UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANDRO MANUEL ESPINOZA LOPEZ

Petitioner,

v.

KRISTI NOEM, in her capacity as Secretary for the United States Department of Homeland Security;

LADEON FRANCIS, Field Office Director of New York, Immigration and Customs Enforcement, in his official capacity,

PAMELA BONDI, in her official capacity as the Attorney General of the United States,

Respondents.

Civil Action No. 26-CV-345 (JHR)

Honorable Jennifer H. Rearden, U.S.D.J.

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

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PRELIMINARY STATEMENT

Sandro Manuel Espinoza Lopez is a native and citizen of Ecuador ("Petitioner"). Petitioner entered without inspection in November 2023. On January 14, 2025, the Petitioner was detained in a targeted operation. The Petitioner was detained at 26 Federal Plaza. Petitioner was then detained at Delaney Hall Detention Facility. Petitioner is currently detained at Arizona Removal Operations Coordination Center. Petitioner has never been arrested before and has no criminal history. The Immigration Judge will likely deny bond holding that the Petitioner is subject to mandatory detention pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Petitioner filed this habeas petition on January 14, 2026. ECF No. 1. On January 14, 2026, the Court issued an Order to Answer, directing Respondents to file an answer to the Petition by January 20. ECF No. 4. On January 16, 2026, the Petitioner filed a Motion for Temporary Restraining Order and Preliminary Injunction. ECF No. 7 On January 20, 2016, Respondents filed a letter in response to the Habeas Petition. ECF No. 12.

For nearly thirty years, Respondents and the federal courts recognized that noncitizens who entered the United States without inspection and were apprehended years later were eligible for a bond hearing before an immigration judge under 8 U.S.C. § 1226(a). Petitioner has been denied a bond determination in

Immigration Court because the Respondents advance a new statutory interpretation that defies the text, structure, and purpose of the Immigration and Nationality Act (INA), and reverses decades of consistent agency practice. The government's novel position mandates the detention, without a bond hearing, of millions of longtime residents of the United States. It is contrary to the plain language of the statute; Congress's intent and understanding of the detention statutes, expressed most recently in January 2025; long-standing agency practice; and the agency's conduct in this case. It is no surprise that, to the best of counsel's knowledge, this new interpretation has been squarely rejected by a majority of the federal courts to address this issue, including in *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J., Sept. 26, 2025);.[1] Many District Courts have rejected the holding of *Matter of Yajure Hurtado*. Some of the more than fifty district courts that have rejected the government's new interpretation. ***Exhibit A*** Appendix Cases. Multiple District Courts have ordered bond hearings or release and have held that 1226(a), not 1225(b)(2) authorizes detention. As court after court has held, § 1225 is a border inspection scheme that does not apply to noncitizens who were already residing in the United States when they were apprehended. Instead, § 1226(a) plainly applies. And those courts all rejected the government's argument that exhaustion is a

[1] The one apparent exception, *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025), denied an ex parte temporary restraining order but has not issued a final judgment on the merits.

barrier to habeas relief. This Court should grant Petitioner's petition and order Respondents to either immediately release him or hold a bond hearing.

Finally, the Petitioner was arrested pursuant to a warrant. ECF No.10-1. The BIA has held that, "a Respondent detained pursuant to a warrant of arrest is subject to discretionary detention under INA 236 rather than mandatory detention under INA 235) (Malphrus, Liebowitz, Brown). ***Exhibit B.***

ARGUMENT

I. Pursuant to *Moreno Madrid v. Acuna, infra* the Respondents' Documents state that the Petitioner is detained pursuant to 1226(a)

Similar to the Petitioner in *Moreno Madrid v. Acuna*, the Respondents' own records detail that the Petitioner's detention falls under 1226(a).[2] "Petitioner's argument heavily relies on "Respondents' own administrative record, where, by their own admission, deemed Petitioner detained under § 1226(a)." *Moreno Madrid v. Brian Acuna et al.,* No. 25-cv-01572, (W.D. La. Dec. 12, 2025). In *Chang Barrios*, the petitioner's arrest warrant, the NTA, and the notice of custody determination classified Barrios as "subject to detention on a discretionary basis under § 1226(a)." *Chang Barrios v. Shepley*, No. 25-CV-00406, 2025 WL 2772579, *7 (D. Me. Sep. 29, 2025). Only after Barrios went into ICE custody did federal respondents attempt to reclassify petitioner's detention under § 1225,

[2] At the time the Habeas Petition was filed, the Petitioner's Counsel did not have the administrative record.

without explaining the authority they relied on to change the basis of his detention. *Id.* at *7. The *Chang Barrios* court ordered petitioner's detention should be governed by the statute he was originally charged with, because "an agency must defend its actions based on the reasons it gave when it acted" and may not rely on a post-hoc rationalization such as reclassification under § 1225. *Id.* (quoting Cf. Dep't of *Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22 (2020)).; *See also Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) ("Similarly, and also on the day of his arrest, he was provided with a Notice of Custody Determination, which informed him that he was detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations.")

Here, the Petitioner was detained pursuant to an arrest which is identical to the arrest warrant issued in *Moreno Supra, and Chang Barrios, Supra. (*During the July 29, 2025 traffic stop, CBP served on Mr. Chang Barrios an administrative warrant, which declares "Carlos Augusto Chang Barrios ... is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act" which is codified as 8 U.S.C. § 1226(a). *Warrant for Arrest of Alien.*)

According to a plain reading of the Arrest warrant: "Any immigration officer authorized pursuant to Section 236 and 287 of the Immigration and

Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations". ECF No. 10-1. DHS made a clear choice to detain Petitioner pursuant to INA 236(a) and should not be allowed to "switch tracks" to §1225(b) . at *8. *Moreno Madrid v. Brian Acuna et al.,* No. 25-cv-01572, (W.D. La. Dec. 12, 2025) ***Exhibit C*** .

Here, DHS alleged the same charge of removability as the alleged in Chang-Barrios' Notice to Appear. "CBP served Mr. Chang Barrios with a NTA, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen "present in the United States who has not been admitted or paroled."..... As mentioned above, the NTA form gives immigration authorities the option to designate a noncitizen in removal proceedings as "arriving alien[,]" an "alien present in the United States who has not been admitted or paroled[,]" or "admitted to the United States," and, significantly, CBP did not designate Mr. Chang Barrios as an "arriving alien." Here, DHS had the same opportunity to declare that the Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(2); they did not. They are now asking this Court to ignore the administrative record.

Support for Petitioner's detention classification under § 1226(a) is the United States District Court of Nebraska's holding in *Vargas Lopez v. Trump*. No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In *Vargas Lopez*, the court noted that "one express requirement to fall within [8 U.S.C.] § 1226(a)—and

a critical one here—is that the alien was arrested on a warrant issued by the Attorney General." *Id.* at *6. In that case, petitioner argued his detention under §1225(b)(2) was unlawful because he was detained under §1226. *Id.* at *4. However, petitioner did not allege that he was arrested pursuant to a warrant issued by the Attorney General nor submitted any warrant to the record, the "critical" express requirement for the detention to fall within §1226(a). *Id.* at *7. As the petitioner bears the burden of demonstrating by a preponderance of the evidence that his detention is unlawful, the *Vargas Lopez* court emphasized the petitioner's failure to produce his arrest warrant was "fatal" to petitioner's argument his detention falls under § 1226(a). *Id.*

In *Chang Barrios and Moreno Madrid v. Brian Acuna et al*, the Petitioners were detained by DHS, released by DHS and then re-detained by DHS. Here, DHS detained the Petitioner once and thus the initial release documents are missing from this record. However, DHS must be aware of the robust litigation on this issue and had ample opportunity to issue detention documents which reflect their intent to detain the Petitioner pursuant to 8 U.S.C. § 1225(b)(2). This makes DHS claim in the instant matter all the more confusing.

II. This Court Has Jurisdiction Over The Instant Matter.

In their Letter, Respondents state "If Petitioner is asking for prospective relief seeking to constrain ICE's ability to execute Petitioner's removal

order—relief for which Petitioner fails to provide any legal support—the Court lacks jurisdiction to grant such relief." ECF No. 10. Respondents cites to *Perez y Perez v. Trump*, No. 25 Civ. 4828 (DEH), 2025 WL 3215438, at *2 (S.D.N.Y. Nov. 18, 2025), in which the Court denied the habeas petition brought by a petitioner subject to a final removal order for whom ICE had obtained a travel document, concluding that § 1252(g) deprived the court of jurisdiction because the relief sought was "with respect to the Government's effort to execute that final order of removal". Here, the Petitioner's claim relates to the whether DHS is required to hold a "pre-deprivation hearing" prior to detention. Petitioner's counsel assumes that the DHS's argument related to lack of jurisdiction only applies to the pre deprivation hearing argument.

Respondents' opposition adopts a much broader reading of 8 U.S.C. section 1252(g) than the law supports. Respondents' reading ignores controlling precedent limiting § 1252(g) to three narrow actions, none of which are at issue here.

The Supreme Court cautioned that the jurisdiction bar under § 1252(g) is "narrow" and only "limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders.'" *Dept. of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 12 (2020) (emphasis added). "We have previously rejected as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings'

or imposes 'a general jurisdictional limitation.'" *Id.* (emphasis added) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). "Section 1252(g)'s bar on judicial review of claims arising from the government's decision to execute removal orders does not preclude jurisdiction over the challenges to the legality of the detention at issue here." *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023) (emphasis added).

Petitioner's unconstitutional detention is not tied to a decision to "commence" removal proceedings because removal proceedings commenced when the Notice to Appear was served. *See* 8 U.S.C. § 1229(a)(1). Custody proceedings are independent of "commencing" removal proceedings and fall under 8 U.S.C. § 1226, which has its own jurisdictional provision in 8 U.S.C. § 1226(e) addressing review of discretionary custody decisions. The government's own position here—that detention is mandatory for all respondents who enter without inspection ("EWI") eliminates discretion, making § 1226(e) inapplicable and rendering § 1252(g) irrelevant. Congress would not have enacted § 1226(e) if § 1252(g) already barred review of custody determinations; the government's reading collapses this statutory structure and should be rejected. And, as explained in the habeas corpus petition and further herein, Petitioner's due process rights are violated by his continued detention, and this Court has jurisdiction to rule on due process violations.

Adjudication of the ongoing violation of Respondent's Fifth Amendment rights are "independent of, and collateral to, the removal process. Her detention does not arise from the government's commence[ment of] proceedings." *Ozturk v. Hyde*, 136 F.4th 382, 397-98 (2d Cir. 2025). Therefore, 8 U.S.C. § 1252(g) does not apply and this Court has jurisdiction over the instant matter.

Respondents cite urge that the Board of Immigration Appeals or federal circuit court through a petition for review should have jurisdiction over Petitioner's claims. This ignores the plain fact that the regulations provide no legal mechanism to challenge or appeal the automatic stay before EOIR, the BIA, or the circuit court. There is also no mechanism to challenge or appeal his constitutional claims per the regulatory scheme. Respondents offer no alternative court or tribunal for Petitioner to challenge the fact that DHS is keeping him detained.

8 U.S.C. § 1252(b)(9) is not applicable here.

Respondents' argument concerning the 8 U.S.C. § 1252(b)(9) jurisdictional bar muddies the distinction between challenges to removal and constitutional challenges. This case does not challenge any removal order, and section 1252(b)(9) cannot be used to shield unconstitutional detention from judicial review.

The distinction between these categories is important because EOIR lacks jurisdiction to consider constitutional challenges. *Ozturk v. Hyde*, 136 F.4th 382, 400 (2025); *see also Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) ("Moreover,

it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."). The Second Circuit noted,

> [W]hile the court of appeals considering the petition for review may consider constitutional claims, that court is obliged to decide the petition ***only*** on the administrative record on which the order of removal is based. 8 U.S.C. § 1252(b)(4)(A). However, **we are not persuaded that an IJ or the BIA would have developed a sufficient factual record, or any record at all,** with respect to the challenged ***detention***, especially seeing as **bond hearings are decided separately, appealed separately, and contain separate records than the removal proceedings**.

The First Circuit noted that the legislative history of section 1259(b)(9) indicates that federal courts retain jurisdiction of habeas petitions:

> [T]he legislative history indicates that Congress intended to create an exception for claims "independent" of removal. H.R.Rep. No. 109–72, at 175, *as reprinted in* 2005 U.S.C.C.A.N. at 300. **Thus, when it passed the REAL ID Act, Congress stated unequivocally that the channeling provisions of section 1252(b)(9) should not be read to preclude "habeas review over challenges to detention."** ***Id.*** (indicating that **detention claims are "independent of challenges to removal orders").** In line with this prescription, **we have held that district courts retain jurisdiction over challenges to the legality of detention in the immigration context.** *See Hernández v. Gonzales*, 424 F.3d 42, 42 (1st Cir.2005) (**holding that detention claims are independent of removal proceedings and, thus, not barred by section 1252(b)(9)).**

Aguilar v. ICE, 510 F.3d 1, 11 (1st Cir. 2007) (emphases added). The Ninth Circuit concurs that 1259(b)(9)'s jurisdictional limitations only apply with respect to final orders of removal, and that Article III courts maintain jurisdiction over

constitutional challenges to detention. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006). Therefore, section 1259(b)(9) does not prevent this Court from exercising jurisdiction.

Additionally, Respondents' reliance on *Jennings v. Rodriguez* is misplaced. The Supreme Court rejected an "expansive interpretation of § 1252(b)(9)[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). The excerpt from a concurrence that Respondents cited was already rejected in the same case: "The question is not whether ***detention*** is an action taken to remove an alien but whether the legal questions in this case arise from such an action" and "those legal questions are too remote from the actions taken to fall within the scope of § 1252(b)(9)." *Id.* at 295 n.3 (emphasis in original). Thus, section 1252(b)(9) does not preclude review of Petitioner's case.

III. Because § 1225 Only Applies to the Inspection of Recent Arrivals, § 1226 Governs the Detention of Residents Like Petitioner.

The text, structure, and purpose of the INA all support Petitioner's argument that § 1226(a) governs his detention, and not § 1225(b)(2)(A). *See Lopez-Campos*, *supra*. The Court does not owe any deference to the agency's new interpretation of §§ 1225 and 1226. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). Here, the agency believes that the language of the statute is plain such that there

are no gaps for the agency to fill. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025).

Many District Courts have rejected the holding of *Matter of Yajure Hurtado*. Exhibit A Appendix of Cases. They have not only ruled in favor of the Petitioner but have also held that the Court has jurisdiction. In decision after decision, federal courts— nationwide—have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

A. The rules of statutory interpretation show that § 1226(a) applies here

Sections 1226(a) and 1225(b)(2)(A) work in tandem to cover different categories of noncitizens: § 1226 provides a discretionary detention scheme for individuals who are "already in the country" and are detained "pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while § 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *Id.* at 287. Conversely, § 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of

removal proceedings." *Id.* at 289. Indeed, there is a "line historically drawn between these two sections" and the categories of noncitizens they respectively cover. *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

This understanding situates each detention provision "in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted). *See also Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (looking to statutory structure to inform interpretation of INA provision). Placing a provision in its larger context is especially important where the provision "may seem ambiguous in isolation" but can be "clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). And the one meaning which permits a logical and compatible effect here is that § 1225 and § 1226 each cover different categories of noncitizens.[3]

Section 1225's plain text shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. §

[3] Respondents are also wrong to claim § 1225(b)(2)(A) somehow takes "priority" over § 1226(a) if they overlap. To the contrary, the U.S. Supreme Court has said the opposite, characterizing § 1226(a) as the "default rule" for "aliens already in the country." *Jennings*, 583 U.S. at 288-89.

1225(a)-(b), (d). That section repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4); sets out procedures for "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id.* § 1225(a)(2), (b)(2)(B), (b)(2)(C). Even the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens (emphasis added). *Cf. Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (relying on section title to help construe statute). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the U.S. border. Petitioner, of course, arrived at the border three years ago and has been residing in the United States since.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested "on a warrant . . . pending a decision on whether [they are] to be removed from the United States." *See also Jennings*, 583 U.S. at 289 (§ 1226(a) applies to those "already in the country" who are detained "pending the outcome of removal proceedings"). On its face, the provision plainly applies to Petitioner, who was arrested "on a warrant" when he was already in the U.S. and is now detained "pending a decision on" his removal. Thus, § 1226(a), and not § 1225(b)(2)(A), is clearly the proper detention authority for Petitioner.

1. Section 1225(b)(2)(A) cannot apply to Petitioner because he is not an "applicant for admission."

Respondents first argue that, despite having lived in this country for three years, Petitioner is an "applicant for admission" and can be detained under § 1225(b)(2)(A) as if he were fictionally at the border attempting entry. [4] Respondents zoom too far into the statute. The term "applicant for admission," when viewed in its statutory context, cannot be understood without acknowledging Congress's choice to deploy the term within § 1225's border inspection scheme. *See* Section I. By contrast, the term "applicant for admission" appears nowhere in § 1226. This comparative context thus clarifies that the term refers to a specific category of "arriving" noncitizens being "inspected" at or near the border. See 8 U.S.C. § 1225. Indeed, in *Bautista v. Santacruz Jr.*, the court rejected this exact argument, finding that the petitioners—who had been residing in the U.S.—were not "applicants for admission." No. 5:25-CV-1873-BFM (C.D. Cal. July 28, 2025), Dkt. 14 at 7-8.

Thus, when § 1225(a)(1) describes "applicants for admission" as a noncitizen "present in the United States who has not been admitted," the larger context of § 1225 clarifies that this definition refers to individuals who were

[4] Respondents' reliance on *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020), to support this statutory fiction is misleading at best. The Supreme Court was clearly referring to the scope of due process protections in the context of people who physically "arrive at ports of entry" (airports are offered as an example). *Id.*

apprehended in the interior of the country after having recently crossed the border. In sum, Petitioner—who has resided here for three years—is not an "applicant for admission" as that term should be understood within the INA, and thus he cannot be mandatorily detained under § 1225(b)(2)(A).

2. Section 1225(b)(2)(A) cannot apply to Petitioner because he is not "seeking admission" to the United States.

Even if Petitioner were an "applicant for admission," § 1225(b)(2)(A) also requires an independent and separate showing that he is "seeking admission" to the United States. Respondents' interpretation of "seeking admission" has even less statutory footing: they argue that the term encompasses anyone seeking "a lawful means of entering" the country without regard to where or when that right may be granted, thus mandating the detention of any noncitizen present in the United States who has not been lawfully admitted or paroled. Such a broad interpretation of "seeking admission" flies in the face of the INA's text, structure, and purpose, and defies the common-sense meaning of the term.

Interpreting the INA properly shows that "seeking admission" describes a much narrower class: recent arrivals who are presenting themselves for admission at or near the border. Again, the text and structure of § 1225 clearly show that it deals with inspections of recent arrivals at or near the border. *See* Section I. By deploying "seeking admission" within § 1225's border inspection scheme—and not § 1226—Congress intended for this term to cover the detention of noncitizens

seeking admission at or near the border. That is why the statute's implementing regulations, which were "promulgated mere months after passage of the statute and have remained consistent over time," *Lopez Benitez v. Francis*, 25-CV-5937-DEH, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025), describe those seeking admission as "arriving aliens," 8 C.F.R. § 235.3(c)(1), who are "coming or attempting to come into the United States," 8 C.F.R. § 1.2 (emphasis added). *See Martinez*, 2025 WL 2084238 at *6 (the regulations' use of "arriving alien" is "roughly interchangeable with an 'applicant . . . seeking admission'" as used in § 1225(b)(2)(A)); *see also Lopez Benitez*, 2025 WL 2371588, at *7 (same). Thus, only those who take affirmative steps to seek admission while "coming or attempting to come into the United States" can reasonably be said to be "seeking admission" under § 1225(b)(2)(A). *See Gonzalez v. Noem*, 25-CV-2054-ODW-BFM at 8 (C.D. Cal. Aug. 13, 2025).

The word "seeking" is the present participle of the verb "seek." It thus has a temporal element-Petitioner must have been in the process of seeking admission at the time of the inspection. *United States v. Balint*, 201 F.3d 928, 933 (7th Cir. 2000) ("[U]se of . . . the present participle, or '-ing' form of an action verb, generally indicates continuing action."). It is difficult to see how Petitioner could be deemed to be "seeking" admission at the time of his encounter with ICE. By that point, he had been present in the U.S. for many years. If he became an

"applicant for admission" at the time of his initial entry, by Respondents' interpretation he would be in a perpetual state of seeking admission the entire time between his entry and encounter. This "would seem to push the statutory text beyond its breaking point." *Echevarria v. Bondi*, 25-03252 at *12 (D. Ariz. Oct. 3, 2025).

A cancellation of removal applicant, 8 U.S.C. § 1229b(b)(1), is not "seeking admission." If granted, the agency will adjust their status to that of a lawful permanent resident and record their "lawful admission for permanent residence." 8 U.S.C. § 1229b(b)(3). The term "lawfully admitted for permanent residence" means "the status of having been accorded the privilege of residing permanently in the United States as an immigrant." 8 U.S.C. § 1101(a)(20); *Stanovsek v. Holder*, 768 F.3d 515, 517 (6th Cir. 2014). On the other hand, an "admission" means "with respect to an alien, 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).

Petitioner is not presenting himself for admission at the border; he arrived at the border three years ago and has been residing in the United States since. He simply wishes to remain in the country he has called home—not to enter it. All that Respondents can say in response to this obvious fact is that noncitizens like Petitioner must be seeking admission. But even Respondents' massive presumption

does not make their case. Regardless of whether Petitioner desired a lawful means of entering, the reality is that he is not trying to enter the United States; he is already here. Thus, he cannot be considered "seeking admission" in any reasonable way, rendering § 1225(b)(2)(A) wholly inapplicable to his detention.

B. Congressional intent shows that § 1226(a) applies to Petitioner

Congress intended for § 1226 to govern the detention of noncitizens who entered the U.S. without inspection. Congress most recently expressed this understanding earlier this year in the Laken Riley Act. This act added a subsection to § 1226 that specifically mandated detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025).

Respondents' interpretation of the statutes renders this recently amended section superfluous. *Lopez-Campos*, *supra*. If Congress intended or understood § 1225 to govern the detention of noncitizens like Petitioner, who were apprehended years after entering the country, it would have placed these amendments within § 1225, not § 1226.

When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There is no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b). *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).

C. Long-standing agency practice shows that § 1226(a) applies here

Petitioner's position is not a novel interpretation of the INA. It has been Respondents' own understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course two 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, 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 385-86.

D. Respondents' conduct in this case suggests they did not view Petitioner as seeking admission

Finally, belying Respondents' entire defense are the facts surrounding Petitioner's detention. Please section I. Pursuant to *Moreno Madrid v. Acuna, infra* the Respondents' Documents state that the Petitioner is detained pursuant to 1226(a) for this argument.

IV. Due Process Entitles Petitioner to a Bond Hearing

Respondents claim that Petitioner is only due the removal procedures provided by Congress. While that may be true for some people apprehended while crossing the border, *see Thuraissigiam*, 591 U.S. at 139, that is not true for people like Petitioner who have resided in the United States and "develop[ed] the ties that

go with" that longtime residence, *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Indeed, there has long been a legal "distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added).

And the process due here is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Petitioner is limited to ensuring his appearance at future immigration proceedings and preventing danger to the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). But because Respondents denied Petitioner a proper bond hearing, "there is nothing in the record demonstrating that [Petitioner] is a flight risk or a danger to the community." *Lopez Benitez,* 2025 WL 2371588 at *12. Therefore, the risk of erroneously depriving Petitioner of his physical freedom is unbearably high. *See id.* Without the bond hearing that he is entitled to under § 1226(a), Petitioner will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Due process thus requires that Petitioner be afforded a bond hearing under § 1226(a). *See Lopez-Campos, supra.*

If the Court agrees in over 200 cases across the country, including several in this district, that 1226(a) applies, then there is also a Due Process violation because the Petitioner is subject only to discretionary detention and therefore should have access to a bond hearing. *See Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Oliveros v. Kaiser*, No. 25-CV-07117-BLF, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2476524 (D.N.J. Aug. 28, 2025); *Contreras Maldonado v. Cabezas*, No. CV 25-13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, --- F. Supp. 3d ----, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Contreras-Cervantes et al. v. Raycraft, et al*, No. 2:25-CV-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Sanchez Alvarez v. Noem et al.*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Soto v. Soto*, No. 25-CV-16200, --- F. Supp. 3d ----, 2025 WL 2976572 (D.N.J. Oct. 22, 2025).

If the court finds that 1225b applies, Petitioner is still entitled to due process. First, as mentioned above, *Thuraissigiam* does not control here because that case was about due process as to procedures for admission into the United States, which

the Supreme Court said Congress has the prerogative to set. But, due process as to detention is fundamentally and the Supreme Court has set clear limits on civil immigration detention. *See Zadvydas*, citing *Salerno*, *Addington*, *Foucha*.

V. Petitioner's Detention Without a Pre- Deprivation Hearing Violates His Due Process Rights.

The government's interest in detaining people on a discretionary, case-by-case basis under § 1226(a) includes "ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community." *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (internal quotation marks omitted). "As discussed *supra*,there is no indication in the record that detaining Hyppolite without a pre-deprivation hearing would further those interests, because without one, there is no basis to conclude that he falls into either category, i.e., that he poses a risk of non-appearance or a danger to the community." *Hyppolite v. Noem,* No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6, 2025). Given the absence of "evidence of urgent concerns," the Court concludes that "a *pre*-deprivation hearing [was] required to satisfy due process." *Fernando A.G. v. Chestnut,* No. 1:25-CV-01925-SKO (HC), 2026 WL 74007, at *6 (E.D. Cal. Jan. 9, 2026) collecting cases *Guillermo M. R.*, 2025 WL 1983677, at *9. Numerous district courts have reached a similar conclusion. *See, e.g., id.*; *Garcia*, 2025 WL 1927596, at *5; *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3–4 (N.D. Cal. July 4, 2025);

Ortega, 415 F. Supp. 3d at 970; *Doe*, 787 F. Supp. 3d at 1093–95; *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

Here, the Petitioner is seeking to remain in the United States through a filing of special immigrant juvenile status. His father-his guardian will be filing that application with the appropriate family court.

VI. Direct Release or a Bail Hearing Held By This Court Are the Appropriate Remedies

In the alternative, the habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. This is a more efficient and effective remedy than ordering an immigration judge to conduct a hearing, which may lead to additional enforcement proceedings and delays before the unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v.*

Chadbourne, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); see also *Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), rep. and rec not reached, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

Enforcement Problems in Immigration Court Bond Hearings

A bond hearing by an immigration judge (IJ) is not the most appropriate or efficient use of this court's equitable authority. Recent actions by ICE attorneys and immigration judges during and after habeas court-ordered bond hearings have necessitated enforcement proceedings across the country, creating significant extra work for the court and the parties while petitioners' unlawful detention continues.

In the last year, ICE has frequently appealed the IJ's grant of bond to the Board of Immigration Appeals (BIA) and invoked the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2). This stay, which keeps the petitioner detained despite an

IJ bond grant, was rarely invoked in prior years but has now become common. Dozens of habeas courts have ruled that the automatic stay violates due process and have had to order Respondents to allow a petitioner to post his bond. *See, e.g., Otilio B.F. v. Andrews*, No. 1:25-cv-01398, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025) (finding the automatic stay likely violates due process); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (same, noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process, and collecting cases at n.6); *Guasco v. McShane*, No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting that other habeas courts have "assailed the Government's practice of acting both as the prosecution and the judge in making a unilateral and unreviewed decision as to detention") (internal citation omitted).

In other cases, ICE has applied onerous electronic GPS ankle monitors or other unnecessary conditions of release that neither the habeas court nor the immigration court ordered, requiring additional litigation. *See Diahn v. Lowe*, No. 1:24-cv-1936, 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026) (ordering ICE to remove ankle monitor it had unilaterally imposed after IJ granted bond without further conditions); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 70 (D. Mass. 2025) (same, finding this presented a "real constitutional risk" and defeated the

purpose of neutral third-party review of custody); *Menjivar Sanchez v. Wofford*, No. 1:25-CV01187, 2025 WL 3089712, at *9 (E.D. Cal. Nov. 5, 2025) (same, in preliminary injunction context); *N- N- v. McShane*, No. 25-cv-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025) (finding ICE's imposition of an ankle monitor, check-ins, and travel restrictions, which the IJ did not order in setting bond, violated due process and the *Accardi* doctrine).

Still other cases have left habeas courts unclear whether Respondents intend to comply with the court's orders to hold a bond hearing at all. *See, e.g., Gomez Rodriguez v. Noem*, No. 2:25-cv-01115, 2025 WL 3771268, at *2 (M.D. Fla. Dec. 31, 2025) (noting that "[i]n other cases before this Court, the respondents have claimed they cannot direct the EOIR when to conduct a bond hearing," and ordering release if the government does not comply); *Khogiani v. Raycraft*, No. 25-cv-13744, 2025 WL 3753532, at *4 (E.D. Mich. Dec. 29, 2025) (noting the government's argument that given the "overwhelming caseload" in the immigration courts, it likely could not comply with an order to hold a bond hearing within five days, but re-setting a short deadline anyway given the petitioner's five months of unlawful detention); *Vargas v. Bondi*, No. 25-cv1023, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), report and recommendation adopted, No. 25-cv-1023, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) (recommending immediate release, in part because respondents argued that "if this Court ordered a hearing, it would

require the immigration judge to do that which, in light of BIA precedent, the judge would not believe he had any authority to do").

As one example, government counsel in the Southern District of New York have often asserted that an immigration court bond hearing is an appropriate remedy, citing *Romero Perez v. Francis*, No. 25-cv-8112, 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025). However, that case alone demonstrates why such bond hearings are often futile. In R*omero Perez*, notwithstanding the court's order that a burden-shifted bond hearing be held within seven days, the immigration judge refused to hold a hearing on the merits, denying bond on a lack of jurisdiction. *See* No. 25- cv-8112, ECF No. 31 (Nov. 10, 2025) (first motion to enforce). After petitioner filed an emergency motion to enforce, the immigration judge held a second hearing and granted bond. ICE then immediately invoked the automatic stay provision to bar the Petitioner's release. *Id.*, Jan 2026 7 ECF No. 33 (Nov. 13, 2025) (second motion to enforce). Only after the second emergency motion was filed did ICE withdraw the automatic stay and permit release. *Id.*, ECF No. 34 (status update).

To avoid a wasteful round of enforcement proceedings – or even two – while unlawful detention continues, this Court should grant release or hold any bail hearing itself

CONCLUSION

Petitioner respectfully requests that the Court grant Petitioner's petition for writ of habeas corpus because he is detained in violation of federal law or the Constitution.

Dated: January 26, 2026

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), and the Court's Individual Practices, the undersigned counsel obtained opposing counsel's consent to submit a brief longer than the word-count limitation of this Court's Local Civil Rules. Opposing Counsel did not oppose this.

Certificate of Service

I hereby certify that on January 26, 2026, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Paul Grotas

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