IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JORDAN RAMIREZ QUINTANA, Petitioner, v. KEVIN RAYCRAFT, Field Office Acting Director of Enforcement and Removal Operations Detroit, United States Immigration and Customs Enforcement, Department of Homeland Security, et al., Respondents.	Case No. 1:25-cv-00919 District Judge Susan J. Dlott

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

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INTRODUCTION

The Court should grant Petitioner's request for a writ of habeas corpus and order Respondents to release Petitioner on bond in accordance with the plain language of the Immigration and Nationality Act ("INA") and the district court's certified class judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). The factual issues are restated in the Petition as well as the Respondent's Return of Writ. There are no relevant factual issues in dispute, and the Respondents' recounting of the procedural and factual history is accurate, apart from their identification of 8 U.S.C. § 1225 as the Petitioner's proper statute of confinement. ECF 1; ECF 7, PageID #3-4. Two recent decisions in the Southern District of Ohio denying similar relief are not controlling on this Court and are against the decided majority of national district courts to have considered the issue. *See* ECF 7, PageID #3. There is no jurisdictional bar to the court granting the relief requested by the Petitioner, and he is not required to exhaust the administrative remedy in these circumstances.

ARGUMENT

I. The Court has jurisdiction to review the legality of Petitioner's detention

Congress has limited district court review of decisions related to the removal of non-citizens in the United States. However, the Court nonetheless has jurisdiction to review matters arising from non-citizen detention in the habeas context. The detention of a non-citizen is a separate issue than those issues which Congress has restricted federal court review over, such as final decisions related to the admissibility and removability of a non-citizen. When a non-citizen awaiting the adjudication of their immigration status is unlawfully detained in violation of the law and Constitution, habeas is available to challenge that detention.

Generally, 28 U.S. C. § 2241 grants a district court broad jurisdiction to issue writs of habeas corpus in the interests of and as required by law and justice. *Jones v. Hendrix*, 599 U.S. 465, 473 (2023). As the writ of habeas corpus is a fundamental tool for securing release in a free society, there is a strong presumption that courts may exercise this authority to review administrative action absent "a clear statement of congressional intent to repeal habeas jurisdiction." *I.N.S. v. St. Cyr*, 533 U.S. 289, 298 (2001). "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *Id.* at 301. And specifically in the immigration context, the jurisdiction of courts to consider habeas claims brought by non-citizens to address their detention has a long history. "For over 100 years, habeas corpus has been recognized as the vehicle through which noncitizens may challenge the fact of their detention." *Malam v. Adducci*, 452 F. Supp.3d 643, 649 (E.D. Mich. 2020) (*citing Chin Yow v. U.S.*, 208 U.S. 8, 13 (1908)).

A challenge to a non-citizen's unconstitutional detention during the pendency of their administrative removal proceedings differs from a challenge to an order of removal from the United States. Congress has generally cordoned off the latter from judicial review and left the adjudication and implementation of such claims to the Executive. However, the review of immigration-related detentions and their comportment to the law and Constitution are properly subject to review by Federal courts. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)); *see also Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018) (affirming the district court's jurisdiction over detention-based claims as distinct from the removal-based claims).

The Respondents argue Congress has removed this jurisdiction by citing to three statutory subsections of 8 U.S.C. § 1252. This section governs judicial review of orders of removal. The clearest and strongest portions of this statute refer to the removal of habeas jurisdiction from individuals who are subject to administratively final orders of removal. These portions are plainly inapplicable to Petitioner and his present request for habeas corpus. The Petitioner has never been ordered removed from the United States. His removal proceedings remain pending with the Executive Office for Immigration Review.

Respondents therefore must rely on the language contained in 8 U.S.C. § 1252(g). This section states:

> (g) Exclusive jurisdiction. Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, [] no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

For Respondents to succeed in persuading this Court it does not have jurisdiction, the legality of Petitioner's detention must "arise from" their decision or action to "commence proceedings, adjudicate cases, or executive removal orders." It does not. This argument has been rejected by the Supreme Court in *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). There, the Court held that the provision "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Id.* (emphases in original). These three actions do not "cover[] the universe of deportation claims" because "[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.* Rather, the plain text of this jurisdiction-stripping provisions applies only to those aspects of non-citizen removal proceedings soundly left to the prosecutorial discretion of the executive, i.e., whether to commence proceedings at all, how to adjudicate those cases, and whether and how to executive final orders of removal. While the decision to detain is removed from habeas jurisdiction, the legal authority under which the Petitioner is detained is still subject to judicial review. *See Valencia-Mejia v. United States*, No. CV 08–2943, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added). If the Executive elects to detain a non-citizen while those removal proceedings are pending, they are still bound by the laws enacted by Congress and the Constitution, and violations of those claims are subject to judicial review in habeas. Congress has expressly legislated in the area of non-citizen detention and these laws afford non-citizens such as Petitioner the ability for release on bond while their immigration court case proceeds. 8 U.S.C. § 1226(a).

The cases cited by Respondents on this issue are inapplicable. *See* ECF 7, PageiD #5-6. In none of those cases was the Petitioner challenging the legality of his or her detention because of the statute ICE was relying on to detain them prior to a final order of removal. In *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016), for example, the 11th Circuit took great care to acknowledge the narrow scope of §1252(g) but found that the Petitioner's challenge regarding ICE's cooperation with a plea bargain in a separate criminal matter and decision regarding an ICE detainer were clearly challenges to the *methods* the Executive was using in commencing and administering his removal proceedings. *Id.* (emphasis added). Those discretionary decisions are barred from judicial review by §1252(g). Petitioner does not challenge the factual circumstances of his arrest or elective decision to detain him in this case; rather he is challenging what statute he is properly detained under. This is a legal question outside of the Executive's discretion, and therefore is not barred by § 1252 (g).

Tazu v. Att'y Gen. U.S., 975 F. 3d 292 (3d Cir. 2020) is also inapposite, as that case arose from detention for the purposes of executing a final order of removal. *Id.* at 297. This is clearly within the ambit of § 1252(g), but also clearly different than Petitioner's situation where there is no final order of removal and he is challenging the legality of his detention while the administrative process goes forward. *See Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir.1999); *see also Zhislin* *v. Reno*, 195 F.3d 810, 814 (6th Cir.1999) ("Zhislin ... challenges neither the constitutionality of the deportation order nor the right of the Attorney General to execute the order. All that [he] is challenging is the right of the Attorney General to detain him indefinitely"). *See also Alonso-Portillo v. Bondi*, No. 1:25-cv-306, 2025 WL 2483393, at *5–6 (upholding district court's jurisdiction when detainee "raise[s] legal questions regarding the government's statutory authority to detain them" and collecting cases stating same).

The other jurisdiction limitations contained in § 1252 are similarly unavailing to Respondents. 8 U.S.C. § 1252(b)(9) states:

> (b) Requirements for review of orders of removal.
> (9) Consolidation of questions for judicial review. Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, [] or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

For this provision to bar Petitioner's claim, Respondents must argue that his claim that he is being illegally detained "arises from" an "action taken or proceeding brought to remove an alien from the United States." But, following the same logic in its assessment of § 1252(g), the Supreme Court similarly rejected this broad reading in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *See Id.* at 293-94. The actions of the Executive are only barred from judicial review under § 1252(b)(9) if a habeas petition challenges either the Executive's decision and action to commence removal proceedings or to act to detain an individual in the first place. *Jennings*, 583 U.S. at 294–95.

Contrary to Respondent's assertions, the Petitioner has not made a claim challenging ICE's discretionary authority to decide to detain him or to serve him with a charging document commencing his removal proceedings. *See* Return of Writ, ECF 7, PageID #9. His claim is the distinct argument that once they decide to detain him, his detention is governed by a specific statutory provision enacted by Congress to govern the detention of non-citizens in removal proceedings that expressly requires bond consideration: § 1226. This section provides for administrative review of a non-citizen's detention and the potential release on bond issued either by a DHS officer or by an Immigration Judge upon reconsideration. As explained by the Central District of California in the Final Judgment of the *Maldonado Bautista* class action lawsuit (when discussing § 1252(f)): "Although the outcome of the bond determination is discretionary, providing a bond determination in the first instance is not." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *27 (C.D. Cal. Dec. 18, 2025).

The *Jennings* majority expressly rejected the concurrence's view that detention writ large is an action taken to remove a non-citizen, and is governed by § 1252(b)(9). "The question is not whether detention is an action taken to remove an alien but whether the legal questions in this case arise from such an action. And for the reasons explained above, those legal questions are too remote from the actions taken to fall within the scope of § 1252(b)(9)." *Jennings,* 583 U.S. at 295 n.3 (emphasis original). Because the Petitioner does not contest the decision to initiate removal proceedings against him, the process by which his removability will be determined, or an administratively final order of removal, § 1252(b)(9) "does not present a jurisdictional bar." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020).

The other provision, 8 U.S.C. § 1252(e)(3) is entitled broadly as "Challenges on Validity of the System" and provides:

> Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of-
> (i) whether such section, or any regulation issued to implement such section, is constitutional; or
> (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

8 U.S.C. § 1252(e)(3)(A). Petitioner is not making any challenge to validity of the statutory or regulatory scheme governing detention generally but is instead challenging the lawfulness of his own detention without bond because Respondents have improperly detained him under the mandatory detention statute. Thus, § 1252(e)(3) does not preclude jurisdiction. *See, e.g.*, *Rivero v. Noem, et al.*, No. 1:25-CV-1294, 2025 WL 3438303, at *2 (W.D. Mich. Dec. 1, 2025); *Ardon-Quiroz v. Assistant Field Director*, No. 25-CV-25290, 2025 WL 3451645, at *3 (S.D. Fla. Dec. 1, 2025) (collecting cases for proposition that § 1252(e)(3) does not deprive federal courts of jurisdiction in such situations).

II. Administrative exhaustion is not required

While Respondents cite non-binding authority on the judicially-constructed doctrine of prudential exhaustion in its Motion to Dismiss (ECF No. 7, PageID #10-11), it is not a jurisdictional prerequisite for a habeas corpus petition. *See Ward v. Chavez,* 678 F.3d 1042, 1045 (9th Cir 2012). No authority requires that a habeas petitioner first exhaust his administrative options. *Lopez v. Barr*, 458 F. Supp. 2d 171, 176 (W.D.N.Y. 2020) ("No statute requires an alien to exhaust administrative remedies before challenging detention. And courts can excuse a failure to exhaust if the case presents a substantial constitutional question."). When not mandated, whether to apply administrative exhaustion is left to the discretion of the reviewing court. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Moreover, this prerequisite is subject to waiver. *Ward,* 678 F.3d at 1045. Here, the facts support waiver.

Respondents point to a three-part test for determining when courts should dismiss a claim of unconstitutional confinement for failing to exhaust administrative remedies. Return of Writ, ECF 7, PageID #11.

> (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.

citing Lopez-Campos v. Raycraft, Case No. 2:25-cv-12486, 2025 WL 2496379, *4 (E.D. Mich. Aug. 29, 2025); *United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983). As the court in *Lopez-Campos* found, each of these factors weigh heavily in favor of the Petitioner and against requiring administrative exhaustion. *See, e.g.*, *Contreras Cervantes v. Raycraft*, No. 2:25-cv-13073-BRM-EAS, at *13 (E.D. Mich. Oct. 17, 2025) ("Here, all three factors weigh against requiring exhaustion. First, the issues raised in the habeas petition are purely legal in nature and do not require the agency to develop the record. Second, because [Petitioner's] habeas petition includes a due process claim, the administrative scheme (i.e., appeal to the BIA) is likely futile. And third, administrative review is not likely to change Respondent's position that Section 1225(b)(2)(A) applies in this context."); *see also Gonzalez Lopez v. Raycraft*, No. 4:25-cv-02449-BYP, at *5 (N.D. Ohio Nov. 25, 2025) ("Here, all three factors weigh against requiring administrative exhaustion.").

First, no agency expertise is required because Petitioner's claims do not require any specialized expertise or knowledge possessed by the Board of Immigration Appeals. There are no factual issues related to Respondent's detention in dispute; Petitioner's claims involve solely legal questions. The Immigration Judge found that a precedent decision issued by the Board of Immigration Appeals squarely controlled whether the Immigration Judge could find the Petitioner detained under § 1226 and release the Petitioner. An appeal to the same Board which issued the decision would only result in the same jurisdictional finding. No special facts or determination of flight risk, danger, or likelihood of success on the Petitioner's underlying applications for relief from removal would be required. In fact, the Immigration Judge has already issued an alternative order, and would have allowed the Petitioner to be released from custody to pursue his applications in removal proceedings upon payment of a $35,000 bond. An appeal to the Board would solely involve legal questions, which Federal judges are eminently capable of assessing.

For the same reason, allowing Petitioner's claim to go forward is unlikely to bypass or thwart the administrative review of immigration bond determinations that do not involve due process concerns or constitutional questions. Challenges based on due process generally do not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of nonfrivolous constitutional challenges to an agency's procedures.") (citation omitted). The Board of Immigration Appeals reviews assessments of flight risk, danger to the community, and amount of bond sufficient to insure appearance at future proceedings *de novo*, and the Board's expertise in such matters would caution the district courts from stepping in before the Board had a chance to review a non-citizen's dispute on those issues. Here, however, the Petitioner's interest in not being unlawfully confined for potentially months before his removal proceedings are conclusively adjudicated far outweighs any frustration of the administrative review process for bond determinations. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025) (finding bond appeals to the BIA, on average, take six months to complete). A challenge to the lawfulness of his detention is preciously the "core habeas relief" that Federal courts are competent in and empowered to grant as an important check to executive overreach in the Constitutional system. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).

Most importantly, however, such an appeal would be futile. Even when courts find a requirement of exhaustion for considering a habeas corpus petition, prudential exhaustion may further be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) *see also Fraley v. U.S. Bureau of Prisons* 1 F.3d 924,925 (9th Cir. 1993) ("exhaustion is not required if pursuing those remedies would be futile"). The Petitioner's appeal of his bond decision would be futile because the Board of Immigration Appeals has already determined conclusively for administrative purposes that all detained non-citizens similarly situated as Petitioner are detained during the pendency of their removal proceedings under the mandatory detention provision of § 1225(b). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) *see also Contreras-Lomeli v. Raycraft*, No. 2:25-cv-12826, 2025 WL 2976739, at *4 (E.D. Mich. Oct. 21, 2025) ("Waiver based on futility is appropriate when an administrative agency 'has predetermined the disputed issue' by having a 'clearly stated position' that the petitioner is not eligible for the relief sought.") (*quoting Cooper v. Zych*, No. 09-CV-11620, 2009 WL 2711957, at *2 (E.D. Mich. Aug. 25, 2009)). The Immigration Judge applied *Yajure Hurtado* despite the Respondent's *Maldonado Bautista* class membership, further highlighting the futility of seeking further redress in the Immigration Court system. *See* Return of Writ, ECF 7, PageID #22; *See also Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009) ("It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].")

Here, an appeal would be futile, because the Immigration Judge was acting in accordance with the Board of Immigration Appeals' controlling precedent decision *Matter of Yajure Hurtado*. As the Board has settled the legal question of the Petitioner's statute of detention for administrative purposes, Petitioner will automatically fail in his potential appeal. His statutory and Constitutional claims are thus ripe for judicial review. Although Respondent is still within the period of time where he could appeal the Immigration Judge's bond determination, any appeal by petitioner would be wasteful, long, and futile, and would ultimately result in irreparable injury to Petitioner through extended unlawful detention, and should this Court take jurisdiction over the petition, the instant administrative custody proceedings may be voided.

III. Petitioner is being deprived of due process when he is unlawfully deprived of his liberty

Section III of Respondent's argument addressing the Petitioner's due process claims improperly conflates Mr. Ramirez Quintana's removal proceedings with the decision as to whether he may be released on bond while those proceedings are pending. As explained in Section I, detention of non-citizens by the Executive is "core habeas" relief and a Petitioner is more than justified in filing for habeas corpus when his liberty has been unlawfully restrained. The availability of a petition for review before a Circuit Court of Appeals to address the merits of a potential order of removal does nothing to address the Petitioner's unlawful confinement during the pendency of those proceedings. This habeas action does not seek to prevent his removal from the United States or require a special proceeding not available to him by the Immigration and Nationality Act. 8 U.S.C. § 1226 governs the Respondent's detention and affords him the opportunity to be released on bond while a final decision on his admissibility, removability, and any applications for relief from removal are made. The lack of an opportunity to avail himself of this relief from detention is what the Petitioner is challenging, and the process he has been denied by Respondents.

IV. The Petitioner for Writ of Habeas Corpus should be granted because the Petitioner is improperly detained by Respondents under 8 U.S.C. § 1225(b)(2) when the proper statute of his detention is 8 U.S.C. § 1226.

For over 30 years, the government applied 8 U.S.C. § 1226 to non-citizens like Petitioner who entered the United States without inspection and were later apprehended by immigration authorities in the country. It was only this year that the government declared that this long-standing and straightforward reading of the detention and removal statutes was surprisingly mistaken. Suddenly, a re-read of these provisions resulted in the discovery that non-citizens who entered the United States without encountering any immigration authorities and who remained in the United States for years afterwards were actually applicants for admission who are legally still at the border. 8 U.S.C. § 1225(b)(2)(A), which mandates detention without an individualized assessment of a non-citizen's flight risk or danger to the community was coincidentally the more appropriate statute of detention. Petitioner entered the United States without inspection in approximately 2000, has remained in the United States unlawfully since that time, and never encountered any U.S. government immigration officials before his recent arrest. He cannot properly be subject to the detention provisions of 8 U.S.C. § 1225(b)(2) and can only be detained under 8 U.S.C. § 1226.

The Respondent's novel reading of 8 U.S.C. § 1225 and § 1226 conflicts with the plain language of the statutes, their overall structure, Congressional intent in their enactment and subsequent recent amendment, and with settled expectations of agency stakeholders after decades of consistent practice. Their reading of the statute has been overwhelmingly rejected by district courts that have considered the issue, with the Respondent's position representing a distinct minority position. See, e.g. *Quinapanta v. Bondi*, 2025 WL 3157867, *6 (W.D. Wisc. 2025) ("[M]ore than 45 district courts have now rejected similar arguments made by respondents here and ordered bond hearings for noncitizens who, like petitioner, were apprehended within the United States years after entering without admission or inspection . . . . These decisions, along with a growing number of others now including this court have concluded that the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades support its application to noncitizens in petitioner's position.") (cleaned up).[1]

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[1] *See also Morales Chavez v. Dir. of Detroit Field Off.*, No. 4:25CV2061, 2025 WL 3187080, at *7, n. 6, 7 (N.D. Ohio Nov. 14, 2025) (collecting cases nationally and in the Sixth Circuit); *Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Sampiao v. Hyde*, -- F. Supp. 3d --, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-1193-TAD-KDM (W.D. La. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Diaz Sandoval v. Raycraft*, No. 25-12987, 2025 U.S. Dist. LEXIS 205418, at *13–25 (E.D. Mich. Oct. 17, 2025); *Contreras-Lomeli v. Raycraft*, No. 25-12826, 2025 U.S. Dist. LEXIS 207162, at *9–22 (E.D. Mich. Oct. 21, 2025); *Jiménez García v. Raybon*, No. 25-13086, 2025 U.S. Dist. LEXIS 207166, at *7-9 (E.D. Mich. Oct. 21, 2025) (collecting cases). *Diego v. Raycraft*, No. 25-13288, 2025 U.S. Dist. LEXIS 222614, at *9 (E.D. Mich. Nov. 12, 2025); *Leon Macias v. Raycraft*, 4:25-cv-02642-DAP at *4 (N.D. Ohio December 9, 2025) (finding Petitioner a *Bautista* class member); *Roman v. Olson*, No. 2:25-cv-00169-DLB (E.D. Kentucky Nov. 24, 2025); *Robledo Gonzalez v. Raycraft*, No. 2:25-cv-13502-LJM-APP (E.D. Mich. Nov. 17, 2025); *Contreras Cervantes v. Raycraft*, No. 2:25-cv-13073-BRM-EAS, at *22-23, n. 4 (E.D. Mich. Oct. 17, 2025) (collecting cases); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-cv-94-RGE-WPK (S.D. Iowa Sept. 10, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Hernandez Nievas v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Francisco T. v. Bondi*, -- F. Supp. 3d --, 2025 WL 2629838 (D. Minn. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Ermeo Sicha v. Bernal*, No. 1:25-cv-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-

"A statute should be construed so that effect is given to all its provisions[.]" *Corley v. United States*, 556 U.S. 303, 314 (2009); *Kentucky v. Biden*, 23 F.4th 585, 603 (6th Cir. 2022) (discussing how courts "must give effect to the clear meaning of statutes as written."). Each word within the statute must be given " 'it's ordinary, contemporary, common meaning,' while keeping in mind that 'statutory language has meaning only in context.' " *Kentucky v. Biden*, 23 F.4th at 603

01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025); *Calderon v. Kaiser*, 2025 U.S. Dist. LEXIS[MW2] 163975 (N.D. Cal. Aug. 22, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Arrazola-Gonzales v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Arostegui Castellon v. Kaiser*, No. 1:25-cv-00968 JLT EPG, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at * 11-12 (N.D. Cal. Sept. 12, 2025); *Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 U.S. Dist. LEXIS 117197, at *15 (D. Minn. June 17, 2025); *Günaydin v. Trump*, No. 0:25-cv-01151-JMB-DLM, 2025 WL 1459154, at *8-9 (D. Minn. May 21, 2025); *Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, at *18-19 (W.D. Wash. Aug. 21, 2025); *Alvarez-Martinez*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Singh v. Lewis*, No. 4:25-cv-96-RGJ (W.D. Ky. Sept. 22, 2025); *Beltran Barrera v. Tindall*, No. 3:25-cv-541-RGJ (W.D. Ky. Sept. 19, 2025); *see also, e.g., Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025).

(*citing Walters v. Metro Edu. Enters., Inc.*, 519 U.S. 202, 207 (1997). "The words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.,* 566 U.S. 93, 101 (2012). *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence but look to the provisions of the whole law, and to its object and policy"). Courts must also "use every tool at their disposal to determine the best reading of the statute" and do not defer to the administrative agency's interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

A. 8 U.S.C. § 1225 Governs Arriving Aliens While 8 U.S.C. § 1226 is the Default Rule for Aliens Already Present in the United States

Respondents argue that Petitioner is lawfully detained under 8 U.S.C. § 1225 based solely on subsection (a)(1), which states "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." However, Respondents ignore the purposes of the chapter, which is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Subsection (a) itself is titled "Inspection." The word "arriving" "indicates that the statute governs "arriving" noncitizens, not those present already. *Barrera v. Tindall*, No. 3:25-cv-541-RCG, 2025 WL 2690565, at *6 (W.D. Ky. Sept. 19, 2025). This is further supported by the fact that the statute focuses "on inspections for noncitizens when they arrive via 'crewman' or as 'stowaways.'" *Id.*; 8 U.S.C. § 1225(b)(2)-(3). It is clear that Section 1225 "is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States." *Id.*

The Supreme Court adopted this interpretation in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). "In sum, U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country pending the outcome of removal proceedings* under §§1226(a) and (c)." 583 U.S. at 289 (emphasis added). The distinction is clear, despite Respondents' insistence on isolating one phrase of Section 1225, selectively isolating portions of the *Jennings* opinion. The *Jennings* Court found that 8 U.S.C. § 1226 creates a default rule for aliens already present in the United States. *Id.* at 288.

The Respondents' reading of the statute completely ignores the term "seeking" when referring to the "seeking admission" discussed in 8 U.S.C. § 1225. Seeking "implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Lopez-Campos v. Raycraft*, Case No. 2:25-cv-12486, 2025 WL 2496379, *14 (E.D. Mich. Aug. 29, 2025). The statute also contemplates that this action is assessed by an "examining immigration officer" again limiting the statute's reach to those seeking admission at the border where this assessment is made. *Id.*; *see also* Return of Writ, ECF No. 7, PageID #15, *citing* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made to an immigration officer at a U.S. port-of-entry when the port is open for inspection . . . .").

This Court should not defer to the agency's interpretation just because the statute may be ambiguous. *Loper Bright Enter. v. Raimando*, 603 U.S. 369, 412-413 (2024). That is especially true where, as here, the agency is reversing course on nearly 30 years of interpretation and ignoring Supreme Court precedent on the issue. Petitioner is detained as an alien already in the country pending the outcome of removal proceedings under 8 U.S.C. § 1226.

B. Petitioner is Not an "Applicant for Admission"

Respondents contend that the Petitioner is an applicant for admission, defining the term broadly to include any alien present in the United States without having been admitted. ECF 7, Page ID #14. Respondents argue that, regardless of when a noncitizen entered the country, simply by being in the United States without being admitted, a noncitizen is actively seeking admission.

ECF 7, Page ID #16. However, the agency cannot create a legal fiction and twist the words of the statute to make it come true because it benefits their current position.

A review of the INA's definitions section is instructive as to why the Respondent's reading of the term "applicant for admission" is wrong. As always when reviewing statutes, the Court must "begin[] with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). Except in unusual cases, "[s]tatutory definitions control the meaning of statutory words." *Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949). 8 U.S.C. § 1101(a)(13)(A) defines the term "admission" to mean "the lawful entry of the alien into the United States *after inspection and authorization by an immigration officer*." (emphasis added). "Alien" is defined as "any person not a citizen or national of the United States. §1101(a)(3). "Application for admission" means "the application for admission into the United States and not to the application of or the issuance of an immigrant or nonimmigrant visa." §1101(a)(4). It logically follows that an admission occurs at the moment when an alien presents him- or herself to an immigration officer for inspection and requests permission to enter the country. This is exactly the opposite of an alien who entered without inspection, such as the Petitioner, where no inspecting immigration official is involved.

When 8 U.S.C. § 1225(a)(1) states that "[a noncitizen] present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission," it necessarily incorporates the definition of that term from § 1101(a)(13)(A) and requires examination by an immigration officer. *See* § 1225(b)(2). Petitioner has never sought admission to the United States and is not currently seeking admission into the United States. According to the government, a noncitizen can be "actively seeking admission" for decades without ever taking any action or making any request. This interpretation is not supported by the statute. Those who entered the United States without inspection lack the trait and condition of having been inspected and authorized by an immigration officer, and therefore cannot fit the statutory term "applicant for admission."

Jennings and the Attorney General's 2019 precedent decision *Matter of M-S-* also support this reading. *Jennings* read these provisions to be in harmony with one another. § 1225(b)(2) applies to "other [noncitizens]" but only who are "an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted." Where § 1226(a) by contrast "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings." *Jennings* found these provisions to be in harmony, a reading that is only possible if "applicant for admission" has the definition provided in the statute and is not broadly applicable to every noncitizen who entered the country without inspection. 583 U.S. at 289.

Matter of M-S- found that aliens in expedited removal proceedings under 8 U.S.C. § 1225 whose case is later transferred to full removal proceedings under 8 U.S.C. § 1229a are not eligible for bond. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f). In accord with *Jennings*, the attorney general clarified that the class of non-citizens who were originally subject to expedited removal but establish a credible fear of persecution or torture, "shall be detained for further consideration of the application for asylum." *Matter of M-S-*, 27 I&N Dec. 509, 510 (A.G. 2019). By its own terms, *Matter of M-S-* is limited to "aliens subject to expedited removal." *Id.* at 511. Expedited removal is defined narrowly by statute and regulation and essentially refers to noncitizens entering the United States and are apprehended close to that time of entry. *See id.* *Matter of M-S-* acknowledges section 8 U.S.C. § 1226 applies to noncitizens who do not fall into one of the other mandatory detention statutory categories, such as "arriving aliens . . . attempting to come into the United States at a port of entry," or noncitizens designated for expedited removal. *Id.* at 512-13. *Matter of M-S-* and *Florida v. United States*, 660 F. Supp. 3d 1239 (N.D. Fla. 2023) are inapplicable to Petitioner because he is not an arriving alien, subject to expedited removal, or an applicant for admission. The fact that DHS continued to provide bond hearings for noncitizens who entered without inspection following the 2019 decision in *Matter of M-S-* shows that Repondent's reading of the statutes and the Board's 2025 decision in *Yajure Hurtado* is mistaken.

Petitioner's reading is further supported by the heading of § 1225: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." A "[c]ourt gives each and every word meaning, and this includes the title." *Barrera*, 2025 WL 2690565, at *4. While section headings are not dispositive, "they are instructive and provide the Court with the necessary assurance that it is at least applying the right part of the statute in a given circumstance." *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 at *8 (E.D. Mich. Aug. 29, 2025) (*citing Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.")).[2] In this case, when read in the proper context, 8 U.S.C. § 1225(b)(2) applies to those noncitizens seeking entry into the country who have been examined by an immigration officer, and not to noncitizens like Respondent who entered the United States without inspection. This reading does not render 8 U.S.C. § 1225(b)(2)(A) "meaningless," Return of Writ, ECF 7, PageID #33, because the provision applies

[2] Respondents also acknowledge the preamble language to the implementing regulations of these statutory provisions specifically contemplates that aliens who are present without having been admitted or paroled "will be eligible for bond and bond redetermination." ECF 7, PageID # 19 n. 2, citing 62 Fed. Reg. at 10,323. While the court need not address whether this language is binding given other normal tools of statutory construction resolve the issue in favor of Petitioner, this additional language which Respondents attempt to disclaim actually provides helpful supportive insight as to how the statutes should be read.

to the group of noncitizens it was meant to apply to, i.e. applicants for admission as defined by the INA, while § 1226 applies to others apprehended without inspection.

Respondents argue that if Petitioner is not an applicant for admission, his status is a "legal conundrum," asking "If he is not admitted to the United States [...] but he is not 'seeking admission' [...] then what is his legal status?" ECF 7, Page ID# 20, quoting *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (BIA 2025). The answer is obvious – he is present in the United States without having been admitted or paroled. 8 U.S.C. § 1182(a)(6)(A)(i). This is the charge of removability currently being adjudicated by the immigration court in the Petitioner's currently pending removal proceedings, and the charge brought in the Notice to Appear (Form I-862) which initiated his removal proceedings. Petition, ECF 1-3, Notice to Appear; 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court . . .").

The Department of Homeland Security's Form I-862 answers this "legal conundrum" for us by listing three different classifications for a noncitizen placed in removal proceedings: (1) arriving alien; (2) alien present in the United States who has not been admitted or paroled; and (3) admitted to the United States, but removable. *See* ECF 1, Exh. 2, Notice to Appear. DHS's own regulations define "arriving alien" as "an *applicant for admission* coming or attempting to come into the United States at a port-of-entry [...]" 8 C.F.R. § 1.2 (emphasis added). Therefore, it is clear that DHS itself treats "arriving aliens" (also known as applicants for admission) differently than aliens present without having been admitted or paroled. To say otherwise, Respondents contradict their own regulation and render obsolete the classifications on Form I-862 used to initiate removal proceedings against noncitizens. On the Petitioner's Notice to Appear, DHS classified him as "an alien present in the United States who has not been admitted or paroled." It necessarily follows that he is not an applicant for admission. There is no conundrum.

C. Congress Grants Noncitizens Varying Rights Based on Their Length of Time and Equities in the United States

Respondents argue that noncitizens who enter the United States unlawfully are treated the same as those arriving at the border, regardless of when they entered the country, and this was the manifest intent of Congress in enacting the statutes at issue. ECF 7, Page ID# 19. But this is simply not true, as Congress does in fact grant varying rights to noncitizens based on when they entered the United States. The Immigration and Nationality Act repeatedly distinguishes the rights and remedies available to noncitizens based on the length of their presence and the equities they have established in the United States. Moreover, this explains why someone who entered the United States before being inspected and who presumably has built equities in the United States obviating their flight risk, such as work, family, and community ties, may be afforded greater due process rights in the form of the availability of bond if they are detained.

For example, Legal Permanent Residents in removal proceedings who have been in the Unites States for seven years or more may seek and be granted cancellation of removal; but those present for less than seven years are ineligible. 8 U.S.C. § 1229b(a). Non-Legal Permanent Residents (i.e., noncitizens with no status, including those who entered the United States unlawfully like the Petitioner) who have continually resided in the United States for ten years or more and have a U.S. Citizen or Legal Permanent Resident spouse, parent, or child may seek and be granted cancellation of removal. 8 U.S.C. § 1229b(b). Those residing in the country for less than ten years and without qualifying relatives are ineligible. *Id.* Congress clearly intended to differentiate the rights and remedies available to noncitizens based on the length of their presence and the equities they have developed in the United States.

Similarly, 8 U.S.C. §1225(b)(1)(a)(3)(II) distinguishes the rights and remedies available to noncitizens who enter unlawfully depending on how long they have been present. Those who have not been present in the United States for two years are subject to the expedited removal process, which affords significantly less due process. *Id.; see also* 8 C.F.R. § 235.3(b)(ii); *Matter of M-S-*, 27 I&N Dec. 509, 510 (A.G. 2019). Those not subject to expedited removal are placed in removal proceedings before an immigration judge and granted additional rights as articulated in 8 U.S.C. § 1229a. Respondents agree that noncitizens subject to expedited removal have fewer rights than those in removal proceedings before an immigration judge. *See* ECF 7, Page ID #17.

Given the foregoing, it is not "perverse" that a noncitizen who has resided in the United States for more than 20 years with a family, home, and business is entitled to release on bond, while someone who more recently arrived and applied for admission is subject to detention. *See* ECF 7, Page ID #27-28. Respondents assert that noncitizens who entered unlawfully – no matter how long ago – are not entitled to more process than those stopped at the border. *See id.* But the Supreme Court has made clear that there is a difference. "[O]nce an alien enters the country, the legal circumstances change, for the Due Process Clause applies to 'all persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, at 693 (2001).

Due process is guaranteed when any person is facing the deprivation of life, liberty, or property. U.S. Const. amend. V. "Liberty" is a broad term.

> Without a doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized … as essential to the orderly pursuit of happiness by free men.

Bd. of Regents v. Roth, 408 U.S. 564, 572 (1972), *citing Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Due process not only protects Petitioner's liberty to be free from physical restraint, but also the equities he has developed in the more than two decades years he has resided in the United States – the home he has established, the work he does, and the family he has created.

The Fifth Amendment requires due process *before* a person is deprived of life, liberty, or property; by continuing to detain him pending removal proceedings, Respondents have deprived Petitioner of his liberties before the completion of his process. Contrast this scenario with that of an arriving alien who is applying for admission – they are *arriving* and therefore have not established presence or equities in the United States. It logically follows that the law would treat these situations differently, which is precisely what the agency did for nearly 30 years by granting release on bond to eligible noncitizens who entered without inspection.

D. Respondents' Novel Interpretation Renders Obsolete an Entire Act of Congress – The Laken Riley Act of 2025.

Respondents argue that statutes often have superfluous language because drafters often repeat themselves, or do so in an effort to be "doubly sure." ECF 7, Page ID# 32-33. However, the issue here is not one of a few extra words or a flawed writing style. The Laken Riley Act was enacted into law at the beginning of 2025 and added two provisions to the mandatory detention provisions of 8 U.S.C. § 1226(c). The Act provides that:

> The Attorney General shall take into custody any alien who –
> [...]
> (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.

8 U.S.C. 1182(a) provides that aliens are inadmissible if:

(6)(A) they are present in the United States without being admitted or paroled;
(6)(C) by fraud or misrepresentation they "seek[] to procure (or [have] sought to procure or has procured) a visa, other documentation, *or admission into the United States*" (emphasis added); and
(7) they are not in possession of a valid entry document *at the time of application for admission.*

Therefore Congress clearly differentiates aliens present without being admitted or paroled from applicants for admission. The Laken Riley Act became law on January 29, 2025, which is a very recent demonstration of Congress's statutory intent.

The Laken Riley Act provides that such noncitizens are subject to mandatory detention if they are charged with, convicted, or have admitted committing certain crimes. But if all aliens "present in the United States without being admitted or paroled" are applicants for admission subject to mandatory detention under 8 U.S.C. § 1225, as Respondents argue, why would Congress need a separate statute providing that aliens present without being admitted or paroled are subject to mandatory detention if they are charged with certain crimes? Rather than redundancy or to make "doubly sure," the addition of a mandatory detention element to the class of noncitizens who (1) entered without inspection and (2) are charged with or are arrested for certain crimes, would be completely unnecessary if 8 U.S.C. § 1225(b)(2)(A) already holds that aliens who entered without inspection are to be held without bond. The fact that Congress deemed it necessary to include a mandatory detention requirement in an otherwise discretionary section of a detention statute is strong evidence that those who entered without inspection and who do not commit the types of criminal activity laid out in 8 U.S.C. § 1226(c)(E)(ii) are eligible for bond.

The canon against surplusage must apply to Respondents' interpretation; to say otherwise would render an entire Act of Congress obsolete. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S.

386, 297 (1995). "If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless [...]" *Barrera v. Tindall*, No. 3:25-cv-541-RCG, 2025 WL 2690565, at *7 (W.D. Ky. Sept. 19, 2025), *quoting Lopez-Campos v. Raycraft*, 2025 WL 2496379 at * 8 (E.D. Mich. Aug. 29, 2025) and *Maldonado v. Olsen*, 2025 WL 2374411, at * 12 (D. Minn. Aug. 15, 2025). *See also Diaz v. Marinez*, 792 F. Supp. 3d. 211, 221 (D. Mass. 2025) (("[I]f, as the Government argue[s] ... a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect. This is a presumptively dubious result."); *Selvin Adonay E.M. v. Noem et al.*, No. 25-cv-3975, 2025 WL 3157839, at *6 (D. Minn. Nov. 12, 2025) ("the presumption against superfluity is at its strongest because the Court is interpreting two parts of the same statutory scheme, and Congress even amended the statutory scheme this year when it passed the Laken Riley Act.").

Petitioner is detained under 8 U.S.C. § 1226 as an alien already in the country pending the outcome of removal proceedings. He is not an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225. The government's novel interpretation contradicts nearly 30 years of precedent and practice, and renders obsolete an act of Congress enacted less than a year ago. For the foregoing reasons, and those stated in his petition, this Court should grant a writ of habeas corpus and order his immediate release.

V. Petitioner is a *Bautista v. Noem* class member and Respondents are bound by the Final Judgment in that case.

Respondents incorrectly assert that the final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025) is inapplicable to Petitioner, issued without jurisdiction, and/or only effective in the Central District of California.[3] These arguments were addressed by the judge in that decision and Respondents are in violation of the judgment by failing to provide the Petitioner with a bond hearing.

The Executive Office for Immigration Review is a Defendant in *Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011).

Bautista did not include habeas claims on behalf of the class, and thus, class members are not precluded from raising their rights as class members in habeas in the district of their confinement. The court found that the Petitioner's actions were brought under the APA, and that such claims were available both to the named Petitioners in the case as well as the broader class members. *See Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025) at *22. The habeas claims are not exclusive and although the court did grant habeas relief to the named plaintiffs detained in that judge's district, "[n]owhere in the Amended Class Complaint or Motion for Partial Summary Judgment do Petitioners seek habeas relief on a nationwide level." *Id.* at *23; *quoting Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (finding habeas jurisdiction lies "in only one district: the district of confinement"). The plaintiffs did not even seek the release of class members

[3] Respondents do not seem to dispute that the class meets the numerosity, commonality, typicality and other requirements for class certification under FRCP 23.

outside of the district. *Id.* at *20. The relief granted by the *Bautista* court is therefore not limited to the district of confinement of its named plaintiffs and the Respondents' arguments that precedent, res judicata, and collateral estoppel are not applicable in habeas proceedings are not applicable in this case. *See* ECF No. 7, PageID #38, 40.

The *Bautista* court's relief is not coterminous with habeas, as argued by Respondents. ECF 7, PageID #34-36. Instead, the relief provided to class members in *Bautista* is a vacatur of the Respondent's policies which would deny similarly situated noncitizens review of their detention in a bond hearing. *Id.* at 24. Section 706(2)(A) of the APA commands a reviewing court to "hold unlawful *and set aside* agency action, findings, and conclusions" found to be "arbitrary, capricious, . . . or otherwise not in accordance with law." § 706(2)(A)(emphasis added).

The *Bautista* court found that the APA provides it with jurisdiction to issue declaratory relief and the vacatur of the Respondent's policies. The court found that this relief was not injunctive relief and was so not barred by § 1252(f)(1). The vacatur of the Respondent's policies is certainly meaningful, but also distinct from more serious injunctive relief. *See Texas v. United States*, 40 F.4th 205, 219 (5th Cir. 2022) (*citing Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010) ("[t]here are meaningful differences between an injunction, which is a 'drastic and extraordinary remedy,' and vacatur, which 'is a less drastic remedy.'"); *see Bautista*, at *28, 30-31 (listing additional cases distinguishing vacatur from injunctive relief and that § 1252 (f)(1) does not bar such relief).

To Counsel's knowledge, no stay has been issued of the judge's decision in *Bautista*, and the Respondents do not assert that a stay is in place or has been requested. The Respondents are therefore bound by the judge's decision in Bautista for the named class, and the decision is final. *Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay pending appeal."), *rev'd on other grounds*, 184 F.3d 900 (D.C. Cir. 1999). The Court declared that for the class members, § 1226 governs their detention and are entitled to consideration for release on bond and are not subject to mandatory detention under § 1225(b)(2). The Court also vacated the Department's policy denying such class members a bond hearing and interpreting the statutes in this manner, as well as stated that *Yajure Hurtado* is no longer controlling. *Bautista*, at *20.

There is no need or requirement for the Petitioner to seek redress for the Respondents' violation of the declaratory judgment and vacatur in the *Bautista* court. The relief granted to the *Bautista* class members did not lie in habeas, and when Respondents refuse to abide by the declaratory judgment and vacatur in the district court's final judgment, it is appropriate and necessary for the petitioner to seek his release in this district.

As Respondents are choosing to ignore the *Bautista* decision and are continuing to apply the policies vacated by that court, Petitioner brings this habeas action for relief under the statutes correctly governing his detention and his class membership in the *Bautista* case. As explained previously, habeas remains available for enforcing these rights as the court in *Bautista* did not and could not grant habeas relief outside of the district, but was required to issue declaratory relief under the APA after finding the government's actions unlawful. *Bautista*, at *27; § 706(2)(A) (a reviewing court *shall* ". . . hold unlawful and set aside agency action . . . found to be . . . not in accordance with law.") (emphasis added)

Even if the court determines or elects to delay on a decision of the effect on the *Bautista* class action on Respondent's present detention, Petitioner is detained under § 1226(a) and has an independent basis that his detention is unlawful. Even prior to the Final Judgment in *Maldonado*

Bautista, the vast majority of District Courts, including in the Sixth Circuit, have held that detainees such as Petitioner are properly held under § 1226 and are eligible for release on bond. *See* n. 1, *supra.*

CONCLUSION

This Court has jurisdiction to consider the Petitioner's challenge to his unlawful detention and administrative exhaustion is not required or should be waived and excused due to the circumstances in this case. Respondents are unlawfully detaining the Petitioner in violation of 8 U.S.C. § 1226 by improperly denying him a bond redetermination. Respondents are also refusing to abide by a declaratory judgment in *Bautista* which Petitioner is a class member in and which is a final order not stayed pending appeal. Petitioner therefore requests that this Court grant his petition for a writ of habeas corpus and order Respondents to provide him with the relief requested in his Petition, and any other such relief this Court deems appropriate to grant.

DATED this 30th day of December, 2025.

Respectfully submitted,

s/ David L. Dawson
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CERTIFICATE OF SERVICE

I, David L. Dawson, hereby certify that on December 30, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

s/ David L. Dawson

Attorney for Petitioner