**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**EL PASO DIVISION**

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| **Pedro Antonio MELENDEZ RIVERA,** | ) | |
| **A** [redacted] | ) | |
| **Petitioner,** | ) | **Civil Action No. 3:25-cv-00646-DCG** |
| **v.** | ) | |
| | ) | |
| **Pamela Jo Bondi,** | ) | |
| **Attorney General of the** | ) | |
| **United States of America, *et al.*** | ) | |
| | ) | |

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

Petitioner, Mr. Melendez Rivera, by and through undersigned counsel, respectfully submits this reply in further support of his petition for a writ of habeas corpus.

Herein, Petitioner asserts the following: (1) this Court has jurisdiction in this matter; (2) Petitioner is entitled to due process and his continued detention is a violation of his right to due process; (3) Petitioner's proper detention authority falls under § 1226(a), not § 1225(b)(2); and (4) he is a member of the *Maldonado Bautista* Bond Eligible Class and the recently issued final judgment in that case confirms his right to a custody redetermination hearing. 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).

**LEGAL STANDARD**

The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States," including those subject to immigration-related detention. *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); *Immigr. and Naturalization Svc. v. St. Cyr*, 553 U.S. 289, 301 (2001). The petitioner has the burden to demonstrate that he is in custody in violation of the Constitution or federal law. *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

## ARGUMENT

### I. THE COURT HAS JURISDICTION OVER THE INSTANT CASE REGARDING 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. *See* ECF No. 5 at 6-7. As explained herein, those provisions do not bar Petitioner's challenge to the legality of his detention or to the denial of access to a bond hearing. *See, e.g., Escalante v. Noem*, No. 25-cv-182, 2025 WL 2206113, at *2-3 (E.D. Tex. Aug. 2, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-cv-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Santiago v. Noem*, No. EP-25-CV-00361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025).

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 id.* 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 that § 1252(g)'s jurisdiction bar only applies to the three discrete actions listed in the statute: "the decision or action to commence proceedings, adjudicate cases, or execute removal orders." Section § 1252(g) applies only "to protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to

prosecute or adjudicate removal proceedings or to execute removal orders." *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (citing *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)). The statute "does not bar courts from reviewing a[ noncitizen] detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to execute removal orders and thus does not implicate section 1252(g)." *Cardoso v. Reno*, 216 F.3d 512, 516-17 (5th Cir. 2000) (internal citations omitted). Petitioner seeks release from detention or a bond hearing; he does not challenge the commencement, adjudication, or execution of removal proceedings. Respondent's contention that his claims "arise from" the commencement of removal proceedings is incorrect. Therefore, section 1252(g) does not bar jurisdiction over this *habeas* petition.

Next, Respondents 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 5. 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. Instead, Petitioner challenges the denial of a bond hearing, which is "independent of" and "collateral to" the removal process. *See Duarte*, 27 F.4th at 1056 ("where review of any agency determination involves neither a determination as to the validity of [the noncitizen's] deportation orders or the review of any question of law or fact arising from their deportation proceedings, § 1252(a)(5) and (b)(9) should not operate as a bar to the district court's review"); *Texas v. United States*, 126 F.4th 392, 417 (5th Cir. 2025) (holding that § 1252(b)(9) "does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined"); 8 C.F.R. § 1003.19(d) ("Consideration by the

Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding."). As such, the Court should conclude that section § 1252(b)(9) does not present a jurisdictional bar to Petitioner's claim.

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.*

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.). "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)).

The Supreme Court "has said that government detention violates [the Due Process 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." *Id.* (citations omitted).

Respondents argue that mandatory detention without a custody redetermination hearing, as outlined in § 1225(b)(2), is not a violation of due process because Petitioner is only afforded the protections set forth by statute. *See* ECF No. 5 at 7-8 (citing *Dep't of Homeland Sec. v.*

*Thuraissigiam*, 592 U.S. 103, 140 (2020). First, as explained herein, Petitioner is, in fact, detained pursuant to § 1226(a), not § 1225(b)(2). Nonetheless, the findings in *Thuraissigiam* are inapplicable to Petitioner's situation. Petitioner has lived in the United States since 2004, over twenty-one years; the respondent in *Thuraissigiam* was arrested upon their entry into the United States. *Id.* at 114 (nothing that immigration officials stopped Mr. Thuraissigiam "within 25 yards of the border"). This is important because, as the Supreme Court noted, noncitizens "who have established connections in this country have due process rights in deportation proceedings." *Id.* at 107. In contrast, noncitizens "at the threshold of initial entry cannot claim any greater rights under the Due Process Clause" and thus have "no entitlement to procedural rights other than those afforded by statute." *Id.*; *see also Zadvydas*, 533 U.S. at 693 ("once a[ noncitizen] enters the country, the legal circumstances change, 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"). Since Petitioner has "established connections in this country" over the last twenty-one years, he clearly has due process rights related to his immigration proceedings, including his detention. *See id.*

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

Since the Due Process Clause protects Petitioner, the next question is to determine "how much" process he is due. "[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 Government'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). Respondents' policy shift to detain all noncitizens present in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, violating due process.

First, Petitioner has acquired a liberty interest by being present in the United States for the last twenty-one years without interruption. "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 2004 and has established strong ties to the community, including his five-year-old U.S. citizen child who depends on him for financial support. 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, admittedly without authorization; nonetheless, this interest deserves great weight and gravity.

The second *Mathews* factor also weighs in favor of Petitioner. 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, these interests are specifically protected through a custody redetermination hearing, which requires analysis of those precise factors. Furthermore, any claim of an additional financial or administrative burden imposed on Respondents in necessitating a custody redetermination hearing would be misguided, as Respondents regularly provided this procedural protection to individuals like Petitioner for decades prior to their policy change earlier this year. As such, the second *Mathews* factor weighs in favor of Petitioner.

Finally, the third *Mathews* factor also weighs in Petitioner's favor. Mandatory detention without the possibility of a custody redetermination hearing, as applied to Petitioner, creates a

substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement pending resolution of his removal proceedings. Additionally, the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020); *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) ("limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings to determine the necessity of detention, and weighs in favor of additional procedural protections. Thus, the final *Mathews* factor weighs in Petitioner's favor.

In conclusion, the Court should find that mandatory detention pursuant to § 1225(b)(2) as applied to Petitioner violates his Fifth Amendment Due Process rights.

## 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 final judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal., Dec. 18, 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").[1]

### *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 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

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

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-superfluousness 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 States[2]). In passing IIRAIRA, Congress explicitly explained that it was *not* upending the detention *status quo*, and that it intended

[2] 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."

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) (". . . 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.").

## IV. PETITIONER IS A MEMBER OF THE BOND ELIGIBLE CLASS IN *MALDONADO BAUTISTA* AND IS THUS ENTITLED TO A CUSTODY REDETERMINATION HEARING.

In *Maldonado Bautista*, the Central District of California first granted declaratory relief to the case's named petitioners by declaring "unlawful" the DHS's new detention policy and the Board of Immigration Appeal's matching conclusion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—that Immigration Judges lack jurisdiction to conduct custody redetermination hearings for individuals present in the United States without being admitted. *Maldonado Bautistia*, 2025 WL 3289861 at *3, 17 (C.D. Cal. Nov. 20, 2025). The court granted the named petitioners' motion for partial summary judgment and found "the statutory provisions to be unambiguous and consistent with only Petitioners' interpretation[.]" *Id.* at 16-17. In its order, the court concluded that "it is unambiguous that 'applicants for admission' do not include noncitizens already in the United States like Petitioners—individuals that were not determined inadmissible by an

'examining immigration officer.'" *Id.* at *14. The court continued, holding that 8 U.S.C. § 1226(a) is the appropriate governing authority over the detention of the Petitioners, who are present in the United States and have not been inspected and authorized by an immigration officer. *Id.* In sum, the court declared unlawful the holding in *Yajure Hurtado,* 29 I&N Dec. at 228, that 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 avoided apprehension for more than 2 years." *See Maldonado Bautista*, 2025 WL 3289861 at *16-17.

Next, the *Maldonado Bautista* court certified the "bond eligible class . . . as to Petitioners' claims that the DHS Policy violates the INA and Due Process." *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 at *9. The Bond Eligible Class consists of:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

*Id.* at *1. In its order, the court specified: "the Court extends *the same declaratory relief* granted to Petitioners *to the Bond Eligible Class as a whole.*" *Id.* (emphasis added). Thus, the court declared unlawful the government's detention of all class members—not just the case's named petitioners—without a custody redetermination hearing. *Id.*

On December 18, 2025, issued after Respondents filed their response, the *Maldonado Bautista* court issued further clarification. *See Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal., Dec. 18, 2025) (courtesy copy attached). In her order, the judge stated:

> Nevertheless, the Court observes that the core holding of *Yajure Hurtado* cannot be squared with the MSJ Order. In spite of *Yajure Hurtado*, this Court determined that Petitioners and those similarly situated are not 'applicants for admission,' and therefore not subject to mandatory detention under § 1225. Although the MSJ Order does not grant vacatur of *Yajure Hurtado* under the APA, ***Yajure Hurtado is no longer controlling; the legal conclusion underlying the decision is no longer tenable.***

*Id.* at *6 (emphasis added). Following extensive analysis, the court then deemed it proper to enter "final judgment in this action as to Counts I, II, and III of the Amended Class Complaint." *Id.*

Thus, the *Maldonado Bautista* court held that *Yajure Hurtado* "is no longer controlling" for members of the Bond Eligible Class and, in turn, that Immigration Judges have jurisdiction to hear custody redetermination hearings for all class members.

Petitioner is clearly a member of the Bond Eligible Class. First, he entered the United States without inspection. *See* ECF No. 1-2. Second, he was not apprehended upon arrival. *See* ECF No. 5-1. Finally, he is not subject to any of the mandatory detention provisions outlined in the Bond Eligible Class. Section § 1226(c) involves individuals with certain criminal histories and arrests; Respondent has no criminal convictions or arrests, so he is not subject to mandatory detention under INA § 236(c). *See id.* at 3 ("Melendez has no known criminal history."). Section § 1225(b)(1) involves a noncitizen "who is arriving in the United States" or is otherwise unable to prove they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *See* INA § 235(b)(1)(A)(i)-(iii). Petitioner was not "arriving in the United States" at the time of his arrest and has been physically present in the United States continuously for the last twenty-one years, so this provision

is inapplicable. *See id.* (confirming arrest while driving in Maryland). Finally, section 1231 involves noncitizens who have been ordered removed who are subject to mandatory detention. Petitioner is actively in removal proceedings and has not been ordered removed. *See id.* (confirming no prior removal orders in his immigration history). As such, section 1231 is also inapplicable and the final requirement for class membership is met.

Thus, Petitioner is clearly a member of the Bond Eligible Class as outlined in *Maldonado Bautista*, 2025 WL 3288403 at *1. Pursuant to the recently issued final judgment in *Maldonado Bautista*, Respondent's policy to hold noncitizens like Petitioner in mandatory detention is clearly unlawful and he is entitled to either direct release or a custody redetermination hearing.

**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 release or to a custody redetermination hearing in front of an Immigration Judge. Finally, Petitioner is a member of the *Maldonado Bautista* Bond Eligible Class and the recently-issued final judgment confirms that continuing to subject him to mandatory detention is 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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