

the writ and order his release from detention under § 1225(b)(2), or, in the alternative, order Respondents to provide him with a prompt bond hearing under § 1226(a).

ADDITIONAL FACTUAL BACKGROUND

Petitioner is scheduled for his next Master Calendar Hearing before an immigration judge on December 23, 2025. Petitioner will be seeking fear-based relief from removal in the form of Withholding of Removal under the Immigration and Nationalities Act as well as protection from removal under the Convention Against Torture.

LEGAL STANDARD

As this Court outlined in *Vieira*, “[t]he Constitution guarantees that the writ of habeas corpus is ‘available to every individual detained within the United States,’” including immigration-related detention. *See Vieira*, 2025 WL 2937880 at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)). “Habeas is a core remedy for unlawful executive detention” that is “regularly invoked on behalf of noncitizens.” *Govern v. Geren*, 553 U.S. 674, 693 (2008); *Immigration and Naturalization Svc. v. St. Cyr*, 533 U.S. 289, 301 (2001). The Petitioner has the burden to “demonstrate that [h]e is in custody in violation of the Constitution or federal law. *See Vieira*, 2025 WL 2937880 at *2 (citing 28 U.S.C. § 2241(c)(3)); *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

ARGUMENT

I. THE COURT HAS JURISDICTION OVER THE INSTANT CASE REGARDING THE PETITIONER’S UNLAWFUL DETENTION WITHOUT A CUSTODY REDETERMINATION HEARING.

Respondents contend that 8 U.S.C. § 1252(g) and § 1252(b)(9) strip this Court of jurisdiction over Petitioner’s habeas petition. As explained herein and as this Court held in both *Vieira*, 2025 WL 2937880 at *2-4, and *Cortina*, 2025 WL 3218682 at *2, those provisions do not

and the effects that has on his claims. *See* Petitioner’s Brief Regarding Class Membership Pursuant to *Maldonado Bautista*, ECF No. 6. Petitioner incorporates those arguments herein.

bar Petitioner’s challenge to the legality of detention or to the denial of access to a bond hearing.

First, Respondents argue that 8 U.S.C. § 1252(g) deprives the Court of jurisdiction in this matter because “Petitioner is challenging the decision to detain him in the first place, which arises directly from the decision to commence and/or adjudicate removal proceedings against him.” *See* Federal Respondents’ Response to Petition for Writ of Habeas Corpus, ECF No. 5 at 5-6 (Dec. 15, 2025) (hereinafter, “ECF No. 5”). Respondents assert that Petitioner’s claim “is exactly the type of challenge *Jennings* referenced as unreviewable.” *Id.* at 6 (referencing *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018)).

“In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482-83 (1999), the Supreme Court explicitly determined Section 1252(g)’s jurisdiction bar only applies to the three discrete actions listed in the statute”—none of which are at issue here. *See Vieira*, 2025 WL 2937880 at *3. As this Court previously concluded, “Section 1252(g) only applies to the Attorney General’s discretion to decide whether and when to prosecute or adjudicate removal proceedings or execute removal orders.” *Id.* Like the petitioner in *Vieira*, Mr. Rincon Chavero “is not challenging Respondents’ decision to commence removal proceedings.” *Id.* Instead, Petitioner “is challenging his detention in Respondents’ custody without a bond hearing pending final resolution of his removal proceedings.” *Id.* As such, the Court should conclude—like it did in *Vieira* and *Cortina*—that “Section 1252(g) cannot be said to present a jurisdictional bar” to Petitioner’s claim. *See id.*; *see also Cortina*, 2025 WL 3218682 at *2.

Respondents also argue that the channeling provision at 8 U.S.C. § 1252(b)(9) bars Petitioner’s claims, stating that “such a challenge must be raised before an immigration judge in removal proceedings.” ECF No. 5 at 6. While § 1252(b)(9) addresses review of an order of removal and the proceedings leading to such an order, it does not convert all challenges tangentially related

to removal into issues that can only be raised in a petition for review. As *Vieira* held, “it is clear this jurisdictional statute cannot be read to be all-encompassing.” *Vieira*, 2025 WL 2937880 at *3; *see also Cortina*, 2025 WL 3218682 at *2 (rejecting Respondents’ similar argument). Like the Petitioner in *Vieira*, Mr. Rincon Chavero “is not asking for a review of an order of removal, challenging the decision to detain him in the first place or to seek removal, and not even challenging any part of the process by which his removability will be addressed.” *Vieira*, 2025 WL 2937880 at *4. “Instead, Petitioner is challenging whether certain INA provisions require his detention without a bond hearing, and whether they are being unconstitutionally applied to him.” *Id.* As such, the Court should conclude—like it did in *Vieira* and *Cortina*—that “Section § 1252(b)(9) does not present a jurisdictional bar” to Petitioner’s claim. *See id.*; *see also Cortina*, 2025 WL 3218682 at *2.

Thus, the Court should assert its jurisdiction over Petitioner’s claims.

II. PETITIONER’S CONTINUED DETENTION IS A VIOLATION OF HIS RIGHT TO DUE PROCESS.

As explained herein, Petitioner has a right to due process and his continued detention without a custody redetermination hearing is a violation of his Fifth Amendment Due Process rights.

A. THE DUE PROCESS CLAUSE PROTECTS PETITIONER.

First, Petitioner has a right to due process. *See Vieira*, 2025 WL 2937880 at *4 (“The Fifth Amendment’s Due Process Clause forbids the government to ‘deprive’ any ‘person of liberty without due process of law.’”) (citing U.S. CONST. amend V.) (omitting internal punctuation). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). As this Court noted in *Vieira*,

“[t]he Supreme Court ‘has said that government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification such as harm-threatening mental illness, outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” *Vieira*, 2025 WL 2937880 at *4. Like the petitioner in *Vieira*, Mr. Rincon Chavero “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 for years.” *Id.* In fact, Petitioner has lived in the United States since 1991, with one brief return to Mexico in 1997 and a second brief return to Mexico in 2022.

As this Court noted in *Vieira*, “Respondents’ position overlooks the well-established ‘distinction between a[noncitizen] who has effected an entry into the United States and one who has never entered that runs throughout immigration law.’” *Id.* at *5 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). As *Zadvydas* recognized, “once a[noncitizen] enters the country, the legal circumstances changes, for the Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* As this Court stated, “[p]recedent and logic tell us that those individuals who have established ties in the country are protected by constitutional procedural due process.” *Vieira*, 2025 WL 2937880 at *5.

As Petitioner was not detained while crossing the border, but while living in the United States, he is entitled to the Fifth Amendment’s Due Process Clause protections. *See id.*

B. PETITIONER’S CONTINUED DETENTION IS A VIOLATION OF HIS FIFTH AMENDMENT DUE PROCESS RIGHTS.

As this Court outlined in *Cortina*, the next question is “how much” process he is due. *Cortina*, 2025 WL 3218682 at *4. “[I]dentification of the specific dictates of due process generally

requires consideration of three distinct factors”: (1) “the private interest that will be affected by the official action”; (2) “the [g]overnment’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,” and (3) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The analysis in the instant case is virtually identical to the Court’s analysis in *Cortina*, 2025 WL 3218682 at *4-5. First, “Petitioner has acquired a liberty interest by being present in the United States” for the last three years without interruption, and the last thirty-four years but for two brief returns to Mexico. *See id.* at *4. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Petitioner has called the United States home since 1991 and has established strong ties to the community, including his four U.S. citizen children and his Legal Permanent Resident wife. As such, the Court should find that “Petitioner possesses a strong liberty interest in his freedom from detention because he has established a life here—albeit without authorization” and that this interest “deserves great weight and gravity.” *Cortina*, 2025 WL 3218682 at *5.

The second *Mathews* factor should also weigh in favor of Petitioner, like in *Cortina*. *See id.* Although Respondents “have a generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live . . . Respondents could certainly vindicate this interest in a bond hearing.” *Id.* “The government’s interest is generally protected by affording bond hearings like the one Petitioner is requesting.” *Id.* Finally, as this Court already noted, “any fiscal or administrative burdens Respondents may assert by

having to provide a bond hearing are diminished given the government had conducted such hearings until a change in the agency's interpretation of the law" just a few months ago. *Id.* Thus, the second *Mathews* factor weighs in favor of Petitioner.

Finally, the third *Mathews* factor also weighs in Petitioner's favor. As this Court previously found, "Section § 1225(b)(2) as applied creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings." *Vieira*, 2025 WL 2937880 at *7; *Cortina*, 2025 WL 3218682 at *5. "The risk lies in the automatic continued deprivation of liberty for a noncitizen who has lived in the United States for a prolonged period of time and with strong ties to the community[.]" *See id.* "Lastly, the value of additional safeguards is high given that it will allow an immigration judge conducting a bond hearing to make a determination on specific facts whether continued detention is necessary to ensure presence at removal hearings and safety for the community." *Id.*; *Cortina*, 2025 WL 3218682 at *5.

As such, the Court should reach the same conclusion as *Vieira* and *Cortina* and find that "Section 1225(b)(2) as applied to Petitioner violates his Fifth Amendment Due Process rights." *Id.*; *Cortina*, 2025 WL 3218682 at *5.

III. PETITIONER'S DETENTION IS GOVERNED BY 8 U.S.C. § 1226(a), NOT § 1225(b)(2).

Petitioner is subject to unlawful detention. The statutory text, structure, history, and long-standing practice all demonstrate that interior arrests like Petitioner's are governed by § 1226(a), not § 1225(b)(2). This conclusion is supported by a plain reading of the statutory language, various canons of statutory interpretation, and legislative and statutory history, and reinforced by the decisions of dozens of district courts across the country and the partial summary judgment decision in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal., Nov. 25, 2025),

which rejected DHS's new reading of § 1225(b)(2)(A).

Two provisions of the INA govern the detention of noncitizens during removal proceedings. Section 1225(b) applies to certain “applicants for admission”—generally those at the border or a port of entry—and mandates detention in limited categories. Individuals detained pursuant to § 1225(b) are subject to mandatory detention and receive no bond hearing before an Immigration Judge. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under humanitarian parole at the agency's discretion. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5).

By contrast, § 1226(a) applies to noncitizens “already in the country” who are entitled to consideration for release on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If Immigration and Customs Enforcement (ICE) denies release, these individuals can seek a custody redetermination hearing—commonly known as a bond hearing—before an Immigration Judge. *See* 8 C.F.R. § 1236.1(d). At that hearing, the noncitizens must present evidence to show that they are (1) not a flight risk, and (2) not a danger to the community. *See generally, Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

The difference between these statutes reflects Congress's long-recognized “plenary power” to regulate admission at the border and the different considerations that apply to long-term residents apprehended in the interior. Prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), the statutory authority for custody determinations was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during “deportation” proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994). Those “deportation” proceedings governed the detention of anyone in the United States, regardless of the manner of entry. *Id.* IIRAIRA maintained the same basic detention

authority and access to release on bond as set forth in the provisions now codified at 8 U.S.C. § 1226(a). As Congress explained, the new provisions at § 1226(a) merely “restate[d] the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); see also H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Separately, through IIRAIRA, Congress enacted new detention and removal authorities for people apprehended upon arriving in the United States. *See* 8 U.S.C. § 1225(b)(1)-(2). These individuals can be placed in special (1) expedited removal proceedings where DHS officers issue administrative removal orders without any hearings before an IJ, *see* 8 U.S.C. § 1225(b), or full removal proceedings before an IJ, *see* 8 U.S.C. § 1229a. Individuals arrested and detained upon arrival in the United States, in either type of proceeding, are nonetheless subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A).

When implementing IIRAIRA, the former INS confirmed this reading. In its 1997 interim rule, INS explained that noncitizens placed in removal proceedings after being apprehended in the interior would continue to receive custody redeterminations before Immigration Judges under § 1226(a), and that the new mandatory detention provisions would apply only to specific categories of arriving noncitizens and criminal aliens. *See Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (describing “[t]his procedure” as maintaining “the status quo”).²

A. A PLAIN READING OF THE STATUTE SHOWS THE PETITIONER IS ELIGIBLE FOR A BOND HEARING.

A plain reading of the language of § 1226(a) demonstrates that it governs Petitioner’s

² The exception is for those separately subject to the expanded expedited removal scheme under § 1225(b)(1)(A)(iii)(II).

detention and affords him a right to seek bond.

The text of 8 U.S.C. § 1226(a)—which expressly provides access to custody redetermination hearings and bond for noncitizens in removal proceedings—covers noncitizens who, like Petitioner, are detained “pending a decision on whether the [noncitizen is to be removed from the United States.” 8 U.S.C. § 1226(a). This includes both people who entered without inspection, were never formally admitted to the country, and thus are charged as “inadmissible”, as well as people who were originally admitted to the country and are charged as “deportable” under the INA.

Congress carved out distinct categories of noncitizens ineligible for bond hearings. It outlined a specific list of individuals present without admission or inspection who are ineligible for bond due to criminal issues—regardless of their status as noncitizens present without admission or inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Thus, mandatory detention applies to noncitizens inadmissible under 8 U.S.C. § 1182(A)(6)(A) who must also have been charged with, arrested for, convicted of, or admitted to having committed certain criminal offenses. 8 U.S.C. § 1226(c)(1)(E)(ii). When Congress creates “specific exceptions” to a statute’s applicability, it “proves” that, absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

The text and structure of Section 1225(b) further demonstrate Congress’s intention to distinguish between noncitizens like the Petitioner, whose detention fails under § 1226(a) because they are “already in the country” and detained “pending the outcome of removal proceedings,” and other categories of aliens. Section 1225(b)(2)’s detention scheme applies “at the Nation’s borders and ports of entry, where the Respondents must determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287, 289. In contrast to § 1226(a), the whole

purpose of § 1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. *See id.* at 297 (“[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the United States. . . .”).

The text of paragraph (b)(2) underscores this point. The paragraph specifies that it applies only to “applicants for admission” who are “seeking admission.” 8 U.S.C. § 1225(a)(1), (b)(2), (b)(2)(A). By stating that (b)(2) applies only to those “seeking admission,” Congress confirmed that it did not intend to sweep into this section individuals like the Petitioner, who have already entered and are now residing in the United States, and who did not take affirmative steps to obtain admission when they arrived. *See generally* 8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209.

Until recently, Respondents took the same position, explaining that “[t]o ‘seek admission’ . . . entails affirmative actions to gain authorized entry.” *Crane v. Johnson*, No. 14-10049 (5th Cir. Sept. 29, 2014), Dkt 78-1; *accord* Tr. Of Oral Argument at 44:23-45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (“[Solicitor General]: . . . DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”

“This active construction of the phrase ‘seeking admission’” accords with the plain language in § 1225(b)(2)(A) by requiring that a person be an “applicant for admission” and “also [be] doing something” following their arrival to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at *6-7; *see also Lopez Benitez*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7. As the Court in *Lopez Benitez* recently analogized, “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be

described as already present there.” 2025 WL 2371588, at *7.

The Supreme Court in *Jennings* further supports the interpretation that § 1225(b) governs the detention authority “at the Nation’s borders and ports of entry,” while § 1226 governs detention of noncitizens already living in the United States. See *Jennings*, 583 U.S. at 287–89; see also 8 U.S.C. § 1225(a)(3), (b)(1), (d). Petitioner falls squarely into the latter category.

B. VARIOUS CANONS OF STATUTORY CONSTRUCTION ALSO PROVE THE PETITIONER IS ELIGIBLE FOR A BOND HEARING.

If 8 U.S.C. § 1225(b) were to apply to all noncitizens who entered the United States without admission or parole, as the Respondents argue, it would render significant portions of 8 U.S.C. § 1226 meaningless and contravene basic canons of statutory construction. Under “one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009). “This principle . . . applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times.” *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

Congress’s recent enactment of the Laken Riley Act further supports the argument that 8 U.S.C. § 1225(b) does not apply to all noncitizens who were not admitted. Such an interpretation would render 8 U.S.C. § 1226(c)(1)(E)(i), which specifically applies to certain categories of inadmissible noncitizens with criminal convictions, superfluous. The Laken Riley Act imposes mandatory detention for noncitizens who are present in the United States without being admitted or paroled and who are implicated in one of the enumerated crimes. This piece of legislation would be meaningless if all noncitizens who had not been admitted were already subject to mandatory detention under 8 U.S.C. § 1225(b). See *Corley*, 556 U.S. at 314, n.5 (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which

includes observing the anti-superfluosity canon); *see also Stone v. Immigration and Naturalization Svc.*, 514 U.S. 386, 397 (1995) (“When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.”) (internal citations omitted).

Congress would not have included inadmissibility under 8 U.S.C. § 1182(A)(6)(A) as a requirement for mandatory detention under the Laken Riley Act if all individuals present without being admitted or paroled were already subject to mandatory detention. *See* 8 U.S.C. § 1226(c); *see also Shady Grove Orthopedic Assocs., P.A.*, 559 U.S. at 400. Thus, Congress did not intend that all individuals present without inspection be subject to mandatory detention.

Additionally, “[w]hen Congress adopts a new law against the backdrop of a ‘long-standing administrative construction,’” courts “generally presume the new provision should be understood to work in harmony with what has come before.” *Monsalvo Velasquez v. Bondi*, 604 U.S. Slip Op. at 12 (2025) (quoting *Haig v. Agee*, 453 U.S. 380, 397-98 (1981)).

For decades, DHS and EOIR interpreted § 1226(a) as governing detention and bond eligibility for noncitizens apprehended in the interior, including those present without admission or parole. Congress legislated against that backdrop in the Laken Riley Act but did not disturb that settled understanding, confirming that it accepted the prior interpretation of the immigration detention statutory scheme.

C. THE LEGISLATIVE AND STATUTORY HISTORY SUPPORTS THE CONCLUSION THAT THE PETITIONER IS ELIGIBLE FOR A BOND HEARING.

Finally, the legislative and statutory history supports the ongoing interpretation of 8 U.S.C. § 1226, which allows bond hearings for noncitizens who have not been admitted. Prior to IIRAIRA, people like the Petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a) (1994) (authorizing the Attorney General to arrest noncitizens for deportation

proceedings, which applied to all persons within the United States³). In passing IIRAIRA, Congress explicitly explained that it was *not* upending the detention *status quo*, and that it intended for the new Section 1226(a) to continue to govern the detention of those apprehended inside the United States. Specifically, the Congress stated that the new provisions at § 1226(a) merely “restate[d] the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229; see also H.R. Rep. No. 104-828 at 210. As the Western District of Washington recognized, “[b]ecause noncitizens like [the Petitioner] were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRAIRA, this background supports [the Petitioner's] position that he, too, is subject to discretionary detention.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1260.

Finally, the Respondents' new interpretation violates EOIR's long-standing regulations, considering people like the Petitioner as detained under § 1226(a) and eligible for bond. Immediately following the passage of IIRAIRA, in the decades since, EOIR's regulations have recognized that the Petitioner is subject to detention under § 1226(a). Indeed, when EOIR promulgated regulations implementing the custody provisions of IIRAIRA, it explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“. . .

³ Before IIRAIRA, individuals already present in the country were placed in “deportation proceedings,” while individuals seeking admission into the country were placed in “exclusion proceedings.” See *Landon v. Plasencia*, 459 U.S. 21, 25 (1982) (“The immigration laws create two types of proceedings in which [noncitizens] can be denied the hospitality of the United States: deportation hearings and exclusion hearings. The deportation hearing is the usual means of proceeding against a [noncitizen] already physically in the United States, and the exclusion hearing is the usual means of proceeding against a [noncitizen] outside the United States seeking admission.”) (internal citations omitted). Following IIRAIRA, both proceedings are subsumed into the title “removal proceedings.”

inadmissible [noncitizens,] except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not. This procedure maintains the status quo regarding release decisions for [noncitizens] in proceedings.").

Respondents' new interpretation also conflicts with EOIR's long-standing regulations governing Immigration Judges' bond jurisdiction. See 8 C.F.R. §§ 236.1(c)(8), 1003.19, 1236.1(d). Those regulations have not been amended in the decades since IIRAIRA, and they continue to provide Immigration Judges with authority to conduct custody redetermination hearings for noncitizens in removal proceedings under § 1226(a), subject to specified exceptions (such as certain arriving noncitizens and individuals detained under § 1226(c)). The new DHS policy and *Yajure Hurtado* attempt to displace that regulatory scheme without any corresponding change in the regulations themselves.

Such a long-standing and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of the Respondents' interpretation and practice to reject its new proposed interpretation of the law at issue); *Util. Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) ("When an agency claims to discover in a long-extant statute an unheralded power . . . [the courts] typically greet its announcement with a measure of skepticism.").

CONCLUSION

In sum, the Court has jurisdiction over Petitioner's claim. Petitioner is entitled to due process and his continued detention is a violation of his right to due process. Petitioner's proper detention authority falls under § 1226(a), not § 1225(b)(2), which in turn guarantees his right to a custody redetermination hearing in front of an Immigration Judge. Finally, Petitioner is a member

of the *Maldonado Bautista* Bond Eligible Class and thus the *Maldonado* court has deemed his continued detention without a custody redetermination hearing unlawful. As such, the Court should grant the writ and order his release from detention under § 1225(b)(2), or, in the alternative, order Respondents to provide him with a prompt bond hearing under § 1226(a).

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