UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Sandra Nohemy Cruz de Cuadra,	§	
Petitioner,	§	
vs.	§	Civ. 5:25-cv-01735-FB
PAMELA BONDI, UNITED STATES ATTORNEY GENERAL, *et al*.,	§	
Respondents.	§	

PETITIONER'S TRAVERSE TO FEDERAL RESPONDENTS' ANSWER TO HABEAS PETITION

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I. INTRODUCTION

The Petitioner, Ms. Cruz De Cuadra, timely submits her traverse to Respondents' response to her habeas petition. On December 15, 2025, this Court ordered Respondents to respond within three days of service.[1] Dkt. 2. Respondents filed their response on December 22, 2025, urging denial. Dkt. 4. Federal Respondents maintain generally that Petitioner's detention is lawful, that she is unlikely to succeed on the merits of her habeas claim, because they believe she is an applicant for admission. *Id.* at 1. Petitioner urges the Court to grant her habeas and injunctive relief request, not least because her removal hearing in immigration court is scheduled for January 8, 2026 before the Pearsall Immigration Court See Petitioner's Traverse Exh. 1, Notice of Removal Hearing.

Respondents in their Response present much that this Court has already rejected. Dkt. 4 at 4-9; see this Court's decisions in *Mendoza Euceda v. Noem*, Order, No. SA25-CV-1234-OLG (W.D. Tex. Nov. 17, 2025); in *Pereira-Verdi v. Lyons*, SA-25-CA-01187-XR (W.D. Tex. Oct. 10, 2025) ("[T]he Supreme Court has already explained that "§ 1226 applies to aliens already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). "[T]he language of §§ 1225(b)(1) and (b)(2) is quite clear." *Id.* "§ 1225(b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297.");

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[1] "In preparing their response, Respondents should consider the Court's orders in *Mendoza Euceda v. Noem*, Order, No. SA25-CV-1234-OLG (W.D. Tex. Nov. 17, 2025) and *Rahimi v. Thompson*, Order, No. SA-25-CV-1338- OLG (W.D. Tex. Dec. 4, 2025), and identify material differences between the facts in this case and the facts presented in those cases." [In *Mendoza*, the Government had argued, and the Court rejected, that *8 U.S.C. § 1225(b)(2)* provided for mandatory detention. In the *Rahimi* case, the posture is not applicable to the instant case's posture, since it involved a revoked order of supervision, which Petitioner agrees with Respondents being "post-order" is a different scenario.]

Hernandez-Ramiro v Bondi, SA-25-CA-01207-XR, W.D. (Tex. Oct. 15, 2025) ("[T]he Board's interpretation has been subject to criticism upon judicial review. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025) ("In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect."); *Liguicota-Mayancela v Karnes Sup't*, 5-25-CV-01038-OLG-RBF, Report and Recommendations, Nov. 18, 2025, Richard B. Farrer, adopted by District Judge Orlando Garcia in *Mayacela v. Superintendent of Karnes Cnty. Immigration Processing Center*, SA-25-CV-1038-OLG, 2025 WL 3540074, at *1 (W.D.Tex., Dec. 9, 2025) (noting Government's argument as "the parties disagree as to whether 8 U.S.C. § 1225(b)(2) or § 1226(a) controls in these circumstances.")

Respondents now insist that their earlier argument was incorrect, namely as argued in *Mayacela* that persons like Petitioner are subject to mandatory under that *8 U.S.C. § 1225(b)(2)*. Dkt. 4 at 3-4. Now, they insist that a different provision, namely *1225(b)(1)(A)(iii)(II)* (persons apprehended within two years of entry") applies. *Id.* at 3. This is a new rationale, one that was not put forward in the original internal guidance on the policy change ("Lyons Memorandum") (failing to mention "8 U.S.C. § 1225(b)(1)(A)(iii)(II)" as a basis for mandatory detention).[2] It is also one that has already been rejected within this district, see *Reyes-Perez v. Bondi*, SA-25-CV-1302-XR, November 25, 2025, slip Op. at 10-12; and outside this district, see e.g., *Coalition for Humane Immigrant Rights v. Noem*, 2025 WL 2192986 (D.D.C., 2025). Indeed, the Respondents nowhere in their Answer point to any authority that would be persuasive, other than *Florida v*

[2] ICE Memorandum: 2025.07.08 ICE - Interim Guidance Regarding Detention Authority for Applicants for Admission, available at Immigration Tracking Policy Project, https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/ (last checked December 29, 2025).

United States, 660 F.Supp. 3d 1239, 1270-77 (N.D. Fla. 2023), which pre-dates their own new interpretation of mandatory detention, and which is inapposite to the posture here, where now the DHS released noncitizens under 8 U.S.C. § 1226(a) and subsequently re-arrested them based on an internal policy change. In other words, not a single district court since their newly announced mandatory detention policy has adopted its new argument of 1225(b)(1)(A)(iii)(II) being applicable to those re-arrested within the interior of the United States. That they now rationalize their new reasons for mandatorily re-arresting persons like Petitioner after being unsuccessful in nearly every district court on their former argument of *8 U.S.C. § 1225(b)(2)* casts doubt on the authenticity of their stance.

II. BRIEF SUMMARY OF FACTS

Petitioner is 48 years old, citizen of El Salvador. She has been in the United States for over 13 years, since March 29, 2012, when she surrendered to border agents and, it is undisputed, was released on O-rec under 8 U.S.C. §1226(a). Dkt. 1-2. She has been living with her husband and children in Austin, Texas, and pursuing her asylum application with the San Antonio Immigration Court. At the time of entry, Petitioner was detained under Section 236 of the Immigration and Nationality Act ("INA"), the respondents then released her on her own recognizance (O-rec), under 8 U.S.C. § 1226(a)(2)(B), "conditional parole," on March 29, 2025. Dkt. 1-2, Form I-220A. She has attended annual check-ins, and was awaiting her non-detained immigration court setting for 2027 (at the non-detained San Antonio immigration court). ICE then abruptly re-detained her without notice or providing any reasons at her regularly scheduled ICE check-in in San Antonio on November 25, 2025. She has remained now in civil detention in the custody of ICE at Karnes County Detention Center (KCDC) in Karnes City, Texas ever since. Petitioner had as mentioned filed her Form I-589, application for asylum with the San Antonio Immigration Court, and also

had hired an attorney and was preparing for her non-detained master hearing for 2027, before her re-arrest, but now with her new detention will be in front of the detained immigration judge on the Pearsall Immigration Court docket, which handles Karnes Detention cases, in less than 14 days. Her removal hearing is scheduled before the Pearsall Immigration Court on January 8, 2026, at 8:30 a.m. Petitioner's Traverse, Exh. 1.

Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025), the immigration judge cannot grant her a bond because that case says she is subject to mandatory under 8 U.S.C. § 1225(b)(2), and *Matter of Yajure-Hurtado* is itself binding precedent on the IJ, and any appeal of the IJ's decision to the same Board will be futile.

Petitioner is prima facie eligible for relief, namely, asylum under 8 U.S.C. § 1158(a). She has maintained to this Court that the respondents' unlawful detention of her impedes her defense by limiting access to counsel, witnesses, and evidence.

III. ARGUMENT

A. The Court Should Reject, As Judge within This District Has Done Recently in *Reyes-Perez*, Respondents' Newly Manufactured Argument under a New Provision for Mandatory Detention

This Court has rejected the Government's newly asserted (and to date, unpublished and un-promulgated, to counsel's knowledge) rationale. See *Reyes-Perez v. Bondi*, SA-25-CV-1302-XR, (W.D. Tex. November 25, 2025), slip Op. at 10-12. Respondents do not attempt to distinguish Reyes-Perez in their Answer. They merely contend, as they did in *Reyes-Perez*, that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(A)(iii)(II), notwithstanding their internal memorandum's *differing* basis for finding no jurisdiction to grant bond, namely "mandatory detention under 8 U.S.C. § 1225(b)(2)(A)." See also *Matter of Yajure Hurtado*, 29

I&N Dec. at 218-19; Lyons Memorandum, https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/.

Notably, Respondents do not now argue that Petitioner is somehow subject to §1225(b) expedited removal proceedings, or potentially subject to expedited removal proceedings. Dkt. 4 at 3–5. Nor could they, as indeed courts have recognized the emptiness of such argument because § 1225 does not authorize expedited removal of individuals who have ever been paroled into the U.S. *See, e.g., Patel v. Tindall*, 2025 WL 2823607, at *5 (W.D. Ky., 2025) ("Patel cannot be subject to Section 1225. Patel was released on his own recognizance, which is understood to be a conditional parole. *See Espinoza*, 2025 WL 2675785, at *6 ("[A] person on conditional parole is usually released on their own recognizance subject to certain conditions such as reporting requirements."). Therefore, Section 1225 is inapplicable to Patel, and in fact, ICE violated the INA by invoking it against Patel."); *Morales Chavez v. Director Detroit Field Office*, et al, 2025 WL 2959617, at *8 (N.D. Ohio, 2025) ("Other district courts have not permitted retroactive application of § 1225(b)(1) where immigration officials have begun proceedings under standard removal proceedings and its discretionary detention provision. *See, e.g., Ballestros v. Noem*, No. 3:25-CV-594-RGJ, 2025 WL 2880831, at *3–4 (W.D. Ky. Oct. 9, 2025) ("[Petitioner] cannot be subject to Section 1225 proceedings....Therefore, [Petitioner] is subject to standard removal and detention proceedings under Section 1229a and Section 1226.")."). Instead, they argue that Petitioner was initially apprehended in 2012, less than two years after she entered the country. Dkt. 4 at 3. But as the *Reyes-Perez* court noted, Petitioner "was not apprehended under Section 1225(b)(1)" in 2012; contemporaneous documents repeatedly referenced Section 1226. Dkt. 1-2. To quote Reyes-Perez, "Respondents cannot retroactively transform what was clearly action under Section 1226 into detention under Section 1225(b)(1). *Cf. Lopez v. Lyons*, No. 2:25-CV-

03174-DJC-CKD, 2025 WL 3124116, at *2 (E.D. Cal. Nov. 7, 2025) (rejecting the argument that someone's initial contact with immigration officials was a "determination of inadmissibility" under Section 1225(b)(1) because "the Order of Release on Recognizance specifically state[d] that Petitioner was released pursuant to [S]ection 1226")." *Reyes-Perez v. Bondi*, SA-25-CV-1302-XR (W.D. Tex. November 25, 2025), slip Op. at 11. In any event, Section 1225(b)(1) is inapplicable to Petitioner because she has been charged as inadmissible under Section 1182(a)(6)(A)(i) *only*. Petitioner's mere "unlawful presence" (as "[a]n alien present in the United States without being admitted or paroled") cannot, as a textual matter, serve as the grounds for detention under Section 1225(b)(1), which applies to noncitizens found "inadmissible under" 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7). *See* 8 U.S.C. § 1182(a)(6)(C) (discussing aliens who seek admission by fraud or willful misrepresentation); *id.* § 1182(a)(7) (discussing required documentation for admission of immigrants and nonimmigrants).

Respondents in their Answer do not address Petitioner's argument that in 2012 she was released into the United States after apprehension at the Southern border on a "conditional parole" under the DHS's statutory power under 8 U.S.C. § 1226(a)(2)(B), "pending a decision on whether the alien is to be removed from the United States . . .[the DHS] may release the alien on— … (B) conditional parole; but (3) may not provide the alien with work authorization [including and "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization." They make no attempt to reconcile the fact that their arrest of her in 2012, cited in their Form I-220A (Dkt. 1-2), is specifically "under § 1226(a)," (which applies to those present or who have been admitted or paroled into the United States). Dkt. 4 at 3–5.

They argue now that the Petitioner over thirteen years later is still in the position of an applicant for admission standing at the threshold of entry. Dkt.4 at 3- 4. Respondents assert that her detention is under 8 U.S.C. § 1225(b)(1)(A)(iii)(II). The Respondents in their Response appear to be easing away from their arguments previously presented in other similar petitions to district courts (and roundly rejected) that placed such petitioners under 1225(b)(2)(A), and—without explanation—pivoting to a new section they believe justifies their holding Petitioner under mandatory detention, namely, § 1225(b)(1)(A)(iii)(II), as an arriving alien. Dkt. 4 at 3-5. But court after court has rejected their proposed reading. *See, e.g., Salgado-Bustos v Raycraft*, No. 25-13202, 2025 WL 3022294 (E. D. Mich, Oct. 29, 2025) (under similar factual circumstances, "[N]umerous courts have rejected Respondents' interpretation of the statute. In *Coalition for Humane Immigrant Rts. v. Noem*, No. 25-CV-872, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025), the D.C., 2025 WL 2192986, at *39, "the court determined that the statute forbids the expedited removal of noncitizens who have been, *at any time*, paroled into the United States."); *E.V. v. Raycraft*, 2025 WL 2938594, at *8 (N.D. Ohio, 2025) ("[T]he Government, however, offers only a single legal basis for continued detention: Petitioners' designations for expedited removal. Consequently, a challenge to that designation is a challenge to the underlying detention. If the Court finds the Government acted *ultra vires* in designating Petitioners for expedited removal, its only justification for mandatory detention evaporates. In *Jennings*, noncitizens challenged "the extent of the Government's detention authority under the statutory framework [of the INA] as a whole." 583 U.S. 281, 283 (2018). Therein, the Supreme Court held "the extent of the Government's detention authority is not a matter of discretionary judgment, action, or decision," and, therefore, not wholly subject to the Government's "discretion to detain"

vis-a-vis expedited removal. *Id.* Because the justification for detention is unsettled, the detention itself is unsettled.").

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

Even if Respondents' reliance on the expedited removal process were correct—notwithstanding its prior release of Petitioner on a conditional parole—the second prong of 18 U.S.C. § 1225(b)(1)(A)(iii)(II), which states that the alien "has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph" would not be applicable to Petitioner, as she has been continuously living in the United States for over three years. *See* Dkt. 1, Exh. 1. Section 1225(b)(1) requires detention for certain aliens undergoing *expedited* removal proceedings. 8 U.S.C. § 1225(b)(1), (b)(1)(B)(ii), (b)(1)(B)(iii)(IV). But Respondents admit that Petitioner is currently in "full" removal proceedings. Dkt. 4 at 3-4. Respondents have conceded in other cases that an alien cannot simultaneously be in both full and expedited removal proceedings. *See Patel v. Tindall*, No. 3:25-CV-373-RGJ, 2025 WL 2823607, at *5 (W.D. Ky. Oct. 3, 2025) (collecting cases). In short, even if Section 1225(b)(1) could apply to Petitioner, she is not subject to its detention provisions because she is not in expedited removal proceedings. Respondents cannot detain Petitioner based on expedited removal proceedings that do not exist.

Respondents ignore the vastly greater contrary precedent, and offer as a new authority only a single recent decision denying a similar petitioner a temporary restraining order, namely, *Garibay-Robledo v Noem*, No. 1:25–CV–177–H (N.D. Tex. Oct. 24, 2025). Dkt. 4 at 4. The district judge there held that "[g]iven that Garibay-Robledo is "[a]n alien present . . . who has not been admitted," the plain language of the mandatory-detention provision weighs heavily against the petitioner's assertion that he is subject only to discretionary detention." *Id.* at *5. The court held that "By defining "applicants for admission" broadly enough to encompass both arriving aliens and illegal entrants, Congress removed the previously existing incentives to enter the country illegally."

First, this Court is not bound by the aberrant holdings of the outlying cases concluding that § 1225(b) applies rather that § 1226(a). Indeed, the out-of-circuit district courts, a handful in number, not only contradict cases from the same district, *compare Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal, Sept. 24, 2025) to *Martinez Lopez v. LaRose*, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025), and *compare Vargas Lopez v. Trump*, 2025 WL 27080351 (D. Neb. Sept. 30, 2025, to *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) and *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025). The Northern District of Texas case cited, *Garibay-Robledo*, simply disagrees with the other courts in this Circuit which have found that there is a difference between an "applicant for admission" (one who has applied) and a person "seeking admission" (one doing so in the present tense). Those courts have found that a person who has already been released into the United States cannot be construed as "seeking admission." The Garibay court merely states: "There is no material disjunction—by the terms of the statute or the English language—between the concept of "applying" for something and "seeking" something. Black's Law Dictionary defines "applicant" as "[s]omeone who requests something;

a petitioner, such as a person who applies for letters of administration." (12th ed. 2024). Thus, an applicant for admission, in ordinary English usage, is one who requests (or seeks) something. Insofar as the term "applicant for admission" is more passive than "seeking admission," this is inherent in the nature of agent nouns and their corresponding gerunds." But the multitude of district courts have explained that § 1225(b)(2) applies to arriving aliens undergoing inspection, which generally occurs at the United States' border or ports of entry, when they are seeking lawful entry into the United States." *Sanchez Alvarez*, 2025, No. 1:25-CV-1090, 2025 WL 2942648 at *5 (W.D. Mich. Oct. 17, 2025). In contrast, § 1226(a) applies to a noncitizen already residing within the United States when apprehended and arrested. *Jimenez Garcia*, 2025 WL 2976950, at *4 (E.D. Mich. Oct. 21, 2025) (quoting *Lopez-Campos*, 2025 WL 2496379, at *8). Here, Petitioner had been living for over three years in compliance with all this country's rules and regulations, at the time of her August 28, 2025 arrest by ICE. *See* Dkt. 1 at 2. She should be entitled to a bond hearing under 8 U.S.C § 1226(a).

"Arrive" means "to reach a destination" or "to make an appearance." *Arrive*, Merriam-Webster's Collegiate Dictionary (1996); *see also Arrive*, Oxford English Reference Dictionary (1996) (defining "arrive," when followed by "in," as "reach a destination; come to the end of a journey or a specified part of a journey"). Read according to its plain meaning, a noncitizen "arriving" in the United States would be one who is in the process of reaching his or her destination (the United States) and making an appearance here. It would not naturally be read to refer to someone who previously reached the United States via a port of entry, underwent inspection at that port of entry, and then was paroled into the United States (beyond their original destination) for an indefinite period of time. Thus, if the plain language governs, Petitioner here

has the upper hand. See *Coalition for Humane Immigrant Rights v. Noem*, 2025 WL 2192986, at *28 (D.D.C., 2025).

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

Finally, Respondents in their Answer insist, as the Board has done in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), on the policy argument that subjecting those who are detained at the border to mandatory detention, while allowing those who entered the United States without permission to be released on bond, would create the perverse incentive for aliens to enter the country unlawfully – or surreptitiously get access to the country's interior – rather than enter at a lawful location. Dkt. 4 at 5-6. But this ignores that civil immigration detention, which is "nonpunitive in purpose and effect[,]" is typically justified under the Due Process Clause only when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). "It is therefore reasonable to read these statutes 'against [that] backdrop.' " *Romero*, 2025 WL 2403827, at *13 (quoting

Hewitt v. United States, 145 S. Ct. 2165, 2173 (2025)). Moreover, policy arguments cannot override the plain meaning of the text. *See also Romero*, 2025 WL 2403827, at *12.

Thus, Petitioner believes she has shown that the Respondents' mandatory detention of her is contrary to law, and her immediate release should be granted.

B. Scope of Relief

As to the appropriate remedy, Petitioner requests that she be immediately released from custody. This is because Petitioner cannot be detained under Section 1225(b)(1) or (2), the remaining option is Section 1226. As Respondents do not claim that Petitioner is being detained under Section 1226, however, there is no futher need to consider Section 1226 as a basis for Petitioner's current detention. *See Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025). Her detention is unlawful, and habeas relief is proper.

This is also because a bond hearing would only be an appropriate remedy where "the government has at least some articulable, legitimate interest in detaining the petitioner," but immediate release is appropriate where "the government had no or an insignificant interest in detaining the petitioner." *Santiago-Santiago v Noem*,EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) at *13. Respondent

. Additionally, noncitizens released by the government into the country acquire a protected liberty interest in remaining out of custody and are entitled to procedural safeguards before being detained. *See Danierov v. Noem*, No. 2:25-cv-01215-KG-KRS, 2025 WL 3653925, at *2 (D.N.M. Dec. 17, 2025); *Santiago*, 2025 WL 2792588, at *11. The Supreme Court's *Mathews v. Eldridge* test provides the appropriate framework when determining what procedural safeguards are due, requiring courts to consider "(1) the private interest affected, (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguard; and (3) the

Government's interest, including the fiscal and administrative burdens of additional procedures." *Danierov*, 2025 WL 3653925, at *2 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (internal quotations omitted).

Indeed, many district courts have determined instead to order the immediate release of immigration habeas petitioners held in custody in violation of their due process rights. *See, e.g., J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025);*Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025);*Rosado*, 2025 WL 2337099, at *19; *M.S.L.*, 2025 WL 2430267, at *15. In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. *See J.U.*, 2025 WL 2772765, at *10; *Zumba*, 2025 WL 2753496, at *10; *Rosado*, 2025 WL 2337099, at *14, 18;*Sepulveda Ayala II*, 2025 WL 2209708, at *3.

C.Thuraissigiam Does not Apply here

Respondents lean on *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020), arguing it forecloses Petitioner's challenge to her custody and compels mandatory detention under § 1225(b)(2). *See* Dkt. 4 at 8 (characterizing Petitioner as "seeking admission," invoking *Thuraissigiam* to minimize due process in the "applicant for admission" context, and insisting detention is part of the "action taken to remove"). That reliance is misplaced for three independent reasons.

First, *Thuraissigiam* is a deportability (admission-process) case, not a detention-authority case. The petitioner there sought a second chance at admission-related relief in expedited removal; he did not seek habeas release from civil custody, and the Court framed its analysis around the "scope of habeas" in the admission context—i.e., it cannot be used to demand another "opportunity

to remain lawfully in the United States." 591 U.S. at 117–20, 140. Nothing in *Thuraissigiam* decided whether—much less how—noncitizens may challenge the fact or length of immigration detention. That question was expressly left open in *Jennings v. Rodriguez*, which resolved only statutory issues and remanded the constitutional due-process questions. 583 U.S. 281, 297–301, 312 (2018). Four years later, the Government told the Court that "as-applied constitutional challenges remain available" in the detention context. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022). The Western District of Texas has already drawn this precise line: in *Santiago v. Bondi*, the court explained that *Thuraissigiam* concerns admission and removal, "not whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention"—which is exactly what *Santiago* (and here, Petitioner) asserted. *Santiago v. Noem*, 2025 WL 2792588, at *12 (W.D.Tex., 2025). Respondents' brief never engages that distinction.

Second, the text, structure, and history of the INA foreclose Respondents' "everyone is 'seeking admission' forever" theory. Section 1225(b)(2)(A) applies only when an examining officer determines the person is an "applicant for admission," is seeking admission, and "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (present-tense language tied to inspection/admission). That grammar and placement—as *Jennings* observed—reflect § 1225's focus "primarily [on those] seeking entry," typically "at the Nation's borders and ports of entry." 583 U.S. at 297, 287. By contrast, Congress designed § 1226 to govern custody for persons arrested in the interior and placed in full § 1229a proceedings, with targeted, offense-specific mandatory-detention carve-outs in § 1226(c). If § 1225(b)(2) automatically controlled everyone "present without admission," then § 1226(a)'s bond default and § 1226(c)'s tailored exceptions (including express references to inadmissibility, such as § 1182(a)(6)(A) and (7)) would

be surplusage—an atextual result Respondents never confront. Courts addressing DHS's July 2025 pivot have rejected the Government's bid to erase the "seeking admission" requirement for arrestees who are found in the interior of the U.S.[3]

Third, after *Loper Bright*, *Yajure-Hurtado* is not entitled to deference—and it is unpersuasive on its own terms. The BIA's September 2025 opinion posits a false dichotomy: if a person has never been "admitted," they must still be "seeking admission," no matter how many years they have lived here. 29 I. & N. Dec. 214, 221 (B.I.A. 2025). But the statute's present-tense text, its border-inspection context, and § 1226's architecture refute that premise. Under *Loper Bright Enterprises v. Raimondo*, courts "owe no deference" to an agency's interpretation simply because the statute is ambiguous; rather, courts independently construe the statute using the traditional tools. 144 S. Ct. 2244, 2262–63 (2024). And under *Skidmore*, a late-breaking, two-page policy shift (the July 8, 2025 Lyons memo, supra) and a fast-follow BIA decision that contradict

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

decades of § 1226 practice and the accumulating federal case law merit little weight. See *Matter of Yajure Huratdo*, 29 I. & N. Dec. 214 (B.I.A. 2025). Respondents' brief does not grapple with *Loper Bright* at all, nor do they justify why a litigation-driven reversal should displace the longstanding reading that interior § 1229a cases are governed by § 1226(a) unless § 1226(c) applies. *See* Dkt. 4 at 4-5 (asserting "plain language" and citing *Yajure-Hurtado*).

Respondents also cherry-pick dicta from *Thuraissigiam* noting that confinement during expedited-review proceedings was not disputed in that case, 591 U.S. at 118, and then treat that aside as a blanket endorsement of mandatory detention for anyone deemed an "applicant for admission." But *Santiago* squarely rejected that move, explaining that *Thuraissigiam* "constrain[ed] itself" to the admission process and does not foreclose due-process challenges to detention; indeed, the Supreme Court "has not addressed the viability of constitutional due-process challenges to mandatory immigration detention," and recent authority reaffirms that "the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings." *Santiago v. Noem*, 2025 WL 2792588 * 11–14 (citing *Jennings*, 583 U.S. at 312; *Arteaga-Martinez*, 596 U.S. at 583; and *Reno v. Flores*, 507 U.S. 292, 306 (1993)). The Government's heavy emphasis on *Thuraissigiam* thus collapses the crucial line between deportability and detention. Petitioner, like Santiago, challenges only the lawfulness of her civil confinement—not any entitlement to remain in the United States.

In short, *Thuraissigiam* does not carry the Government's burden. Properly read, the text and structure of the INA place long-present, interior arrestees like Petitioner within § 1226(a) (subject to § 1226(c)'s specific exceptions), not § 1225(b)(2). The Government's contrary theory would transform § 1225 into an all-purpose detention mandate, nullify Congress's § 1226 framework, and disregard the deportability-versus-detention distinction recognized in *Jennings*,

confirmed by the Government in *Arteaga-Martinez*, and applied by the Western District of Texas in *Santiago*. This Court should therefore reject Respondents' *Thuraissigiam* argument and decline to defer to *Yajure-Hurtado*.

D.The Court Should Reject the Respondents' Jurisdictional Challenge

Respondents' argument that Section 1252(b)(9) bars this Court's jurisdiction over the petition fails for at least two reasons. Dkt. 4 at 7-8, First, Petitioner's claim—that Respondents lack "legal authority to subject [her] to mandatory detention under § 1225 instead of detention with a bond hearing under § 1226(a)"—"is not a review [of] an order of removal, the decision to seek removal, or the process by which removability will be determined." *Beltran v. Noem*, No. 25CV2650-LL-DEB, 2025 WL 3078837, at *3 (S.D. Cal. Nov. 4, 2025); *Aguilar*, 510 F.3d at 11 ("[T]he legislative history indicates that Congress intended to create an exception for claims 'independent' of removal."). Because Petitioner challenges only her ongoing detention during the pendency of her removal proceedings, "§ 1252(b)(9) does not present a jurisdictional bar." *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018).

E.Respondents "No Net Gain" Argument Is Not a Defense to Unlawful Detention

To the extent the Respondents suggest that her detention does not violate due process because "[Petitioner] has an opportunity to be heard by an immigration judge", and thus habeas relief provides "no net gain" because Petitioner might still remain in proceedings, their suggestion misunderstands habeas and due process. The "gain" is freedom from unlawful executive confinement and the receipt of the custody process Congress and the Constitution require. The possibility that DHS might pursue removal proceedings is not a justification for detaining someone under the wrong statute and without a bond hearing.

Indeed, the continued detention of Petitioner separates her from her family, prohibits her removal defense in many ways, including by inhibiting her access to computers, to any counsel's office to prepare evidence, to communicate with witnesses, gather evidence, and afford legal representation, among other related harms. Her detention makes it difficult for them to access counsel and prepare for the ongoing removal proceedings. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (U.S., 2003). A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690. Petitioner's detention is improper because she has been deprived of her substantive Due Process rights. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. 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). "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

F.Immediate Release Is Superior to Ordering a Bond Hearing to Prevent DHS Nullification Under 8 U.S.C. § 1225(b) and 8 C.F.R. § 1003.19(i)

Recent events confirm DHS will invoke § 1003.19(i) to nullify an IJ's bond order. It is not speculative. In *Padron Covarrubias v. Vergara*, No. 5:25-cv-00112 (S.D. Tex.), the court granted habeas on October 8, 2025; after the IJ granted a $6,000 bond on October 15, 2025, DHS invoked an "emergency" discretionary stay under 8 C.F.R. § 1003.19(i)(1) that same day—classic run-out-

the-clock tactics to keep a habeas petitioner detained despite an Immigration Judge's release order. Likewise, in *Alvarez Martinez v. Secretary of DHS*, No. 5:25-cv-01007-JKP (W.D. Tex.), after the IJ set a $3,000 bond on July 15, 2025, DHS filed Form EOIR-43 and triggered the automatic stay under § 1003.19(i)(2), preventing release pending appeal. *See* Exh 3. These are not hypotheticals; they are recent, local examples showing exactly what DHS does when an IJ grants bond.

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

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

Irreparable harm, equities, and the public interest favor relief. Continued detention triggered solely by an administrative stay is irreparable harm: loss of liberty, family separation, and impaired ability to litigate, with no adequate damages remedy. The balance of equities favors preserving the efficacy of the Court's order, while the public interest is served when executive action does not sidestep judicial remedies or constitutional process. Recent district-court orders

addressing § 1003.19(i)(2) recognize these due-process concerns and the need to ensure meaningful bond determinations are not overridden by automatic stays. An order of immediate release from DHS custody would tailor a remedy that suits Petitioner's circumstances.

IV.CONCLUSION

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

Here, Petitioner has alleged viable causes of action, and she has sought injunctive relief from this Court, under the laws and the Constitution. The writ of habeas corpus should be granted. Her detention is illegal. The writ is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978); *Fay v. Noia*, 372 U.S. 391, 400 (1963) ("The writ must be construed to afford "a swift and imperative remedy in all cases of illegal restraint or confinement.")

Respectfully submitted on this 29th day of December, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF PETITIONER TO THE RESPONDENTS' ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS in the case of *Cruz De Cuadra v. Pamela Bondi*, et al.,, was sent to Fidel Esparza, Assistant United States Attorney, Western District of Texas, 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216 through the District Clerk's electronic case filling system on thus the 29th day of December, 2025.

Dated this 29th day of December, 2025

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