UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

NOE NAHUN TORRES REYES,

Petitioner,

v.

PAMELA BONDI, et. al.,

Respondents.

Case No: 8:25-cv-4143-MJM

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND REPLY TO RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner Noe Nahun Torres Reyes ("Mr. Torres")[1], through undersigned counsel, files this Opposition to Respondents' Motion to Dismiss and Reply to Respondents' Opposition to the Petition for a Writ of Habeas Corpus. *See* ECF Nos. 8, 8-1. Respondents claim that the Court should dismiss this action pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(1) for lack of jurisdiction, as well as FRCP 12(b)(6) for failure to state a claim for which relief can be granted. As part of their argument to dismiss pursuant to FRCP 12(b)(6), Respondents also oppose the petition for a writ of habeas corpus because Respondents believe that Mr. Torres is properly detained under 8 U.S.C. § 1225(b)(2). The Court should deny the Respondents' Motion to Dismiss and grant Mr. Torres's petition for a writ of habeas corpus.

[1] In the original petition, Counsel referred to Petitioner as Mr. Reyes. However, Mr. Torres is more appropriate, as Torres is his first last name. Counsel apologies for any confusion this may cause.

OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Legal Standards

To hear a claim, a court must have subject-matter jurisdiction or the authority to issue a decision over the type of case at hand. Respondents may challenge the court's authority to hear a case through a motion to dismiss pursuant to FRCP 12(b)(1). If the court does not have subject-matter jurisdiction to hear the case, the court should dismiss the action; however, if the petitioner establishes that the court indeed has subject-matter jurisdiction, the court cannot dismiss the action pursuant to FRCP 12(b)(1) *See Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). The court should consider the claims in the petition as evidence as well as any evidence outside the petition to determine whether the court may hear the claim. *Id.*

Additionally, a Respondent may also request that the court dismiss an action if Respondents believe that the petition does not state a claim upon which relief can be granted pursuant to FRCP 12(b)(6). Petitions must state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

I. The Court Has Subject-Matter Jurisdiction to Consider the Petition for a Writ of Habeas Corpus and Should Grant Mr. Torres's Petition for a Writ of Habeas Corpus.

Respondents contend that this court cannot review their decision to subject Mr. Torres to mandatory detention under 8 U.S.C. § 1225, claiming that 8 U.S.C. § 1252 strips the court of jurisdiction. ECF No. 8-1 5. This position is inapposite to the history of the writ of habeas corpus and is incorrect as a matter of law. Indeed, courts have held they had jurisdiction in identical cases. *See, e.g.*, *Leal-Hernandez v. Noem*, -- F.Supp.3d --, 2025 WL 2430025 (D. Md. 2025) (Rubin, J.); *Hernandez Hernandez v. Crawford*, 2025 WL 2940702 (E.D. Va. 2025); *Hasan v. Crawford*, --- F. Supp. 3d --- 2025 WL 2682255 (E.D. Va. 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. 2025); *Garcia Jimenez v.*

Kramer, 2025 WL 2374223 (D. Neb. 2025). Historically, "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Munaf v. Geren*, 553 U.S. 674 (2008) ("Habeas is at its core a remedy for unlawful executive detention.").

Respondents claim that three different subsections within 8 U.S.C. § 1252 strip the Court of jurisdiction to hear Mr. Torres's claims: sections 1252(e)(3)(A), 1252(g), and 1252(b)(9). ECF No. 8-1 at 5-7. All these arguments fail.

Section 1252 is generally titled "Judicial review of orders of removal." Thus, this section is meant to remove federal courts' jurisdiction from reviewing orders of *removal* within several types of removal proceedings but does not strip federal courts of jurisdiction to review a noncitizen's custody status. First, Congress specifically instructed that federal courts cannot review final orders of removal other than orders of removal without a hearing under section 1225(b)(1) (expedited removal order). 8 U.S.C. § 1252(a)(1). The statute then clarifies that a federal court cannot review certain claims arising from expedited removal proceedings: (1) any cause of action involving "the implementation or operation of an order of removal pursuant to section 1225(b)(1)"; (2) the Attorney General's decision to use the provisions of section 1225(b)(1); (3) the government's application of that section to individual noncitizens, including determinations under section 1225(b)(1)(B); and (4) the procedures used to implement section 1225(b)(1). *See generally id.* § 1252(a)(2)(A). The only exception to these rules is codified in section 1252(e).

The provisions in subsection (e) do not support Respondents' position. Respondents claim that section 1252(e)(3)(A) precludes this court from reviewing Mr. Torres's detention because only claims pursuant to this section can be heard in the U.S. District Court for the District of

Columbia. ECF No. 8-1 at 5. However, Respondents are mistaken; reading 1252(e) in its entirety makes clear that this subsection only strips this Court of jurisdiction to review a *removal order* issued pursuant to 8 U.S.C. § 1225(b)(1). It does not, as Respondents claim, prevent the Court from determining whether Mr. Torres's *detention* is lawful. Further, Respondents do not claim that Mr. Torres is detained under section 1225(b)(1); rather, Respondents allege that he is detained pursuant to section 1225(b)(2). Thus, section 1252(e)(3)(A) clearly does not strip this Court of reviewing Mr. Torres's detention in a habeas corpus proceeding.

Next, Respondents contend that 8 U.S.C. § 1252(g) strips the court of jurisdiction in this case. Respondents argue that section 1252(g) deprives federal courts of jurisdiction to review any claims arising from the federal government's decision to initiate or pursue removal proceedings, including a habeas corpus petition. ECF No. 8-1 at 6. However, the plain meaning of the statute does not support Respondents' position. Again, the general title of section 1252 is "Judicial Review of *Orders of Removal*". (emphasis added). Subsection (g) reads "[N]o court shall have jurisdiction to hear any cause of claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

Respondents interpret this language to sweep in all challenges to Department of Homeland Security actions. ECF No. 8-1 at 6. This judicial district and others have rejected this reading of § 1252(g) time and time again. *See e.g.*, *Leal-Hernandez*, 2025 WL 2430025, at *5; *Hernandez Hernandez*, 2025 WL 2940702, at *2. Importantly, since custody and bond proceedings are separate and apart from removal proceedings, a noncitizen need not have an ongoing removal proceeding to request a custody redetermination hearing before the immigration judge. *See* 8 C.F.R. § 1003.19(d); Executive Office for Immigration Review ("EOIR") Immigration Court

Practice Manual Chapt. 9.3(b) ("An Immigration Judge has jurisdiction over [custody] cases *even if a charging document has not been filed.*") (emphasis added).

Mr. Torres's habeas corpus petition does not challenge the three distinct decisions outlined in § 1252(g). *See generally* ECF No. 1. He is not challenging the decision to place him in removal proceedings or the adjudication of those proceedings, nor is there a removal order in his case. Because bond and custody proceedings are separate and apart from removal proceedings, this Court has jurisdiction over Mr. Torres's habeas corpus petition.

Third and finally, Respondents assert that 8 U.S.C. § 1252(b)(9) precludes judicial review of all questions of law and fact arising from "any action taken or proceeding brought to remove a [noncitizen] from the United States." ECF No. 8-1 at 7. This contention also fails.

This court and dozens of others rejected Respondents' interpretation of 8 U.S.C. § 1252(b)(9), finding that the provision does not preclude judicial review of the government's decision to detain a noncitizen. *Leal-Hernandez*, 2025 WL 2430025, at *6 (stating that § 1252(b)(9) is part of a statutory scheme that "requires review of removal orders to be undertaken by the Court of Appeals" and is not related to the Petitioner's arguments about his detention); *See Hasan v. Crawford*, 2025 WL 2682255, at *4 ("Section 1252(b)(9) does not insulate detention orders from judicial review because they are 'separate and apart from' orders of removal") (citing 8 C.F.R. § 1003.19(d)); *Lopez Santos v. Noem*, 2025 WL 2642278, at *3 (W.D. La. 2025); *Ozturk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025) (rejecting a § 1252(b)(9) jurisdictional challenge when a petitioner sought review of detention without a bond hearing because, "even if [petitioner's detention] claims have a relationship to pending removal proceedings, her claims do not themselves challenge removal proceedings and thus § 1252(b)(9)'s channeling function has no role to play.") (citations omitted).

The government attempts to paint § 1252(b)(9) with such a wide brush that it would consider any decision the government made during "immigration proceedings" to be barred from judicial review. This court rejected this argument in *Leal-Hernandez*. 2025 WL 2430025, at *6; *see also Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (noting that "an expansive interpretation of § 1252(b)(9) would lead to staggering results" and cautioning that "[i]n past cases, when confronted with capacious phrases like 'arising from,' we have eschewed 'uncritical literalism' leading to results that 'no sensible person could have intended.').

Here, Mr. Torres is not challenging the Respondents' decision to place him into removal proceedings. Rather, he challenges Respondents' incorrect statutory application to keep him detained, which effectively subjects him to detention though the entirety of his removal proceedings when he is entitled to release. Furthermore, the misapplication of this statute violates constitutional protections afforded to Mr. Torres. This challenge is properly within the Court's jurisdiction. *See Jennings*, 583 U.S. at 291-96 (analyzing habeas jurisdiction to challenge detention without an individualized bond hearing).

The three subsections of 8 U.S.C. § 1252 that Respondents rely upon to argue that this Court does not have subject-matter jurisdiction over Mr. Torres's habeas corpus petition do not support their position. This Court clearly has subject-matter jurisdiction over this petition. Thus, the Court should deny Respondents' motion to dismiss.

II. Mr. Torres Has Alleged a Claim Under Which Relief Can Be Granted and the Court Should Grant His Petition for a Writ of Habeas Corpus.

Respondents argue that the Court should dismiss Mr. Torres's habeas corpus petition because he has not stated a claim upon which relief can be granted. They contend that this is so because they have properly subjected Mr. Torres to mandatory detention under 8 U.S.C. § 1225(b).

However, those arguments fail. Respondents have improperly applied section 1225, and the proper statute controlling his detention is 8 U.S.C. § 1226.

A. Mr. Torres Is Not an Applicant for Admission Under 8 U.S.C. § 1225.

First, Respondents claim that because Mr. Torres is an applicant for admission, he must be detained. Respondents rely on the definition of an applicant for admission at 8 U.S.C. § 1225(a)(1) and ignore other relevant sections of the INA. ECF No. 8-1 at 8-10.

For example, § 1101(a)(4), which Congress noted are the definitions for the entire INA, defines an 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." (emphasis added). The INA's definitions go on to define the terms "admission" and "admitted" as "the lawful *entry* of the alien *into* the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Importantly, any noncitizen paroled pursuant to 8 U.S.C. § 1182(d) is not considered admitted to the United States. *Id.* § 1101(a)(13)(B).

Further, 8 U.S.C. § 1225(a)(3) shows that Mr. Torres is not an applicant for admission. Section 1225(a)(3) statute states that "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission *or readmission to or transit through the United States* shall be inspected by immigration officers." (emphasis added). Thus, the plain language of the statute shows that the noncitizens in question are requesting to physically enter the United States.

Also, § 1225(b)(2)(A) uses the term "applicant for admission" in the context of an immigration officer determining whether a noncitizen seeking admission, *in the present tense*, is entitled to enter. Thus, an applicant for admission is only a person who is requesting to physically enter the United States. *See Leal-Hernandez*, 2025 WL 2430025, at *10; *see also Hasan*, 2025 WL 2682255, at *8; *DHS v. Thuraissigiam*, 591 U.S. 103, 114 (2020) (noting that the noncitizen

was stopped within 25 yards of the U.S.-Mexico border and subject to 8 U.S.C. § 1225(b)(1)).

Respondents state that Mr. Torres is subject to mandatory detention because he is in removal proceedings under 8 U.S.C. § 1229a[2], and because he is an applicant for admission. However, the INA makes clear that Mr. Torres is not an applicant for admission.

B. Mr. Torres Is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(2)(A).

Next, Respondents allege that because Mr. Torres is an applicant for admission and he is seeking admission, he is subject to mandatory detention under § 1225(b)(2)(A). ECF. No 8-1 at 10-21. Their arguments here also fail.

Section 1225(b)(2)(A) states:

> Subject to subparagraphs (B) [exceptions] and (C) [treatment of aliens arriving from contiguous territory], in the case of an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(emphasis added). Respondents' reading of this subsection inherently relies on a mistaken understanding of who is an "applicant for admission," as described above. Further, Respondents contend that this subsection does not only apply to arriving aliens, but to any noncitizen present in the country without having previously been admitted in a lawful immigration status.

However, this argument does not make sense given a holistic reading of section 1225(b)(2). First, in subsection 1225(b)(2)(B), Congress found that exceptions to the rule include crewmen (those with crewman visas seeking entry into the country in that status), a noncitizen to whom

[2] Respondents cite to *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011). In that case, the BIA held that DHS has the discretion to place noncitizens into expedited removal proceedings or regular removal proceedings because the word "shall" in 8 U.S.C. § 1225(b)(1)(A)(i) does not actually mean shall. Instead, it means "may." Perhaps the word "shall" in § 1225(b)(2) also means "may," and thus, Mr. Torres is not subject to *mandatory* detention.

section 1225(b)(1) applies, and stowaways (people attempting to enter the United States by hiding inside a vessel or vehicle). All these potential exceptions apply to true applicants for admission, or those seeking entry into the United States at or close to the border or at a port of entry.

Second, subsection 1225(b)(2)(C) allows for noncitizens arriving (present tense) by land from a contiguous territory to be returned to that contiguous territory pending removal proceedings. Again, this exception applies to noncitizens who are attempting to arrive into the country at the time the immigration officer makes the determination that they are subject to section 1225(b)(2). The statute makes no mention of noncitizens who have already entered and resided in the United States.

The regulatory definitions of arriving alien do not help Respondents. According to 8 C.F.R. §§ 1.2 and 1101.1(q), an arriving alien is "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." Again, an arriving alien must also be an applicant for admission. The entirety of § 1225(b)(2) hinges on the noncitizen being an applicant for admission, which Mr. Torres is not.

To further support this argument, Respondents rely on the Board of Immigration Appeals' ("BIA") recent decisions. ECF No. 8-1 at 12-14. Importantly, the Court need not defer to the BIA's decisions. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The BIA decisions are also based on flawed reasoning.

The first case Respondents rely upon is *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that case, the BIA upheld an immigration judge's decision that noncitizens who entered

the country without inspection who then later detained are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The BIA further concluded that if a noncitizen has not been admitted, then he or she is seeking admission. *Id.* at 221. The BIA explained that noncitizens who enter without inspection are not admitted. 29 I&N Dec. at 228. However, the BIA's interpretation of the statute, and thus Respondents' interpretation, is flawed.

In coming to this decision, the BIA the BIA conflated two distinct issues: the issue of custody and the issue of removal. The BIA used the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Division C of Pub. L. No. 104-208, 110 Stat. 3009-546 to state that those who enter without inspection should be detained because, in the BIA's view, Congress meant to keep all noncitizens who entered without inspection detained. *Id.* at 224.

The BIA reasoned that Congress changed the law because prior to 1996, exclusion proceedings were for noncitizens who were unable to physically enter the United States. *Id.* at 222-23. Deportation proceedings, on the other hand, were for anyone who successfully entered the country, whether lawfully or unlawfully. *Id.* The new scheme after IIRIRA created inadmissibility and deportability, and removal proceedings were then initiated on that basis. *Id.* at 223. In turn, Congress restricted the equities and privileges of a person who entered unlawfully, which makes sense given the full statutory scheme: it should be harder to ***remove*** a person who has been lawfully admitted than someone who was never lawfully admitted, whether by virtue of requesting entry at the border or entering the United States without inspection. *Compare* 8 U.S.C. § 1182 *with* 8 U.S.C. § 1227 (showing that there are more inadmissibility grounds than deportability grounds, and thus it is harder to be lawfully admitted to the United States or permitted to stay than to be deported from the country after a lawful admission); *see also Matter of Yajure Hurtado*, 29 I&N Dec. at 223-24.

Therefore, *Matter of Yajure Hurtado* is flawed and does not support Respondents' position. The BIA's reasoning stands to mean that anyone who is inadmissible is subject to mandatory detention. However, IIRIRA, which the BIA relies upon heavily, does not stand for that proposition.

Respondents also rely on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) for support, but oversimplify its holding and applicability, or rather inapplicability, to this case. There, immigration authorities encountered the noncitizen while she was entering the United States, only 100 yards north of the U.S.-Mexico border. 29 I&N Dec. at 67. Immigration authorities arrested her without a warrant and then released her from detention on parole pursuant to 8 U.S.C. § 1182(d)(5)(A). *Id.* Later, immigration authorities detained her again and placed her in removal proceedings under 8 U.S.C. § 1229a, charging that she was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a person present in the United States without being admitted or paroled. *Id.* The noncitizen argued that she was eligible for bond under 8 U.S.C. § 1226(a) and not § 1225(b). *Id.*

The BIA explained that the only way one may be released from custody when detained pursuant to 8 U.S.C. § 1225(b) is through the parole authority at § 1182(d)(5)(A). *Id.* at 67-69. However, if that parole is terminated, the noncitizen must return to custody from which he or she was paroled. 8 U.S.C. § 1182(d)(5)(A). *Id.* at 69-70. Because the noncitizen in Q. Li fit squarely into those clear, statutory rules, the BIA found that she was ineligible for bond under § 1226(a). *Id.* at 71.

This case does not support Respondents' argument that Mr. Torres is rightfully detained. He, unlike Q. Li, successfully entered the United States without encountering immigration authorities. He was never detained and never issued parole. This shows that he is not an applicant for admission or subject to detention under § 1225(b)(2)(A).

Respondents also rely on *Jennings*, 583 U.S. 281 for support. But *Jennings* supports Mr. Torres's position. Respondents lean heavily on *Jennings* deeming § 1225(b)(2) a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." ECF No. 8-1 at 15. *Jennings* clearly states that § 1225(b) governs "[noncitizens] seeking admission into the country" whereas § 1226(a) is the "default rule" governing the detention of noncitizens "already present in the United States." 583 U.S. at 288-289, 303; *see also Abreu v. Crawford*, 2025 WL 51475, at *3 (E.D. Va. 2025) ("There is a statutory distinction between noncitizens who are detained upon arrival to the United States and those who are detained after they have already entered the country, legally or otherwise."). As the Court went on to describe, ". . . § 1225(b) applies primarily to [noncitizens] *seeking entry into* the United States ("applicants for admission" in the language of the statute)." 583 U.S. at 297. Later, the Court states, "As noted, § 1226 applies to [noncitizens] already present in the United States." *Id.* at 303. Thus, *Jennings* clearly supports Mr. Torres's position that he is not subject to detention under any subsection within § 1225. Rather, he is undoubtedly detained pursuant to § 1226(a), and Respondents have improperly subjected him to unlawful detention based on a flawed legal theory.

Additionally, Respondents believe that Congress's grammar choices support their reading of the statute. They argue that the statute's use of the word "seeking" means that anyone who entered the United States without inspection is always seeking admission, regardless of the passage of time. ECF No. 8-1 at 18-19. Respondents' reliance on *Jimenez Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021) is likewise misplaced. ECF No. 8-1 at 19-20. In that case, the Fourth Circuit was only considering whether immigration judges, as persons acting on behalf of the Attorney General, could grant inadmissibility waivers under 8 U.S.C. 1182(d)(3)(A)(ii). 996 F.3d at 191. The court specifically declined to analyze the text of the statute as outside the scope of the appeal.

Id. at 194. Despite using a footnote to quickly address the statute and looking to § 1225(a)(1) for guidance, the Fourth Circuit was not reviewing the detention statutes under § 1225. At least one jurist in this Circuit found this argument unpersuasive. *See Hernandez Hernandez*, 2025 WL 2940702 at *3 n.3 (Trenga, J.).

Any other interpretation of the phrase "seeking admission" would require the Court to find that "seeking", in the present tense, could also mean "was seeking" or "has sought". Accepting Respondents' position would mean we could ascribe whatever meaning we want to a phrase, regardless of the natural rules of the English language.

Respondents do not dispute that Mr. Torres is a noncitizen already present in the United States. In Respondents' Exhibit 2, Mr. Torres's Notice to Appear ("NTA") notes that he is a noncitizen "present in the United States who has not been admitted or paroled." The officer that issued Mr. Torres's NTA had the opportunity to designate him as an arriving alien but instead checked the box indicating that he was *already present* in the United States. REX 2 (Notice to Appear); *see Leal-Hernandez*, 2025 WL 2430025, at *9-10 ("Petitioner had been present in the United States for more than 20 years at the time of his arrest, which the Government does not contest. Indeed, the Government tacitly (if not explicitly) concedes he is not an 'arriving alien' in the very document that charges him as removable[.]")

The record in this case is clear that immigration authorities encountered Mr. Torres inside the United States and charged him with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) as a person who is "present *in* the United States without being admitted or paroled *or* who arrives in the United States at any time or place other than as designated . . .". (emphasis added). He was also charged as inadmissible under 8 U.S.C. § 1182(a)(7)(a)(1)(I), which requires that he be applying for (or seeking) admission. *See* REX 2. This second charge is a recent DHS practice to

make Mr. Torres *appear to be* an applicant for admission, despite DHS marking that Mr. Torres is already present in the United States. REX 2. Considering Respondents' own acknowledgement that Mr. Torres is already present in and not arriving into the United States, Respondents' position is untenable. Mr. Torres is neither an applicant for admission nor is he seeking admission. Thus, Mr. Torres is not subject to mandatory detention under § 1225(b)(2)(A).

C. 8 U.S.C § 1226 Is the Proper Authority Under Which Mr. Torres is Detained.

Respondents also contend that because § 1225(b)(2)(A) uses specific mandatory language, as opposed to the permissive language of § 1226(a), it should govern because the permissive language is more "general" than the mandatory language. ECF No. 8-1 at 21 n.9.[3] (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)). If applying § 1226(a) in this case would render § 1225(b) meaningless as Respondents argue, then it would be reasonable to expect that an immigration court, the Board of Immigration Appeals ("BIA"), the federal district and circuit courts, or the U.S. Supreme Court would have identified such a grave shortcoming before today – after all, for the past 25 years, § 1226(a) *has* been applied in cases such as these, all under the watchful eye of the aforementioned agencies and courts.

Respondents further argue that the statute demonstrates that an applicant for admission is seeking admission, even if that creates redundancy when reading the entire statute; thus, Respondents argue, the redundancy should not result in rewriting or practically omitting another portion of the statute. ECF No. 8-1 at 22-23. Mr. Torres agrees but based on a more realistic reading of the statute. Again, Respondents are limiting themselves to the definitions in § 1225. They blatantly ignore the definitions of "application for admission", "admission", and "admitted." 8 U.S.C. §§ 1101(a)(4), 1101(a)(13)(A). When reading the INA, the only reasonable conclusion is

[3] Mr. Torres refers the Court to footnote 2, *supra* 8.

that an applicant for admission or someone seeking admission is a person seeking to physically enter the United States. Respondents are asking the court to rewrite the statute, despite the definitions in § 1101 applying to the entire INA. *Id.* § 1101(a) ("As used in this Act-").

Moreover, Respondents contend that their reading of § 1225(b)(2)(A) does not make the Laken Riley Act's (Pub. L. 119-1, 129 Stat. 3 (2025)) additions to 8 U.S.C. § 1226(c)(1) (criminal grounds of mandatory detention) superfluous. ECF No. 8-1 at 22. Respondents fail to acknowledge that the Laken Riley Act's additions to the statute in § 1226(c)(1)(E) *specifically address and mandate detention for noncitizens inadmissible under § 1128(a)(6)(A)(i)* – the same group of noncitizens that Respondents claim to be *already* automatically subject to mandatory detention under its novel interpretation of §§ 1225 and 1226. To the extent that Respondents put forth this argument to make another point, that is unclear.

Finally, Respondents note that while no jurist in this district has agreed with their position, other courts have done so. Those courts "have recognized that the Government is permitted to enforce existing laws more strictly when a new Administration comes into office." ECF No. 8-1 at 25. Mr. Torres does not disagree that the government can enforce existing laws. However, the enforcement must be lawful. Mr. Torres does not oppose the initiation of his removal proceedings. But law and justice demand that he be detained pursuant to the proper authority, which is § 1226. Because Respondents have unlawfully applied § 1225(b) to Mr. Torres, his detention is illegal. The court should deny the motion to dismiss and grant his petition for a writ habeas corpus.

D. Mr. Torres Is a Maldonado Bautista Class Member and Should Be Granted a Custody Redetermination or Bond Hearing.

Finally, Respondents claim that the declaratory judgment from the class action suit *Maldonado Bautista v. Santacruz*, 2025 WL 3678485 (C.D. Cal 2025) does not apply to Mr. Torres. They claim the declaratory judgment in that case does not have preclusive effect outside

of that judicial district. ECF No. 8-1 at 26. Essentially, they argue that the December 18, 2025, order grants relief that is specifically does not. Their argument is an oversimplification of the lawsuit and the Central District of California's findings and order.

The *Maldonado Bautista* ruling applies to Mr. Torres. It is true that the individual petitioners requested writs of habeas corpus, which is proper to challenge their own detention. However, in the class action complaint, the petitioners, on behalf of the requested class, also filed a suit under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702, 706 and requested preliminary injunction pursuant to FRCP 65. Count three of the complaint alleged that Respondents violated the APA by subjecting all noncitizens residing in the United States to mandatory detention under 8 U.S.C. § 1225(b)(2). *See generally* PEX 1, attached.

The Central District of California addressed the Respondents' instant concerns in its December 18, 2025, order. The government had argued that habeas corpus relief displaced the APA claims, and that habeas corpus was the proper remedy. 2025 WL 3713987 at *12-15. The Central District of California found, however, that a request for habeas relief and APA claim can coexist. 2025 WL 3713987 at *14 (citing *J.G.G. v. Trump*, 772 F. Supp. 3d 18, 31 (D.D.C. 2025)). The court explained that if the petitioners in that case requested classwide declaratory *habeas* relief, then that relief would only apply to members of the class in the Central District of California. *Id.* (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). Finally, the court described how vacating government policy is an appropriate remedy for an APA violation. *Id.* at *15-16.

The court specifically stated, "This is *not*, however, an order by the Court to require Respondents to provide *habeas relief* for all class members across the nation." *Id.* at 29 (emphasis added). Then, the court explained how the court can grant a declaratory judgment vacating the unlawful detention policy under the APA. *Id.* at *29-32. The court certified the following class:

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

Id. at *32.

Ultimately, the court granted partial summary judgment in favor of the noncitizens and vacated the DHS detention policy under the APA, *not* habeas corpus relief. *Id.* Thus, the court found that for all class members, the DHS policy is unlawful. It follows that those in the bond eligible class, like Mr. Torres, are detained under 8 U.S.C. § 1226(a) and are entitled to a bond hearing.

E. Detaining Mr. Torres Pursuant to 8 U.S.C. § 1225 Violates His Due Process Rights.

In their motion to dismiss and opposition, Respondents did not address Mr. Torres's allegations regarding the violation of his due process rights. However, in his support of his opposition to the motion to dismiss, particularly the FRCP 12(b)(6) motion, Mr. Torres makes those arguments here.

Importantly, Mr. Torres is not arguing that the mandatory detention provision itself is violative of due process, but rather that the Respondents' *application* of that provision to him violates his due process rights. ECF No. 1 ¶¶ 42-63. Further, due process does not end at the process afforded in the INA. Finding so would dangerously undermine long standing and core principles of this legal doctrine. *Zadvydas v. Davis* made clear that due process is "guaranteed [and] applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." 533 U.S. 678, 693 (2001) (internal quotations omitted); *see also United States v. Lopez-Collazo*, 824 F.3d 453, 461 (4th Cir. 2016) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after

proceedings conforming to traditional standards of fairness encompassed in due process of law." (quoting *Shaughnessy v. United States* ex rel. *Mezei*, 345 U.S. 206, 212 (1953))).

In many other habeas corpus cases in this circuit, Respondents have argued that there is no substantive due process violation here because Mr. Torres's liberty interest is weaker than the government's interest in immigration enforcement. Respondents are subjecting Mr. Torres to arbitrary restraint on his bodily freedom because the Respondents have misclassified him as subject to the no-bond detention scheme of § 1225(b)(2). This unequivocally violates his substantive due process rights.

Further, while the government does have an interest in immigration enforcement, there is no reason to conclude that the discretionary detention scheme of § 1226(a) does not properly serve this interest. *See Hasan*, 2025 WL 2682255, at *4. Neither in Mr. Torres's immigration court proceedings, nor in these proceedings, have Respondents cited any evidence that would indicate that Mr. Torres is a danger to the community or a flight risk. Mr. Torres has every incentive to pursue relief from removal in immigration court, as he is eligible for cancellation of removal for non-permanent residents, a form of relief that can *only* be sought in immigration court. 8 U.S.C. § 1229b. Indeed, the government's actions raise the question of "'whether the detention is not to facilitate deportation, or to protect against the risk of flight or dangerousness, but to incarcerate for other reasons.'" *Id.* at *13.

Even one day spent in detention is an affront to Mr. Torres's constitutional rights, considering that Respondents are subjecting him to an unlawful mandatory detention schema that courts nationwide have soundly rejected and that was previously unobserved in the decades of custody redetermination practice. These harms are not speculative, and the Respondents' attempts to minimize them are unavailing and indicative of their lack of concern for the Constitution.

Respondents' procedural due process analysis, as argued in other cases in this circuit, minimize Mr. Torres's liberty interest and impermissibly inflates the government's interest in the instant case. First, it is worth noting that Respondents' arguments are premised on the erroneous conclusion that Mr. Torres is subject to mandatory detention under § 1225(b)(2) and that he has been afforded all process he is due under this statute.

First, it is well established in sister districts within this circuit that noncitizens who Respondents have erroneously subjected to no-bond detention have a significant liberty interest at stake. *See Hasan*, 2025 WL 2682255, at *11; *Luna Quispe v. Crawford*, 2025 WL 2783799, at *8 (E.D. Va. 2025) ("Petitioner's interest at stake is his bodily freedom, the "most elemental of liberty interests"',); *Quispe-Ardiles v. Noem*, 2025 WL 2783800, at *9 (E.D. Va. 2025). Courts in other circuits have found that this classification deprives noncitizen petitioners of their due process rights as well and are ordering petitioners' release. *J.U.*, 2025 WL 2772765; *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. 2025); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. 2025).

Respondents have also contended that noncitizens' liberty interest is diminished because their release would assist an ongoing violation of U.S. law. This argument is nonsensical. Just as in the instant case, "Respondents fail to recognize that releasing Petitioner on bond . . . does not preclude the government from moving forward with its removal proceedings against Petitioner at the appropriate time." *Luna Quispe*, 2025 WL 2783799, at *8. The government's ability to remedy an "ongoing violation of U.S. law" is served through removal proceedings, not blanket mandatory detention of all noncitizens who lack legal status in the United States.

Regarding the second *Mathews* factor, Respondents have argued that noncitizens can seek

parole under 8 U.S.C. § 1182(d)(5)(A). The idea that Mr. Torres could seek parole from detention for "humanitarian reasons or a significant public benefit" does not comport with procedural due process. Parole is vastly different than bond, as a neutral fact finder is not involved; rather, Respondent DHS adjudicates those requests solely based on discretion. Thus, the agency responsible for erroneously classifying Mr. Torres as a no-bond detainee in the first place would also be responsible for adjudicating his parole request. *See* § 1182(d)(5)(A) ("The *Secretary of Homeland Security* may . . . *in his discretion* parole into the United States temporarily under such conditions as he may prescribe *only on a case-by-case basis*") (emphasis added). It is illogical to expect Mr. Torres to seek parole from the very agency that has unconstitutionally detained him.

Respondents' argument as to the third *Mathews* factor, that the government has a significant interest in continued mandatory detention, also fails because mandatory detention is "valid where it advances a legitimate governmental purpose," such as "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *J.U.*, 2025 WL 2772765, at *10. Respondents have put forth no arguments that the discretionary detention scheme of § 1226(a) would not also serve these legitimate interests. *See Luna Quispe*, 2025 WL 2783799, at *9 (analyzing this exact argument and concluding similarly). Additionally, Mr. Torres is not subject to a final removal order, so the Respondents' argument that the public has an interest in "prompt execution of removal orders" is unavailing.

Notably, EOIR, through Respondent Bondi and in collusion with Respondents from DHS, have concocted this new mandatory detention scheme and in turn violated DOJ regulations. *See* Memorandum, *Interim Guidance Regarding Detention Authority for Applicants for Admission*, DHS ICE (July 8, 2025); Memorandum from Rodney S. Scott, U.S. Customs and Border Protection Commissioner, *Detention of Applicants for Admission* (July 10, 2025). The Supreme

Court has held that generally, when a federal agency fails to comply with its own regulations, the actions that follow are unlawful, resulting in the *Accardi* Doctrine. *United States ex. Rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Maldonado de Leon*, 2025 WL 2968042 at *9. The Accardi Doctrine stands for the idea that if an agency does not afford a person of individual safeguards that the agency's own regulations require, then the ultimate agency decision may be invalidated. *United States v. Morgan*, 193, F.3d 252, 266 (4th Cir. 1999). The Supreme Court also requires that a claimant demonstrate prejudice due to the violation. *Am. Farm Lines v. Black Ball Freight Serv.*, 379 U.S. 532, 538-39 (1970). Because the regulations implementing the INA at 8 C.F.R. §§ 236.1(d), 1003.19, and 1236.1(d) are meant to protect noncitizens like Mr. Torres, Respondents have violated his due process rights under the *Accardi* doctrine. *See Maldonado de Leon*, 2025 WL 2968042 at *9.

For these reasons, the Court should find that Mr. Torres's unlawful mandatory detention violates his due process rights. Thus, the Court should deny Respondents' FRCP12(b)(6) motion and grant his petition for a writ of habeas corpus.

CONCLUSION

Respondents have not established that the Court should dismiss this action under FRCP12(b)(1) and 12(b)(6). Further, their opposition to Mr. Torres's petition for a writ of habeas corpus is based on flawed logic and improper readings of the relevant statutes at issue. For these reasons, the Court should deny the motion to dismiss and grant Mr. Torres's petition for a writ of habeas corpus.

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Respectfully submitted,

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01/06/2026
Date

CERTIFICATE OF SERVICE

I certify that on January 6, 2026, a copy of the foregoing Opposition to Respondents' Motion to Dismiss and Reply to Respondents' Opposition to the Petition for a Writ of Habeas Corpus and attached exhibits were served on Respondents' counsel via the Court's CM/ECF system.

//S// Doran Michelle Shemin
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