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**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

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| PERALTA-DORMES, Ramon Adalberto<br><br>Petitioner,<br><br>v.<br><br>PAMELA BONDI, *et al.*,<br><br>Respondents. | ) | Case No.: 1:26-cv-20294-KMM |

**PETITIONER'S REPLY TO RESPONDENT'S RETURN IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, by and through undersigned counsel, submits the following reply to Respondent's return in opposition to the Petitioner for Writ of Habeas Corpus. First, the government's expansive interpretation of § 1225 has been uniformly rejected by countless other courts including within the Southern District of Florida. *See Perez v. Parra*, Case No. 25cv24820, 6-10 (S.D. Fla) (exhaustively listing the district court decisions across the United States rejecting Respondents' interpretation of § 1225).

Like the petitioner in *Perez v. Parra*, here the Department of Homeland Security itself proceeded under § 1226 from the outset by providing Mr. Peralta Dormes with a Notice to Appear charging him as "present in the United States without admission or parole." *See* D.E. 1-4. The Honorable Judge Williams found that "this classification places him squarely within §1226" as an

individual apprehended within the interior of the United States. The Judge went on to cite a number of other district courts that have granted similar petitions on the very set of circumstances that Petitioner finds himself in. *Id.* at 6.

1. **THIS COURT HAS SUBJECT MATTER JURISDICTION BECAUSE PETITIONER IS NOT CHALLENGING THE GOVERNMENT'S DECISION OR ACTION TO "COMMENCE REMOVAL PROCEEDINGS AGAINST HIM, THE DECISION TO ARREST OR DETAIN HIM, OR THE METHODS USED BY WHICH HE IS DETAINED."**

The Court does have subject matter jurisdiction over the Petitioner's habeas claim. District Courts and the Eleventh Circuit have held that section 1252(g) bars review of or challenges to final administrative orders of removal, however, it does not apply to the facts of the Petitioner's case as he is not challenging his removal proceedings. Section 1252(g) states "the provision applies only to three discrete actions that the Attorney General may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders". *Cetino v. Hardin*, 2025 U.S., 3 Dist. Lexis 257174. Courts have interpreted this provision narrowly, applying only as to those three specific actions; "when asking if a claim is barred by § 1252(g), Courts must focus on the action being challenged." *Id. See, Madu v. United States*, 2006 U.S. Dist.LEXIS 52516; *Madu v. United States AG*, 470 F.3d 1362 (11 th Circ. 2006); *Patel v. Hardin*, 2025 U.S. Dist.LEXIS 233409; *Cetino v. Hardin*, 2025 Dist.LEXIS 257174.

Petitioner was arrested for driving without an expired driver's license on October 7, 2025, and subsequently detained by ICE and placed in an ICE detention facility. *See*, Petitioner's Writ at ECF No. 1 at p. 5. Petitioner is not challenging the Department's decision to commence removal proceedings against the Respondent. Rather, the Petitioner is challenging the Attorney General's treatment of the Petitioner as an "alien seeking admission," and thus finding him subject to mandatory detention pursuant to 8 U.S.C. § 1225(a) See, Writ Petition ECF No. 1 at Exhibit FC

(Immigration Judge's Bond Order.) Petitioner is challenging the Immigration Judge's decision, agreeing with DHS's of mandatory detention and denying the Respondent's bond for lack of jurisdiction. The Petitioner is therefore asking the Court to answer a question of law. Petitioner is not asking this Court to override the Respondent's decision to commence removal proceedings against him. *Id at 3*. Therefore, section 1252(g) does not bar this Court from this action and the Court does have subject matter jurisdiction over the Petitioner's claim. *Id.* Petitioner does not allege or challenge ICE's authority to take him into custody and detain him during his removal proceedings. Petitioner however challenges DHS's and the Court's interpretation under 8 U.S.C. § 1225(a) regarding "applications for admissions and seeking admission."

**2. THE "ZIPPER" CLAUSE DOES NOT APPLY TO THE PETITIONER AS HE IS NOT CHALLENGING THE DECISION TO DETAIN HIM OR TO SEEK TO REMOVE HIM.**

The Petitioner is not challenging ICE's and DHS's decision to detain him or their effort to remove him from the United States or challenging any part of the process by which his removability will be determined. Madu v. United States AG, 470 F.3d 1362, (11 th Cir. 2006). The Madu Court's decision is similarly situated to the Petitioner in this case because Petitioner challenges the Department's and Immigration Court's interpretation of law, specifically regarding mandatory detention under § 1225(a), not the Attorney General's decision to detain him and place him in removal proceedings in the first place. Here, the Court found that because the language of 8 U.S.C.S. § 1252(b)(9) unambiguously divests all courts of habeas jurisdiction over cases that fall within its purview. Yet § 1252(b) is equally clear that § 1252(b)(9) applies only with respect to review of an order of removal. *Id* at 2.

**3. *ALVAREZ V. ICE*[1] PRESENTS A DIFFERENT LEGAL SCENARIOS THAN THOSE PRESENTED IN THE PRESENT CASE**

[1] *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016)

As explained earlier, the Petitioner is not challenging the Department's decision to arrest and detain him and thus commence removal proceedings. What the Petitioner challenges is his detention without the entitlement of a bond proceeding to make determinations as to flight risk and danger to the community pursuant to *Matter of Guerra. Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). The factual and legal questions in *Gupta* and *Alverez* differ from the factual and legal considerations in this case. Petitioner challenges the Court's determination that the Petitioner is an alien "seeking admission" who's detained under § 1225 (a)(2) rather than § 1226(a). Any argument by the Government or DHS that "ICE's decision to detain him in the first instance—is an action taken to remove alien, does not carry the day." *Cetino* at 3. The Supreme Court and the Eleventh Circuit precedent on this issue is clear: The zipper clause only applies to claims requesting review of a removal order; thus, the INA did not divest the district Court of jurisdiction over a § 2241 challenge to detention of the Petitioner's pending deportation. *Cetino* at 2 citing *Madu*, 470 at 1365.

**4. PETITIONER HAS STANDING TO BRING THE ADMINISTRATIVE PROCEDURES ACT ("APA") CLAIM BECAUSE EXHAUSTION IS PRUDENTIAL NOT JURISDICTIONAL, AND THERE ARE NO ADMINISTRATIVE REMEDIES TO EXHAUST THAT WOULD NOT BE FUTILE**

Petitioner remains detained without any opportunity for release on bond. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and other courts have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. *F. G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 U.S. Dist. LEXIS 111539 (N.D. Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that when "the question presented is purely legal and has been

repeatedly mishandled administratively, exhaustion serves no useful purpose."). Here, the appellate body is the Board of Immigration Appeals, the same body that issued the decision stripping immigration judges of their jurisdiction to hear bonds. Other districts have held that habeas corpus relief was available despite a pending BIA appeal, because "[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact" *LG v. Choate*, No. 23-cv00611, slip op. at 14 (D.N.M. 2024). The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v. Bostock* explained, while the BIA has occasionally remanded bond denials where immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling. 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). Consequently, many immigration judges continue to deny bond altogether, and appeals typically take six months or more, during which noncitizens remain detained unlawfully, with severe consequences for their health, families, and ability to defend against removal. *Id.* Because Petitioner's injury is the very fact of unlawful detention without a bond hearing, administrative remedies are neither timely nor effective. Habeas corpus is the only adequate remedy.

5. **CONGRESS SPECIFICALLY DEFINED THE TERMS "APPLICATION FOR ADMISSION," "ADMISSION," AND "ADMITTED," TO LEAVE NO DOUBT THAT THAT ONE WHO IS "SEEKING ADMISSION" MUST BE PHYSICALLY OUTSIDE OF THE UNITED STATES AND ASKING TO COME IN."**

Under the post-IIRIRA INA, it is admission, not entry, that matters. The term "admission" and "admitted," previously absent from the INA were added and defined at 8 U.S.C. § 1101(a)(13)(A), which provides:

> The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien *into the United States* after inspection and authorization by an immigration officer.

Meanwhile, the related term "application for admission" (also added by IIRIRA) defined at 8 U.S.C. § 1101(a)(4), provides: "The term 'application for admission' has reference to the

application for admission *into the United States* and not to the application for the issuance of an immigrant or nonimmigrant visa."[2]

The terms "application for admission," "admission," and "admitted" all make Congress' intent clear: Admission cannot happen anywhere other than when at the proverbial door asking to come in. Circuit courts interpreting INA provisions referencing the definition of "admission" at 8 U.S.C. § 1101(a)(13), have explained:

> This definition "is limited and does not encompass a post-entry adjustment of status," because it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry." [3]

By explicitly defining these terms, the "work" of determining their meaning and the meaning of statutes using them has been done by Congress.[4] And in so doing, courts analyzing such provisions have rejected the government's claims that an admission can happen from within the U.S. [5] This has been repeatedly affirmed by courts interpreting INA provisions containing these terms.[6]

**i. There is no question that Jennings reached the conclusion it did with the understanding that § 1225(b) applies at or near the border and § 1226(a) to**

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[2] 8 U.S.C. § 1101(a)(4) (emphasis added).

[3] *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete–Ramirez*, 741 F.3d at 1051); *see also Papazoglou*, 725 F.3d at 793 ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes*, 675 F.3d at 385 ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez*, 519 F.3d at 544 (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status").

[4] *Martinez v. Mukasey*, 519 F.3d 532, 543-44 (5th Cir. 2008).

[5] *See e.g. id.* (rejecting the government's argument that an alien's adjustment of status within the United States was the equivalent of "being admitted to the United States as an alien lawfully admitted for permanent residence" as that phrase is used in 8 U.S.C. § 1182(h)).

[6] *See generally Vartelas v. Holder*, 566 U.S. 257 (2012)(discussing IIRIRA's elimination of the entry doctrine through defining admission in 8 U.S.C. § 1101(a)(13) and the application of subparagraphs (C)(i)-(vi) to LPRs who, after a departure, are returning to the U.S. and seeking admission into it which it ultimately held violated the constitution's prohibition against retroactivity).

**those encountered in the interior and not subject to expedited removal—these are key distinctions that would have otherwise changed the analysis.**

While 8 U.S.C. § 1225 does not explicitly state that its application is limited to ports of entry (POEs) or their immediate vicinity, this was without question the Supreme Court's understanding in *Jennings*. The Court's conclusions regarding the statute's interpretation and constitutionality relied heavily on the historically limited rights afforded to aliens at the country's borders. This was not an incidental assumption; the Supreme Court is fully cognizant of the limited constitutional rights at the border, and the government itself argued this precise distinction in support of its interpretation of § 1225 and § 1226.

Indeed, the Court presented the precise question this Court is being asked to answer now to the Solicitor General more than once. For example, Justice Sotomayor asked, "Clarifying question. For an alien who is found in the United States illegally, has not been admitted, are they held under 1225(b) or are they held under 1226(a)?"[7]

The Solicitor General responded, "So they are held under – if they are not – if they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not (c).[8]

Seeking further clarity, Justice Sotomayor posed a hypothetical of an EWI alien stating, "I'm talking about an alien who has come into the United States illegally without being admitted who takes up residence 50 miles from the border."[9]

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[7] (*Id.* at p. 7.)

[8] (*Id.* at pp. 7-8.)

[9] (*Id.* at p. 8.)

Without hesitation, the Solicitor General confirmed: "The answer is they are held under 1226(a) and that they get a bond hearing under it - - and this is at page 156a of the appendix."[10]

As discussed below, the simple reality is that the Supreme Court and all the litigants in *Jennings* recognized that § 1225 is a statute applicable at or near the border, and therefore, the warrant requirement of the Fourth Amendment and the due process clause of the Fifth Amendment have little or no application.

Those advocating for the government's new position have often asserted that nothing in § 1225 says it applies only at POEs and near the border so it must apply everywhere and anywhere. But this ignores context and the assumption that Congress seeks to legislate constitutionally. Moreover, just as the § 1225 does not explicitly state its application is at or near the border, § 1226 does not say its application is in the interior of the United States. The absence of such language does not change the fact that its application is in the interior of the United States. This distinction between the geographical location of their application was explicitly acknowledged in *Jennings*.

The application of § 1225 at POEs and near the border is clear, unless one's entire test for interpretation is whether the statute explicitly states: "this statute applies only at X." The placement of § 1225 strongly supports its border-centric application. It is preceded by statutes plainly applying at POEs: § 1221 (arrival/departure manifests), § 1222 (detention and health examinations of arriving aliens), § 1223 (contracts with transportation companies regarding arriving aliens), and § 1224 (designation of POEs for aircraft). It is immediately followed by § 1225A, governing pre-inspection at airports. Simply put, § 1225 is surrounded by statutes that obviously apply at the borders and POEs.

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[10] (*Id.* at p. 8-9.)

Furthermore, the statute's implementing regulations affirm this understanding. The very first section, 8 C.F.R. § 235.1(a), states: "Generally. Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section." The subsequent regulatory sections under 8 C.F.R. § 235 et. seq. consistently address procedures at the point of entry. Furthermore, most the implementing regulations have to do with airports, vessels, and other things that are clearly taking place at the border.

**ii. Section 1225's real world application and purpose is to set forth the procedures for inspection of the millions of "applicants for admission" who arrive at the country's POEs every year.**

Annually, millions of foreign nationals arrive at United States Ports of Entry (POEs)[11] seeking entry.[12] In 2022 for example, DHS granted approximately 97 million admissions into the U.S. with an estimated 45 million of those admissions being nonimmigrants who were issued an I-94.[13] The majority of these individuals present facially valid non-immigrant visas, such as B-1/B-2 visitor, F-1 student, or H-1B temporary worker visas. [14]

Upon arrival, every such individual, regardless of their documentation, is legally deemed an "applicant for admission" pursuant to INA § 1225(a)(1). This foundational statute, which governs the inspection procedures at all POEs, defines an "applicant for admission" as either "[1] An alien present in the United States who has not been admitted or [2] who arrives in the United States..." 8 U.S.C. § 1225(a)(1).

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[11] The term "POE" is used throughout this brief as a short hand reference to any time or place designated by the attorney general for the admission of aliens.

[12] (See Ex. 1 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.)

[13] (*Id.*)

[14] (*Id.*)

The inspection process mandated by INA § 1225 functions as a critical sorting mechanism, resulting in one of three primary outcomes. First, an inspecting officer may determine that the alien possesses valid, unexpired documents and is admissible, thereby admitting them into the United States.

Second, if the officer determines the alien is inadmissible either for seeking entry through fraud or material misrepresentation (8 U.S.C. § 1182(a)(6)(C)) or for lacking valid entry documents (8 U.S.C. § 1182(a)(7)), the alien will be subject to expedited removal (ER) pursuant to 8 U.S.C. § 1225(b)(1). Significantly, there are many grounds of inadmissibility,[15] but only aliens determined to be inadmissible under § 1182(a)(6)(C) or § 1182(a)(7) may be processed for Expedited Removal.[16]

In the second scenario, the alien is subject to expedited removal under INA § 1225(b)(1)(A). This is a summary process intended to be completed in a matter of hours, if not minutes. At airports and seaports, this authority is most commonly invoked not for lack of documents, but for alleged fraud or willful misrepresentation under § 1182(a)(6)(C).

For example, an inspecting officer may conclude that an alien arriving with a validly issued B-2 visitor visa is misrepresenting their nonimmigrant intent and secretly plans to remain permanently. Following questioning, the officer issues a Form I-860, a summary order of removal. Critically, this expedited removal order is immediate and final. The alien receives no hearing before an Immigration Judge. No appeal. And none of the procedural rights afforded in full removal proceedings under § 1229a.[17] While such aliens may claim a fear of return, triggering a

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[15] *See generally* 8 U.S.C. § 1182(a).

[16] § 1225(b)(1)(A)(1).

[17] § 1225(b)(1)(C).

separate review process, that distinct process itself does not shed light on the issues presented in this matter.[18]

Significantly, once an alien is issued an expedited removal order, the alien's subsequent removal (as well as any incidental detention) is under the custody and detention authority proscribed by 8 U.S.C. § 1231. The goal is for such removal immediately either by return to the contiguous territory the alien arrived from or on the carrier/vessel they arrived on if by sea or land.

The third category encompasses all "other aliens" specified in § 1225(b)(2)(A). These are applicants whom the inspecting officer does not believe to be admissible based on one of the grounds of inadmissibility set forth in § 1182 (other than § 1182(a)(6)(C) or § 1182(a)(7)).[19]

For instance, if an inspecting officer at an airport encounters a LPR with a conviction that potentially renders them inadmissible under the criminal grounds at § 1182(a)(2), that officer lacks the authority to issue an expedited removal order. [20] Instead, the officer's sole recourse under the statute is to refer the alien for full removal proceedings before an Immigration Judge pursuant to § 1229a, where the alien will have the opportunity to be heard, contest the charges, and apply for any relief from removal which they are eligible to seek before an IJ.[21] As this statutory framework demonstrates, the procedures detailed in § 1225 are designed for, and overwhelmingly applied at, the nation's ports of entry. Just as the plurality in *Jennings v. Rodriguez*, repeatedly alluded to, §

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[18] It is, nonetheless, important to point out that Congress was careful to unambiguously state its intent that aliens placed in this fear review process through § 1225(b)(2)(B)(iii)(I), explicitly titled "Mandatory detention" proscribes exactly that: "Any alien subject to procedures under this clause shall be detained pending a final determination of credible fear of persecution, and, if found not to have such a fear, until removed. The fact that Congress went out of its way to specifically mandate detention for those in this process but never sought to provide a similarly worded provision accompanying § 1225(b)(2)(A) is consistent with both Petitioner's interpretation under the statutory terms and the plain language interpretation employed by many.

[19] § 1225(b)(2)(A)

[20] *See id.* (proscribing its application only to those applicants for admission found inadmissible pursuant to § 1182(a)(6)(C) or § 1182(a)(7)).

[21] *Id.*

1225(b) authorizes detention of those applicants for admission who are "seeking admission into the country"—while it is 8 U.S.C. § 1226 which authorizes detention of those "already in the country."[22]

In sum, far from a "detention" statute, § 1225 is the precise mechanism by which millions of applicants for admission arriving at the POEs are inspected, admitted, referred for proceedings, or summarily removed every year.

**iii. Caselaw interpreting eligibility for a waiver under 8 U.S.C. § 1182(h) affirms that the definition found at § 1101(a)(13) leaves no doubt an admission requires "passage into the country from abroad at a port of entry."**

An illustration of the fact that by defining admission the way it did Congress unambiguously defined admission to "encompasses the action of an entry into the United States, accompanied by an inspection or authorization." [23]

This is illustrated by the caselaw interpreting eligibility for a waiver under 8 U.S.C. § 1182(h). Specifically, courts tasked with determining whether an alien who had adjusted their status inside the United States, (rather than being admitted as a Lawful Permanent Resident at a Port of Entry), and subsequently was convicted of an aggravated felony, could apply for a waiver under § 1182(h). [24]

The relevant portion of the statute in those cases provided:

> No waiver shall be granted under this subsection *in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if ... since the date of such admission* the alien has been convicted of an aggravated felony...[25]

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[22] *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).
[23] *Papazoglou v. Holder*, 725 F.3d 790, 792–94 (7th Cir.2013).
[24] *Id.*

[25] 8 U.S.C. § 1182(h) (emphasis added).

The Tenth Circuit, interpreting this provision, explained the consensus and clarity on this issue in *Medina Rosales v. Holder*, stating:

> Eight circuits . . . have held that this language clearly and unambiguously precludes eligibility for a waiver after conviction of an aggravated felony only if the alien received LPR status at the time the alien lawfully entered the United States, but it does not apply to an alien who obtained LPR status after having been present in the United States before acquiring that status.[26]

This interpretation is consistent with the statutory definition given to the terms admission and admitted by Congress. That being said, it has (at first blush) an illogic to it: Aliens who entered EWI or overstayed their visa then adjusted their status to that of a LPR in the U.S. are eligible for the waiver; meanwhile, aliens who waited until they had legal status to enter the U.S. are ineligible for it. [27] Respondents point to this purported illogical outcome in the context of bond eligibility. D.E. 16, Respondent's Return at Pg. 12.

While some courts suggested possible reasons for the distinction, [28] most courts correctly pointed out that due to the unambiguous text of § 1101(a)(13) and § 1182(h) the reasons for the distinction were irrelevant to interpreting the statutes. [29] The *Medina-Rosales* court quoting from a Sixth Circuit decision explained:

> Why would Congress distinguish between those who obtained lawful permanent resident status at the time of lawful entry and those who adjusted status later, for purposes of barring permanent residents who have committed aggravated felonies

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[26] *Medina-Rosales v. Holder*, 778 F.3d 1140, 1144 (10th Cir. 2015) (citing *Husic v. Holder*, 776 F.3d 59, 60–67 (2nd Cir.2015); *Stanovsek v. Holder*, 768 F.3d 515, 516, 517–19 (6th Cir.2014); *Negrete–Ramirez v. Holder*, 741 F.3d 1047, 1050–54 (9th Cir.2014); *Papazoglou v. Holder*, 725 F.3d 790, 792–94 (7th Cir.2013); *Leiba v. Holder*, 699 F.3d 346, 348–56 (4th Cir.2012); *Hanif v. Att'y Gen.*, 694 F.3d 479, 483–87 (3rd Cir.2012); *Bracamontes v. Holder*, 675 F.3d 380, 382, 384–89 (4th Cir.2012); *Lanier v. U.S. Att'y Gen.*, 631 F.3d 1363, 1365–67 (11th Cir.2011); *Martinez*, 519 F.3d at 541–46.).

[27] *See Medina-Rosales*, 778 F.3d at 1144-1146; *see also Martinez*, 519 F.3d at 544-546 (discussing the debatably absurd result of those who did everything legally by entering for the first time as a LPR and suggesting possible reasons for it, but ultimately pointing out that Congress' reasoning for the distinction is irrelevant where the text of § 1101(a)(13) and § 1182(h) are unambiguous).

[28] *See e.g., Martinez*, 519 F.3d at 544-546.

[29] *See e.g., Medina-Rosales*, 778 F.3d at 1146.

> from discretionary hardship relief? Our inability to answer such a question does not, however, warrant expanding the scope of a statutory provision beyond a meaning as plainly limited as the one in question here.[30]

**iv. IIRIRA's Twin Goals of Deterring Illegal Immigration and Fraud**

IIRIRA's primary goals were to disincentivize illegal entry and fraud in immigration. But the provisions enacted to achieve this goal are unrelated to detention during INA § 1229a proceedings. The "anomaly" IIRIRA aimed to fix had nothing to do with bond. Rather, it concerned the disparate procedural treatment (i.e. expedited removal) of aliens arriving at a Port of Entry (POE) versus those who entered without inspection (EWI).

Prior to IIRIRA, aliens arriving at a POE without proper documents were subject to expedited removal under INA § 1225(b)—a summary process culminating in immediate removal without a hearing before an Immigration Judge (IJ).[31] In stark contrast, an alien who entered without inspection, even if apprehended near the border moments after entry, was, prior to IIRIRA, statutorily entitled to full removal proceedings under § 1229a. IIRIRA corrected this procedural disparity by expanding the expedited removal provisions to EWI aliens who were encountered within two years of entry and within a geographic area defined by regulation and inadmissible under INA § 1182(a)(6)(C) or § 1182(a)(7) to expedite removal just as they would have been if at a POE.71 This "anomaly" of giving aliens found a few miles from the border and hours after entering full § 1229a proceedings while those similarly situated at a POE were order removed without any hearing under the expedited removal statute was corrected by IIRIRA's expansion of expedited removal to such aliens.[32]

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[30] *Id.* at 1146.

[31] *See generally* § 1225(b)(1).

[32] *See id.*

Both pre- and post- IIRIRA, aliens who are subjected to expedited removal that do not claim any fear of return are not supposed to be "detained" in custody—rather, the purpose and goal is immediate removal. Indeed, the very purpose of expedited removal is to effectuate an immediate removal, entirely bypassing the need for any detention or hearing. This goal of immediacy is codified in INA § 1231(c), which governs the "removal of aliens arriving at [a POE]" and mandates they "shall be removed immediately," unless impracticable. This focus on immediacy, not custodial detention, was the paradigm IIRIRA extended to recent EWI aliens.

**v. The real deterrents to entering the country EWI established by IIRIRA were the 3-year and 10-year bars for unlawful presence.**

IIRIRA put provisions in place to deter illegally entering as well as extended stays of unlawful presence in the U.S. by penalizing such actions through bars to becoming a LPR. Beyond expanding expedited removal, IIRIRA employed other significant statutory tools to deter illegal entry. Chief among these was the creation of the 3- and 10-year unlawful presence (ULP) bars found at INA § 1182(a)(9)(B). Because EWI aliens are generally ineligible to adjust status within the United States under § 1255(a), they must depart and seek admission via consular processing.[33] IIRIRA's new bars ensured that such a departure, after accruing sufficient unlawful presence, would trigger a multi-year, or even decade-long, bar to their lawful return. [34] IIRIRA did provide a waiver for these bars in the case of aliens who have either a spouse or parent that is a U.S. citizen or LPR who will suffer hardship if the alien's application for admission as a LPR is denied. This, not mandatory detention, was yet another deterrent aimed at the EWI population.

**6. <u>THE DEFAULT RULE IS THAT ALIENS ENCOUNTERED IN THE U.S. AND PLACED IN § 1229A REMOVAL PROCEEDINGS ARE, AT ANY POINT PRIOR TO THE ENTRY OF A FINAL ORDER OF REMOVAL, ENTITLED TO A BOND HEARING BEFORE AN IJ UNLESS ONE OF THE EXCEPTIONS SET FORTH IN 8 C.F.R. § 1003.19(H)(2) APPLIES.</u>**

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[33] § 1182(a)(9)(B)(i)(I)-(I).
[34] § 1182(a)(9)(B)(i)(I)-(I).

Pursuant to the INA, its implementing regulations, and decades of consistent agency practice, aliens placed into full § 1229a proceedings who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) are entitled to a bond hearing before an IJ. Indeed, Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States."

When the provisions related to inspection, expedited removal, and removal proceedings before an IJ were amended by IIRIRA, Congress clarified "the amendment of § 1226(a) simply "restate[d]" the detention authority previously found at § 1252(a) "to arrest, detain, and release on bond an alien who is not lawfully in the United States."[35] Meanwhile, the amendments did not disturb "the existing mandatory detention scheme for noncitizens arriving in the U.S. without a clear right to admission and expanded the scope of" expedited removal to "include certain recently arrived noncitizens." [36]

These amendments and the statutory scheme simply "reflected [Congress'] understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving."[37]

Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, EWI aliens are detained for § 1229a proceedings under § 1226(a).[38] Thus, in the decades

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[35] *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996) and H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.).

[36] *Id.*

[37] *Id.* (citing H.R. Rep. No. 104-469, p. 1, at 163-66 (recognizing the "constitutional liberty interest[s]" of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing Knauff v. Shaughnessy, 338 U.S 537 (1950)).

[38] *See id.* ("The EOIR's regulations drafted following the enactment of the IIRIRA explained this distinction.") (citing Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection).

that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. [39]

This, as every agency administering the INA and immigration attorney practicing when IIRIRA was passed knows, is nothing more than the obvious conclusion from the INA's statutory scheme (post-IIRIRA), the implementing regulations, and their actual application in millions of § 1229a proceedings for decades.

**a. <u>The Statutory and Regulatory Framework of the Entire Act Demonstrates the Government's New Position Is Simply Untenable Under Any One Of Many Canons Of Statutory Construction</u>**

The government's new position hinges on a simplistic and overbroad reading of § 1225(b)(2)(A) and the definition of "applicant for admission" found in § 1225(a)(1).[40] More specifically, the government takes the definition of applicant for admission in (a)(1), and leaps to the conclusion that all such applicants for admission must be "seeking admission," and therefore, subject to detention under § 1225(b)(2)(A) regardless of when or where they are encountered.[41] This interpretation ignores the careful distinctions drawn throughout the INA and its implementing regulations.

As an initial matter, *Hurtado* and the Respondents in their response claim to read the plain language of § 1225(b)(2)(A), but as many courts have pointed out the BIA only reaches its conclusion by omitting "plain language" contradicting its interpretation. Specifically, to be subject to § 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly

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[39] *Id.* ("[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond.").

[40] *See Hurtado*, 29 I&N Dec. at 216-220.

[41] *Id.*

and beyond a doubt entitled to be admitted."[42] The second element of Sec. 1225(b)(2)(A)—which requires that a noncitizen be *seeking admission*—is not met in the case of EWI aliens who are found miles away from the land border and years after their entry.

As explained above, Congress left no room to dispute that an admission may only take place at a designated POE when asking to enter after inspection by an immigration officer. Accordingly, EWI aliens, like Petitioner, cannot be said to be *seeking admission* when arrested and detained in the interior well after entering. Rather, consistent with pre-IIRIRA detention provisions and decades of agency action, § 1225(b)(2) only implicates noncitizens who are "*seeking admission*" into the United States.[43]

The statutory use of the present and present progressive tenses—"is an applicant for admission" "seeking admission"—excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States.[44] Throughout the country district courts have agreed with this plain reading, which gives effect to the meaning of each word, holding that 8 § 1225(b)(2)(A) must be read to apply only to noncitizens who are apprehended while seeking to enter the country, and that noncitizens already residing in the United

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[42] 8 U.S.C. § 1225(b)(2)(A); *see also Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

[43] *Id.*

[44] *See Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); accord Lopez Benitez v. Francis, 2025 WL 2371588, at *6–7 (S.D.N.Y. Aug. 13, 2025). See also United States v. Wilson, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes." ); Al Otro Lado v. McAleenan, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in 8 U.S.C. Sec. 1225 (1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

States, including those who are charged with inadmissibility, continue to fall under the discretionary detention scheme in § 1226.[45]

Further support for the overwhelming conclusion reached by courts can be found in the various statutes proscribing various arrest and detention authorities depending on the circumstances.[46]

One need not look any further than 8 C.F.R. § 1003.19(h)(2)(iii)(B) to see that the statutory and regulatory scheme was always intended to give Immigration Judges jurisdiction to grant bond to most noncitizens falling under the definition of "applicant for admission." This is demonstrated by the fact that the regulations governing an Immigration Judge's bond jurisdiction explicitly strip the Judge of authority over "arriving aliens" which are a subset of noncitizens who fall under the definition of "applicants for admission."[47] Specifically, 8 C.F.R. § 1.2 defines an arriving alien as:

> Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien

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[45] *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 779 F. Supp. 3d 1239, 1256–59 (W.D. Wash. 2025) (granting preliminary injunction prohibiting I.J.s from denying bond to individuals apprehended in the interior based on INA § 1225(b)(2)); *see also Gomes v. Hyde*, 2025 WL 1869299 at *6-7 (D. Mass. July 7, 2025) (relying on statutory structure and Laken Riley Act amendments to § 1226 to find that recent entrant re-detained on a warrant was not subject to § 1225(b)(2)); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6–8 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025); *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *8–10 (D. Ariz. Aug. 11, 2025); *Aguilar Maldonado v. Olson*, 2025 WL 2374411, at *11–13 (D. Minn. Aug. 15, 2025); *accord Castillo Lachapel v. Joyce*, 2025 WL 1685576, at *2 (S.D.N.Y. June 16, 2025) (parties agreed that a person who had entered without inspection and was arrested in the interior was detained under § 1226(a)).

[46] *See* 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357; *see also United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .") (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine" exempting border searches and seizures from the Fourth Amendment's warrant requirement. "It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border."

[47] 8 C.F.R. § 1003.19(h)(2)(iii)(B).

> remains an arriving alien even if paroled pursuant to section [§ 1182(d)(5)] of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section [1225(b)(1)(A)(i)] of the Act.[48]

If, as the government now contends, every noncitizen who is an "applicant for admission" is subject to mandatory detention for bond purposes, there would have been no need for a regulation stating immigration judges do not have jurisdiction to grant "arriving aliens" a bond. The regulations specific prohibition against bond for "arriving aliens" implicitly confirms that Immigration Judges do have jurisdiction over other categories of "applicants for admission," such as those like Petitioner, who were apprehended years after entry and deep in the nation's interior.[49] Petitioner is not an "arriving alien"; nor is he subject mandatory detention under § 1225. Rather, he is an alien arrested within the United States and detained under § 1226.

Recently, countless courts have repeatedly pointed out that under the government's new theory, the Laken Riley Act (LRA) is completely devoid of any meaning as every person described in § 1226(c)(1)(E)(i) was already subject to mandatory detention under the government's new interpretation of § 1225(b)(2)(A).[50] Congress, therefore, would have enacted a statute that accomplished nothing. It is a foundational principle of statutory construction that courts must

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[48] 8 C.F.R. § 1.2 (emphasis added).

[49] *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (recognizing that "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)") (emphasis added); *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) ("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . .years.")

[50] *See e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.").

"give effect, if possible, to every clause and word of a statute,"[51] and must avoid interpretations that render statutory language superfluous.[52] The government's position violates this canon in the most profound way, effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted § 1226(c)(1)(E) precisely because being EWI or an "applicant for admission" alone *does not* trigger mandatory detention.[53]

**b. Reliance on Jennings is Misplaced at Best and Misleading at Worst.**

In *Matter of Hurtado*, and the Respondent in their response, claims that the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) dictates their preferred result. This claim, as one court put it, however, "is, to say the least, not without some doubt."[54] Contrary to the BIA's claims about *Jennings*, Article III courts have seemingly uniformly pointed out that *Jennings* actually said: ""U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)."[55] Furthermore, as discussed above and illustrated by the oral argument transcript provided in the attached Exhibit, the *Jennings* court was operating under the belief that the application of § 1225 was at or near the border. A change in this fact completely changes the constitutional analysis.

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[51] *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

[52] *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013).

[53] Another (of many) applicable cannons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled "Mandatory detention," explicitly states that noncitizens found not to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

[54] *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934, at *4–6 (D. Neb. Sept. 18, 2025).

[55] *Jennings*, 583 U.S. at 289 (emphasis added).

This is particularly true given the fact that when the Solicitor General was directly asked—more than once and in more than one way—what statute an alien who entered illegally who was not subject to expedited removal was detained under, he unequivocally responded § 1226(a) every time.

**c. <u>Congress can give more rights than the constitution through statute, but it cannot lower the protections it provides—another fatal fact for the government's position.</u>**

Congress may expand procedural protections through statute, but it cannot legislate away fundamental constitutional guarantees. The Fourth Amendment's protection against unreasonable seizures applies to all persons within the territory of the United States, including noncitizens. Immigration officials may not § 1225(b)(2)(A) detain individuals encountered in the interior indefinitely or without probable cause; the Fourth Amendment simply does not permit it. Likewise, the constitution's due process clause protections must be afforded to all those living in the U.S. before being deprived of their liberty.

At the nation's borders, however, the constitution's protections are lowered and almost nonexistent for those who are not in the U.S. (including those who are at the border still under the legal fiction of parole). The absence of a warrant requirement in 8 U.S.C § 1225, therefore, is in line with the longstanding principle that the search and seizure of persons at our country's borders are not subject to the Fourth Amendment's warrant requirement. [56]

**d. The absence of a warrant requirement in § 1225(b)(2)(A) requires that the statute continues to be interpreted as limited to arriving aliens at the POE, border, or in close proximity to the border, otherwise it is unconstitutional.**

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[56] *See United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .") (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine" exempting border searches and seizures from the Fourth Amendment's warrant requirement. "It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border.").

Just as established as the border exception to the Fourth Amendment is the fact that immigration stops and arrests elsewhere are subject to the Fourth Amendment's protections. Indeed, "[l]ongstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"[57] The law in this area is not grey. Rather, since at least 2009, it has been "clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."[58]

The clarity of the law in this area is bolstered by the proscriptions of 8 U.S.C. § 1357, which "[c]ourts have consistently held" the inclusion of the phrase "reason to believe" in § 1357 "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause."[59]

Despite the abundantly clear requirements of the Fourth Amendment, the government now argues that a statute with no warrant requirement (§ 1225(b)(2)(A)), historically applied at or near the border, allows DHS to arrest or detain aliens in the interior of the United States without any concern for the Fourth Amendment's protections. Such an interpretation is unconstitutional and any interpretation that would have such a result must be avoided.

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[57] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York*, 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

[58] *Id.* at 215.

[59] *Id.* at 216-17 (citing *Au Yi Lau*, 445 F.2d at 222; *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

The Supreme Court has explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

> The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once 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. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.[60]

Moreover, *Zadyvdas* left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the community.[61] Where no such justification exists detention without due process is unconstitutional.[62]

Here, the notion that Petitioner, who is not a flight risk or danger to anyone may be held without a bond hearing to determine if there is a special justification for such detention is contrary to the due process everyone was once afforded in this country. It is important to point out that the actual mandatory detention provisions, § 1226(c), § 1231, and 8 C.F.R. § 1003.19(h)(ii), are simply a codification of circumstances typically believed to be indicative of flight risk or danger to the community. Whether it be as a result of having no ties in the U.S. for arriving aliens, or a criminal conviction indicative of danger, these detention provisions all are rooted in flight risk and danger, which are the only two justifications for depriving one of their liberty.

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[60] *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001).

[61] *Id.*

[62] *Id.*

**e. DHS has consistently treated Petitioner as though they are subject to § 1226, and therefore, have created a liberty interest that cannot be abrogated by the government unilaterally deciding to "switch tracks."**

As stated in the opening, every DHS created, authored, and signed document issued in conjunction with Petitioner's encounter with DHS explicitly cited § 1226 for authority; meanwhile, § 1225 is not referenced anywhere in any of those documents. Nonetheless, the government now attempts to switch Petitioner's detention to being under § 1225. This attempted switch is not new to this case. Indeed, it seems to be an argument attempted by the government—and rejected by courts—from coast to coast.[63]

Courts faced with such arguments from the government in cases where DHS had previously consistently treated the alien as being subject to § 1226 have rejected this purported switching. In so doing, courts have explained that "settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2)."[64] In this context, courts have also found DHS's prior treatment of an alien as though they are subject to § 1226 has resulted in concluding such an alien "enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply

## 7. THE CASE AT BAR IS THE EXACT CIRCUMSTANCE IN WHICH DUE PROCESS WAS INTENDED TO BE INVOKED

Congress may expand the protections granted by the Constitution through statute, but it cannot legislate away fundamental constitutional guarantees. The Due Process Clause of the Fifth

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[63] *See e.g. Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); Patel v. Crowley, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025).

[64] *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

Amendment guarantees that no person in the United States shall be deprived of liberty without due process.[65] These substantive and procedural due process protections apply to all people, including noncitizens, regardless of their immigration status. [66] The Due Process Clause provides heightened protection against government interference with certain fundamental rights—and freedom from detention lies at the heart of the Due Process Clause's protections. For persons in the United States (even unlawfully), courts have found that noncitizens who have established a life here—albeit without authorization—possess a strong liberty interest in their freedom from detention.

The Fourth Amendment's protection against unreasonable seizures applies to all persons within the territory of the United States, including noncitizens. Immigration officials may not detain individuals encountered in the interior indefinitely or without probable cause; the Fourth Amendment simply does not permit it.

"'"Longstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"'[67] The law in this area is not grey. Rather, for decades, it has been "clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention." [68] The clarity of the law in this area is bolstered by the statutes proscribing

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[65] U.S. Const. amend. V.

[66] *Trump v. J.G.G.*, 604 U. S. ---145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

[67] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York*, 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

[68] *Id* at 215.

its arrest authority: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357. These statutes, "[c]ourts have consistently held," "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause."[69] The "robust consensus of cases [and] persuasive authority" in this area makes it "beyond debate that an immigration officer . . . would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status." [70]

The Supreme Court has explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

> The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once 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. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.[71]

In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention, including in the immigration context, requires a sufficient justification— namely preventing flight or danger to the

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[69] *Id.* at 216-17 (citing *Au Yi Lau*, 445 F.2d at 222; *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

[70] (*Id.*)

[71] *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

community. [72] Where no such justification exists detention without due process is unconstitutional. [73]

At the nation's borders, however, the constitution's protections are lowered, even nonexistent for those who are not in the U.S. (including those who are at the border still under the legal fiction of parole). The history of the INA, the constitution's protections as well as the lowered protections at or near the border, are reflected in the INA's statutory scheme.

## CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be granted, and an order should be issued immediately releasing Petitioner from his seven-month unlawful detention or an immediate deadline should be imposed before which Respondents must provide Petitioner with a discretionary custody redetermination (bond) hearing.

***/s/ Jan Peter Weiss***

Dated: February 5, 2026

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[72] *Id.*

[73] *Id.*

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| PERALTA-DORMES, Ramon Adalberto | ) | |
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| Petitioner, | ) | |
| v. | ) | Case No.: 1:26-cv-20294-KMM |
| | ) | |
| PAMELA BONDI, U.S. Attorney General, et al. | ) | |

**INDEX OF SUPPORTING DOCUMENTS**

| Attachment No. | Document Title |
|---|---|
| 1 | 2022 Annual Flow Report – Department of State |
| 2 | Jennings Oral Argument Transcript |

**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all counsel of record identified on the Service List via CM/ECF.

Dated: February 5, 2026

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