UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

Josue Andres CASTANEDA ROSAS, 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. 25-cv-13876 Hon. Matthew F. Leitman

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

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INTRODUCTION

Respondents do not dispute Petitioner's long residence in the United States or that the government has historically interpreted the INA to allow bond hearings for people in his position; instead, they offer meritless smokescreen arguments.

I. Section 1226(a), Not Section 1225(b)(2)(A) Applies to Petitioner.

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

Respondents read §1225 in isolation, ignoring §1226, and INA's overall structure. § 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).[1] 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 are] to be removed from the United States." Respondents also cannot explain why §

[1] 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 non-citizens), *Jennings* "made clear" that § 1226(a) applies only to those both present and admitted. Resp. Brf, pg. 16-17. 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.

1226 does not render bond-eligible most people residing here without admission 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 §1226(a) apply to noncitizens who … are 'present in the United States without being admitted or paroled'" unless § 1226(c) applies. *Rodriguez v. Bostock,* -- F. Supp. 3d --, 2025 WL 2782499, *17 (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 is to ignore Laken Riley because it does not apply to Petitioner. Resp. Brf, pg. 17,18. The government dismisses the conflict between its view that § 1225(b)(2)(A) mandates detention for all non-admitted noncitizens and § 1226's more limited mandatory detention scheme as mere redundancy. Resp. Brf, pg. 17. 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 § 1225 distinguishes between recently arrived noncitizens ('arriving aliens') and those like Petitioners who were successfully able to evade apprehension for many years ('applicants for admission'). Resp. Brf, pg. 17. 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" and "applicants for admission" is divorced from the statutory text. §1225(a)(1) defines "applicants for admission" to *include* non-citizens arriving in the U.S. Meanwhile, in describing "arriving aliens," Respondents cite provisions in *§ 1225(b)(2)* about "crewmen, "stowaways" and people arriving from contiguous territory, even though Respondents contend that § 1225(b)(2) concerns applicants for admission. Resp. Brf, 17. There is no way to read § 1225(b)(2) as covering only people who have lived in the U.S. for years. Respondents misunderstand the structure of § 1225. §1225(b)(1) provides for expedited removal and detention of certain non-citizens. §1225(b)(2) applies to other "applicants for admission" "seeking admission" who are *not* subject to expedited removal but 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 Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J., Sept. 26, 2025) (unpublished) (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 taken alone, § 1225(b)(2) does not support Respondents' view because it requires action by an "examining immigration officer," which does not apply to a petitioner seeking relief before an immigration judge. See Pet. Brf, pg. 20–22. Instead, they focus on whether Petitioner is an "applicant for admission" who is "seeking admission." They 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." Resp. Brf, pg. 9-10 (citing 8 U.S.C. § 1101(a)(13)(A)). Which, again, refers

to inspections by immigration officers, but also "[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 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 claim that applying for relief to remain is equivalent to seeking entry, Resp. Brf, pg. 9–10, but Petitioner is not asking to enter at all—he seeks adjustment of status from an immigration judge while already inside the United States.

D. Respondents Misunderstand the Legislative History.

Respondents ignore legislative history showing § 1226(a) controls. See Pet. Brief, pg.9 at §33–45. Their reading of IIRIRA relies on elevating one congressional concern, which is error. Cordero Pelico, 2025 WL 2822876 at 13. While Congress addressed equal treatment in removal proceedings, the statute "says nothing about detention." Rodriguez, 2025 WL 2782499, *24 (cleaned up). If Congress meant to require mandatory detention without bond hearings, it would have said so clearly, and agencies would not have disregarded such a mandate for thirty years. See *Loper Bright Enters. V. Raimondo*, 603 U.S. 369, 386 (2024).

II. Due Process Requires a Bond Hearing.

Respondents do not give a special justification for detaining Petitioner without a bond hearing. Nor weigh the factors of *Mathews v. Eldridge*, 424 U.S. 319, 334-35

(1976). Nor identify a case showing constitutionality in the deprivation of long-time residents of liberty without consideration of risk to the public or of flight. Respondents rely on inapposite cases about limited due process for individuals apprehended at the border or with significant criminal histories. *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

Respondents' reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is also misplaced Demore upheld § 1226I only in a narrow context—certain noncitizens with criminal convictions—based on a presumed danger or flight risk, and only because brief detention was found to "outweigh[] their interest in liberty." Id. At 529, n.12. It did **not** create any irrebuttable presumption of dangerousness, even for those with serious criminal histories[2], let alone for law-abiding residents like Petitioner. And *Zadvydas v. Davis*, 533 U.S. 678 (2001), emphasizes that immigration detention must tie to the civil purposes of preventing flight and protecting the public. *Zadvydas* held

[2] 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).

that even for noncitizens already ordered removed, reading the INA to permit prolonged detention raises "serious constitutional problem[s]." *Id*

III. Requiring Administrative Exhaustion Would Be Futile.

Respondents admit administrative exhaustion would be futile. Resp. Brf., pg.6-7

IV. There Are Multiple Proper Respondents.

The parties agree that the ICE field office director is Petitioner's "immediate custodian" and thus a proper respondent. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). But he is not the *only* proper respondent. Petitioner is detained under a new ICE directive issued with DOJ, and if Respondents Noem, Bondi, and DHS rescinded it, Petitioner could be released through ICE-set bond under 8 C.F.R. § 236.1(8) or via bond hearings in immigration court. Because EOIR—housed within DOJ—and Respondent Bondi oversee those courts, they can, but have not, ensured that Petitioner receives a bond hearing. This Court has jurisdiction both in habeas (28 U.S.C. § 2241; U.S. Const. art. I, § 9, cl. 2), and over federal questions (28 U.S.C. § 1331). It can grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. *See* Pet., §11-13.

CONCLUSION

Petitioner requests that the Court grant the relief requested in the Petition.

Respectfully submitted,

/s/ Brad Whitney Thomson

Counsel for Petitioner

Dated: December 09, 2025