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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GONZALO CONSTANTE VALVERDE, Petitioner, v. SHIKHA DOSANJ, WARDEN, FEDERAL DETENTION CENTER, HONOLULU, HAWAI'I; DAVID PORTER, ACTING FIELD OFFICE DIRECTOR, HONOLULU FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT; PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES; KRISTI	CIVIL NO. 26-00061 JAO-KJM **PETITIONER'S TRAVERSE AND REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS, FILED FEBRUARY 17, 2026, [DKT. 13];** **DECLARATION OF NERIBEL CHARDON;** **CERTIFICATE OF COMPLIANCE;** **CERTIFICATE OF SERVICE**

NOEM, SECRETARY OF HOMELAND SECURITY, IN THEIR OFFICIAL CAPACITIES,

Respondents.

PETITIONER'S TRAVERSE REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS, FILED FEBRUARY 17, 2026, [DKT. 13]

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I. INTRODUCTION

Respondents do not dispute the salient facts. Respondents' legal arguments are contrary to Supreme Court and Ninth Circuit precedent, strain credulity, and have been repeatedly rejected by numerous courts around the country.

Respondents' argument that pursuant to 8 U.S.C. §§ 1252(b)(9) and (g), this Court does not have jurisdiction over a habeas petition contesting a noncitizen's detention without bond is inconsistent with the language of the statutory provisions, Supreme Court and Ninth Circuit precedent, and numerous district court orders. *See supra*, Section II.A.

Respondents' argument that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225 is based on its assertion that the use of "applicants for admission" and "seeking admission" in Section 1225(b)(2) are "virtually indistinguishable." *See* Dkt. 13 at 15. Numerous courts around the country have rejected this argument as inconsistent with the Supreme Court's stated understanding of Sections 1225 and 1226 in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the statutory text and scheme, and decades of historical practice. *See id.* at 288–89 ("U.S. immigration law authorizes the Government to detain certain aliens **seeking admission** into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens **already in the country pending the outcome of removal proceedings** under §§ 1226(a) and (c).") (emphasis added); *supra*, Section II.B.

Independent of the statutory argument, Petitioner's detention without a bond hearing violates his right to due process. *See supra*, Section III.C. Respondents do not address the merits of Petitioner's due process claim.

The consequences of not receiving a bond hearing are devastating. Petitioner is separated from his community and can no longer work to support himself and his two daughters. Moreover, Petitioner's ability to defend his case, gather evidence, and communicate with counsel is severely impeded by his detention. While non-detained respondents in immigration court often have several months to years to prepare for their merits hearings before an immigration judge, detained respondents must do so on a much shorter timeline with little communication with the outside world.

Accordingly, the Court should grant the Petition.

II. ARGUMENT

A. This Court has jurisdiction over the Petition.

Respondents' arguments that 8 U.S.C. § 1252(b)(9) and (g) preclude jurisdiction have no merit.

Section 1252(g) provides: "[N]o 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."

Respondents argue this provision precludes jurisdiction because "Petitioner

seeks to challenge the government's decision to charge him with removability and detain him, which arise 'from the decision [and] action' to commence removal proceedings against him." Dkt.13 at 4. Respondents' further attempt to fit a square peg in a round hole through arguing this case is governed by *Wang v. Derr*, No.-CV25-00231-JAO-RT (D. Haw.) because Petitioner challenge DHS's decision to classify him as an "arriving alien" and he should raise the issue before the Immigration Judge. Dkt.13 at 1-2. These arguments lack merit.

A cursory review of the Petition establishes that Petitioner challenges the government's continued detention of him without a bond hearing pursuant to the government's interpretation of § 1225(b), and not any decision "to commence proceedings, adjudicate cases, or execute removal orders" or his classification as an "arriving alien" on the Notice to Appear ("**NTA**") provided to him when he first entered the U.S. *See* Dkt.1-1.

Respondents' broad interpretation that Section 1252(g) applies to bar any challenges related to detention is contrary to Supreme Court and the Ninth Circuit precedent. In *Reno v. AADC*, the Supreme Court rejected the argument that § 1252(g) "is a sort of 'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review.'" 525 U.S. 471, 482 (1999). The Court explained: "[W]hat § 1252(g) says is much narrower. 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.' (Emphasis added.) ... **It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings**." *Id.* (emphasis added).

In *Ibarra-Perez v. U.S.*, the Ninth Circuit explained that general rule is to "resolve any ambiguities in a jurisdiction-stripping statute [such as §1252(g)] in favor of the narrower interpretation, and by the strong presumption in favor of judicial review.'" 154 F.4th 989, 995 (9th Cir. 2025) (citation omitted). And "[i]nstead of 'sweep[ing] in any claim that can technically be said to 'arise from' the three listed actions,' **[§1252(g)] 'refer[s] to just those three specific actions themselves**.'" *Id.* at 996 (citing *AADC*, 525 U.S. at 487, quoting *Jennings*, 583 U.S. at 294) (emphasis added). The Court held that it had jurisdiction to review Ibarra-Perez's legal arguments challenging his removal to Mexico without providing any process that would have allowed him to present evidence supporting his fear of removal to Mexico. *Id.* at 999. The Court explained, "**[f]rom the beginning, we have been clear that § 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders**." *Id.* (emphasis added); *see id.* at 997-998 (noting the Ninth Circuit had previously "specifically held § 1252(g) did not bar due process claims") (citation omitted).

Respondents' argument that §1252(b)(9) deprives this Court of jurisdiction is

also contrary to Supreme Court precedent. 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.

As Judge Park explained, "a decision to detain is independent of an action taken to remove an alien; while the former is aimed at ensuring that the alien is not a flight risk or a danger to the community, the focus of the latter is the removal of the alien," and a challenge to detention without bond is properly within the Court's habeas jurisdiction. *Rico-Tapia v. Smith*, 2025 WL 2950089, at *4 (D. Haw. Oct. 10. 2025) (citing *Jennings* 583 U.S. at 295 n.3).

In *Jennings*, the Supreme Court held that §1252(b)(9) did not apply to the adjudication of whether certain statutory provisions allowed prolonged detention without a bond hearing. 583 U.S. 281. The provision's applicability turned on whether the legal questions at issue "'ar[ose] from' the actions taken to remove" the noncitizens. *Id.* at 293. The Court noted an expansive interpretation of this provision would lead to "staggering results" and "would be absurd," and "[i]nterpreting 'arising from' in this extreme way would also make claims of prolonged detention effectively unreviewable." *Id.*

The Court explained:

> [R]espondents are not asking for review of an order of removal; they 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. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.

Id. at 294-95. Likewise, Petitioner is not asking for a review of removal order and he is not challenging the decision to detain him in the first place or any part of the process by which his removability will be determined. He is challenging his detention pending the outcome of his proceedings without a meaningful bond hearing.

Rather than addressing *Jennings*, Respondents rely on the following selective quote from *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016): "[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 [petition-for-review] process." Dkt.13 at 12. As one district court explained, "[o]n the very next page of that opinion, the Ninth Circuit continues, 'the statute excludes from the [petition for review] process any claim that does not arise from removal proceedings. *Accordingly, claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9).*'" *Guzman v. Noem,* 2025 WL 3691994, at *3 (C.D. Cal. Oct. 31, 2025) (quoting *J.E.F.M.*, 837 F.3d at 1032).

Respondents' reliance on the Court's decision in *Wang v. Derr* is also misplaced. There, after his arrest, Wang received a NTA, which classified him as an "arriving alien" and charged him removable. Dkt.13, Ex. F. at 4-5. Wang filed a

habeas petition challenging his designation as an arriving alien. The Court, recognizing "the jurisdictional question is a close call," concluded it lacked jurisdiction. *Id.* at 2. The Court relied on the fact that detention began with the commencement of Wang's proceeding and Wang had administrative avenues to challenge his classification. *See id.* at 20-27.

Here, Petitioner does not challenge his designation as an "arriving alien" on the NTA that commenced proceedings and was provided to him when he entered the U.S. Rather, he challenges Respondents' legal position that he is "seeking admission" within the meaning of §1225(b) despite that he was arrested nearly a year after he had been living in the U.S. And there are no administrative avenues available to him because the BIA has predetermined the issue. *See supra*, Section II.D.

None of the cases cited by Respondents for support barred habeas challenges to the government's new interpretation that noncitizens arrested within the U.S. are subject to mandatory detention under §1225(b). *See* Dkt.13 at 5-14. Numerous courts have held that §1252(b)(9) and (g) do not bar such challenges. *See Vicharra v. Henkey*, 2025 WL 3564725, at *4 (D. Nev. Dec. 12, 2025) (government's arguments that Sections 1252(g) and 1252(b)(9) bar review of habeas petition challenging mandatory detention "are foreclosed by Ninth Circuit and Supreme Court precedent"); *Yataco v. Warden*, 2025 WL 4065463, at *3, *R&R adopted* 2026 WL 158151 (C.D. Cal. Jan. 16, 2026) (government's arguments regarding the applicability of § 1252(b)(9) and (g) to

noncitizens contesting mandatory detention "cannot be reconciled with Supreme Court and Ninth Circuit authority"); *Guzman*, 2025 WL 3691994, at *3 ("Multiple courts in this Circuit have now addressed and rejected the Government's argument with respect to sections 1252(b)(9) and (g).") (citing cases); *Yang v. Kaiser*, 2025 WL 2791778, at *3 (E.D. Cal. Aug. 20, 2025) (collecting cases holding § 1252(g) does not bar review of similar challenges); *Salgado v. Mattos*, 2025 WL 3205356, at *9 (D. Nev. Nov. 17, 2025) ("Because Petitioners do not challenge ICE's decision to 'commence' removal proceedings against them, nor the continued 'adjudication' … of their removability in immigration court, but rather their detention without the opportunity for release on bond pending the resolution of those proceedings, § 1252(g) does not apply to this case.").

This Court has jurisdiction.

B. <u>Petitioner is not subject to mandatory detention under § 1225(b).</u>

Respondents ignore the numerous cases cited in the Petition that have held that noncitizens like Petitioner who resided in the U.S. prior to their arrest are subject to Section 1226 and not mandatory detention under §1225(b). *See* Dkt.1-1, ¶¶ 29-39. Respondents' argument that § 1225(b)(2) nonetheless applies to Petitioner, who was arrested 7 months after his parole expired while living in the U.S., is based on inapplicable cases and contrary to basic rules of statutory interpretation, the Supreme Court's stated understanding of the differences between Sections 1225 and 1226, and

longstanding historical precedent.

8 U.S.C. § 1226 "provides the general process for arresting and detaining aliens **who are present in the United States** and eligible for removal." *Rico-Tapia*, 2025 WL 2950089, at *5 (D. Haw. Oct. 10, 2025) (citation omitted) (emphasis added). On the other hand, §1225(b)(2) 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[.]" *Id.* (emphasis added).

Put simply, "Section 1225 covers persons seeking to enter the country, while Section 1226 applies to persons already present in the country." *Rico-Tapia*, 2025 WL 2950089, at *5 (internal quotations omitted). Until this past year, the aforementioned statutes have always been applied in this manner. *Aceros v. Kaiser*, 2025 WL 2637503, at *3 (N.D. Cal. Sept. 12, 2025).

Numerous courts have rejected Respondents' new position that noncitizens residing in the U.S. are subject to mandatory detention under §1225(b) as "contrary to the plain meaning of the statutory text, legislative history, and decades of agency practice, and raises serious constitutional concerns under the Due Process Clause of the Fifth Amendment." *Arce-Cerva, v. Noem*, 2025 WL 3017866, at *2 (D. Nev. Oct. 28, 2025); *see Rodriguez v. Bostock*, 2025 WL 2782499, at *1 (W.D.Wash. Sept. 30, 2025) (citing numerous cases concluding "that the government's position belies the

statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Vazquez v. Feeley*, 2025 WL 2676082, at *11 (D. Nev. Sept. 17, 2025) ("[C]onsistent with the overwhelming majority of district courts in the Ninth Circuit and across the country that have thus far considered the issue," §1226, not §1225, applies to noncitizens who had resided in the U.S. prior to their apprehension) (citing cases); *Mercado v. Francis*, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (explaining challengers to the government's new mandatory detention policy had prevailed in 350 cases decided by over 160 different judges) (collecting cases). [1]

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[1] A divided Fifth Circuit panel recently ruled that two noncitizens who were arrested while living in the U.S. were subject to mandatory detention under §1225. *See Buenrostro-Mendez v. Bondi*, 2026 WL 323330, at *9 (5th Cir. Feb. 6, 2026). As the dissent recognized:

> The Congress that passed IIRIRA would be surprised to learn it had also required the detention without bond of two million people. For almost thirty years there was no sign anyone thought it had done so, and nothing in the congressional record or the history of the statute's enforcement suggests that it did. Nonetheless, the government today asserts the authority and mandate to detain millions of noncitizens in the interior, some of them present here for decades, on the same terms as if they were apprehended at the border. No matter that this newly discovered mandate arrives without historical precedent, and in the teeth of one of the core distinctions of immigration law. The overwhelming majority of courts in this circuit and elsewhere have recognized that the government's position is totally unsupported. Undeterred, the majority and the government distort the statutory text, abstract it from its context and history, ignore the Supreme Court's clearly stated understanding of the statutory scheme, and wave away the agency's previous failure to detain millions of

Nonetheless, Respondents argue Section 1225(b) applies to Petitioner because the Supreme Court in *Jennings* equated "applicants for admission" with aliens "seeking admission." Dkt.13 at 15. Respondents' rely on the following quote from a discussion of Section 1225(b) that had nothing to do with the differences between Sections 1225 and 1226: "As noted, § 1225(b) applies primarily to aliens seeking entry into the United States ("applicants for admission" in the language of the statute)." *Jennings*, 583 U.S. at 297. At best, this indicates that those seeking entry are applicants for admission, not that every applicant for admission is "seeking entry" within the meaning of Section 1225(b)(2) as Respondents now argue.

Furthermore, the Supreme Court made clear its interpretation of the interplay between Sections 1225 and 1226 in *Jennings*:

> Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls "within one or more ... classes of deportable aliens." § 1227(a). **That includes aliens who were inadmissible at the time of entry** or who have been convicted of certain criminal offenses since admission. See §§ 1227(a)(1), (2).
>
> **Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.** . . .

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noncitizens as if it were a rounding error.

Id. at *10 (internal footnote omitted). Consistent with the dissent, the Seventh Circuit concluded that the government was not likely to prevail on its argument that "§ 1225(b)(2)(A) covers any noncitizen who is unlawfully already in the United States as well as those who present themselves at its borders," *Castanon-Nava v. DHS*, 161 F.4th 1048, 1062 (7th Cir. 2025).

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). **It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).**

Id. at 288–89 (emphasis added).

Additionally, treating "applicant for admission" and "seeking admission" as synonyms would "render the phrase 'seeking admission' in § 1225(b) superfluous." *Pelico v. Kaiser*, 2025 WL 2822876, at *9 (N.D. Cal. Oct. 3, 2025). "The government's interpretation thus violates the 'cardinal principle' of interpretation that courts must give effect, if possible, to every clause and word of a statute." *U.S. v. Corrales-Vazquez*, 931 F.3d 944, 950 (9th Cir. 2019) (citation omitted; cleaned up). "Moreover, the Government's ... reading of 'seeking admission' is unnatural and ignores the tense of the term." *Pelico*, 2025 WL 2822876, at *9; *see Rosado v. Figueroa*, 2025 WL 2337099, at *8, *R&R adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("If Respondents' interpretation of § 1225 is correct and this section's mandatory detention provisions apply to all noncitizens present in the [U.S.] who have not been admitted, it would render superfluous provisions of § 1226 that apply to certain categories of inadmissible noncitizens.") (citing 8 U.S.C. § 1226(c)(1)(A), (D), (E)).

As Judge Park explained in *Rico-Tapia*:

> Taken together, Section 1225 covers persons "seeking to enter the country," while Section 1226 applies to persons "already present in the

> country." This conclusion is supported not only by the plain text of those statutes and the larger statutory scheme, but also the Supreme Court's analysis in *Jennings v. Rodriguez*, 583 U.S. 281, 138 (2018).

2025 WL 2950089, at *6; *see Salgado*, 2025 WL 3205356, at *15 ("[T]he statutory text, when read in accordance with its ordinary meaning, and in context, indicates that for purposes of mandatory detention under § 1225(b)(2)(A), the phrases 'applicants for admission' and 'seeking admission,' taken together, are limited in temporal and geographic scope and apply within the specific context of the inspection of 'arriving' noncitizens, at or near ports of entry.) (internal citations omitted).

Respondents attempt to distinguish *Rico-Tapia* based on its assertion the petitioner was not challenging his designation as an arriving alien. Dkt.13 at 9-10. But like here, the basis of the government's argument in that case was that despite being arrested after already living in the U.S., Rico-Tapia was "seeking admission" within the meaning of §1225(b). 2025 WL 2950089. Although the Court held that the government's failure to identify Rico-Tapia as an arriving alien on his NTA "reinforced" its conclusion, the Court's analysis did not depend on this designation. *Id.* at *4-7 ("As Section 1225(b) does not apply to aliens who are *already present in the country*, it does not apply to Rico-Tapia. At the time of his detainment in July 2025, Rico-Tapia was not seeking to "enter the country," but rather, had already been present within the [U.S.]").

As a person detained under §1226(a), Petitioner must receive a bond hearing.

See id. at *7; Dkt.1-1, ¶¶29-39.

C. Petitioner's due process rights have been violated.

Even if Petitioner is subject to mandatory detention under any statute, under the test set forth in *Mathews v. Eldridge*, his detention without a bond hearing violates his due process rights. Respondents failed to contest this in their Response. *See* Dkt.13.

First, Petitioner retains a strong liberty interest in remaining free from detainment, particularly after his parole into the United States. *See Sorosh v. Wofford*, 2026 WL 323058, at *3 (E.D.Cal. Feb. 6, 2026) ("[N]oncitizens paroled into the [U.S.] pursuant to § 1182(d)(5) have a liberty interest in their continued release.").

Second, there is great risk of erroneous deprivation of Petitioner's liberty because he will not be granted a bond hearing under the BIA decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025) and because a hearing is likely to determine that Petitioner presents no risk to public safety and no risk of non-appearance. *See Tesara v. Wamsley*, 2025 WL 3288295, at *5 (W.D.Wash. Nov. 25, 2025) (holding there was "a high risk of erroneous deprivation of Petitioner's liberty interest in the absence of a pre-detention hearing."); *Rico-Tapia*, 2025 WL 2950089, at *9 ("[T]he risk of an erroneous deprivation of liberty is high where, as here, Rico-Tapia has not received a bond hearing.").

Third, the Government's interest in re-detaining Petitioner without a hearing is low. "[T]he Government's interest in redetaining non-citizens previously released

without a hearing is minimal: any administrative or financial burdens in providing Petitioner a hearing are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *Tesara*, 2025 WL 2950089, at *6; *Doe v. Becerra*, 2025 WL 691664, at *2 (E.D.Cal. Mar. 3, 2025) ("In immigration court, custody hearings are routine and impose a minimal cost.") (internal quotations omitted).

Accordingly, Petition's detention without a bond hearing is in violation of Petitioner's constitutional due process rights.

D. Petitioner has had no opportunity for a meaningful bond hearing.

Respondents assert that Petitioner had an opportunity for the bond hearing without making any related legal argument. Respondents know that any bond hearing would be meaningless without an order from this Court because the BIA has predetermined that immigration judges do not have authority to release on bond noncitizens like Petitioner who were released in the U.S. and later arrested. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216; Dkt.1-1 ¶¶54-61. Thus, post-*Yajure Hurtado*, even when bond hearings are held, the immigration court will conclude it lacks jurisdiction regarding a respondent's eligibility. Chardon Decl. ¶8.

III. CONCLUSION

Petitioner respectfully requests that the Court issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing prior to his merits hearing in immigration court on

February 26, 2026, and order Petitioner's release on conditions the Court deems just and proper.

If the Court is unable to issue a decision prior to Petitioner's merits hearing, Petitioner requests the Court issue an order requiring Respondents to continue his merits hearing pending the Court's decision.

DATED: Honolulu, Hawai'i, February 19, 2026.

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