatory detention of an identical petitioner "is a violation of his due process rights." *Lopez-Campos*, 2025 WL 2496379, at *10. Since the "BIA lacks authority to review constitutional challenges," *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006), "[n]either an immigration judge nor the Board of Immigration Appeals is positioned to properly adjudicate" Petitioner's due process claim. *Lopez Benitez*, 2025 WL 2371588, at *14.

Fourth, waiver of prudential exhaustion is appropriate because there is no need for IJs or the BIA to "make a factual record" or "apply [their] expertise." *McGee v. United States*, 402 U.S. 479, 484 (1971). There are no factual disputes, obviating any need for factual development. And the immigration courts have no expertise in matters of statutory interpretation, which is "the proper and peculiar province of the courts," *Loper Bright Enters.*, 603 U.S. at 385 (cleaned up), or in analyzing constitutional claims, which IJs wholly "lack[] authority to review," *Sterkaj*, 439 F.3d at 279. Thus, it would not impair agency functions for this Court to promptly address matters the agency is not equipped to handle in the first place.

Finally, the need for waiver is amplified in the context of a habeas corpus petition, which demands a "swift" remedy in the face of illegal detention. *Fay v.*

Noia, 372 U.S. 391, 400 (1963). *See also* 28 U.S.C. § 2243. Requiring prior administrative exhaustion will serve only to prolong that illegal detention. Indeed, "[w]hen the liberty of a person is at stake, every day that passes is a critical one," thus necessitating habeas petitions to "be met with a sense of urgency." *Lopez-Campos*, 2025 WL 2496379, at *5. Unsurprisingly, then, this Court regularly waives prudential exhaustion requirements in § 2241 habeas actions, including in recent actions identical to this one.[6] This Court should again exercise its discretion to do so here and proceed to the merits of this petition.

CONCLUSION

For the foregoing reasons, Petitioner respectfully urges this Court to grant Petitioner's habeas corpus petition and order Respondents to immediately release him from custody unless he is provided with a bond hearing within seven (7) days.

Respectfully submitted on November 16, 2025.
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[6] *See, e.g., Lopez-Campos*, 2025 WL 2496379, at *5; *Pizarro Reyes*, 2025 WL 2609425, at *4; *Cooper*, 2009 WL 2711957, at *2; *Shweika v. DHS*, No. 09-CV-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015); *Holloway v. Eichenlaub*, No. 08-CV-11347, 2009 WL 416325, at *1 (E.D. Mich. Feb. 18, 2009); *Williams v. Zych*, No. 09-CV-12173, 2010 WL 200847, at *1 (E.D. Mich. Jan. 15, 2010); *Cabrera v. Walton*, No. 10-CV-13654, 2010 WL 4974040, at *1 (E.D. Mich. Dec. 1, 2010).