UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALISHER SMANOV,

Petitioner,

v.

MICHAEL ROSE, *et al.*,

Respondents.

Civil Action No. 26-cv-211

Petitioner's Reply in Support of the Petition for Writ of Habeas Corpus

The Hon. Joseph F Leeson, Jr.
District Judge

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

INTRODUCTION

In response to Respondents' response to the Court (Dkt. 4), Petitioner submits this reply in support for his petition for writ of habeas corpus and concur that a decision may be decided on the papers. Petitioner's habeas rests on the familiar argument that he is being unlawfully detained without bond under 8 U.S.C. § 1225(b)(2) (i.e., mandatory detention without the prospect of release on bond), and that section 1226(a) governs his detention. *See* Pet., Dkt. 1, *generally.* Respondents failed to sufficiently state a bond hearing was required in this matter if their legal argument fails about mandatory detention.

Distinguishing this case among the countless alien habeas petitions filed since late 2025, this case warrants immediate release because of the egregious violation of Petitioner's Fourth Amendment rights. Immigration and Customs Enforcement (ICE) officials barged into his residence without a warrant and seized him for immediate detention. Violating Petitioner's constitutional rights warrants, at a minimum, immediate release, rather than ordering a bond hearing. If Petitioner is subsequently determined to be a danger or flight risk, then ICE has a remedy: a custody redetermination before an Immigration Judge (an option that was already available before Petitioner's warrantless arrest and detention). This habeas petition should require immediate release as a warning to compel Respondents to lawfully detain.

Numerous courts have rejected Respondents' new legal interpretation of 8 U.S.C. § 1225(b)(2) that reverses decades of past agency understanding and implementation of alien detention. The Board of Immigration Appeals' (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and this interpretation of 8 U.S.C. § 1225(b)(2), have been rejected

by the vast majority of courts, including those within the Third Circuit (and more than 100 to date in this district).[1]

STATEMENT OF FACTS

Respondents, for the purposes of responding to this habeas petition only, "does not dispute other facts or characterizations thereof stated in the petition (except if the petitioner claims he has been "admitted" to the United States)." *See* Dkt. 4 at 3.

Petitioner entered the United States from Mexico into California around January 30, 2023. *See* Dkt. 1 para. 2. Government officials detained and released him on an Order of Release on Recognizance (OREC) and to report for ICE check-ins in the future. *See* Dkt. 1 para. 3; 1-3 (Exh. C). ICE issued and filed a Notice to Appear (NTA) with the Executive Office for Immigration Review, charging him as an alien who entered the U.S. without admission or inspection under 8 U.S.C. § 1182(a)(6)(A)(i). *See* Dkt. 1-3 (Exh. A). Petitioner was charged with aggravated assault on November 23, 2023. *See* Dkt. 1-3 (Exhs. D, E). The disposition was stricken off. *See* Dkt.. 1-3 (Exh. E). Newly obtained corroborating evidence is filed with this Reply to explain (1) Petitioner demanded a trial on November 24, 2023, after charges were filed by Cook County State's Attorney's Office; (2) On December 13, 2023, the State's Attorney's Office made a motion to abandon the prosecution against Petitioner and Petitioner repeated a demand for trial; and (3) the State of Illinois was not able to meet their burden of proof before the 160-day tolled on the criminal

[1] *See, e.g., Rios Porras v. O'Neill*, No. 25-cv-6801, 2025 WL 3708900 (E.D. Pa. Dec. 22, 2025) (Beetlestone, C.J.); *Pereira v. O'Neill*, 2025 WL 3516665 (E.D. Pa. Dec. 8, 2025) (Marston, J.); *Conde v. Jamison*, No. 25-cv-6551, 2025 WL 3499256 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Del Cid v. Bondi*, No. 25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025).

complaint. *See* Jan. 16, 2026 Letter by Aaron Rosenblatt, Esq., *to be filed* Dkt. 5-1 (Exh. G). In sum, Petitioner has no criminal convictions in the United States.

Petitioner timely filed for asylum with the Immigration Court that had jurisdiction over his case, qualified for work authorization and a social security number, and lived in our country for two years without re-detention on the basis of flight risk or danger. *See* Dkt. 1 para. 4, 41. He moved to Philadelphia with his friend Izetulla, who previously lived with him in Chicago. *See* Dkt. 1 para. 40.

On January 12, 2026, Izetulla was driving Petitioner's car when ICE law enforcement stopped him. Law enforcement pulled Izetulla out of the vehicle and questioned him. Law enforcement confiscated his phone, car keys, and personal belongings. Law enforcement asked Izetulla if Petitioner owned body armor. *See* Dkt. 1 para. 42.

ICE entered Petitioner's home without a warrant signed by a federal judge and detained him without his or Izetulla's consent, as conceded by Respondents. *See* Dkt. 1 paras 4, 43.

Newly discovered evidence, as reported in the news, details that ICE now believes it can enter homes without a warrant under presumed regulatory and policy authority, in direct violation of the Fourth Amendment of the Constitution of the United States. *See* Rebecca Santana, *Immigration officers assert sweeping power to enter homes without a judge's warrant, memo says*, A.P. News (Jan. 21, 2026), *to be filed* Dkt. 5-2 (Exh. H); Whistleblower Aid Letter to Congress (Jan. 7, 2026), including Memorandum from Acting ICE Director Todd Lyons on Utilizing Form I-205, Warrant of Removal (May 12, 2025), *to be filed* Dkt. 5-3 (Exh. I).

ARGUMENT

I. RESPONDENTS' JURISDICTIONAL ARGUMENTS FAIL.

Federal district courts have jurisdiction to decide petitions for writs of habeas corpus. 28 U.S.C. § 2241(a) ("Writs of habeas corpus may be granted by ... the district courts."). "Habeas

jurisdiction . . . is not the same thing as subject-matter jurisdiction." *Khalil v. President, United States of America*, No. 25-2162, 2026 WL 111933 at *8 (3d Cir. Jan. 15, 2026) (explaining that the former implicates personal jurisdiction).

District Courts adhere to two essential principles of habeas law: "(1) the district-of-confinement rule and (2) the immediate custodian requirement." *Id.* at *8. "Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 428 (2004) (explaining this rule prevents habeas forum shopping); *accord*, *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025). With respect to subject-matter jurisdiction, however, in some immigration cases, certain provisions of the INA "limit an alien's ability to collaterally attack (challenge) ongoing immigration proceedings through habeas," *Khalil*, No. 25-2162 at *8, including: 8 U.S.C. §§ 1252(a), (b)(9), and (g).

Contrary to all the arguments Respondents raise, these three provisions fail to bar this Court from issuing a writ of habeas corpus.

A. Section 1252(g) is inapplicable to this petition.

Petitioner does not, at any point in his Petition or these proceedings, challenge the Attorney General's authority to commence or adjudicate proceedings. And section 1252(g) only strips this Court of jurisdiction "to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). *See also Reno v. Am.-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999) (finding Section 1252(g) "applies only to the three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders' " and not to the

"many other decisions or actions that may be part of the deportation process") (emphases in original); *accord Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret [the language in § 1252(g)] to sweep in any claim that can technically be said to "arise from" the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.").

Congress targeted these three stages because at each stage the former INS has discretion to abandon the endeavor, and at the time § 1252(g) was enacted, the former INS routinely had been defending suits challenging its exercise of discretion in deportation cases. *DeSousa v. Reno*, 190 F.3d 175, 182 (3d Cir. 1999) (internal citations omitted). Interpreting § 1252(g) beyond those three discrete actions – as Respondents ask this Court to do – would treat § 1252(g) as an extremely broad provision that would apply to every deportation-related challenge, because every such challenge could be deemed a suit related to the commencement or adjudication of removal proceedings. *Id.* The Supreme Court and the Third Circuit have explicitly rejected such a broad interpretation of § 1252(g), instead finding that it is "a narrow" provision. *Id.*

Petitioner does not, at any point in his Petition or these proceedings, challenge the three specific decisions made by the executive that are covered by § 1252(g): decisions to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." Petitioner's detention pursuant to § 1225(b)(2) may occur during—but is nonetheless independent of—his removal proceedings. Accordingly, § 1252(g) does not strip this Court of jurisdiction.

B. Section 1252(b)(9)'s "Zipper Clause" and *Khalil* are inapplicable to this petition because Petitioner's custody challenge is collateral to his removal proceedings.

Petitioner's claim does not arise from Respondents' actions taken to remove him from the United States, so section 1252(b)(9) fails to strip this Court of jurisdiction.[2] Respondents contend sections 1252(b)(9) (referring to actions or proceedings taken to remove an alien from the United States) and 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal" unless a petition for review is filed with an appropriate court of appeals) are read together as provisions diverting all claims relating to removal proceedings to a court of appeals post-removal order. *See* Dkt. 4 at 8.

Respondents cherry pick from *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), in support of their claim that taken together, sections 1252(a)(5) and (b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the petition for review process. *See* Dkt. 4 at 9. The Court in *J.E.F.M.,* on the very next page, goes on to "distinguish[] between claims that 'arise from' removal proceedings under § 1252(b)(9)—which must be channeled through the PFR process—and claims that are collateral to, or independent of, the removal process." *J.E.F.M.*, 837 F.3d at 1032. The *J.E.F.M.* Court then re-affirmed the long-standing principal "that § 1252(b)(9) *does not apply to federal habeas corpus provisions* that do not involve final orders of removal." *Id.* (emphasis added).

Section 1252(b)(9) does not strip the Court of jurisdiction because the question here—whether a bond hearing is required prior to detention—is collateral to the removal process. *See Jennings*, 583 U.S. at 292–95 (Alito, J.) (reasoning for a plurality of the Court that because the class was not challenging "an order of removal," a "decision to detain [the noncitizen] in the first

[2] "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.... [N]o court shall have jurisdiction ... to review such an order or such questions of law or fact." 8 U.S.C. 1252(b)(9).

place or to seek removal," or "the process by which [a noncitizen's] removability will be determined," Section 1252(b)(9) did "not present a jurisdictional bar" to the Court's consideration of whether Sections 1225 and 1226 require detention without a bond hearing); *E.O.H.C. v. Secretary, U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 185–86 (3d Cir. 2020) (citing the plurality's discussion in *Jennings* with approval and "distill[ing]" that discussion to "a simple principle"—Section 1252(b)(9) does "not strip jurisdiction when aliens seek relief that courts cannot meaningfully provide alongside review of a final order of removal"); *Khalil*, No. 25-2162, 2026 WL 111933 at *12 (explaining that the plurality's "reading defines the proper scope of § 1252(b)(9)").

The Third Circuit's opinion in *Khalil* is distinguishable from the facts in this case. In *Khalil*, the petitioner was a lawful permanent resident determined by the Secretary of State to be removable under an Immigration and Nationality Act (INA) provision permitting removal of a noncitizen causing potentially serious adverse foreign policy consequences. *See Khalil*, No. 25-2162, 2026 WL 111933 at *2. The petitioner sought habeas relief in federal district court but the Third Circuit held section 1252(b)(9) stripped the district court of subject matter jurisdiction. *See id.* at *8. The Third Circuit distinguished *E.O.H.C.*, stating that the petitioner's challenge to his ongoing detention was not "wholly collateral to the removal process," but instead "inextricably linked to it" and therefore, a petition for review of a final order of removal was the proper jurisdictional avenue to seek release. *Id.* at *9.

Petitioner's challenge is not "inextricably linked" to his removal process. Just like the petitioner in *Jennings*, Petitioner here is not "challenging the decision to detain [him] in the first place or to seek removal; and [he is] not even challenging any part of the process by which [his] removability will be determined." *Jennings*, 583 U.S. at 294. Rather, Petitioner is challenging his

detention under § 1225 and his entitlement to a bond hearing. *Jennings* holds that § 1252(b)(9) does not bar this Court from hearing his claim. The question is not capable of review once the immigration courts issue a final order of removal. *Khalil*, No. 25-2162, 2026 WL 111933 at *12 (distinguishing a case where petitioners did not challenge the decision to detain them but rather the bond procedures used, and two cases that "challenged only the length of confinement without a bond hearing, a claim that does not get channeled into the [petition for] review process"); *cf. id.* at *11 ("Because the arguments Khalil has offered to challenge the detention necessarily challenge the government's decision to commence removal proceedings, the [petition for review] court will be able to review those legal questions once the Board enters a final order of removal." (quotation marks omitted)).

C. Section 1252(a)(2)(B)(ii) is inapplicable to this petition because the choice between detention statutes is not a discretionary determination but a legal question.

Section 1252(a)(2)(B)(ii) strips jurisdiction from this Court if Petitioner challenged a discretionary decision. Petitioner is not challenging a discretionary decision. Nor is the Petitioner necessarily challenging the "charges of inadmissibility" lodged against him. Petitioner is challenging his detention under § 1225 and his entitlement to a bond hearing. This is a "pure[ly] legal question about which section governs. If it's 1225(b), then detention is mandatory. No discretion. If it's 1226, then due process protections apply, and a bond hearing is mandatory. No discretion." *Kashranov v. Jamison*, No. 25–cv–05555, 2025 WL 3188399, at *4 (E.D. Pa. Nov. 14, 2025). Threshold legal questions and are "not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *see also Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639, at *1 (E.D. Pa. Nov. 13, 2025) ("Finally, 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar jurisdiction because Petitioner is not challenging a discretionary decision to deny him bond, but is instead

challenging the Government's position, as a matter of statutory interpretation, that no bond hearing is required.").

II. EXHAUSTION IS UNNECESSARY FOR HABEAS CORPUS PETITIONS AND ADMINISTRATIVE REMEDIES ARE FUTILE.

Except when required by statute, exhaustion of administrative remedies is not an inexorable command, but is a matter of sound judicial discretion. That discretion must be guided by the rationales advanced for the judicially created exhaustion doctrine." *Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 970 (3d Cir. 1980); *see also McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). "[E]ven when courts might otherwise require exhaustion, they may excuse it when, for instance, 'waiver, estoppel, tolling or futility' applies." *United States v. Dohou*, 948 F.3d 621, 628 (3d Cir. 2020) (quoting *Wilson v. MVM, Inc.*, 475 F.3d 166, 174 (3d Cir. 2007)). The exception is appropriate when the decisionmakers in the administrative process will almost certainly reject petitioner's requested relief. *See, e.g., Bradshaw v. Carlson*, 682 F.2d 1050, 1052 (3d Cir. 1981); *Cantu-Cortes*, No. 25-cv-6338, 2025 WL 3171639, at *1.

Exhaustion is not mandated by statute in habeas proceedings. *See Kashranov,* No. 25-cv-05555, 2025 WL 3188399, at *4. And the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), makes it unlikely that the BIA will reconsider the issue soon. Thus exhaustion becomes an empty formality. *See McCarthy*, 503 U.S. at 148. So this Court may proceed in reviewing the petition.

III. CONSTITUTIONAL AND STATUTORY VIOLATIONS REQUIRE A REMEDY .

Petitioner reaffirms that he is eligible for habeas relief, which he can seek because he "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490 (1989).

A. Respondents violated Petitioner's Fifth Amendment right to due process by detaining him without first requesting a custody redetermination hearing to assess flight risk and danger.

The Fifth Amendment "prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the states, from depriving any person of life, liberty, or property without 'due process of law.' " *See Dusenbery v. United States*, 534 U.S. 161 (2002). The Supreme Court has consistently held that "some form of hearing is required before an individual is finally deprived" of such an interest. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). These protections extend to the "millions of aliens within the jurisdiction of the United States." *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (finding that the "Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law."). However, "[t]he fact that all persons, aliens and citizens alike, are protected by the Due Process Clause does not lead ... to the conclusion that all aliens must be placed in a single homogeneous legal classification." *Id.* at 78. And in *Demore v. Kim,* 538 U.S. 510 (2003), the Court noted that "it is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523.

To determine whether a claimant's detention violates his due process rights, federal courts apply the balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The *Mathews* test requires courts to weigh the following factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335. "To access the constitutionality of non-criminal detention, including in the immigration context, the Court assesses and weighs each of these factors to determine if an individual was afforded the appropriate level of procedural due process." *See Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 44 (M.D. Pa. 2025) (internal citations omitted). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews*, 424 U.S. at 334 (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

1. *All three factors in* Mathews v. Eldridge *weigh heavily in favor of Petitioner.*

First, the private interest, Petitioner's liberty, is a fundamental liberty. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Fifth Amendment Due Process] Clause protects."). Commitment for any purpose is a significant deprivation of liberty that requires due process protection. *Jones v. United States*, 463 U.S. 354, 361 (1983). At this stage in the *Mathews* calculus, the Court must consider the interest of the *erroneously* detained individual. *Carey v. Piphus,* 435 U.S. 247, 259 (1978)

Second, Petitioner's risk of an erroneous deprivation of his liberty interest is particularly high. The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Petitioner has raised significant and supported legal arguments against Respondents' detention of Petitioner under §1225(b). Petitioner is not a flight risk nor a danger to his community yet he remains detained. He remained out of custody without incident requiring re-detention, residing in Philadelphia with his roommate. ICE's own assessment determined his release in 2023 without advance notice of custody revocation. And the

government's sudden policy reversal after 28 years of interpreting 8 U.S.C. §§ 1225 and 1226 demonstrates an arbitrary decision to obtain a policy goal of increased detention and deportation of noncitizens.

As evinced in the underlying petition before this Court, individuals in the Petitioner's situation historically were held under section 1226(a)'s discretionary provisions but Petitioner is now being held in mandatory detention through an agency extension of section 1225(b)(2)(A)'s mandatory detention provisions against him. And, "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). The unilateral decision by the BIA to use *Matter of Yajure Hurtado* to extend a different statute to Petitioner's circumstances despite historically applying 1226(a) now leaves his liberty interest at risk. Petitioner contends that the Respondents may not now extend the bounds of their authority to apply § 1225(b)(2)(A) against him, and this Court must ensure proper application of the laws against Petitioner.

Third, the United States has an interest in meaningful immigration laws that advance its stated policies. However, the United States has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied under the proper means. It is not appropriate to utilize the "wrong" statute against any person to ensure their continued detention. Respondents may not choose unilaterally when and how to apply duly enacted laws.

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas,* 533 U.S. at 690. Respondents have provided no evidence or argument that Petitioner is either a flight risk or a danger, and the record would indicate that he is neither. He has a timely filed I-589, Application for Asylum

pending with EOIR, and has work authorization and a social security number. Respondents cannot show that their interest in detaining Petitioner without first conducting a custody redetermination hearing outweighs Petitioner's liberty interests; nor can they show that the effort and cost of providing Petitioner with procedural safeguards is burdensome.

Accordingly, all three *Mathews* factors weigh heavily in support of Petitioner.

B. Respondents detained Petitioner in violation of the Fourth Amendment.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances "where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas* at 690. Barging into a home without a signed judicial warrant to detain Petitioner requires nothing less than immediate release.

Entry "into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant." *Steagald v. United States*, 451 U.S. 204 (1981). Egregious violations of the Fourth Amendment and widespread violations of the Fourth Amendment transgress fundamental fairness and trigger the exclusionary rule in civil proceedings. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050–51 (1984); *Oliva-Ramos v. Att'y Gen.*, 694 F.3d 259, 270, 276–81 (3d Cir. 2012).

Without Petitioner's consent, his roommate's consent, or a warrant, ICE officials detained Petitioner in his home. ICE conducted a deliberate, planned operation by taking Izetulla's keys and driving to Petitioner's residence. ICE officials knew they were entering a home. They should have known a judicial warrant was required. They took Izetulla's keys without consent. No

emergency justified a warrantless entry. No authorization was granted to enter Petitioner's home. Yet ICE entered the home, where the Fourth Amendment provides the highest amount of protection. *See Payton v. New York*, 445 U.S. 573, 590 (1980). And ICE is now training officers verbally to ignore written guidance and adopt the position in their new memo about warrantless entry into a home. *See* Dkt. 5-3 (Exh. I).

Given that the violation of Petitioner's rights was so egregious, immediate release is the remedy. If he is actually a flight risk or danger to the community, ICE can seek a custody redetermination before an Immigration Judge and provide evidence to establish that detention is warranted. The appropriate remedy in this matter is immediate and unconditional release, *not* a bond hearing before an immigration judge. After all, the Supreme Court has also recognized that "Habeas has traditionally been a means to secure *release* from unlawful detention." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (emphasis in original). Several decisions from the Eastern District have ordered immediate release in similar cases. *See eg. Rodrigues Pereira v. O'Neill*, et al. No. 25-6543, Dkt. 11 (E.D. Pa. Dec. 8, 2025); *Morocho v. Jamison, et al.*, No. 25-05930, 2025 WL 3296300, at *3 (E.D. Pa. Nov. 26, 2025); *Diallo v. O'Neill, et al.*, 25-06358, Dkt. 10 (E.D. Pa. Nov. 26, 2025); *Patel v. McShane, et al.*, 25-05975 (E.D. Pa. Nov. 20, 2025). The Court should not depart from this norm.

C. Respondents detained Petitioner in violation of the Immigration and Nationality Act.

Respondents aver that "Petitioner falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement." Dkt. 4 at 12. Respondents concede, however, that Petitioner entered near the United States-Mexico border and was not then admitted and make the illogical leap that this qualifies him as "an applicant for admission" when in fact his entry was factually the

antithesis of applying for admission. *Id.* And Petitioner instead was released on recognizance and should have only been re-detained under 8 U.S.C. § 1226.

For decades, Respondents, immigration courts, and federal courts have not interpretated this "unambiguous language" in this way. "The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). The flood of habeas cases nationwide on this matter suggest Petitioner's interpretation is the correct one. *See, e.g., Barco Mercado v. Francis et al.*, No. 25-06582, Dkt. No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025); *Del Cid*, No. 25-cv-00304, 2025 WL 2985150; *Cantu-Cortes,* No. 25-cv-6338, 2025 WL 3171639; *Kashranov,* No. 25-cv-05555, 2025 WL 3188399; *Zumba v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025).

The crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226. Section 1225(b)(2)(A) provides that "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" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) "mandate[s] detention of applicants for admission until [removal] proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals detained following examination § 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)).

Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Under § 1226(a), "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The government then "may

continue to detain the arrested" noncitizen during removal proceedings or "may release" the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either by clear and convincing evidence that he poses a danger to the community or by a preponderance of the evidence that poses a flight risk. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 276 (3d Cir. 2018); *see also Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) (Bond should be granted unless there is a finding that the individual is a threat to public safety or national security or is likely to abscond); *Matter of Daryoush*, 18 I&N Dec. 352 (BIA 1982).

Section 1226(c), however, "'carves out a statutory category of aliens who may not be released' during removal proceedings, outside of certain limited circumstances." *Jennings* at 289; *see* 8 U.S.C. § 1226(a) (authorizing discretionary detention "[e]xcept as provided in subsection (c)"). This mandatory detention provision applies to noncitizens who are inadmissible or deportable on certain criminal or terrorist grounds. *Id.* at 527 n.2.

2. *Petitioner is neither an 'applicant for admission' nor is he 'seeking admission' to the United States.*

Petitioner has not been legally admitted into the United States despite his entry and residence here for years. Respondents would want Petitioner to nevertheless fall squarely within section 1225(a)(1)'s definition of an "applicant for admission" and fall under section 1225(b)(2)'s mandatory detention requirement.

The interpretation of the applicable statutes by Respondents here and by the BIA in *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025)

overlooks part of the language in § 1225(b)(2)(A), gives little consideration to the overall statutory scheme, and ignores section 1226. Section 1225(b)(2)(A) requires mandatory detention of all "applicants for admission" if the examining immigration officer determines that "an alien seeking admission is not clearly beyond a doubt entitled to be admitted." An "applicant for admission" is defined in the statute as an alien "present in the United States who has not been admitted." § 1225(a)(1). It is undisputed that, when Petitioner was arrested, he was present in the United States and had not been admitted. Therefore, he would qualify as an "applicant for admission" under this broad language.

However, this does not end the interpretative inquiry. The statute that mandates detention does not state that all "applicants for admission" shall be detained. It narrows this mandatory detention to aliens who are "seeking admission." Had Congress intended for this subsection to apply to all applicants for admission, it could have said so by simply replacing the phrase "an alien seeking admission" with the term "an applicant for admission"; or to be even more succinct, it could have replaced the phrase "an alien seeking admission" with the word "alien." Under either of these constructions, it would be clear that "applicant for admission" means the same thing as "alien seeking admission," which is Respondents' interpretation of the statute. But this is not the language that Congress chose.

Instead, Congress chose the phrase, "an alien seeking admission." Because this phrase is not defined in the statute, the Court must construe it based upon its ordinary everyday meaning. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 69 (2012). "Seeking admission" is a participial phrase that modifies the noun alien. It narrows the meaning of alien to one who is attempting to obtain lawful admission to the United States. "Seek" is an active verb, not a type of status. Seek, *Merriam-Webster*, https://www.merriam-

webster.com/dictionary/seek [https://perma.cc/42LS-5YMV] (defining "seek" as "to try to acquire or gain"). The Court cannot simply disregard these words as superfluous. It must assume that Congress intended for them to have a purpose. Scalia & Garner, supra, at 174 (describing the "surplusage canon": "If possible, every word and every provision is to be given effect .... None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

Thus, based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to aliens in the United States who have not been admitted ("applicants for admission" definition) *and* who are attempting to obtain lawful admission to the United States. *See, e.g., J.A.M. v. Stereval*, No. 25-cv-342, 2025 WL 3050094, at *3 (M.D. Ga. Nov. 1, 2025).

This interpretation is also consistent with the framework of section 1225, which focuses on the admission of aliens upon their arrival to the United States or upon an attempt to obtain admission after arrival. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (Kennedy, J.) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, *as well as the language and design of the statute as a whole.*") (emphasis added). This so-called "whole-text canon" calls on the interpreter to consider the entire text "in view of its structure and of the physical and logical relation of its many parts." Scalia & Garner, supra, at 167. Its cousin canon counsels that the title and headings for statutory provisions may sometimes be indicators of meaning. *Id.* at 221. Section 1225 focuses on "inspection" of aliens upon their arrival or when they otherwise present themselves for admission. In addition to the statutory language previously discussed, the framework of the statute and the headings within the statute are

consistent with the interpretation that the statute applies to aliens who are actively seeking admission to the United States.

At the time of his arrest, Petitioner was an alien in the United States who had not been lawfully admitted, but based on the present record, he was not attempting to be lawfully admitted. *See* Dkt. 1, *generally*. Therefore, it cannot be said that he qualifies as an "alien seeking admission" subject to mandatory detention under § 1225(b)(2)(A), which requires both presence and seeking admission.

Section 1226(a) supports and bolsters this interpretation. Section 1226(a) must be read in conjunction with section 1225. *See* Scalia & Garner, supra, at 252 ("Statutes *in pari materia* are to be interpreted together, as though they were one law."). These provisions should not be interpreted in a way that renders them incompatible or contradictory. *Id.* at 180; *United States v. Butler*, 297 U.S. 1, 65 (1936) (Roberts, J.) ("These words cannot be meaningless, else they would not have been used.").

Turning to Section 1226(a), this section provides in relevant part:

> "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General–
>
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on
>
> > (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General . . ."

8 U.S.C. § 1226(a). Thus, unlike section 1225(b)(2)(A), which limits its application to applicants seeking admission, nothing in the text of section 1226(a) indicates that it is meant to apply to a subcategory of noncitizens (such as those seeking lawful entry after having been inspected and examined by an immigration officer).

Congress clearly intended for some aliens, who are arrested and similarly situated to Petitioner, to be provided with the opportunity for a bond. The text of section 1226(a) applying to all "aliens" generally, could have been limited only to those who were lawfully admitted, but Congress failed to use such language, and there is no indication that Congress intended to limit section 1226(a) in that way.

Reading sections 1226(a)(2) and 1225(b)(2)(A) harmoniously and in context, there is only one reasonable interpretation: for an alien seeking admission upon his arrival to the United States or at some later time, Congress has determined that his detention is mandatory while a determination is made as to whether he is allowed entry and admission. But, for aliens who are found in the country unlawfully and are arrested, an immigration officer or immigration judge has the discretion, after considering all the circumstances, not to detain such aliens and instead grant them release on bond.

Of greatest relevance for this Court's interpretation of the statutes are the canons aimed at avoiding surplusage and seeking to construe related statutes harmoniously. Typically, courts apply these cannons when construing different terms within the same statute. For example, in *United States v. Taylor*, 596 U.S. 845 (2022), the Supreme Court rejected the government's interpretation of one provision within a criminal statute that would "effectively replicate the work" of a separate clause within the same statute. The Supreme Court reasoned that courts "do not lightly assume Congress adopts two separate clauses in the same law to perform the same work." *Taylor*, 596 U.S. at 857; *see also Roberts v. Sea-Land Servs.*, 566 U.S. 93, 103 (2012) ("We will not construe § 906(c) in a manner that renders it 'entirely superfluous in all but the most unusual circumstances.'") (*quoting TRW Inc. v. Andrews*, 534 U.S. 19, 29 (2001)).

The doctrines also apply to construe related statutes in a manner that avoids one statute nullifying portions of another. *See e.g.*, A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts § 27(2012) (discussing the Harmonious-Reading Canon). For example, the Supreme Court recently rejected a construction of a statute that would render portions of related statutes unnecessary. *See Fischer v. United States*, 603 U.S. 480 (2024). As explained in that decision: "Federal obstruction law consists of numerous provisions that target specific criminal acts and settings. . . . Much of that particularized legislation would be unnecessary if (c)(2) criminalized essentially all obstructive conduct, as the Government contends." *Id.* at 492. The Supreme Court recognized that "the Government's all-encompassing interpretation may be literally permissible," but it rejected such an interpretation because, in part, accepting the construction would "render[ ] an unnerving amount of statutory text mere surplusage." *Id.* at 498.

As applied in the present case, these canons support a construction of section 1225 that limits the statute to aliens inspected when they present themselves at a port of arrival or who are arrested near a United States border shortly after attempting to enter the country without detection. Applying this section to any alien who enters the United States without being admitted, regardless of how long they have been present in the country, would render section 1226(c)(1)(E) a nullity. Section 1226(c)(1)(E) obligates the mandatory detention of any alien "inadmissible under paragraph 6(A) . . . of section 1182(a)" and who commits certain crimes. Under the Respondents' proposed construction, every alien encompassed by section 1226(c)(1)(E) would already fall within section 1225. In other words, section 1226(c)(1)(E) would represent a wholly-encompassed subset of sections 1225(a)(1) and (b)(2)(A).

This result bears particular weight because less than one year ago, Congress passed the Laken Riley Act, which amended section 1226(c). Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified

at 8 U.S.C. § 1226(c)(1)(E)). The Laken Riley Act mandates detention for noncitizens "present without admission or parole" and admit to committing, are arrested for, or convicted of certain theft offense. 8 U.S.C. § 1226(c)(1)(E). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Intel Corp. Inv. Pol'y Comm. V. Sulyma*, 589 U.S. 178, 189 (2020); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). Accepting Respondents' position would strip any "real and substantial effect" from the language that the Laken Riley Act added to section 1226(c), as the Secretary could rely on section 1225 to mandatorily detain every alien subject to section 1226(c)(1)(E).

Relatedly, "[w]hen Congress adopts a new law against the backdrop of a 'longstanding administrative construction,' the Court generally presumes the new provision should be understood to work in harmony with what has come before." *Monsalvo v. Bondi*, 604 U.S. 712, 725 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297-98 (1981)). For decades, succeeding administrations have applied section 1225 only to individuals who presented themselves at a United States border or who were arrested while attempting to enter the country other than at a port of arrival. They applied section 1226 to individuals arrested after having entered the country without detection and who had lived in the country for some period of time. Congress enacted the Laken Riley Act in this historical context. Had the generally understood meaning of section 1225 been what Respondents now claim, Congress would have had no need to add section 1226(c)(1)(E).

This interpretation would not lead to incongruous treatment of aliens and subject the lawful applicant to more stringent requirements than the unlawful alien evader. The relevant distinction

is not between aliens who unlawfully enter the United States without inspection and possibly evade apprehension for a number of years and those who appear at a port of entry. Rather, it is between persons inside the United States and persons outside the United States. That distinction is consistent with the long history of our immigration laws and with the Constitution. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. It is therefore reasonable to read these statutes against that backdrop. *Romero v. Hyde*, No. 25-cv-11631, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025).

The basic doctrine that treats arriving aliens who appear at a point of entry and apply for admission as not being considered "in the United States" despite their physical presence is known as the entry fiction doctrine. This legal principle, established by the Supreme Court in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), holds that aliens seeking initial admission are legally treated "as if stopped at the border" regardless of whether they are physically detained within U.S. territory. Under this doctrine, physical presence at a port of entry does not constitute legal "entry" or "admission" into the United States for immigration law purposes.

Indeed, the Supreme Court in *Shaughnessy* explained this "incongruous treatment" directly, stating,

> It is true that aliens 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. But an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."

Shaughnessy at 212, (emphasis added).

This principle has long been upheld. *See, e.g., Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 447 (3d Cir. 2016), *citing Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause].");

Respondents also rely on *Jennings* to support their interpretation of section 1225(b)(2). Although that decision did involve the same provisions of the INA at issue here, the issue presented in *Jennings* was different, and therefore, the Supreme Court did not interpret the precise language of the relevant statutes involved here. The issue before the Supreme Court in *Jennings* was whether the INA implicitly requires periodic bond hearings for certain alien detainees. *Jennings*, 583 U.S. at 296–97. The Supreme Court did not have to decide whether an alien arrested in the United States, after having been in the country illegally for several years, qualified as "an applicant for admission" who was "seeking admission" and thus was subject to mandatory detention under section 1225(b)(2) or whether the alien was entitled to a bond hearing.

In addition to being distinct and thus not binding precedent for this matter, *Jennings* is not even analogous and thus does not constitute persuasive authority. Respondents pick certain isolated phrases from *Jennings*' general background description of the INA detention framework to bolster their position that every alien arrested in the United States—regardless of their lack of criminal history and the absence of any evidence that they would be a flight risk or a danger to the community—is now subject to mandatory detention without the opportunity for a bond hearing, notwithstanding the clear language of section 1226(a). The majority opinion's description of section 1225(b)(2) is not a "catchall" provision intended to include all aliens, including those who did not seek admission when they initially entered the United States or who never sought admission thereafter. It may indeed be a "catchall," but it only catches "aliens seeking admission."

Significantly, the Supreme Court did not specifically engage in any statutory construction of the phrase "alien seeking admission" in the context of § 1225(b)(2). It did not need to because that was not the issue in *Jennings*. Accordingly, this Court should find Respondents' reliance upon *Jennings* unpersuasive.

To be clear, individuals in Petitioner's situation have always been treated by Respondents as subject to discretionary detention under section 1226, rather than mandatory detention under section 1225. It was not until the BIA arbitrarily decided that the uncontested law, practice, and policy of the past thirty years was suddenly incorrect did Respondents decide to treat Petitioner differently.

For these reasons, this Court should find the BIA's recent decision in *Matter of Yajure Hurtado*, and the Respondents' arguments which largely parrot the BIA's rationale as unpersuasive, in the same manner as the hundreds of other decisions deciding the same matters.

3. *Long-standing agency practice shows that section 1226(a) applies here.*

Petitioner's position is not a novel interpretation of the INA. It has been Respondents' own interpretation of these provisions since they were first enacted thirty years ago. They held this view until suddenly reversing course six months ago in a policy ICE issued "in coordination with the Department of Justice."

Following IIRIRA, the agency drafted new regulations that provided: "[a]liens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The relevant regulations restrict only "arriving aliens" from an immigration court bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). An

"arriving alien" is, as relevant here, "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q).

In fact, as recently as August 4, 2025 (a mere 30 days before *Matter of Yajure Hurtado* was decided), the Attorney General designated for publication a decision in which the BIA reviewed under § 1226(a) the merits of a bond request by a noncitizen who unlawfully entered the United States. *Matter of Akhmedov*, 29 I&N Dec. 166, 166 n.1 and 166-67 (BIA 2025).

"The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper* Bright, 603 U.S. at 386. Here too, Respondents' longstanding practice should inform the Court's decision.

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant this petition for writ of habeas corpus because of the egregious violation of his right to due process under the U.S. Constitution and ICE's failure to comply with the proper procedure and longstanding statutory interpretation of 8 U.S.C. §§ 1225 and 1226. Only immediate release from custody will provide relief and sufficiently punish ICE to reconsider repeating its violations of the Fourth and Fifth Amendment on other noncitizens.

Date: January 24, 2026

Respectfully submitted,

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RESPONDENT'S CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 24, 2026, he served a copy of the attached:

Petitioner's Reply in Support of the Petition for Writ of Habeas Corpus

by electronic service via ECF.

Date: January 24, 2026

Respectfully submitted,

/s Adam R. Boyd

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