UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SILVIO MARTINEZ LAGUNA, *et al.*, *Petitioners*, v. MICHAEL ROSE, *et al.*, *Respondents*.	Case No. 2:26-cv-0312

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

I. INTRODUCTION

In response to Respondents' response to the Court (ECF 3), Petitioners submit this reply brief. Petitioners are not requesting a bond hearing, but rather immediate release, as Petitioners believe this is the appropriate remedy in this matter. Petitioners also believe that this habeas may be decided on the papers. In sum, Petitioners' habeas rests on the argument that they are being unlawfully detained without bond pursuant to 8 U.S.C. § 1225(b)(2), and that their detention should be governed by § 1226(a). *See* Petition for Habeas Corpus, ECF No. 1, *generally*.

The overwhelming majority of federal district courts have rejected Respondents' argument. In over 350 cases[1] decided by over 160 different judges sitting in roughly 50 different courts across the United States, the Respondents' arguments have been completely rejected. *Barco Mercado v. Francis et al.*, No. 25-06582, ECF No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025).

[1] A November 28, 2025 Politico article notes that "At least 225 judges have ruled in more than 700 cases that the administration's new policy, which also deprives people of an opportunity to seek release from an immigration court, is a likely violation of law and the right to due process." *See* *https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861* (Last accessed December 5, 2025).

II. FACTUAL AND PROCEDURAL BACKGROUND

Respondents' have generally accepted Petitioners' factual summary as listed in the original petition. ECF 3, p. 3.

III. IMMEDIATE AND UNCONDITIONAL RELEASE IS WARRANTED

Before Petitioners address Respondents' arguments regarding jurisdiction, Petitioners wish to emphasize with the court that the appropriate remedy in this matter is immediate and unconditional release, *not* a bond hearing before an immigration judge.

The Supreme Court has also recognized that "Habeas has traditionally been a means to secure *release* from unlawful detention." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (emphasis in original). Several decisions from the Eastern District have ordered immediate release in similar cases. *See eg. Rodrigues Pereira v. O'Neill*, et al. No. 25-6543, Dkt. 11 (E.D. Pa. Dec. 8, 2025); *Morocho v. Jamison, et al.*, No. 25-05930, 2025 WL 3296300, at *3 (E.D. Pa. Nov. 26, 2025); *Diallo v. O'Neill, et al.*, 25-06358, Dkt. 10 (E.D. Pa. Nov. 26, 2025); *Patel v. McShane, et al.,* 25-05975 (E.D. Pa. Nov. 20, 2025). The Court should not depart from this norm.

As noted above, several hundred district court decisions addressing the legal issues presented in the underlying Petition for Writ of Habeas Corpus and rejected the government's position. *Demirel v. Federal Detention Center Philadelphia*, et al., No. 25-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025). Those Courts have roundly rejected Government's interpretation of the Immigration and Nationality Act (INA); the interpretation that is part of the Department of Homeland Security's (DHS) policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under

§ 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond; and the interpretation is part of the Board of Immigration Appeals' (BIA or Board) September 5, 2025 precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

Many of these decisions have found that Respondents' erroneous application of the law violates the respective detainees constitutional right to Due Process. *See eg. Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 317639 (E.D. Pa. Nov. 13, 2025); *Bethancourt Soto v. Soto*, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Rodriguez Serrano v. Noem*, 2025 WL 3122825 (W.D. Mich. Nov. 7, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, (N.D. Ill. Oct. 16, 2025); *Rosales Ponce v. Olson*, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Loza Valencia v. Noem*, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

Despite this *overwhelming rejection* of Respondents' new policies and *Matter of Yajure Hurtado*, and hundreds of decisions finding that Respondents are violating the constitutional

rights, **Respondents refuse to relent and continue act in defiance of the law and the Constitution. It has been reported that ICE agents inform detainees that they** "have to sue us [ICE] to get out."

Petitioners are now two of the approximately 61,000 people detained by Respondents.[2] Respondents' unlawful behavior is pervasive and defies decision after decision from the Courts. As Petitioners' arrests and detentions were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore Petitioners is to immediately release them and enjoin the Government from further similar transgressions. *See eg. Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019).

IV. JURISDICTION

Respondents claim that this Court is statutorily barred from hearing this case because the Immigration and Nationality Act ("INA") contains a variety of jurisdiction stripping provisions, codified at 8 U.S.C. § 1252. ECF 3, p. 7-13. Respondents argue that three such provisions prevent this Court from hearing the petitioners' claim. *Id.* As numerous courts have already found, these arguments fail.

a. 8 U.S.C. § 1252(g)

The Respondents first point to § 1252(g), arguing it strips this Court of jurisdiction to review the decision to detain the petitioners. ECF 3, p. 8-9. That provision states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g).

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[2] *See* ICE's publicly available detention data, available at: https://www.ice.gov/detain/detention-management

Petitioners do not, at any point in their Petition or these proceedings, challenge the Attorney General's authority to commence or adjudicate proceedings.

Respondents' analysis flies in the face of (and ignores) the Supreme Court's ruling *Reno v. Am.-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471 (1999). In *AADC*, the Supreme Court held that § 1252(g) did not apply to anything beyond those "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret [the language in § 1252(g)] to sweep in any claim that can technically be said to "arise from" the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."). The *AADC* Court stated that it made sense for Congress to target these three stages because at each stage the former INS has discretion to abandon the endeavor, and at the time § 1252(g) was enacted, the former INS routinely had been defending suits challenging its exercise of discretion in deportation cases. *DeSousa v. Reno*, 190 F.3d 175, 182 (3d Cir. 1999) (internal citations omitted). Interpreting § 1252(g) beyond those three discrete actions – as Respondents ask this Court to do – would treat § 1252(g) as an extremely broad provision that would apply to every deportation-related challenge, because every such challenge could be deemed a suit related to the commencement or adjudication of removal proceedings. *Id.* The Supreme Court and the Third Circuit have explicitly rejected such a broad interpretation of § 1252(g), instead finding that it is "a narrow" provision. *Id.*

Petitioners do not, at any point in their Petition or these proceedings, challenge the three specific decisions made by the executive that are covered by § 1252(g): decisions to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." Petitioners' detention pursuant to

§ 1225(b)(2) may occur during—but is nonetheless independent of—their removal proceedings. Accordingly, § 1252(g) does not strip this Court of jurisdiction.

b. 8 U.S.C. § 1252(b)(9)

Next, Respondents argue that § 1252(b)(9), deprives this Court of jurisdiction because – according to Respondents – Petitioners' claims arise from Respondents' actions taken to remove them from the United States. ECF 3, p. 9-12.

Section 1252(b)(9) provides:

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

Respondents contend this section means that Petitioners' detention, which arose out of Respondents' attempt to remove them from the country, cannot be reviewed until a final removal order is issued, and then only by a circuit court. This argument relies on language of § 1252(a)(5) that states that judicial review of a removal order is only available through a petition filed "with an appropriate court of appeals." ECF 3, p. 10. Respondents thus read these two provisions (§ 1252(a)(5) and § 1252(b)(9)) as working together to divert all claims relating to removal proceedings to a court of appeals post-removal order. *Id.*

Respondents cite to *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), in support of their claim that "[t]aken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR process. ECF 3, p. 11. Respondents' reliance is misplaced; they have again cherry-picked select wording without analysis. The Court in *J.E.F.M.,* on the very next page, goes on to "distinguish[] between claims that 'arise from' removal proceedings under § 1252(b)(9)—which must be channeled

through the PFR process—and claims that are collateral to, or independent of, the removal process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). The *J.E.F.M.* Court then re-affirmed the long-standing principal "that § 1252(b)(9) *does not apply to federal habeas corpus provisions* that do not involve final orders of removal." *Id.* (emphasis added).

Again, the Respondents construe the statutory text too broadly. A careful reader will notice that the language in § 1252(b)(9) is similar to that in § 1252(g)—the words "arising from," which the Supreme Court in *AADC* interpreted narrowly, appear again. Indeed, the Court later held in *Jennings* that § 1252(b)(9) did not bar it from hearing a petition alleging that the plaintiff's detention was overly prolonged in violation of due process. 583 U.S. at 291, 294–95. Just like the petitioner in *Jennings*, Petitioners here are not "challenging the decision to detain [them] in the first place or to seek removal; and [they are] not even challenging any part of the process by which [their] removability will be determined." *Id.* at 294. Rather, Petitioners are challenging their detention under § 1225 and their entitlement to a bond hearing. *Jennings* holds that § 1252(b)(9) does not bar this Court from hearing their claim.

c. 8 U.S.C. § 1252(a)(2)(B)(ii)

Respondents next argue that § 1252(a)(2)(B)(ii) shields from judicial review discretionary decisions like what charges of inadmissibility to lodge. ECF 3, p.12-13. When the Government argues that a statutory scheme "prohibit[s] all judicial review" of agency decision-making, it bears a "heavy burden." *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 188 (3d Cir. 2020). The entirety of Respondents' argument is:

> "Thus, even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings, Congress added this additional jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA."

Respondents fail to meet their "heavy burden." Again, Petitioners are not challenging Respondents' decision to detain them during removal proceedings. Nor are the Petitioners necessarily challenging the "charges of inadmissibility" lodged against them. Petitioners are challenging their detention under § 1225 and their entitlement to a bond hearing. These are threshold legal questions and are "not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

V. PETITIONERS' DETENTION PURSUANT TO 8 U.S.C. § 1225(b)(2) IS UNLAWFUL

Respondents aver that "Petitioners fall squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement." ECF 3, p. 14. Respondents concede, however, "Petitioners crossed the United States border without being admitted" and make the illogical leap that this qualifies them as "an applicant for admission" when in fact their entry was factually the antithesis of applying for admission. *Id.*

For decades, Respondents, immigration courts, and federal courts have not interpretated this "unambiguous language" in this way. "The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024).

Further, 160 different judges in at least 350 cases have ruled in favor of Petitioner on the same issue. *See Barco Mercado v. Francis et al.*, No. 25-06582, ECF No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025). Indeed, within the Third Circuit, the Western District of Pennsylvania, the Eastern District of Pennsylvania, and the District of New Jersey have all rejected ICE and EOIR's new interpretation. *See Del Cid v. Bondi*, 3:25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Cantu-Cortes, v.O'Neill, et al.,* No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025); *Kashranov v. J.L. Jamison, et al.,* No. 2:25-CV-05555-JDW, 2025 WL 3188399

(E.D. Pa. Nov. 14, 2025); *Zumba v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Bethancourt Soto v. Louis Soto, et al.*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Lomeu v. Soto, et al.*, No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025).

The crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226. Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) "mandate[s] detention of applicants for admission until [removal] proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals detained following examination § 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)).

Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Under § 1226(a), "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The government then "may continue to detain the arrested" noncitizen during removal proceedings or "may release" the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). At that hearing, the immigration judge must release the noncitizen unless the government

establishes either by clear and convincing evidence that he poses a danger to the community or by a preponderance of the evidence that poses a flight risk. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 276 (3d Cir. 2018); *see also Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) [Bond should be granted unless there is a finding that the individual is a threat to public safety or national security or is likely to abscond]; *Matter of Daryoush*, 18 I&N Dec. 352 (BIA 1982).

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

a. Petitioners are neither 'applicants for admission' nor are they 'seeking admission' to the United States

Respondents emphasize that Petitioners fall squarely within § 1225(a)(1)'s definition of an "applicant for admission" because they were not admitted. *See eg.* ECF 3, p. 14. The government asserts that mandatory detention under § 1225(b)(2)(A) applies to any "applicant for admission" – including any noncitizen who entered the United States without inspection, regardless of how long he has been present in the country – who is not subject to expedited removal. *Id.* at p. 17.

The interpretation of the applicable statutes by Respondents here and by the BIA in *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) overlooks part of the language in § 1225(b)(2)(A), gives little consideration to the overall statutory scheme, and ignores section 1226. Section 1225(b)(2)(A) requires mandatory detention of all "applicants for admission" if the examining immigration officer determines that "an alien seeking admission is not clearly beyond a doubt entitled to be admitted." An "applicant for admission" is defined in the statute as an alien "present in the United States who has not been admitted." §

1225(a)(1). It is undisputed that, when Petitioners were arrested, they were present in the United States and had not been admitted. Therefore, they would qualify as "applicants for admission" under this broad language.

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

Instead, Congress chose the phrase, "an alien seeking admission." Because this phrase is not defined in the statute, the Court must construe it based upon its ordinary everyday meaning. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 69 (2012). "Seeking admission" is a participial phrase that modifies the noun alien. It narrows the meaning of alien to one who is attempting to obtain lawful admission to the United States. "Seek" is an active verb, not a type of status. Seek, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/seek [https://perma.cc/42LS-5YMV] (defining "seek" as "to try to acquire or gain"). The Court cannot simply disregard these words as superfluous. It must assume that Congress intended for them to have a purpose. Scalia & Garner, supra, at 174 (describing the "surplusage canon": "If possible, every word and every provision is to be given effect .... None

should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

Thus, based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to aliens in the United States who have not been admitted ("applicants for admission" definition) ***and*** who are attempting to obtain lawful admission to the United States. *See, eg. J.A.M. v. Stereval*, et al., No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *3 (M.D. Ga. Nov. 1, 2025).

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

At the time of their arrests, Petitioners were aliens in the United States who had not been lawfully admitted, but based on the present record, they were not attempting to be lawfully admitted. *See* ECF 1. Therefore, it cannot be said that they qualify as "aliens seeking admission"

subject to mandatory detention under § 1225(b)(2)(A), which requires both presence and seeking admission.

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

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

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

Thus, unlike Section 235(b)(2)(A), which limits its application to applicants seeking admission, nothing in the text of Section 236(a) indicates that it is meant to apply to a subcategory of noncitizens (such as those seeking lawful entry after having been inspected and examined by an immigration officer).

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

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

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

The doctrines also apply to construe related statutes in a manner that avoids one statute nullifying portions of another. *See e.g.*, A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts § 27(2012) (discussing the Harmonious-Reading Canon). For example, the Supreme Court recently rejected a construction of a statute that would render portions of related statutes unnecessary. *See Fischer v. United States*, 603 U.S. 480 (2024). As explained in that decision: "Federal obstruction law consists of numerous provisions that target specific criminal acts and settings. . . . Much of that particularized legislation would be unnecessary if (c)(2)

criminalized essentially all obstructive conduct, as the Government contends." *Id.* at 492. The Supreme Court recognized that "the Government's all-encompassing interpretation may be literally permissible," but it rejected such an interpretation because, in part, accepting the construction would "render[ ] an unnerving amount of statutory text mere surplusage." *Id.* at 498.

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

This result bears particular weight because less than one year ago, Congress passed the Laken Riley Act, which amended Section 236(c). Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). The Laken Riley Act mandates detention for noncitizens "present without admission or parole" and admit to committing, are arrested for, or convicted of certain theft offense. 8 U.S.C. § 1226(c)(1)(E). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Intel Corp. Inv. Pol'y Comm. V. Sulyma*, 589 U.S. 178, 189 (2020); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part

of the same statutory scheme."). Accepting Respondents' position would strip any "real and substantial effect" from the language that the Laken Riley Act added to Section 1226(c), as the Secretary could rely on Section 1225 to mandatorily detain every alien subject to Section 1226(c)(1)(E).

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

Respondents argue that this interpretation would lead to incongruous treatment of aliens and subject the lawful applicant to more stringent requirements than the unlawful alien evader. ECF 3, p. 17. Respondents, however, focus on the wrong question. The relevant distinction is not between "aliens who unlawfully enter the United States without inspection and possibly evade apprehension for a number of years" and those who appear at a port of entry. *Id.* Rather, it is between persons inside the United States and persons outside the United States. That distinction is consistent with the long history of our immigration laws and with the Constitution. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all

'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). It is therefore reasonable to read these statutes against that backdrop. *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025).

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

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

> It is true that aliens who have once passed through our gates, **even illegally**, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. But an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."

Shaughnessy at 212, (emphasis added).

This principle has long been upheld and so it is *not* the lynchpin issue that Respondents make it out to be. *See, eg. Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 447 (3d Cir. 2016), *citing Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause]."); *Zadvydas*, 533 U.S. at 693 ("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." *Id.* (citations omitted).

Respondents also rely on *Jennings v. Rodriguez*, 583 U.S. 281 (2018) to support their interpretation of § 1225(b)(2). Although that decision did involve the same provisions of the INA at issue here here, the issue presented in *Jennings* was different, and therefore, the Supreme Court did not interpret the precise language of the relevant statutes involved here. The issue before the Supreme Court in *Jennings* was whether the INA implicitly requires periodic bond hearings for certain alien detainees. *Id.* at 296-97. The Supreme Court did not have to decide whether an alien arrested in the United States, after having been in the country illegally for several years, qualified as "an applicant for admission" who was "seeking admission" and thus was subject to mandatory detention under § 1225(b)(2) or whether the alien was entitled to a bond hearing under § 1226(a).

In addition to being distinct and thus not binding precedent for this matter, *Jennings* is not even analogous and thus does not constitute persuasive authority. Respondents pick certain isolated phrases from *Jennings*' general background description of the INA detention framework to bolster their position that every alien arrested in the United States—regardless of their lack of criminal history and the absence of any evidence that they would be a flight risk or a danger to the community—is now subject to mandatory detention without the opportunity for a bond hearing, notwithstanding the clear language of § 1226(a). Respondents latch on to the majority opinion's description of § 1225(b)(2) as a "catchall" provision that they argue is intended to include all aliens, including those who did not seek admission when they initially entered the United States or who never sought admission thereafter. ECF 3, p. 14. It may indeed be a "catchall," but it only

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

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

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

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

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

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

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

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

"The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). Here too, Respondents' longstanding practice should inform the Court's decision.

VI. DUE PROCESS

Respondents aver that Congress's interest in regulating immigration, including by keeping specified aliens in detention pending the removal period, this Court should dispense of any due process concerns without engaging in the *Mathews v. Eldridge* test. ECF 3, p. 22-23. Respondents cite to *Demore v. Kim,* 538 U.S. 510 (2003) in support of their position. *Id.* In *Demore v. Kim*, the Court noted that, "it is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523. It would be beyond a stretch – an absolute fiction – to read *Denmore* as stating that the Fifth Amendment did not apply to an individual challenging what they believed was an erroneous deprivation of their liberty without due process.

The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. The Due Process Clause extends to all "persons" regardless of status, including non-citizens, whether here lawfully, unlawfully,

temporarily, or permanently. *Zadvydas* at 693. To determine whether detention violates procedural due process, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Further, government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances "where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas* at 690.

a. Petitioners' Private Interest

First, Petitioners' "private interest … affected by the official action is the most elemental of liberty interests—the interest in being free from physical detention." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, (2004). Respondent's reliance on *Demore* and the Congress's interest in regulating immigration does little to tip the scales. "It is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States,* 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (emphasis added; internal quotation marks omitted). At this stage in the *Mathews* calculus, the Court must consider the interest of the *erroneously* detained individual. *Carey v. Piphus,* 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Hamdi* at 2646–47.

b. The Risk of an Erroneous Deprivation

As to the second prong of the *Mathews v. Eldridge* balancing test, the Court should find that the risk of erroneous deprivation is particularly high here. The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Petitioners have raised significant and supported legal arguments against Respondents' detention of Petitioners under §1225(b). Further, Respondents have presented **no evidence** in the record suggesting that Petitioners are a flight risk or a danger to their communities; only that they are subject to mandatory detention. *See id.*

As evinced in the underlying petition before this Court, individuals in the Petitioners' situation historically were held under § 1226(a)'s discretionary provisions but Petitioners are now being held in mandatory detention through an agency extension of § 1225(b)(2)(A)'s mandatory detention provisions against them. And, "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Ent.*, 603 U.S. at 413.

The unilateral decision by the BIA to use *Matter of Yajure Hurtado* to extend a different statute to Petitioners' circumstances despite historically applying 1226(a) now leaves their liberty interest at risk. Petitioners contend that the Respondents may not now extend the bounds of their authority to apply § 1225(b)(2)(A) against them, and this Court must ensure proper application of the laws against Petitioners.

c. The Government's Interest

The final *Mathews* factor concerns the United States' interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. *Mathews*, 424 U.S. at 335. Petitioners recognize that the United States has an interest in meaningful immigration

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

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas,* 533 U.S. at 690, 121 S.Ct. 2491. Respondents have provided no evidence or argument that Petitioners are either a flight risk or a danger, and the record would indicate that they are neither. They have timely filed I-589s, Applications for Asylum pending. Respondents cannot show that their interest in detaining Petitioners without a bond hearing outweighs Petitioners' liberty interests; nor can they show that the effort and cost of providing Petitioners with procedural safeguards is burdensome.

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

VII. CONCLUSION

Petitioners respectfully request that this Honorable Court grant this petition for writ of habeas corpus because they are detained in violation of federal law and/or the Constitution. Petitioner further requests this court order their immediate release from custody.

Respectfully Submitted,

Date: January 23, 2026

s/Lina Ruth Duiker

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 23, 2026, she served a copy of the attached:

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

by electronic service to Respondents' Counsel *via* ECF.

Date: January 23, 2026

s/Lina Ruth Duiker

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