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## I. INTRODUCTION

The Petitioner, Mr. Qiancheng Zhao submits his traverse to Respondents' response to his habeas petition. On December 12, 2025, this Court ordered Respondents to respond no later than December 17, 2025. Dkt. 4. Respondents filed their response on December 17, 2025, urging denial. Dkt. 5. Federal Respondents maintain that Petitioner's detention is lawful, that he is unlikely to succeed on the merits of his habeas claim, because they believe he is an applicant for admission. *Id.* at 1.

Respondents in their Response present much that this Court has already rejected. Dkt. 5 at 2-9; see this Court's decisions in *Pereira-Verdi v. Lyons*, SA-25-CA-01187-XR (W.D. Tex. Oct. 10, 2025) (“[T]he Supreme Court has already explained that “§ 1226 applies to aliens already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). “[T]he language of §§ 1225(b)(1) and (b)(2) is quite clear.” *Id.* “§ 1225(b) applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Id.* at 297.”); *Hernandez-Ramiro v Bondi*, SA-25-CA-01207-XR, W.D. (Tex. Oct. 15, 2025) (“[T]he Board’s interpretation has been subject to criticism upon judicial review. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at \*7 (W.D. Tex. Sept. 22, 2025) (“In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect.”). This disparity in how courts decide the issue of § 1225’s applicability is persuasive evidence that Petitioner is likely to succeed.”)

The Respondents offer now as justification for their new interpretation, a new rationale, one that was not put forward in the original internal guidance on the policy change (“Lyons Memorandum”) (failing to mention “8 U.S.C. § 1225(b)(1)(A)(iii)(II)” as a basis for mandatory

detention).<sup>1</sup>

## II. BRIEF SUMMARY OF FACTS

Petitioner is a native and citizen of China. He has been in the United States for over two (2) years, since October 8, 2023. He has lived with his wife in New York City since his arrival. At the time of entry, Petitioner was detained under Section 236 of the Immigration and Nationality Act (“INA”), the respondents then released him on his own recognizance (O-rec), under 8 U.S.C. § 1226(a)(2)(B), “conditional parole,” on October 10, 2023. Dkt. 1, Exh. 2, Form I-220A. He has attended annual check-ins, and was awaiting his non-detained immigration court setting at the non-detained New York immigration court. ICE then re-detained him at his regularly scheduled ICE check-in in New York on November 19, 2025, without any notice or explanation. He remained in civil detention in the custody of ICE initially at the Delaney Hall Detention Facility in New Jersey, and then transferred to the current facility at the El Paso Camp East Montana Detention Facility.

On September 5, 2025, the BIA issued a decision in the *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025 holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hold bond requests or to grant bond to aliens who are present in the United States without admission.

Petitioner has maintained to this Court that the respondents’ unlawful detention of him impedes his defense by limiting access to counsel, witnesses, and evidence. Dkt. 3 at 6.

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<sup>1</sup> ICE Memorandum: 2025.07.08 ICE - Interim Guidance Regarding Detention Authority for Applicants for Admission, available at Immigration Tracking Policy Project, <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/> (last checked November 5, 2025).

### III. ARGUMENT

#### A. The Court Should Reject Respondents' Argument That Petitioner is Detained Under § 1225(b)(1)

Respondents in their Answer contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Notably, Respondents do not argue that Petitioner is somehow subject to §1225(b) expedited removal proceedings, or potentially subject to expedited removal proceedings. Dkt. 5 at 2–3. Nor could they, as indeed courts have recognized the emptiness of such argument because § 1225 does not authorize expedited removal of individuals who have ever been paroled into the U.S. *See, e.g., Patel v. Tindall*, 2025 WL 2823607, at \*5 (W.D. Ky., 2025) (“Patel cannot be subject to Section 1225. Patel was released on his own recognizance, which is understood to be a conditional parole. *See Espinoza*, 2025 WL 2675785, at \*6 (“[A] person on conditional parole is usually released on their own recognizance subject to certain conditions such as reporting requirements.”). Therefore, Section 1225 is inapplicable to Patel, and in fact, ICE violated the INA by invoking it against Patel.”); *Morales Chavez v. Director Detroit Field Office, et al*, 2025 WL 2959617, at \*8 (N.D. Ohio, 2025) (“Other district courts have not permitted retroactive application of § 1225(b)(1) where immigration officials have begun proceedings under standard removal proceedings and its discretionary detention provision. *See, e.g., Ballestros v. Noem*, No. 3:25-CV-594-RGJ, 2025 WL 2880831, at \*3–4 (W.D. Ky. Oct. 9, 2025) (“[Petitioner] cannot be subject to Section 1225 proceedings....Therefore, [Petitioner] is subject to standard removal and detention proceedings under Section 1229a and Section 1226.”).”).

Here, Respondents have not cited any case to support their explanation that “[W]hile bond proceedings under § 1226(a) are separate and apart from removal proceedings under § 1229a, challenges to decisions under § 1225(b), including the mandatory detention provision found

within that statute, are to be raised in the same § 1229a proceedings. *See* 8 U.S.C. § 1225(b)(4).<sup>2</sup> Dkt. 5 at 8.

Respondents in their Answer do not address Petitioner’s argument that in 2023 he was released into the United States after apprehension at the Southern border on a “conditional parole” under the DHS’s statutory power under 8 U.S.C. § 1226(a)(2)(B), “pending a decision on whether the alien is to be removed from the United States . . . [the DHS] may release the alien on— . . . (B) conditional parole; but (3) may not provide the alien with work authorization [including and “employment authorized” endorsement or other appropriate work permit ], unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.” They make no attempt to reconcile the fact that their arrest of him in 2023, cited in their Form I-220A (Dkt. 1, Exh. 2), is specifically “under § 1226(a),” (which applies to those present or who have been admitted or paroled into the United States). Dkt. 2 at 1–2.

They argue now that the Petitioner over two years later is still in the position of an applicant for admission standing at the threshold of entry. Dkt. 5 at 3-4. Respondents assert that his detention is under 8 U.S.C. § 1225(b)(1)(A)(iii)(II). The Respondents in their Response appear to be easing away from their arguments previously presented in other similar petitions to district courts (and roundly rejected) that placed such petitioners under 1225(b)(2)(A), and pivoting to a new section they believe justifies their holding Petitioner under mandatory detention, namely, § 1225(b)(1)(A)(iii)(II), as an arriving alien. Dkt. 5 at 4. But court after court has rejected their proposed reading. *See, e.g., Salgado-Bustos v Raycraft*, No. 25-13202, 2025 WL 3022294 (E. D.

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<sup>2</sup> “(4) Challenge of decision-The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.”

Mich, Oct. 29, 2025) (under similar factual circumstances, “[N]umerous courts have rejected Respondents’ interpretation of the statute. In *Coalition for Humane Immigrant Rts. v. Noem*, No. 25-CV-872, 2025 WL 2192986, at \*3 (D.D.C. Aug. 1, 2025), the D.C., 2025 WL 2192986, at \*39, “the court determined that the statute forbids the expedited removal of noncitizens who have been, *at any time*, paroled into the United States.”); *E.V. v. Raycraft*, 2025 WL 2938594, at \*8 (N.D. Ohio, 2025) (“[T]he Government, however, offers only a single legal basis for continued detention: Petitioners’ designations for expedited removal. Consequently, a challenge to that designation is a challenge to the underlying detention. If the Court finds the Government acted *ultra vires* in designating Petitioners for expedited removal, its only justification for mandatory detention evaporates. In *Jennings*, noncitizens challenged “the extent of the Government’s detention authority under the statutory framework [of the INA] as a whole.” 583 U.S. 281, 283 (2018). Therein, the Supreme Court held “the extent of the Government’s detention authority is not a matter of discretionary judgment, action, or decision,” and, therefore, not wholly subject to the Government’s “discretion to detain” *vis-a-vis* expedited removal. *Id.* Because the justification for detention is unsettled, the detention itself is unsettled.”).

In fact, no person shall be removed from the United States without due process of law. See *A. A. R. P. v. Trump*, 605 U.S. 91, 95 (2025). Those who have entered our borders have a liberty interest in remaining, no matter how they entered. See *Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903) (noncitizens who enter the country illegally cannot be deprived of liberty without due process); *A.A.R.P.*, 605 U.S. at 94–95 (the Fifth Amendment applies to noncitizens in the context of removal proceedings); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (same).

Even if Respondents’ reliance on the expedited removal process were correct— notwithstanding its prior release of Petitioner on a conditional parole—the second prong of 18

U.S.C. § 1225(b)(1)(A)(iii)(II), which states that the alien “has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph” would not be applicable to Petitioner, as she has been continuously living in the United States for over two years. *See* Dkt. 1, Exh. 1.

Respondents ignore the vastly greater contrary precedent, and offer as a new authority only a single recent decision denying a similar petitioner a temporary restraining order, namely, *Garibay-Robledo v Noem*, No. 1:25–CV–177–H (N.D. Tex. Oct. 24, 2025). Dkt. 5 at 3. The district judge there held that “[g]iven that Garibay-Robledo is “[a]n alien present . . . who has not been admitted,” the plain language of the mandatory-detention provision weighs heavily against the petitioner’s assertion that he is subject only to discretionary detention.” *Id.* at \*5. The court held that “By defining “applicants for admission” broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally.”

First, this Court is not bound by the aberrant holdings of the outlying cases concluding that § 1225(b) applies rather than § 1226(a). Indeed, the out-of-circuit district courts, a handful in number, not only contradict cases from the same district, *compare Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal, Sept. 24, 2025) to *Martinez Lopez v. LaRose*, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025), and *compare Vargas Lopez v. Trump*, 2025 WL 27080351 (D. Neb. Sept. 30, 2025, to *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) and *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025). The Northern District of Texas case cited, *Garibay-Robledo*, simply disagrees with the other courts in this Circuit which have found that there is a difference between an “applicant for admission” (one who has applied) and a person

“seeking admission” (one doing so in the present tense). Those courts have found that a person who has already been released into the United States cannot be construed as “seeking admission.” The Garibay court merely states: “There is no material disjunction—by the terms of the statute or the English language—between the concept of “applying” for something and “seeking” something. Black’s Law Dictionary defines “applicant” as “[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration.” (12th ed. 2024). Thus, an applicant for admission, in ordinary English usage, is one who requests (or seeks) something. Insofar as the term “applicant for admission” is more passive than “seeking admission,” this is inherent in the nature of agent nouns and their corresponding gerunds.” But the multitude of district courts have explained that § 1225(b)(2) applies to arriving aliens undergoing inspection, which generally occurs at the United States’ border or ports of entry, when they are seeking lawful entry into the United States.” *Sanchez Alvarez*, 2025, No. 1:25-CV-1090, 2025 WL 2942648 at \*5 (W.D. Mich. Oct. 17, 2025). In contrast, § 1226(a) applies to a noncitizen already residing within the United States when apprehended and arrested. *Jimenez Garcia*, 2025 WL 2976950, at \*4 (E.D. Mich. Oct. 21, 2025) (quoting *Lopez-Campos*, 2025 WL 2496379, at \*8). Here, Petitioner had been living for over three years in compliance with all this country’s rules and regulations, at the time of his November 18, 2025 arrest by ICE. *See* Dkt. 1 at 2. He should be entitled to a bond hearing under 8 U.S.C § 1226(a).

“Arrive” means “to reach a destination” or “to make an appearance.” *Arrive*, Merriam-Webster's Collegiate Dictionary (1996); *see also Arrive*, Oxford English Reference Dictionary (1996) (defining “arrive,” when followed by “in,” as “reach a destination; come to the end of a journey or a specified part of a journey”). Read according to its plain meaning, a noncitizen “arriving” in the United States would be one who is in the process of reaching his or her

destination (the United States) and making an appearance here. It would not naturally be read to refer to someone who previously reached the United States via a port of entry, underwent inspection at that port of entry, and then was paroled into the United States (beyond their original destination) for an indefinite period of time. Thus, if the plain language governs, Petitioner here has the upper hand. See *Coalition for Humane Immigrant Rights v. Noem*, 2025 WL 2192986, at \*28 (D.D.C., 2025).

The Supreme Court has already explained that “§ 1226 applies to aliens already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). “[T]he language of §§ 1225(b)(1) and (b)(2) is quite clear.” *Id.* “§ 1225(b) applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Id.* at 297. Petitioner first surrendered himself to Border Patrol and sought asylum. Dkt. 1 at 2. In immigration law, “admission” is something that happens at a specific point in time; it is not a “continuing status.” *Sanchez v. Mayorkas*, 593 U.S. 409, 415, 141 S.Ct. 1809, 210 L.Ed.2d 52 (2021) as stating, “[l]awful status and admission ... are distinct concepts in immigration law”); *see also* 8 U.S.C. § 1101(a)(13)(A) (defining “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer”).

#### **B. *Thuraissigiam* Does not Apply here**

Respondents lean on *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020), arguing it forecloses Petitioner’s challenge to his custody and compels mandatory detention under § 1225(b)(2). *See* Dkt. 5 at 4 (characterizing Petitioner as “seeking admission,” invoking *Thuraissigiam* to minimize due process in the “applicant for admission” context, and insisting detention is part of the “action taken to remove”). That reliance is misplaced for three independent reasons.

First, *Thuraissigiam* is a deportability (admission-process) case, not a detention-authority case. The petitioner there sought a second chance at admission-related relief in expedited removal; he did not seek habeas release from civil custody, and the Court framed its analysis around the “scope of habeas” in the admission context—i.e., it cannot be used to demand another “opportunity to remain lawfully in the United States.” 591 U.S. at 117–20, 140. Nothing in *Thuraissigiam* decided whether—much less how—noncitizens may challenge the fact or length of immigration detention. That question was expressly left open in *Jennings v. Rodriguez*, which resolved only statutory issues and remanded the constitutional due-process questions. 583 U.S. 281, 297–301, 312 (2018). Four years later, the Government told the Court that “as-applied constitutional challenges remain available” in the detention context. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022). The Western District of Texas has already drawn this precise line: in *Santiago v. Bondi*, the court explained that *Thuraissigiam* concerns admission and removal, “not whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention”—which is exactly what *Santiago* (and here, Petitioner) asserted. No. 3:25-cv-00361-KC, slip op. at 10–13 (W.D. Tex. Oct. 15, 2025). Respondents’ brief never engages that distinction.

Second, the text, structure, and history of the INA foreclose Respondents’ “everyone is ‘seeking admission’ forever” theory. Section 1225(b)(2)(A) applies only when an examining officer determines the person is an “applicant for admission,” is seeking admission, and “is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (present-tense language tied to inspection/admission). That grammar and placement—as *Jennings* observed—reflect § 1225’s focus “primarily [on those] seeking entry,” typically “at the Nation’s borders and ports of entry.” 583 U.S. at 297, 287. By contrast, Congress designed § 1226 to govern custody

for persons arrested in the interior and placed in full § 240 proceedings, with targeted, offense-specific mandatory-detention carve-outs in § 1226(c). If § 1225(b)(2) automatically controlled everyone “present without admission,” then § 1226(a)’s bond default and § 1226(c)’s tailored exceptions (including express references to inadmissibility, such as § 212(a)(6)(A) and (7)) would be surplusage—an atextual result Respondents never confront. Courts addressing DHS’s July 2025 pivot have rejected the Government’s bid to erase the “seeking admission” requirement for arrestees who are found in the interior of the U.S.<sup>3</sup>

Third, after *Loper Bright*, *Yajure-Hurtado* is not entitled to deference—and it is unpersuasive on its own terms. The BIA’s September 2025 opinion posits a false dichotomy: if a person has never been “admitted,” they must still be “seeking admission,” no matter how many years they have lived here. 29 I. & N. Dec. 214, 221 (B.I.A. 2025). But the statute’s present-tense text, its border-inspection context, and § 1226’s architecture refute that premise. Under *Loper*

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<sup>3</sup> See, e.g., *Romero v. Hyde*, 2025 WL 2403827, at \*9 (D. Mass. Aug. 19, 2025) (calling DHS’s theory a “novel interpretation” adopted only weeks earlier); *Martinez v. Hyde*, 2025 WL 2084238, at \*2, \*8 (D. Mass. July 24, 2025) (“seeking admission” requires “present-tense action” tied to entry/inspection); *Lopez Benitez v. Hyde*, 2025 WL 2371588, at \*5 (D. Mass. Aug. 13, 2025) (listing § 1225(b)(2)(A) conditions unmet in an interior arrest). Accord *Ortiz-Ortiz v. Bondi*, No. 5:25-cv-00132 (S.D. Tex. Oct. 15, 2025); *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025); *Choglo v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at \*1 (D. Me. 2025); *Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlton v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-cv-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Reyes v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 WL 1692739, at \*5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Dkt. 14 (C.D. Cal. July 28, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at \*16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at \*9 (D. Mass. July 7, 2025); *Santiago v. Bondi*, No. EP-25-CV-2128 (W.D. Tex. Oct. 1, 2025). But see *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, 2025 WL 27080351 (D. Neb. Sept. 30, 2025).

*Bright Enterprises v. Raimondo*, courts “owe no deference” to an agency’s interpretation simply because the statute is ambiguous; rather, courts independently construe the statute using the traditional tools. 144 S. Ct. 2244, 2262–63 (2024). And under *Skidmore*, a late-breaking, two-page policy shift (the July 8, 2025 Lyons memo (Dkt. 1-2)) and a fast-follow BIA decision that contradict decades of § 1226 practice and the accumulating federal caselaw merit little weight. See *Matter of Yajure Huratdo*, 29 I. & N. Dec. 214 (B.I.A. 2025). Respondents’ brief does not grapple with *Loper Bright* at all, nor do they justify why a litigation-driven reversal should displace the longstanding reading that interior § 240 cases are governed by § 1226(a) unless § 1226(c) applies. See Dkt. 10 at 6–8 (asserting “plain language” and citing *Yajure-Hurtado*).

Respondents also cherry-pick dicta from *Thuraissigiam* noting that confinement during expedited-review proceedings was not disputed in that case, 591 U.S. at 118, and then treat that aside as a blanket endorsement of mandatory detention for anyone deemed an “applicant for admission.” But *Santiago* squarely rejected that move, explaining that *Thuraissigiam* “constrain[ed] itself” to the admission process and does not foreclose due-process challenges to detention; indeed, the Supreme Court “has not addressed the viability of constitutional due-process challenges to mandatory immigration detention,” and recent authority reaffirms that “the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” *Santiago*, slip op. at 11–14 (citing *Jennings*, 583 U.S. at 312; *Arteaga-Martinez*, 596 U.S. at 583; and *Reno v. Flores*, 507 U.S. 292, 306 (1993)). The Government’s heavy emphasis on *Thuraissigiam* thus collapses the crucial line between deportability and detention. Petitioner, like *Santiago*, challenges only the lawfulness of his civil confinement and the Government’s refusal to afford a bond hearing—not any entitlement to remain in the United States.

In short, *Thuraissigiam* does not carry the Government's burden. Properly read, the text and structure of the INA place long-present, interior arrestees like Petitioner within § 1226(a) (subject to § 1226(c)'s specific exceptions), not § 1225(b)(2). The Government's contrary theory would transform § 1225 into an all-purpose detention mandate, nullify Congress's § 1226 framework, and disregard the deportability-versus-detention distinction recognized in *Jennings*, confirmed by the Government in *Arteaga-Martinez*, and applied by the Western District of Texas in *Santiago*. This Court should therefore reject Respondents' *Thuraissigiam* argument and decline to defer to *Yajure-Hurtado*.

### **C. The Court Should Reject the Respondents' Jurisdictional Challenge**

Any bond hearing request filed with the immigration court would be unnecessary and futile because the decision in *Matter of Yajure-Hurtado* is binding on all immigration judges and forecloses bond at the administrative level. *See e.g., Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (where Petitioner has raised serious constitutional claims, administrative exhaustion should be excused absent a clear expression from Congress – and the INA does not require or mandate exhaustion of administrative remedies (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992))).

In the alternative, a court can also choose to waive exhaustion, when the “legal question is fit for resolution and delay means hardship.” *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). Courts may require prudential exhaustion when: (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at

\*4 (E.D. Mich. Aug. 29, 2025). Here, all factors favor weigh against requiring exhaustion.

Therefore, filing bond at the administrative level would be completely futile.<sup>4</sup> Numerous courts addressing this issue have held similarly. “First, exhaustion does not bar this court’s review because it is not a statutory requirement in these circumstances.” *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 LX 438445, at \*5 (S.D. Tex. Oct. 7, 2025). When a “legal question is fit for resolution and delay means hardship,’ a court may choose to decide the issues itself.” *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at \*3 (quoting *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000)). As a court in the Southern District of Texas recently found, “[t]he issue here largely ‘boils down to a matter of statutory interpretation,’ which ‘belong[s] historically within the province of the courts.’ . . . Other courts faced with similar issues have found that preventing six months or more of unlawful detention (bond determinations typically take six months or more) outweighs the BIA’s interest in detaining an individual while his or her bond determination is resolved on appeal.” *Buenrostro-Mendez*, 2025 LX 438445, at \*5-6. This Court should adopt the same finding in this matter).

#### **D. Constitutional Claims: Due Process**

Respondents urge this Court to reject his constitutional claims. Dkt. 5 at 8-9. Because the TRO is temporary relief that preserves the status quo, it does not resolve—or moot—the habeas merits. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (preliminary relief is not a final merits adjudication); cf. *Friends of the Earth, Inc. v. Laidlaw Env’t Servs.*, 528 U.S. 167, 189–90 (2000) (voluntary cessation does not moot a case). Therefore his constitutional claim remains

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<sup>4</sup> The Government states that “[s]ubsequent developments may moot the issues Petitioner is complaining about in this proceeding or cause his cases to develop in other ways that obviate the need for any decision by this Court,” but does not explain how this is possible in Petitioner’s case, particularly when the BIA’s decision in *Matter of Yajure Hurtado* foreclosed this possibility.

necessary to support final habeas relief (declaration that § 1226 governs and that due process requires an individualized hearing with the Government’s clear-and-convincing burden, or release if it cannot meet that burden), and to guide any continued custody.

The Fifth Amendment protects freedom from physical restraint at “the heart of the liberty” it guarantees. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In immigration, civil detention is constitutionally justified only to prevent flight or protect the community—and only with adequate procedures. *See id.*; *Demore v. Kim*, 538 U.S. 510, 528 (2003). Applying *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): (1) Petitioner’s private interest is weighty—continued confinement separates him from his wife, and impedes his defense by limiting access to counsel, witnesses, and evidence; (2) the risk of erroneous deprivation is high where no individualized custody determination occurred, and the value of a prompt bond hearing with an appropriate burden is great; and (3) the Government’s interests are fully served by routine, minimally burdensome custody hearings that require it to prove danger or flight risk, rather than by detention without such process. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

This Court should order the constitutionally adequate safeguard of a prompt bond hearing at which the Government bears the clear-and-convincing burden to justify continued detention, with release if it cannot do so. *Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Young v. Harper*, 520 U.S. 143, 148 (1997). The habeas merits should now reflect and confirm that baseline: under § 1226(a) (and independent of the statutory holding), due process requires an individualized hearing with the Government’s clear-and-convincing showing of danger or flight risk—and if that showing is not made, continued detention is unconstitutional and Petitioner must be released under reasonable conditions.

**E. Injunctive Relief to Prevent DHS Nullification Under 8 U.S.C. § 1225(b) and 8 C.F.R. § 1003.19(i)**

Recent events confirm DHS will invoke § 1003.19(i) to nullify an IJ’s bond order. It is not speculative. In *Padron Covarrubias v. Vergara*, No. 5:25-cv-00112 (S.D. Tex.), the court granted habeas on October 8, 2025; after the IJ granted a \$6,000 bond on October 15, 2025, DHS invoked an “emergency” discretionary stay under 8 C.F.R. § 1003.19(i)(1) that same day—classic run-out-the-clock tactics to keep a habeas petitioner detained despite an Immigration Judge’s release order. Likewise, in *Alvarez Martinez v. Secretary of DHS*, No. 5:25-cv-01007-JKP (W.D. Tex.), after the IJ set a \$3,000 bond on July 15, 2025, DHS filed Form EOIR-43 and triggered the automatic stay under § 1003.19(i)(2), preventing release pending appeal. *See* Exh 3. These are not hypotheticals; they are recent, local examples showing exactly what DHS does when an IJ grants bond.

The mechanics and timing create a concrete, imminent threat. Under § 1003.19(i)(2), DHS can file a one-page EOIR-43 within one business day of an IJ’s bond order to impose an automatic, administratively imposed stay through the BIA appeal. Separately, § 1003.19(i)(1) allows DHS to seek a discretionary stay from the BIA “on an emergency basis” at any time. Either route converts an IJ’s neutral release determination into continued detention—precisely the harm this Court sought to avert by ordering a bond hearing.

The All-Writs Act authorizes relief to protect the Court’s remedy. The Court may “issue all writs necessary or appropriate in aid of [its] jurisdiction.” 28 U.S.C. § 1651(a). *See United States v. New York Tel. Co.*, 434 U.S. 159, 172–74 (1977) (courts may issue orders to prevent frustration of their decrees); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100–01 (11th Cir. 2004). Allowing DHS to deploy § 1003.19(i) to block release would nullify the effectiveness of the Court-ordered bond process and frustrate the Court’s remedial authority. A narrow, targeted injunction (or, at minimum, a notice-and-leave requirement) is therefore warranted.

Irreparable harm, equities, and the public interest favor relief. Continued detention triggered solely by an administrative stay is irreparable harm: loss of liberty, family separation, and impaired ability to litigate, with no adequate damages remedy. The balance of equities favors preserving the efficacy of the Court’s order, while the public interest is served when executive action does not sidestep judicial remedies or constitutional process. Recent district-court orders addressing § 1003.19(i)(2) recognize these due-process concerns and the need to ensure meaningful bond determinations are not overridden by automatic stays.

Tailored relief requested. Petitioner respectfully seeks an order that: (1) enjoins Respondents from invoking 8 C.F.R. § 1003.19(i)(2) (the automatic stay) to block execution of any IJ bond order; and (2) requires Respondents to provide 48 hours’ advance notice to Petitioner and the Court and obtain leave of Court before seeking any discretionary stay under 8 C.F.R. § 1003.19(i)(1) that would prevent Petitioner’s release. This relief does not bar DHS from appealing or the BIA from reviewing custody; it simply prevents the government from using § 1225(b) and § 1003.19(i) as run-out-the-clock tools to nullify the Court’s remedy and keep Petitioner detained despite an IJ’s bond grant.

#### **IV. CONCLUSION**

“[A] complaint ‘does not need detailed factual allegations,’ but must provide the plaintiff’s grounds for entitlement to relief—including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’ ” *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555).

Here, Petitioner has alleged viable causes of action, and he has sought injunctive relief from this Court, under the laws and the Constitution. The writ of habeas corpus should be granted. His detention is illegal. The writ is reduced to a sham if the trial courts do not act within

a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978); *Fay v. Noia*, 372 U.S. 391, 400 (1963) (“The writ must be construed to afford “a swift and imperative remedy in all cases of illegal restraint or confinement.”)

Respectfully submitted on this 23th day of December, 2025.

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*(Pro Hac Vice)*

**CERTIFICATE OF SERVICE**

On December 23, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Dated this 23rd day of December, 2025

/s/ Ling Li

Ling Li