UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI-DADE DIVISION

DAVID VELASQUEZ ROMAN *Petitioner*, *v.* United States Attorney General; Secretary of the United States Department of Homeland Security; Director of United States Immigration and Customs Enforcement; Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; Warden, Krome North Service Processing Center *Respondents*.	§	Civ. No. DHS File Number: [redacted] **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Regulations & Federal Register

PRELIMINARY STATEMENT

This petition challenges the unlawful detention of Petitioner DAVID ROMAN VELASQUEZ ("Petitioner "), a 45-year-old, who has resided in the United States for more than 28 years. Petitioner was arrested by Florida Highway Patrol on or about November 20, 2025, and he has since been held at the Krome North Service Processing Center in Miami, Florida. The Department of Homeland Security ("DHS") asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), despite Congress's separate detention framework in 8 U.S.C. § 1226(a), which governs interior arrests and provides discretionary bond and immigration-judge ("IJ") review.

DHS's novel position—recently endorsed in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 220 (B.I.A. 2025)—contradicts the Immigration and Nationality Act's (INA) text, the canon against surplusage, longstanding administrative practice, and Due Process. It effectively erases section 236(a) of the INA, collapses Congress's dual-track detention scheme, and imposes categorical detention on long-time residents like Mr. Roman Velasquez who present no danger and are not flight risks.

The human consequences are immediate and severe. Mr. Roman Velasquez is a husband and father of four U.S. citizen children; Angela Roman (23 years old), Jesus Roman (20 years old), Alexa Roman (19 years old) and D[redacted] (14 years old). D[redacted]has been diagnosed with autism spectrum disorder and requires weekly therapies for his condition. The Petitioner's wife, Wendy Calderon, is a lawful permanent resident who is unemployed as she cares for their son D[redacted]and suffers from anemia and thrombosis. Prior to being detained, the Petitioner had steady employment as a carpenter subcontractor, and he has filed income taxes. He entered in 1995 and has also has resided at the same address with his wife and children since 2022. The Constitution,

the INA, and basic principles of fairness do not permit this outcome of continued detention. Petitioner respectfully requests immediate release or, at minimum, a prompt custody redetermination under § 236(a).

I. INTRODUCTION

1. This Petition seeks the immediate release of Petitioner from unlawful detention in violation of his constitutional and statutory rights.

2. Petitioner was detained by Florida Highway Patrol on November 20, 2025, and remains in civil detention in the custody of Krome North Service Processing Center at Miami, Florida.

3. Petitioner has been in the United States for over 29 years. This detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his parental and financial support.

4. Petitioner's detention is based on DHS's assertion that, because he entered the United States without inspection, he falls under mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). The Immigration Court, before Judge Martyak, has denied bond and adopted DHS's position in light of *Matter of Yajure-Hurtado*, finding Court does not have jurisdiction over these bond proceedings. Thereby denying Petitioner access to a bond hearing under 8 U.S.C. § 1226.

5. Petitioner is eligible 42-B Cancellation of Removal for Non-Permanent Residents as he has resided in the U.S. for more than ten years, does not have any bars for relief, and his lawful permanent resident wife and U.S. citizen child, who suffers from autism, would suffer exceptional and extremely unusual hardship.

6. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner

to ensure his due process rights are upheld. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

I. JURISDICTION AND VENUE

8. Petitioner is detained in civil immigration custody at Krome North Service Processing Center. *See* Exh. 1. He has been detained since or about, November 20, 2025.

9. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

11. Venue is proper in the Southern District of Florida under 28 U.S.C. § 1391, because at least one Respondent is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

II. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE, RETURN, HEARING, AND DECISION

12. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents must file a response "within three days" unless this

Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). The writ of habeas corpus, challenging illegality of detention, 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). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

III. PARTIES

14. Petitioner is a 45-year-old citizen of Mexico. He entered the United States without inspection and has resided here continuously for over 29 years, since 1995.

15. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. She is responsible for the administration of the Executive Office for Immigration Review ("EOIR"), including policies that bear on immigration judges' jurisdiction over custody.

16. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security ("DHS"). DHS is the department charged with administering and enforcing federal immigration laws. Secretary Noem is ultimately responsible for the actions of U.S. Immigration and Customs Enforcement ("ICE") and is a legal custodian of Petitioner.

17. Respondent Todd M. Lyons is named in his official capacity as Acting Director of ICE. He oversees ICE operations, including detention and removal, and is a legal custodian of Petitioner.

18. Respondent Garrett J. Ripa is named in his official capacity as Field Office Director of the Miami ICE Field Office. He is responsible for ICE enforcement in this District and is a legal custodian of Petitioner.

19. Respondent Bobby Thompson is named in his official capacity as Warden of the Krome North Service Processing Center. He has immediate physical custody of Petitioner pursuant to an agreement with ICE to detain non-citizens.

20. Each Respondent is sued in his or her official capacity as a custodian and/or policymaker responsible for Petitioner's continued detention.

IV. FACTUAL ALLEGATIONS

21. Petitioner was detained following arrest by Florida Highway Patrol. He was transferred to ICE custody and transported to the Krome North Service Processing Center in Miami, Florida.

22. ICE has held Petitioner without bond, asserting he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

23. On December 6, 2025, Petitioner's immigration counsel moved for a bond hearing supported by evidence of his long-standing residence, family ties, and lack of dangerousness. The immigration matter is before Immigration Judge Christina Martyak, who denied bond on December 16, 2025. *See* Exh. 3, Order of the Immigration Judge (IJ). The IJ found that *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), remains in effect and that she did not have jurisdiction over the bond proceedings.

24. ICE's litigation stance reflects "interim guidance" issued July 8, 2025, reinterpreting detention authority to treat nearly all noncitizens present without admission as "arriving" and ineligible for bond. *Exh. 2*, Lyons Memo, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025).

25. For nearly three decades, DHS and EOIR treated individuals arrested in the interior and present without admission as detained under § 1226(a), subject to IJ bond hearings unless § 1225(b)(1), § 1226(c), or § 1231 applied.

26. Once the immigration judge denies bond for lack of jurisdiction, Petitioners may pursue an administrative appeal to the Board of Immigration Appeals ("BIA"). BIA bond appeals typically take months, during which detention continues, rendering administrative review by the BIA as an inadequate and delaying remedy in these circumstances.

27. Petitioner's detention has inflicted severe hardship on his family as outlined above.

28. Petitioner's ongoing detention severely impedes his ability to defend against removal, including gathering evidence and coordinating with counsel and witnesses.

29. Petitioner remains detained solely because DHS misclassified his custody under § 1225(b) rather than § 1226(a), contrary to statutory text, constitutional principles, and historical practice.

V. LEGAL FRAMEWORK: DUE PROCESS CLAUSE

30. The Fifth Amendment's Due Process Clause applies to "all persons" within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Id.* at 690. In the immigration

context, detention is constitutionally justified only to prevent flight or protect the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

31. Congress created two distinct detention regimes. Section 235(b) governs inspection and limited mandatory detention of arriving aliens or those apprehended shortly after entry; § 236(a) governs interior arrests on warrant, authorizing detention pending a removal decision with discretionary release on bond. *See Jennings v. Rodriguez*, 583 U.S. 281, 297, 302–03 (2018) (describing § 235(b) as "primarily" for those seeking entry and § 236(a) as applying to aliens "already in the United States" and arrested "on warrant").

32. The Laken Riley Act confirms Congress preserved § 236(a)'s discretionary bond regime for most inadmissible entrants arrested in the interior by adding a narrow new mandatory-detention category under § 236(c)(1)(E) (pairing inadmissibility under 8 U.S.C. § 1182(a)(6)(A), (6)(C), or (7) with specified crimes). If § 235(b) already mandated detention for all inadmissible entrants, § 236(c)(1)(E) would be redundant—an outcome courts must avoid. *See Corley v. United States*, 556 U.S. 303, 314 (2009); *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress legislated against decades of agency practice applying § 236(a) to interior arrests, and courts presume amendments harmonize with that practice. *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025).

33. On September 5, 2025, the BIA in *Matter of Yajure-Hurtado* adopted DHS's position that immigration judges lack bond jurisdiction for noncitizens present without admission because they are "applicants for admission" detained under § 235(b)(2)(A) for the duration of proceedings. 29 I. & N. Dec. at 220 (relying on *Jennings*, 583 U.S. at 300). But *Jennings* construed statutory text and explicitly left open constitutional challenges. *Id.* at 303. Moreover, the Supreme Court has since overruled Chevron deference; courts must

independently interpret the INA rather than deferring to agency readings. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024).

34. Longstanding agency materials confirm that individuals encountered inside the country without admission were treated under § 236(a) and were "eligible for bond and bond redetermination." *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). DHS itself historically limited the "applicant for admission" designation to encounters within a short time and distance from the border. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 121, 130 n.2 (2020) (describing DHS's 2004 14-day/100-mile policy for expedited removal).

35. Arrest authority reinforces this divide: warrantless arrests are narrowly permitted under 8 U.S.C. § 1357(a) (INA § 287(a)); otherwise, interior arrests proceed on warrant (Form I-200) and fall under § 236(a). *See Matter of Mariscal-Hernandez*, 28 I. & N. Dec. 666, 668–71 (B.I.A. 2022) (equating "reason to believe" with probable cause; warrantless arrests are exceptional). Mr. Roman Velasquez interior arrest should have been (and, on information and belief, was) effectuated pursuant to an I-200 warrant—placing him squarely within § 236(a).

36. Statutes must be read "with a view to their place in the overall statutory scheme," giving effect to every clause and word. *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted); *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). DHS's view collapses §§ 235 and 236, nullifies § 236(c)(1)(E), and contradicts the INA's structure.

37. Federal courts addressing DHS's new theory have rejected it and ordered relief, concluding § 236(a) governs noncitizens "already in the country."[1] Even under DHS's classification, constitutional avoidance and due process require meaningful review of whether mandatory detention actually applies (a *Joseph*-type inquiry), and courts must preserve habeas for unlawful detention. *See Jennings*, 583 U.S. at 303; *Clark v. Martinez*, 543 U.S. 371, 380–82 (2005); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

38. The equities here underscore the *Mathews v. Eldridge* balance: (1) Petitioner's profound liberty and family interests; (2) the high risk of erroneous deprivation from DHS's categorical no-bond stance (and the value of individualized hearings); and (3) minimal governmental burden to provide the longstanding process Congress preserved. *See* 424 U.S. 319, 333, 335 (1976).

39. On November 25, 2025, the U.S. District Court for the Central District of California in Maldonado Bautista, Et. Al. v Noem, 5:25-cv-01873, (C.D. Cal.) issued a nationwide class certification effectively rejecting Matter of Yajure Hurtado finding that section INA §236 and not INA §235(b)(2)(A) governs the detention of individuals such as Respondent

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[1] *See, e.g., Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2, *6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2267803, at *4–7 (S.D.N.Y. Aug. 8, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *4–7 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *11–16 (W.D. Wash. Apr. 24, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *Valdez v. Joyce*, No. 25-cv-4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025); *Ercelik v. Hyde*, No. 1:25-cv-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025); *Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025); *Cuevas-Guzman v. Andrews*, No. 1:25-cv-00759, 2025 WL 2617256, at *7 (E.D. Cal. Aug. 2025); *Alvarez-Martinez v. Noem*, No. 5:25-cv-00876, 2025 WL 2598379, at *4–5 (W.D. Tex. Aug. 2025); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-11641, 2025 WL 2609425, at *3 (E.D. Mich. Aug. 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099, at *5–7 (D. Ariz. Aug. 11, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *6–8 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411, at *4–6 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 1:25-cv-11631-BEM, 2025 WL 2403827, at *3–5 (D. Mass. Aug. 19, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, slip op. at 3–5 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *8–10 (W.D. La. Aug. 27, 2025).

in this matter. The Respondent is a member of this class, as he entered without inspection and was never apprehended at the border. See Exh 4, Pg. 15, Bond Eligible Class.

40. Because Mr. Roman Velasquez was arrested in the interior and (on information and belief) under warrant authority, § 236(a) governs his detention. DHS's attempt to shoehorn him into § 235(b)(2) is contrary to the statutory text, structure, and constitutional principles. He is entitled to release or, at minimum, a prompt bond hearing before an IJ applying the correct legal standard.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

41. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

42. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

43. Mr. Roman Velasquez's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

44. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has 29 years), Mr. Roman Velasquez is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including

aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

45. Respondents have deprived Mr. Roman Velasquez of his liberty interest protected by the Fifth Amendment by detaining him since November 20, 2025.

46. Mr. Roman Velasquez's detention is improper because he has been deprived of a bond hearing. A hearing is if anything a right to be heard, and here the immigration judge considered it a foregone conclusion that he was ineligible for bond, without considering the law or entertaining his counsel's arguments. Like the accused in criminal cases, habeas is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

47. Respondents' actions in detaining Mr Roman Velasquez without any legal justification violate the Fifth Amendment.

48. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

49. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION
Violation of Immigration and Nationality Act

50. Petitioner re-alleges and incorporates by reference the paragraphs 1-49.

51. Petitioner was detained pursuant to "authority contained in section 236" of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, DHS finds that Petitioner is detained subject to 8 U.S.C. § 1225(b)(2) and the IJ lacks jurisdiction under *Matter of Yajure Hurtado* on the same basis.

52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

53. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

54. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION
Fifth Amendment – Due Process
Denial of Opportunity to Contest Mis-Inclusion in Mandatory Category of Detention

55. Petitioner re-alleges and incorporates by reference the paragraphs 1-55.

56. Mr. Roman Velasquez has a vested liberty interest in preventing his removal because he is eligible for cancellation of removal and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk under 8 U.S.C. §1226(a).

57. For all of the above reasons, Respondents' attempts to detain Petitioner without a meaningful opportunity to be heard violate his Procedural Due Process rights under the Fifth Amendment.

FOURTH CAUSE OF ACTION
ADMINISTRATIVE PROCEDURE ACT

58. Petitioner re-alleges and incorporates by reference the paragraphs 1-57.

59. Respondents' continued efforts to deny Petitioner bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

60. As set forth in Count Two and Three, federal regulations and case law provide the procedure for a noncitizen in removal proceedings like Petitioner to seek a bond redetermination by an IJ.

61. In being denied the opportunity to return to his family, and pursue Cancellation of Removal in a non-detained court setting where he is free to gather the necessary evidence, Mr. Velasquez Munoz would be deprived of the right to freedom to lawfully pursue his rights in this civil matter. The Government's "no-review" provisions are a violation of his procedural and substantive due process and without any statutory authority. There is no timeframe or procedure for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Petitioner remains in custody.

62. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The

regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should hold that Petitioner is detained under § 236(a), not § 235(b), and order his immediate release or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing under § 236(a) in which Petitioner has a meaningful opportunity to show that he is not a danger or flight risk. Any contrary reliance on *Matter of Yajure-Hurtado* would unlawfully misapply the statute and deprive Petitioner of his rights under the INA, the APA, and the Due Process Clause.

FIFTH CAUSE OF ACTION
STAY OF REMOVAL CLAIM

63. Petitioner re-alleges and incorporates by reference the paragraphs 1-62.

64. The denial of a bond, followed by removal of Mr. Roman Velasquez from the United States would cause him irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.

65. The Court should grant the stay of Mr. Roman Velasquez's removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on bond, or at the very least, of his ability to prove he is not subject to mandatory detention and that he merits release on bond.

SIXTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM

66. Petitioner re-alleges and incorporates by reference the paragraphs 1-65.

67. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Roman Velasquez the opportunity for meaningful review of the unlawfulness of his detention and removal.

68. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Roman Velasquez satisfies these three requirements and may invoke the Suspension Clause.

69. First, although Mr. Roman Velasquez is not a U.S. citizen or resident, he has lived here for over 29 years, and he qualifies for cancellation of removal. Mr. Roman Velasquez has significant family connections in the United States as stated above. All of which establishes a substantial legal relationship with the United States.

70. Mr. Roman Velasquez satisfies the second factor because he was apprehended by DHS and remains detained in the United States.

71. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to decide whether Mr. Roman Velasquez is entitled to the writ.

72. There is no adequate alternative to a habeas petition. The refusal of the immigration court to grant Mr. Roman Velasquez the right to show he is mis-classified and that he is not subject to mandatory detention, without proper notice or due process, deprives him of his constitutional rights. The BIA cannot adequately and expeditiously review these issues.

SEVENTH CAUSE OF ACTION
INJUNCTIVE RELIEF

74. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

75. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. Id.

76. Respondents' actions have caused Petitioner harm that warrants immediate relief.

VII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's November 20, 2025, apprehension and continued detention of Mr. Roman Velasquez was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Issue an order directing Respondents to show cause why the writ should not be granted;

(4) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security;

(5) Enjoin ICE from transferring Mr. Roman Velasquez outside of the Southern District of Florida while this matter is pending;

(6) Grant the writ of habeas corpus ordering Respondents to release Mr. Roman Velasquez on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to conduct a bond hearing under which it correctly applies the statutes and no longer mis-classifies him as subject to mandatory detention, in the alternative order a hearing under *Matter of Joseph.*

(7) Grant any other relief that this Court deems just and proper.

PRAYER FOR EXPEDITED CONSIDERATION

Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests expedited consideration. Each day of unlawful detention inflicts irreparable harm on Petitioner and his U.S. citizen children, depriving them of their father's care, stability, and support. Prompt judicial intervention is necessary to protect Petitioner's constitutional rights and his family's well-being.

Respectfully submitted,

/s/ Jacqueline Delgado
Counsel for Petitioner
Delgado Law Group, LLC
631 Lucerne Avenue, Suite 26
Lake Worth Beach, Florida 33460
Tel: (561) 342-1429
jdelgado@delgado-law.com

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Mr. Roman Velasquez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 16th day of December, 2025.

/s/ Jacqueline Delgado
Counsel for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2025, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

U.S. Attorney's Office for the Southern District of Florida
Attn: Civil Division – Habeas / Immigration
99 NE 4th Street
Miami, FL 33132

Warden, Officer in Charge
Krome North Processing Center
18201 SW 12th Street
Miami, FL 33194

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 16th day of December, 2025.

/s/ Jacqueline Delgado
Counsel for Petitioner
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Official Website of the Department of Homeland Security

Report

Main Menu

Search Results: 1

DAVID ROMAN-VELAZQUEZ

Country of Birth : Mexico

A-Number: [redacted]

Status : In ICE Custody

State: FL

Current Detention Facility: KROME NORTH SPC

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EXHIBIT 1

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Bureau of Prisons Inmate Locator

To All ICE Employees
July 8, 2025

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Exhibit 2

Moving forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(IV), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
MIAMI KROME IMMIGRATION COURT

Respondent Name:
ROMAN VELASQUEZ, DAVID

To:
Fraga, Gina Marie
530 N. Federal Highway
Lake Worth, FL 33460

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
12/16/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☑ Denied, because
The opinion in Lazaro Maldonado Bautista et el v. Ernesto Santacruz Jr. et. al., 5:cv-01873, and grant of partial summary judgment does not constitute a judgment. See, e.g., Fed. R. Civ. P. 54(b). Accordingly, the Court finds that Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), remains in effect and this Court does not have jurisdiction over these bond proceedings.

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☐ Other:

Exhibit 3

Immigration Judge: Martyak, Christina 12/16/2025

Appeal: Department of Homeland Security: ☑ waived ☐ reserved
Respondent: ☐ waived ☑ reserved
Appeal Due: 01/15/2026

Certificate of Service

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To: [ ] Alien | [ ] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS
Respondent Name : ROMAN VELASQUEZ, DAVID | A-Number [redacted]
Riders:
Date: 12/16/2025 By: Zapata, Claudia, Court Staff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—
GENERAL

Case No.	5:25-cv-01873-SSS-BFM	Date	November 20, 2025
Title	*Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.*		

Present: The Honorable	SUNSHINE S. SYKES, UNITED STATES DISTRICT JUDGE

Irene Vazquez	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Petitioner(s): None Present	Attorney(s) Present for Respondent(s): None Present

Proceedings: (IN CHAMBERS) ORDER GRANTING PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING REQUEST TO ENTER FINAL JUDGMENT [DKT. NO. 42]

Before the Court is Petitioners Lazaro Maldonado Bautista, Ananias Pasqual, Ana Franco Galdamez, and Luiz Alberto de Aquino de Aquino's (collectively, "Petitioners") Motion for Partial Summary Judgment as to their First Amended Complaint seeking class relief. [Dkt. No. 42, "Motion"; Dkt. No. 15, "First Amended Complaint" or "FAC"]. Respondents Ernesto Santacruz Jr., Todd Lyons, Krista Noem, Pamela Bondi, and Feriti Semaia ("Respondents") have filed their Opposition to this Motion. [Dkt. No. 60, Opposition or "Opp."]. Petitioners filed their Reply on September 19, 2025. [Dkt. No. 62, "Reply"]. For the following reasons, Petitioners' Motion is **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 6, 2025, a series of coordinated immigration raids began across Southern California, resulting in the arrest and detainment of around 2,000

Exhibit 4

individuals per day that week.[1] This case centers around individuals directly affected by those events.

The Petitioners. Among the arrested were Petitioners, each of whom are foreign nationals arrested pursuant to warrants issued by Homeland Security Investigations ("HSI") and/or Immigration and Customs Enforcement ("ICE") agents on June 6, 2025, in downtown Los Angeles, California. [Dkt. No. 1 at 5–6; Dkt. No. 5-2 at 4, 8, 12, 17].[2] On the day of their arrests, Petitioners were each charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), or as being present without admission in the United States. [Dkt. No. 1 ¶¶ 43, 48, 53, 58].

Each of the Petitioners requested bond hearings, all of which were denied by an Immigration Judge ("IJ") between July 15, 2025, and July 22, 2025. [*Id.* ¶ 5; Dkt. No. 5-2, Exs. E, F, G, H, "Bond Orders"]. In each of the Bond Orders, the IJ cited to Section 235(b) of the INA (*i.e.*, 8 U.S.C. § 1225) as grounds for lack of jurisdiction. [*Id.*]. The Bond Orders were based in a recent change in policy by the Department of Homeland Security ("DHS").

The Policy Change. On July 8, 2025, the Department of Homeland Security (DHS) instituted a notice titled "Interim Guidance Regarding Detention Authority for Applicants for Admission." [Dkt. No. 5-2 at 45–46, "DHS Guidance Notice" or "DHS Policy"]. The Notice communicated DHS's choice, in coordination with the Department of Justice ("DOJ") to "revisit[] its legal position on detention and release authorities," determining that Section 235 of the Immigration and Nationality Act ("INA") would serve as the applicable immigration detention authority rather than Section 236 for all "applicants for admission." [*Id.*]. In other words, the change in policy requires ICE employees to consider anyone arrested in the United States and charged with being inadmissible as an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A). Under § 1225(b)(2)(A), "applicants for admission" are subject to mandatory detention for proceedings under 8 U.S.C. § 1229(a) and not entitled to the due process protections found within § 1226(a).

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[1] *See* Department of Homeland Security, *DHS Releases Statement on Violent Rioters Assaulting ICE Officers in Los Angeles, CA and Calls on Democrat Politicians to Tone Down Dangerous Rhetoric About ICE*, (June 7, 2025) [https://perma.cc/RJE5-PACW].

[2] Petitioner Franco Galdamez was arrested by Border Control agents around June 19, 2025, in Los Angeles during an ICE operation. [Dkt. No. 1 at 6].

Petitioners Seek Relief. Because of the new DHS Policy, Petitioners were denied bond hearings and remained in detention at the Adelanto Detention Center in Adelanto, California.

On July 23, 2025, Petitioners filed a Petition for Writ of Habeas Corpus raising several challenges against the DHS change in policy, including violations of 8 U.S.C. § 1226(a), the Fifth Amendment Right to Due Process, and the Administrative Procedure Act ("APA"). [Dkt. 1 at 20–21]. That same day, Petitioners filed an Application for a Temporary Restraining Order. [*See* Dkt. 5-1, Application for Temporary Restraining Order or "App."]. Petitioners requested that the Court enjoin Respondents from detaining Petitioners unless they are provided with individualized bond hearings before an IJ. [App. at 3]. Petitioners additionally sought an order to prohibit Respondents from relocating Petitioners outside this District pending final resolution of this litigation. [*Id.*]. This Court granted the application on July 28, 2025. [Dkt. No. 1; Dkt. No. 14, "TRO Order"].

Events Following the TRO. In granting the TRO, the Court ordered Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention. [*Id.* at 13]. On the same day the Court granted Petitioners' *ex parte* application for a TRO, Petitioners amended their complaint to include class allegations and requests for declaratory relief as to the legality of Respondents' policies relating to denying bond hearings. [*See generally* FAC].

Respondents then filed a response to the Court's order to show cause on August 8, 2025. [Dkt. 40]. This response provided evidence that each of the Petitioners was provided with an individualized bond hearing and subsequently released on bond. [*See id.*].

Current Posture. On August 11, 2025, Petitioners filed this Motion, seeking to declare the new DHS Policy as unlawful. Respondents filed their opposition on September 12, 2025, to which Petitioners have filed a response. [*See generally* Opp.; Dkt. No. 62, "Reply"].

Given the number of threshold issues in this matter, the Court first addresses concerns raised by Respondents regarding justiciability. The Court then considers the issues of statutory interpretation underlying the parties' disputes pertaining to the legality of the DHS Policy and its bearing on Petitioners.

II. JUSTICIABILITY

Article III "requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Once again, Respondents argue that provisions of the Immigration and Nationality Act ("INA") bar this Court from reviewing this matter. [Opp. at 18–20; *see also* Dkt. No. 8 at 6–11].

Moreover, ensuring subject-matter jurisdiction is an "independent obligation" on all courts, even in the absence of a challenge from any party. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006). Thus, the Court considers *sua sponte* any questions of the applicability of mootness.

A. Statutory Restrictions on Judicial Review

Respondents' Opposition argues that the INA "entrusts the Executive branch to remove inadmissible and deportable [noncitizens][3] and to ensure that [noncitizens] who are removable are in fact removed from the United States." [Opp. at 17]. The Court has no doubts that the INA confers the executive branch with the powers to faithfully execute the statute's aim. Indeed, Congress expressly precluded judicial review of certain matters within the INA. *See e.g.*, 8 U.S.C. §

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[3] This Order uses the term "noncitizenship" in place of "alienage" and "noncitizen" in place of "alien." The Court follows the U.S. Supreme Court and Ninth Circuit, where the use of the term "noncitizen" has become a common practice. *See Patel v. Garland*, 596 U.S. 328 (2022) (Barrett, J.); *United States v. Palomar-Santiago*, 593 U.S. 321 (2021) (Sotomayor, J.); *Barton v. Barr*, 590 U.S. 222, 226 n.2, (2020) (Kavanaugh, J.) ("This opinion uses the term 'noncitizen' as equivalent to the statutory term 'alien.'" (citing 8 U.S.C. § 1101(a)(3))); *Avilez v. Garland*, 69 F.4th 525 (9th Cir. 2023); *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018). Additionally, this Court thinks it is prudent to "avoid language that reasonable readers might find offensive or distracting—unless the biased language is central to the meaning of the writing." *Chicago Manual of Style Online* 5.253, https://www.chicagomanualofstyle.org/book/ed17/part2/ch05/psec253.html. As noted by the Ninth Circuit, "[t]he word alien can suggest 'strange,' 'different,' 'repugnant,' 'hostile,' and 'opposed[.]'" *Avilez*, 69 F.4th at 527 n.1 (citing *Alien*, *Webster's Third New International Dictionary* 53 (2002)). Accordingly, because the word "noncitizen" is synonymous and does not encompass such negative connotations, the Court finds "noncitizen" is a better word choice. *See Alien* and *Noncitizen*, *American Heritage Dictionary of English Language* 44, 1198 (5th ed. 2011).

1252(a)(2), § 1252(b)(9), § 1252(e)(3)(A). However, the issues presented in this case fall outside the areas in which the INA has stripped courts of jurisdiction.

The Court examines each subsection raised by Respondents in turn.

1. Section 1252(a) and Section 1252(b)(9)

Respondents argue that when reading § 1252(a) and § 1252(b)(9) together, the INA divests district courts of jurisdiction to review both direct and indirect challenges to removal orders. [Opp. at 19].[4] This is incorrect as to each of the sections of the INA read individually as well as read together.

As discussed in the TRO Order, Section 1252, titled "Judicial Review of Orders of Removal," contains a provision detailing "[m]atters not subject to judicial review." *See* 8 U.S.C. § 1252, § 1252(a)(2). Section 1252(a)(2) contains four subsections, which outlines categories of claims that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite to § 1225(b)(2)(A) or § 1226(a), which are the two statutory provisions that the Parties agree are at the heart of this matter. Thus, it remains that no part of § 1252 deprives this Court of jurisdiction.

Similarly, Respondents' jurisdictional challenge based in § 1252(b)(9) presents no new circumstances from the previous challenge raised in its opposition to Petitioners' TRO. [Opp. at 18–19]. As of the date of this Order, nothing in the record indicates that any orders of removal have been issued for any of the Petitioners. Consistent with this Court's TRO Order, § 1252(b)(9) channels review of "*final orders of removal*" to federal courts of appeals. [Reply at 5 (emphasis added); *see also* TRO Order at 4–5]. Without an order of removal, § 1252(b)(9)

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[4] In doing so, Respondents cite to *J.E.F.M. v. Lynch* for the proposition that "[t]aken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR process." [Opp. at 18 (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016)]. However, this fails to acknowledge the next sentence of that very opinion cites to another Ninth Circuit opinion that clarifies that "jurisdiction over removal proceedings is limited to review of final orders of removal." J.E.F.M., 837 F.3d 1031 (citing *Viloria v. Lynch*, 808 F.3d 764, 767 (9th Cir. 2015)).

alone does not bar this Court from reviewing Petitioners' Motion for Partial Summary Judgment regarding the legality of the new DHS Policy.

Therefore, these two sections of the INA do not independently nor jointly preclude judicial review.

2. Section 1252(e)(3)(A)

Finally, Respondents suggest § 1252(e)(3)(A) operates as a bar to review by this Court. [Opp. at 19–20]. Section 1252(e)(3)(A) provides that "[j]udicial 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" and limits challenges to the constitutionality of a section or regulation, or whether certain regulations, policies, or procedures are inconsistent with the INA or violates other laws. *See* § 1252(e)(3)(A).

According to Respondents, because Petitioners "challenge an alleged policy of detaining applicants for admission under § 1225(b)," any challenges must be brought within the District Court for the District of Columbia. [Opp. at 20]. Petitioners correctly argue that this argument misunderstands Petitioners' claims, as they maintain they are detained under § 1226 and are therefore entitled to receive bond hearings rather than remain in mandatory detention. [Reply at 6].

Because the premise of Petitioners' claim is that the proper governing authority over their detention is § 1226 rather than § 1225, the Court does not find § 1252(e)(3)(A) to strip this Court of jurisdiction.

B. Mootness

Moreover, ensuring subject-matter jurisdiction is an "independent obligation" on all courts, even in the absence of a challenge from any party. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006). Thus, the Court considers *sua sponte* any questions of the applicability of mootness to Petitioners' Motion.

The doctrine of mootness applies "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013). A case that becomes moot no longer presents a case or controversy, and thus cannot be properly before a federal court.

Respondents previously suggested Petitioners' Motion, as well as the entire case, is moot because Petitioners lost their stake in this litigation when they received bond hearings. [Dkt. No. 69 at 3–4]. Specifically, Respondents suggest

Petitioners' reliance on *Nielson v. Preap*, 586 U.S. 392, is improper. [*Id.* at 5–6]. According to Respondents, because Justices Thomas and Gorsuch declined to join in the jurisdictional portion of the majority opinion, this renders *Preap*'s mootness discussion as a non-binding discussion by a plurality. [*Id.* at 5].

But *Preap* presents little relevance here. In *Preap*, the parties disputed mootness where the district court had certified a class that comprised of individuals in the district subject to mandatory detention under 8 U.S.C. § 1226(c). *Preap*, 586 at 400. Because the named plaintiffs had received relief, the Government argued in *Preap* that the class action was mooted. *Id.* at 403–04.

Here, the Court has not yet considered Petitioners' class certification motion. Thus, *Preap*'s discussion of mootness presenting jurisdictional barriers there does not provide clear guidance here. Rather, the portion of *Preap* that resonates here is that some of the plaintiffs in *Preap* "faced the threat of re-arrest and mandatory detention." *Preap*, 586 U.S. at 403.

Before this Court are exclusively the legal issues presented by the named Petitioners regarding the legality of the new DHS Policy. The focus of the mootness inquiry is on whether Petitioners present a live controversy—not the Petitioners' relationship to the putative class.

Petitioners in this case have not received complete relief due to the real risk of re-arrest and mandatory detention. [Dkt. No. 63 at 9]. Petitioners cite to four instances since their Motion in which Respondents have again arrested and re-detained similarly situated individuals and subjected them to mandatory detention. [*Id.*]. Moreover, it has now become binding precedent in immigration courts that the DHS Policy is lawful. *See Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025),

This Court finds Petitioners still maintain a live controversy, by virtue of the exceptions to the mootness doctrine, namely, concerns regarding voluntary cessation. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

Respondents suggest Petitioners cannot establish any exception to mootness because any threat of re-detention is "completely speculative and premised on the assumption that [Respondents] will violate this Court's order." [Dkt. No. 69 at 7]. The underlying basis for Respondents' argument is self-defeating. As Respondents will have it, the threat of Petitioners' re-detention is "speculative," even though

Petitioners cite to cases indicating the exact circumstances from which they seek relief, because those cases are "distinct" in that those individuals "should have been subject to mandatory detention under § 1225(b)(2)." [*Id.* at 6–7]. But Respondents argue in their Opposition for that exact proposition: that "Petitioners are subject to detention under § 1225(b)(2) because they are applicants for admission." [Opp. at 20]. At Respondents' perhaps involuntary admission, these facts present a prototypical example of voluntary cessation.

As the Supreme Court stated, "a defendant cannot automatically moot a case simply by ending its unlawful conduct once sued." *Already*, 568 U.S. at 91. This doctrine supports the premise that "a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior." *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001). By seeking to view this case as moot ignores the reality that Respondents have acted upon and maintain their position that Petitioners are applicants for admission, and thus should be subject to mandatory detention under § 1225(b)(2). This case is very much still live, as Respondents have not demonstrated there is no reasonable expectation that Petitioners will not be re-arrested and re-detained.

*   *   *

Having established no jurisdictional barriers exist to adjudicating this Motion, the Court now considers Petitioners' Motion for Partial Summary Judgment.

III. LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" Fed. R. Civ. P. 56(a). A fact is material if the dispute over that fact may affect the outcome of the lawsuit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A court need not consider irrelevant and unnecessary factual disputes. *Id.* A dispute is genuine if a reasonable jury could return a verdict for the non-moving party based on the evidence. *Id.* The movant bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

To do so, the moving party must present evidence that either negates an essential element of the non-movant's case or demonstrates the non-movant does not have evidence sufficient to support its case. *Id.* If the movant has met its burden, the non-movant must set forth specific facts showing there is a genuine

issue for a trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In deciding a summary judgment motion, a court must believe the non-movant's evidence and draw all justifiable inferences in its favor. *Anderson*, 477 U.S. at 255.

IV. DISCUSSION

Petitioners' Motion for Partial Summary Judgment seeks to declare the new DHS Policy unlawful, and asks the Court to enter final judgment pursuant to Rule 54(b). [*See generally* Motion].[5] Respondents' Opposition argues, beyond the jurisdictional issues already discussed, Petitioners are not entitled to summary judgment where Congress has directed Petitioners and those similarly situated to be subject to mandatory detention. [Opp. at 20–30].

Because the parties appear to agree that there are no genuine disputes as to any material facts[6], the Court focuses on whether Petitioners are entitled to judgment as a matter of law. As reflected in the briefings, this is a question of statutory interpretation.

Before examining the statutory text at issue, the Court first provides a primer regarding the statutes, relevant developments to the statutes, and how they operate. Such background provides necessary context to evaluating the text of the statutory provisions. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

A. The INA and IIRIRA

The Immigration and Nationality Act of 1952 ("INA"), codified in Chapter 12 of Title 8 of the United States Code, governs all aspects of immigration law. *See* 8 U.S.C. §§ 1101 *et seq*. Forming the basis of current immigration laws of the United States, the INA addresses issues of admission qualifications for noncitizens,

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[5] The Motion further argues that prudential exhaustion is not required in this scenario. [*See* Motion at 36–41]. Respondents do not raise any objection to this argument, and the Court finds that prudential exhaustion may be waived for the same reasons discussed in its TRO Order. [*See* TRO Order].

[6] *See* Dkt. No. 60-1 (reflecting that Respondents only raises disputes to immaterial facts or "to the extent Plaintiffs make any mischaracterization of the law").

naturalization and loss of nationality, refugee assistance, and removal procedures for noncitizen terrorists. *Id.* *See also* Margaret C. Jasper, *The Immigration and Nationality Act of 1952*, LEGAL ALMANAC: THE LAW OF IMMIGRATION (2012).

As reflected in the subchapters of the INA, immigration law involves the interplay between the manifold issues arising from any noncitizen's arrival, stay, departure, or removal from the United States. *See e.g.*, § 1181(c) (cross-referencing the admission of refugees with the admission of immigrants); § 1201(b) (differentiating registration requirements for noncitizens based on classes enumerated in § 1101); § 1229(a) (cross-referencing grounds of inadmissibility as affecting removal proceedings); § 1301 (conditioning the issuance of visas in accordance with § 1201).

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which "substantially amended" portions of the INA's judicial review scheme with a "new (and significantly more restrictive) one." *Nken v. Holder*, 556 U.S. 418, 424 (2009). Along with its changes to the availability of judicial review, IRRIRA added § 1225 to the INA, which outlines expedited removal of a certain class of noncitizens. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). *See also Biden v. Texas*, 597 U.S. 785, 804 (2022). In contrast, the predecessor to the current language of § 1226 existed in the original INA. *See* INA of 1952, Pub. L. No. 414 (66 Stat. 200) (current version at 8 U.S.C. § 1226). Recently, Congress amended portions of § 1226 through the passage of the Laken Riley Act. Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025).

B. Evaluating Inadmissible Noncitizens

8 U.S.C. § 1225 and § 1226 govern how the executive branch evaluates inadmissible noncitizens. Logically speaking, inspection or apprehension of the noncitizen is a necessary precondition of removal. Only after a noncitizen is identified as inadmissible can removal proceedings happen.

Indeed, the Supreme Court has already differentiated these two sections, distinguishing their application by the category of noncitizens to which their provisions apply. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). *Jennings* held the Government may "detain certain [noncitizens] seeking admission into the country" under § 1225(b) while § 1226 "authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings." *Id.* (emphasis added).

In particular, the statutory language of § 1225 details the process by which immigration officers inspect noncitizens arriving in the United States, refer them for hearings, and initiate procedures for expedited removal. *See* § 1225(a) (defining the categories of individuals that immigration officers are to inspect and statements these individuals may provide at inspection); § 1225(b) (detailing the process for conducting inspections, including screening, interviews, and referrals); § 1225(c) (providing grounds for expedited removal involving security concerns); § 1225(d) (outlining immigration officers' authority relating to inspection). On the other hand, § 1226 describes how noncitizens may be apprehended and detained. *See* § 1226(a) (supplying an exhaustive list of scenarios noncitizens may face pending a removal decision, including being released on bond); § 1226(b) (describing the Attorney General's authority to revoke bond or parole); § 1226(c) (detailing the category of noncitizens that the Attorney General must take into custody); § 1226(d) (directing the Attorney General to create a system to identify criminal noncitizens); § 1226(e) (limiting judicial review of the Attorney General's discretionary decisions).

Beyond *how* noncitizens are identified as inadmissible, another distinction between these two sections is that noncitizens detained under § 1226(a) are entitled to receive bond hearings at the outset of detention. 8 C.F.R. §§ 236.1(d)(1). *See also Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018). As articulated by the Ninth Circuit, "§ 1226(a) stands out from the other immigration detention provisions in key respects." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (observing that § 1226(a) and its implementing regulations "provide extensive procedural protections that are unavailable under other detention provision"). Not only does § 1226(a) provide several layers of review of the agency's initial custody determination, but it also confers "an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change." *Id.*

Based on the undisputed facts, Petitioners were not inspected by immigration officers when arriving in the United States, and were already in the United States at the time of their arrest and being charged as inadmissible. [Dkt. No. 60-1 ¶¶ 18, 25, 26, 34, 42, 48].

Maintaining the position underlying their TRO, Petitioners argue that § 1226(a)—not § 1225(b)(2)—applies to them and those similarly situated.

[Motion at 23–36]. Respondents again argue that § 1225(b)(2) is the governing authority for "applicants for admission", which includes Petitioners. [Opp. at 20–29]. In simpler terms, the parties dispute whether Petitioners are "applicants for admission," a category dispositive of whether Petitioners are subject to mandatory detention pending their removal proceedings. If Petitioners are "applicants for admission," § 1225 governs, and they would not be entitled to bond hearings under § 1226(a).

But who is an "applicant for admission," and is that phrase relevant as to Petitioners?

C. Plain Language of the INA

Both parties assert that the plain language of the INA supports their interpretation. [Motion at 23, 29–30; Opp. at 20–21; Reply at 13]. Petitioners state the application of § 1226(a) "does not turn on whether someone has been previously admitted," and affords access to bond to noncitizens that are inadmissible. [Motion at 23]. Moreover, Petitioners argue that the text of § 1225 "reflects a limited temporal scope." [*Id.* at 29]. Because § 1225(b)(2)(A) requires an "active construction" of the phrase "seeking admission" for "applicants for admission," it cannot apply to Petitioners. [*Id.* at 30].

In response, Respondents argue Petitioners are "applicants for admission" because § 1225(b)(2) is a "catchall provision" that applies to all applicants for admission not covered by § 1225(b)(1). [Opp. at 21, (citing *Jennings*, 583 U.S. at 287)]. According to Respondents, "applicants for admission" "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." [Opp. at 21 (citing *Jennings*, 583 U.S. at 297)]. Such an argument relies on the assumption that "applicants for admission" encompasses *all* noncitizens coming into and already in the United States. If this assumption is true, then Respondents are correct. But this cannot be correct.

Respondents' argument is at odds with the plain language of the INA. Neither party contends with the definition section of the INA, which readily resolves this dispute over statutory interpretation.

1. The INA's Definition Section

The preeminent canon of statutory interpretation requires courts to "presume that [the] legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253–54 (1992).

Thus, even where the parties have advanced various arguments to support their competing interpretations, 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). Barring unusual cases, "[s]tatutory definitions control the meaning of statutory words." *Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949).[7]

Found in § 1101 is the INA's definition section. *See* § 1101(a)–(h). Relevant here, the INA defines "[noncitizen]" as "any person not a citizen or national of the United States"; "application for admission" as "the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa"; and "admission" and "admitted" as "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer. *See* §§ 1101(a)(3), (a)(4), (a)(13)(A).[8]

Later in the INA, § 1225(a)(1) provides 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." § 1225(a)(1). "Applicants for admission"—when replacing "admitted" with its definition from § 1101(a)(13)(A)—are noncitizens who have not "lawful[ly entered] into the United States *after inspection and authorization by an immigration officer*.'" *See* § 1101(a)(13)(A) (emphasis added); § 1225(a)(1).

In suggesting § 1225(b)(2) nevertheless encompasses Petitioners as "applicants for admission," Respondents ignore a crucial portion of *Jennings*. [Opp. at 21]. It is true that § 1225(b)(2) applies to "other [noncitizens]" who "is an applicant for admission, if the examining immigration officer determines that [a

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[7] The Court's holding would not create "obvious incongruities in the [statutory] language" or erase from the statute an entire subsection. *See Lawson*, 336 U.S. at 201. In fact, the Court's interpretation of the INA effectuates the provisions of *both* § 1225 and § 1226, where Respondents' position would render the latter superfluous.

[8] *Torres v. Barr* has already clarified that "applicant for admission" and "application for admission" are not interchangeable. *Torres v. Barr*, 976 F.3d 918, 926–27 (9th Cir. 2020). The Ninth Circuit concurred with the BIA, which had held that "the term 'applicant for admission' in the deeming provision of § 1225(a)(1) 'merely' determines [a noncitizen's] legal status for purposes of removal proceedings." *Id.* at 929.

noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2). But *Jennings* considered § 1226 as existing in harmony with § 1225(b)(2), where § 1226(a) "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings." 583 U.S. at 289.

Individuals who have not been inspected and authorized by an immigration officer lack the trait to be categorized as "applicants for admission." The statutory language of § 1225(b)(2) contemplates a determination by an "examining immigration officer" regarding a noncitizen's admissibility. *See* § 1225(b)(2). Nowhere in the record supports the existence of an examining immigration officer or a requisite determination of inadmissibility that would result in mandatory detention, as Respondents insist. When considering the statutory definitions of the INA and the plain text of § 1225, it is unambiguous that "applicants for admission" do not include noncitizens already in the United States like Petitioners—individuals that were not determined inadmissible by an "examining immigration officer."

This is further supported by the heading under which § 1225(a)(1) falls. This subsection falls under § 1225, which addresses "[i]nspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing." § 1225.

What category, then, do Petitioners fall under? Individuals who are present in the United States and have not been inspected and authorized by an immigration officers are merely part of the broadly defined term "[noncitizen]": any person not a citizen or national of the United States. § 1101(a)(4). As the plain language of § 1226(a) supports Petitioners' interpretation, and "no insuperable textual barrier" hinders this reading, the Court finds that § 1226(a) is the appropriate governing authority over Petitioners' detention. *See Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 321 (2014).

2. The INA's Statutory Scheme

Where neither § 1225 nor § 1226 are ambiguous, only Petitioners' interpretation of these statutes "produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 372 (1988). "[R]easonable statutory interpretation must account for both 'the specific context in which . . . language is used" and the 'broader context of the statute as a whole.'" *Utility Air Regulatory Group*, 573

U.S. at 321 (citing *Robinson v. Shell Oil Co.,* 519 U.S. 337, 341 (1997)). The Ninth Circuit previously recognized that INA is a "dense statute" that is to be read "against the backdrop of our constitutional principles, administrative law, and international treaty obligations." *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (citations omitted).

Petitioners argue that § 1225 and § 1226 are distinct regimes meant to address separate categories of noncitizens. The latter provides the "default detention authority" for all persons detained pending a removal decision, while the former has a limited temporal scope that concerns "inspection" and "expedited removal of inadmissible arriving [noncitizens]". [Motion at 24–29]. *See also Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499 at *17 (W.D. Wash. Sept. 30, 2025) (concluding that a "plain reading of [section 1226] implies that default discretionary bond procedures in section 1226(a) apply to noncitizens who . . . are 'present in the United States without being admitted or paroled' under section 1182(a)(6)(A) but *have not been* implicated in any crimes as set forth in section 1226(c)."). *See id.* (evaluating the language of § 1226 as "lend[ing] strong textual support that 'inadmissible' noncitizens . . . are included within section 1226").

Meanwhile, Respondents endorse an interpretation of § 1225 that effectively removes § 1226 from existence. Respondents attempt to downplay the consequences of their proposed position, stating that § 1226 is a mere redundancy in statutory drafting, or that it is "'congressional effort to be doubly sure' that such unlawful [noncitizens] are detained." [Opp. at 28]. Not so. If the Court were to accept Respondents' position that all noncitizens already in the country (regardless of whether they were inspected and authorized by an immigration officer) were "applicants for admission," then there would be no possible set of noncitizens to which § 1226(a) would apply. Put in another way, Respondents' proposed interpretation requires that any and all inadmissible noncitizens are also "applicants for admission." Such a premise cannot be harmonized with other portions of the INA. *See United States v. Castleman*, 572 U.S. 157, 178, (2014) (Scalia, J., concurring in part and concurring in the judgment) (explaining that the "presumption against ineffectiveness" means "that Congress presumably does not enact useless laws"). *See also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 174–79 (2012) (regarding the rule against surplusage).

There must be an appreciable or meaningful distinction between § 1225 and § 1226.[9] The text of these subsections reveals a crucial difference in their treatment of detention. Detention under § 1226 is permissive; detention under § 1225 is mandatory. The Ninth Circuit previously concluded "permissive and mandatory descriptions are in harmony, as they apply to different situations." *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015).

Thus, Respondents' expansive interpretation of "applicants for admission" would effectively nullify a portion of the INA through the DHS's legislative or interpretive exercise of power. Neither is appropriate under the separation of powers. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024) (establishing that "[t]he views of the Executive Branch could inform the judgment of the Judiciary, but [do] not supersede it."). Meanwhile, Petitioners' interpretation—that § 1226(a) is the governing authority and that they are not "applicants for admission—is not contrary to the statutory scheme of the INA. *See generally* § 1226. Nowhere in § 1226 is the phrase "applicants for admission," "admission," or "admitted" used in the context raised in § 1225.

Absent Congressional action that repeals and revises § 1226(a), the directive that the Attorney General must either continue to detain the noncitizen or release the noncitizen on bond or parole persists. Respondents unacceptably collapse § 1226 into nonexistence under a wide-reaching interpretation of "applicants for admission." [*See* Reply at 8 (arguing Respondents' view would render § 1226(a) meaningless in despite a recent legislative amendment)].

Where statutory language is unambiguous and "the statutory scheme is coherent and consistent," the Court must end its inquiry. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989). Because the Court finds the

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[9] The Court acknowledges certain other district courts disagree with this Court's interpretation. *Barrios Sandoval v. Acuna, et al.*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (holding that the "plain text" of § 1225(a)(1) includes "any [noncitizen] physically present in the United States who has not been admitted"). *Cirrus Rojas v. Olson, et al.*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (same); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (same). *See also Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (denying a preliminary injunction on those grounds).

statutory provisions to be unambiguous and consistent with only Petitioners' interpretation, there is no need to engage with canons of construction, legislative history and intent, implementing regulations, or agency practice. [*See* Motion at 32–42; Opp. at 25–29].[10]

Accordingly, the Court **GRANTS** Petitioners' Motion for Partial Summary Judgment.

V. PETITIONER'S REQUEST FOR FINAL JUDGMENT

Petitioners also request the Court to enter final judgment pursuant to Rule 54(b). [Motion at 40–41]. Although the Opposition does not provide argument as to this request, the Court **DENIES** this request.

Rule 54(b) provides that "[w]hen an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. Proc. 54(b). Because Petitioners have filed a pending motion for class certification, the Court finds final judgment would be inappropriate. [*See* Dkt. No. 41].

VI. CONCLUSION

Consistent with the discussion above, Petitioners' Motion for Partial Summary Judgment is **GRANTED**. [Dkt. No. 42]. The Court further **DENIES** Petitioners' Request to enter final judgment.

IT IS SO ORDERED.

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[10] Even if the Court were to consider the parties' alternative arguments, Petitioners' interpretation still presents more meritorious arguments. *See Rodriguez v. Bostock*, 2025 WL 2782499 at *21–26 (considering arguments regarding canons of construction, legislative history, and agency practice and concluding the same).