UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Alasan COLLEY,

Petitioner,

v.

Kevin RAYCRAFT, in his official capacity as Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Todd M. LYONS, in his official capacity as the Acting Director of United States Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

Respondents.

Case No. 1:26-cv-00565

Hon. Judge: Robert J. Jonker

Magistrate Judge:

PETITION FOR WRIT OF HABEAS CORPUS

DETAINED – Detroit Field Office
Agency Case No. A-[redacted]

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

ARGUMENT

For the reasons below, Respondents' arguments on the revocation of Petitioner's supervision, the applicability of 8 U.S.C. § 1225 to Petitioner's detention, and on Due Process all fail.

Respondents fail to rebut Petitioner's argument that Respondents unlawfully revoked his Order of Supervision. The regulations governing the process by which release under an Order of Supervision may be revoked plainly state that an individual being re-detained must be "notified of the reasons for revocation of his or her release" and be afforded an "initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation." 8 C.F.R. § 241(i)(3). Respondents make no effort to argue that they provided Petitioner with such an interview, nor did they produce a Notice of Revocation of Release. Respondents' contentions that no notice is required to effectuate such a revocation, and that the Notice of Custody Determination and Warrant for Arrest of Alien served on Petitioner provided notice, have no merit. The only appropriate remedy is immediate release under the previous terms of Petitioner's Order of Supervision.

Furthermore, Respondents do not dispute that Petitioner has lived in the United States for more than three years. The undisputed factual record establishes that Petitioner has resided in the United States continually since entering without

inspection in 2022. By arguing that the agency had discretion to impose radical policy changes, Respondents actually highlight Petitioner's assertion that the government for decades interpreted the Immigration and Nationality Act (INA) to provide for bond hearings for people like Petitioner, and that dozens of courts have rejected Respondents' new "strained interpretation" of the INA, *Valencia Zapata v. Kaiser*, No. 25-cv-07492, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025), including the U.S. District Court for the Central District of California, which vacated *Matter of Yajure Hurtado* as "contrary to law under the APA." *Lazaro Maldonando Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873, ECF116 PageID.2090 (February 18, 2026) (currently stayed while on appeal to the Ninth Circuit, *Maldonado Bautista v. U.S. D.H.S.*, Case No. 26-1044, *Order*, ECF 5.1 (9th Circuit, Mar. 6, 2026).

Respondents completely fail to rebut Petitioner's argument that sections 8 U.S.C. § 1226(c)(1)(A), (D)-(E) do indeed apply to noncitizens exactly situated like Petitioner: alleged to be present in the United States without being admitted or paroled and apprehended not at or near a port of entry and years after entry. By the very plain language of section 1226, the discretionary bond procedures in immigration court apply to noncitizens exactly like Petitioner.

I. THE UNLAWFUL REVOCATION OF PETITIONER'S ORDER OF SUPERVISION IS AN INSUFFICIENT BASIS FOR DETENTION

A. Respondents Failed to Identify Any Lawful Basis for Revocation

Pursuant to 8 C.F.R. § 241.13(i), Petitioner's Order of Supervision ("OSUP") was not properly revoked. An OSUP may be revoked only in limited circumstances, including where the noncitizen violates any conditions of release or where, "on account of changed circumstances," removal is "significant likely" in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). The regulations further require that the noncitizen be "notified of the reasons for revocation" and be afforded a prompt "initial informal interview" to respond. 8 C.F.R. § 241.13(i)(3).

Respondents in this case have not identified—either at the time of revocation or in its brief in response—any valid basis for revoking Petitioner's supervision. *See generally Resp. Brf.*, ECF #5. Because Respondents have failed to identify any permissible basis for revocation under 8 C.F.R. § 241.13(i), the revocation of Petitioner's OSUP is unlawful.

B. Respondents Have Not Shown a Violation of Supervision

Respondents have not meaningfully argued that Petitioner violated the conditions of his supervision in a manner that would justify revocation. To the contrary, the record reflects that Petitioner was actively complying with his OSUP.

One day prior to his required check-in date, Petitioner experienced issues with the ICE reporting app on his phone and, to remain compliant, attempted to drive to the ISAP office on Jefferson in Detroit to seek assistance. Petitioner was detained by ICE "after he made a wrong turn and entered outbound traffic towards Canada" at the Detroit Windsor Tunnel, off of Jefferson. *See* ECF #5-4, PageID.144. Petitioner has expressed repeatedly that he had "no intention of traveling to Canada nor departing the United States." *Id.*

Petitioner would not have mistakenly ended up in an exit lane towards the tunnel but for his efforts to comply with his Order of Supervision. While Respondents reference one missed phone check-in with ICE on March 11, 2025, and one office visit on June 13, 2025, Respondent fails to argue that revocation was based on those alleged violations, nor does it connect them to the decision to terminate supervision. *Resp. Brf., at 4*, ECF #5, PageID.97. Because Respondents have not identified any actual violation that formed the basis of revocation, the revocation cannot be justified on this ground.

Respondents further incorrectly characterize Petitioner's status. Petitioner is not an "applicant for admission" who is "seeking admission," as that term is used in section 1225(b). Rather, as argued fully in Section II below, Petitioner was arrested "on a warrant . . . pending a decision on whether [he is] to be removed from the United States." 8 U.S.C. § 1226(a). A "plain reading of [section 1226]

implies that the default discretionary bond procedures in section 1226(a) apply to noncitizens who . . . are 'present in the United States without being admitted or paroled'" unless section 1226(c) applies. *Rodrigeuz v. Bostock*, -- F. Supp. 3d --, 2025 WL 2782499, at *17 (W.D. Wash., Sept. 30, 2025). Because Petitioner is a noncitizen who is present in the United States without being admitted or paroled, he is entitled to a bond hearing under section 1226.

C. Respondents Failed to Show Changed Circumstances or a Likelihood of Removal

Respondents cannot justify revocation on the only remaining permissible ground under § 241.13(i)(2): that changed circumstances make Petitioner's removal "significantly likely" in the reasonably foreseeable future. Respondents' Brief in Response does not address revocation and therefore identifies no changed circumstances supporting it. *See generally Resp. Brf.,* ECF #5.

Petitioner's appeal remains pending, and Respondents do not contend that removal is imminent or even foreseeable. To the contrary, ICE previously determined that supervision—not detention—was appropriate. *See* ECF #4, PageID.64-65. Absent any identified change in circumstances, Respondents cannot justify revocation by reasserting detention authority they previously declined to exercise. Because Respondents have failed to demonstrate changed circumstances or a significant likelihood of removal, revocation is unlawful.

The absence of any Notice of Revocation or other evidence explaining the basis for revocation further underscores that Respondents lacked a lawful basis for re-detention. Where the Government cannot identify who authorized revocation or for what permissible reason, it fails to carry its burden to justify detention. *See, e.g., Dominguez Izaguirre v. Mason*, Case No. 2:26-cv-00121, at *4 (S.D. West Virginia February 27, 2026), ECF No. 18, PageID.125; *Villanueva v. Tate*, 801 F.Supp.3d 689, 705 (S.D. Tex. 2025) (finding that the government violated the petitioner's due process rights by re-detaining him without complying with 8 C.F.R. § 9 241.4(l) and that the only way to vindicate the petitioner's due process rights was to order his release from custody).

D. The Only Appropriate Remedy is Immediate Release Back to Supervision

The foregoing demonstrates a single, unavoidable conclusion: Respondents' revocation of Petitioner's Order of Supervision was unlawful, and his continued detention cannot be upheld. Respondents have failed to identify any permissible basis for revocation under 8 C.F.R. § 241.13(i), have not demonstrated that Petitioner violated any condition of supervision, and have not shown any changed circumstances rendering removal significantly likely in the reasonably foreseeable future. In the absence of any lawful justification for revocation, Petitioner's detention is not authorized by statute or regulation and therefore violates the INA.

Because Petitioner is not challenging a discretionary bond determination but rather the legality of his re-detention following an invalid revocation, the only appropriate remedy is immediate release. Petitioner should be returned to the prior terms of his Order of Supervision, which ICE itself previously determined were sufficient. *See* ECF #4, PageID.64-65.

II. PETITIONER'S DETENTION UNDER SECTION 1225 IS UNLAWFUL

In addition to challenging Respondents' unlawful revocation of Petitioner's Order of Supervision, Petitioner respectfully reasserts that he is bond-eligible under 8 U.S.C. § 1226(a) and is not subject to mandatory detention without bond under 8 U.S.C. § 1225(b)(2).

A. Section 1226(a), Not Section 1225(b), Applies to Petitioner

Respondents continue to assert that Petitioner is subject to and detained under the mandatory detention provisions set forth in 8 U.S.C. § 1225. *Resp. Brf., at 13*, ECF 5, PageID.106. Respondents invite this Court to read § 1225 in isolation, ignoring not just § 1226, but the INA's overall structure. Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," while § 1225 authorizes detention of "certain aliens seeking admission into the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). As their titles state, § 1226 relates to "[a]pprehension and detention" of

noncitizens living in the U.S., while § 1225 covers procedures at the border, including "[i]nspection by immigration officers" and "expedited removal of inadmissible arriving aliens." 8 U.S.C. § 1225; 8 U.S.C. § 1226.

This District has recently held that § 1226(a), not § 1225(b)(2)(A), governs noncitizens, such as Petitioner, who have resided in the United States and were already within the United States when apprehended and arrested. *See Appendix 1*. The Eastern District of Michigan has specifically held that "Section 1225 applies to noncitizens 'arriving to the country' and Section 1226 governs detention of noncitizens 'already in the country.'" *Lopez-Campos v. Raycroft*, 2025 WL 2496379, Case No. 25-12987, (E.D. Mich. October 17, 2025) at 18-19, *quoting Jennings*, 583 U.S. at 289; *see also Contreras-Cervantes v. Raycraft*, 25-cv-13073 (E.D. Mich. October 17, 2025); *Gimenez Gonzalez v. U.S. Immigration and Customs Enforcement*, No. 25-13094, (E.D. Mich. October 27, 2025).

District Courts have also held that "[t]he Supreme Court has looked at these statutes and clarified that they apply in different circumstances. *See Jennings*, 583 U.S. at 287-88. Section 1225 is 'framed [] as a part of the process that 'generally begins at the Nation's borders and ports of entry, where the Government must determine whether [noncitizens] seeking to enter the country are admissible.'' [internal citation omitted], (*citing Jennings*, 583 at 287), whereas Section 1226(a) applies to the process of 'arresting and detaining' noncitizens who are already living

'inside the United States' but still subject to removal. *Jennings*, 538 at 288. Put simply, Section 1225 applies to noncitizens 'arriving to the country' and Section 1226 governs detention of noncitizens "already in the country.' *Id.*" *Gimenez Gonzalez*, No. 25-13094, at 20; *See also Appendix 1*.

Furthermore, Congress recently amended § 1226(c) in the Laken Riley Act. If Respondents' interpretation of § 1225(b)(2) were correct, that "would render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Cordero Pelico v. Kaiser*, 2025 WL 2822876, *12 (N.D. Cal., Oct. 3, 2025). In other words, "if Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond framework." *Gimenez Gonzalez*, No. 25-13094, at 21. Respondents' interpretation of the statutes would render this recently amended section superfluous.

Section 1225(a)(1) defines "applicants for admission" to *include* non-citizens arriving in the U.S. Meanwhile, in describing "arriving aliens," there is no plausible way to read § 1225(b)(2) as covering only people who have lived in the U.S. for years. Section 1225(b)(2) applies to other "applicants for admission" who are "seeking admission" who are *not* subject to expedited removal but instead are in full removal proceedings. Depending on their circumstances, people arriving at the

border may fall under either (b)(1) or (b)(2). *See Jennings*, 583 U.S. at 287 ("applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," with (b)(2) serving "as a catchall provision" that applies to those not covered by (b)(1)).

Finally, § 1225(b)(2) requires a determination by an "examining immigration officer" – widely understood to mean an immigration inspection officer upon entry at a border. Indeed, "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definition[]." *Chafla v. Scott*, 2025 WL 2688541, *6 (D. Me., Sept. 22, 2025). Petitioner is not seeking permission to enter from an immigration officer.

III. DUE PROCESS REQUIRES IMMEDIATE RELEASE, OR IN THE ALTERNATIVE, A BOND HEARING UNDER SECTION 1226(a)

Petitioner respectfully reasserts that since Respondents unlawfully revoked his Order of Supervision in violation of 8 C.F.R. § 241.13(i), immediate release is the only appropriate remedy. The INA does not prescribe any form of detention that is appropriate for a noncitizen who has been released from custody on an Order of Supervision and who is in compliance with that Order of Supervision. The lack of a Notice of Revocation makes it clear that Petitioner was re-detained for no legitimate reason.

In the alternative, Petitioner respectfully reasserts that since he is being denied a bond hearing to determine whether his deprivation of liberty is on account of

danger or flight risk, that "immediate release is the only appropriate remedy" because "[w]here detention has been found unlawful and no constitutionally adequate bond hearing has been provided, continued custody cannot stand." *Dominguez Izaguirre v. Mason*, Case No. 2:26-cv-00121, at *4 (S.D. West Virginia February 27, 2026), ECF No. 18, PageID.125.

The Due Process Clause extends to all "persons" regardless of status, including noncitizens (whether here lawfully, unlawfully, temporarily, or permanently). *Zadvydas v. Davis*, 533 U.S. at 693. Petitioner has a liberty interest in freedom from detention that is distinct from his liberty interest in remaining in the United States. Deprivation of either requires due process.

The Supreme Court held in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), that "due process under the constitution is coextensive with the removal procedures provided by Congress." *Lopez-Campos*, 2025 Case No. 25-12987, at 24, *quoting Thuraissigiam*, 591 U.S. 138–140. *Thuraissigiam* concerned the "due process rights of an alien seeking initial entry" and governmental control over who crosses our borders. *Id.* at 107; *see id.* at 139 (discussing the due process rights of "an alien at the threshold of initial entry" who lack "established connections in this country"). Petitioner is not "at the threshold of initial entry," and has "established connections" here. *See Cordero Pelico*, 2025 WL 2822876, at *6 (distinguishing government's cases on exactly this basis).

Due Process entitles Petitioner to immediate release, and at a bare minimum, to a bond hearing. Civil immigration detention is not punishment for a crime. Thus, it can only be justified "where a special [non-punitive] justification . . . outweighs the individual's constitutionally protected interest" in liberty—usually only by a finding that such detention is necessary to prevent their flight or protect against dangers to the community. *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also United States v. Salerno*, 481 U.S. 739, 750 (1987). A hearing on whether such a special justification necessitates civil detention is the most basic protection required by the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 79; *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Addington v. Texas*, 441 U.S. 418, 428 (1979). And the nature of that hearing is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). That test weighs (1) the nature of "the private interest" being deprived; (2) "the risk of erroneous deprivation" and (3) the "fiscal and administrative burdens" posed by providing additional process. *Id.* In the instant case, Petitioner's unlawful detention not only deprives him of his liberty—it is keeping him detained and separated from his family, friends, and community. All three *Mathews* factors favor Petitioner. *Mathews*, 424 U.S. at 334–35.

If this Court is unable or unwilling to order Petitioner's immediate release and instead considers ordering that Respondents provide Petitioner with a bond hearing,

then Respondents should bear the burden of justifying the continued detention of Petitioner at the bond hearing. *See Miranda v. Garland*, 34 F.4th 338, 378 (4th Cir. 2022) (Urbanski, J., concurring in part) (noting a "a growing chorus of decisions" by federal district and appellate courts "around the country" that have concluded the government should bear the burden of justifying the continued detention of the noncitizen at Section 1226(a) bond redetermination hearings by clear and convincing evidence"). This District has also determined that "[p]lacing the burden on the government also satisfies the second *Mathews* factor, reducing the risk of erroneous deprivation." *Soto-Medina*, Case No. 1:25-cv-01704, PageID.83. The *Soto-Medina* decision concluded that, "[i]n sum, the *Mathews* factors establish that due process requires the government to bear the burden of demonstrating that Petitioner is a flight risk or danger to the community to deny bond. As noted above, a majority of federal courts, including both trial and appellate courts, have taken this position." *Soto-Medina*, Case No. 1:25-cv-01704, PageID.85, *citing Miranda v. Garland*, 34 F.4th at 378.

Petitioner believes that either the government will be unable to prove by clear and convincing evidence that he is a danger or a flight risk, and/or that he will be able to establish that he is *not* a danger or a flight risk, if given a constitutionally adequate custody redetermination hearing under section 1226(a). Petitioner

respectfully asks this Court to order his immediate release, or at a minimum to order that he be provided a bond hearing.

CONCLUSION

Petitioner requests that the Court grant the Petition and order Respondents to immediately release Petitioner from unlawful detention, or in the alternative, to require that Respondents afford Petitioner a constitutionally adequate bond hearing under § 1226(a) at which the government bears the burden of proving that Petitioner poses either a danger or a flight risk.

Respectfully submitted this 26th day of March, 2026.

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Certificate of Service

I certify that on March 26, 2026, I electronically filed the foregoing *REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS* with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted this 26th day of March.

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