UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

DANIEL GIRALDO-FRANCO (A[redacted] *Petitioner* v. **KRISTI NOEM**, in her official capacity as U.S. Secretary of Homeland Security; **PAMELA JO BONDI**, in her official capacity as Attorney General of the United States; **VERNON LIGGINS**, in his official capacity as Field Office Director, Baltimore, Maryland Field Office, Immigration and Customs Enforcement; and *Respondents.*	**Case No. 1:26-cv-783** **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Daniel Giraldo-Franco ("Mr. Giraldo") is a native and citizen of Colombia who has resided in the United States since he first entered the country more than three years ago. Mr. Giraldo has no criminal history in the United States.
2. Mr. Giraldo was detained in or around December 2022, by U.S. Immigration and Customs Enforcement ("ICE") and released on his own recognizance. He has resided continuously in the United States since that time and has not committed any crimes.
3. However, on or about February 20, 2026, U.S. ICE officers stopped Mr. Giraldo as he was exiting his vehicle in Columbia, Maryland and took him into custody. They detained him at the Baltimore Hold Room.

4. Mr. Giraldo remains unlawfully detained in the Baltimore Hold Room without the opportunity to seek release on bond pending his removal proceedings. The Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have determined that Mr. Giraldo is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), concluding that Mr. Giraldo is "seeking admission" into the country he has lived in since on or about December 1, 2022.
5. DHS's interpretation of its detention authority under 8 U.S.C. § 1225(b)(2) marks a complete departure from the interpretation that the government has embraced since the statute's enactment, DHS's prior practice, Supreme Court precedent, and the statute's plain language.
6. This Court should grant Mr. Giraldo's petition for writ of habeas corpus and order his immediate release from immigration custody or, alternatively, the Court should conduct its own bond hearing. However, should the Court decline to order release or conduct its own hearing, it should order a bond hearing before an immigration judge under 8 U.S.C. § 1226(a) with procedural safeguards and retain jurisdiction to review the determination to ensure compliance with the Court's order and due process.

JURISDICTION AND VENUE

7. This action arises under the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.
8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief).
9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
10. Respondents are currently detaining Mr. Giraldo at the Baltimore Hold Room, which sits in the District of Maryland. Venue lies in the judicial district in which Mr. Giraldo is detained when he files his petition. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

11. Under 28 U.S.C. § 2243, a court "entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant . . . is not entitled thereto." 28 U.S.C. § 2243. If the Court issues an order to show cause, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Habeas corpus is "perhaps the most important writ known to the constitutional law ... affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

13. Mr. Giraldo, who has resided in the United States since on or about December 1, 2022, has been unlawfully detained without the opportunity to challenge his continued detention since on or about February 20, 2026. DHS's application of the mandatory detention provision at 8 U.S.C. § 1225(b)(2) to any individual who has entered the United States without inspection, including Mr. Giraldo, has been almost universally rejected by district courts across the country, including this Court. Allowing Respondents to continue detaining Mr. Giraldo without the opportunity to seek release on bond based on a strained reading of the INA that has been overwhelmingly rejected only compounds the due process concerns in this case.

14. Mr. Giraldo requests that the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, given the significant and unlawful restraint on his liberty.

TRANSFER; ALL WRITS ACT

15. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

16. District courts in this circuit have invoked the All Writs Act to prevent ICE from transferring petitioners to far-flung detention centers far removed from their counsel and the district court adjudicating their habeas petition. *See Garcia Guardado v. Lyons*, No. 1:25-cv-1741-MSN-WBP (E.D. Va. Oct. 15, 2025) (citing 28 U.S.C. § 1651; *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) ("The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to 'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'"); *see also Guevara Gomez v. Crawford*, No. 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

17. Mr. Giraldo requests that this Court invoke the All Writs Act to prevent any transfer out of Maryland or Virginia during the pendency of his habeas action, given the strong possibility that he will be released or ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. Mr. Giraldo's counsel operates primarily in Virginia. Transferring Mr. Giraldo out of the area will make it more difficult for Mr. Giraldo to coordinate with his counsel ahead of a bond hearing ordered by the Court. Further, he will incur additional, unnecessary expenses returning to his home in Columbia, Maryland should he be released on bond after being transferred out of state. *See* https://www.tsa.gov/travel/security-screening/identification (listing documents required to board an airplane, which does not include ICE release paperwork); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri*

v. Trump, -- F. Supp. 3d --, 2025 WL 1310745, at *13 (E.D. Va. May 6, 2025).

PARTIES

18. Petitioner Daniel Giraldo-Franco is a native and citizen of Colombia who has been in immigration detention since on or about February 20, 2026. ICE is currently detaining him at the Baltimore Hold Room in Baltimore, Maryland.

19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Giraldo's detention. Secretary Noem has ultimate custodial authority over Mr. Giraldo and is sued in her official capacity.

20. Respondent Pamela Jo Bondi is the United States Attorney General. She has supervisory authority over EOIR, which oversees the immigration courts and the Board of Immigration Appeals. She is sued in her official capacity.

21. Respondent Vernon Liggins is the Field Office Director for ICE's Washington D.C. Field Office. He oversees the operation of detention facilities within the Baltimore, Maryland Field Office's area of responsibility, including the Baltimore Hold Room. Mr. Liggins is sued in his official capacity.

EXHAUSTION

22. The failure to exhaust administrative remedies does not bar Mr. Giraldo's claims unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992)).

23. Even if the Court were inclined to require exhaustion of administrative remedies as a prudential matter, seeking administrative review of ICE's initial custody determination would be futile and should be excused in this case. *See Carr v. Saul*, 593 U.S. 83, 93 (2021) ("[T]his Court has consistently recognized a futility exception to exhaustion requirements.").

24. Critically, the Board of Immigration Appeals issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopting the new interpretation of 8 U.S.C. § 1225(b)(2) that DHS announced in its recent July 8, 2025, policy memorandum. *Matter of Yajure Hurtado* holds that noncitizens who entered the United States without inspection at any point are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Although, as discussed below, this decision is legally erroneous, all immigration judges—including those at the Board of Immigration Appeals—are obligated to apply the Board's published precedent and deny any administrative appeal filed by Mr. Giraldo. 8 C.F.R. § 103.10(b). And indeed, immigration courts have continued to apply this precedent notwithstanding recent orders from the U.S. District Court for the Central District of California certifying a nationwide class and granting summary judgment in an action for declaratory judgment challenging DHS's and EOIR's erroneous interpretation of the INA. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d , 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d , 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment)

25. For this reason, Mr. Giraldo need not go through the futile exercise of seeking a bond hearing before an immigration judge. *See Cabrera v. Barr*, 930 F.3d 627, 633 (4th Cir. 2019) ("We agree with . . . our sister circuits that a petitioner has exhausted his administrative remedies when the BIA has issued a definitive ruling on the issue.").

26. Finally, because Mr. Giraldo's continued detention violates his constitutional right to due process, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has

raised a 'substantial constitutional question.'").

STATEMENT OF FACTS

27. Mr. Giraldo entered the United States without inspection on or about December 1, 2022. He has resided continuously in this country ever since, most recently in Columbia, Maryland.

28. On or about February 20, 2026, Mr. Giraldo was arrested entering a shopping mall in Columbia, Maryland and taken to the Baltimore Hold Room in Baltimore, Maryland.

29. On information and belief, Mr. Giraldo was arrested without a warrant, in violation of the Fourth Amendment.

30. ICE served Mr. Giraldo with a Notice to Appear placing him in removal proceedings under § 240 of the INA (codified at 8 U.S.C. § 1229a).

31. Mr. Giraldo remains detained at the Baltimore Hold Room in Baltimore, Maryland.

LEGAL BACKGROUND

32. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, which set forth separate procedures for the removal and detention of arriving or recently arrived noncitizens and noncitizens who have entered and established a presence in the United States, even those who did so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225, *with* 8 U.S.C. §§ 1226, 1229a. For individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

33. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. For noncitizens subject to detention under § 1226, § 1226(a) sets forth the

default rule, giving the government the discretion to arrest and detain noncitizens "pending a decision on whether the alien is to be removed from the United States," while § 1226(c) mandates the detention of certain classes of criminal noncitizens. 8 U.S.C. § 1226(a), (c). After an initial arrest, a noncitizen subject to detention under § 1226(a) may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.*

34. When a noncitizen is detained under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have DHS's initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

35. In contrast to the discretionary detention scheme established for noncitizens already in the United States, IIRIRA created a separate, expedited removal process for certain "applicants for admission" deemed to be "arriving aliens." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a[noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

36. The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those "already present in the United States").

37. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry

without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility").

38. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish that they have a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

39. Finally, § 1225(b)(2) mandates the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2).

40. Since IIRIRA was first enacted, courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 ("While the language of §§ 1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."); *see also Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States).

41. Despite amending the INA numerous times since passing IIRIRA, *see, e.g.*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, Congress has never seen fit to clarify or alter this universally accepted interpretation of the statute.

42. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it adopted when IIRIRA was first enacted and embraced for the next thirty years. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Ex. 1, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission.

43. On September 5, 2025, the Board adopted DHS's novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. The Board found no distinction between the statutory terms "applicant for admission" and "seeking admission," and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point.[1] *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes. *Id.* at 223-25.

44. Yet the legislative history contradicts the Board's analysis. Critically, IIRIRA's predecessor statute allowed discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994) ("[A]ny such [noncitizen] taken into custody may, in the discretion of the Attorney General ... be continued in custody ... [or] be released under bond[.]"). When it passed IIRIRA, Congress explained that the new § 1226(a) "restates the current provisions in section 242(a)(1) [1252(a)(1)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien *who is not lawfully in the United States*." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720, 2025 WL 2962908, at *8 (D. Colo. Oct. 17, 2025) (quoting H.R. REP. 104-469, 229). "Because noncitizens like [Mr. Diaz] were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports [Mr. Diaz's] position that he too is subject to discretionary detention." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025).

45. The overwhelming majority of courts to consider this issue have read the statute in the same

[1] Nearly 30 years of agency interpretation of the law would have provided Mr. Giraldo with an opportunity to seek review of DHS's custody determination in a hearing before an immigration judge under 8 U.S.C. § 1226(a). In fact, just weeks prior to *Matter of Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

manner the Government did for decades and overwhelmingly rejected the new interpretation Respondents happened upon almost thirty years after IIRIRA was enacted. *Maldonado Merlos v. Noem*, No. 1:25-cv-1645 (E.D. Va. Oct. 9, 2025); *Singh v. Noem*, No. 1:25-cv-1525 (E.D. Va. Oct. 7, 2025); *Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Hasan v. Crawford*, 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025). *See also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025);; *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex., Sept. 8, 2025); *Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025).

46. The new Board precedent violates the INA and deprives Mr. Giraldo of due process by subjecting him, a man who has resided in the United States since on or about December 1, 2022, to the same mandatory detention regime reserved for applicants at the border seeking initial entry into the United States.

CLAIMS FOR RELIEF
COUNT ONE
Violation of Immigration and Nationality Act

47. Mr. Giraldo realleges and incorporates by reference the paragraphs above.

48. Mr. Giraldo is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). He is properly subject to detention under § 1226(a) and entitled to a bond hearing by statute and regulation as countless district court decisions have affirmed. *See supra* ¶ 48.

49. The plain language of the INA is clear: § 1225(b)(2) "authorizes the Government to detain aliens *seeking admission into the country*," while § 1226(a) "authorizes the Government to detain certain

aliens *already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added); *accord Sampiao v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025).

50. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of "seeking admission." *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are geographically "coming or attempting to come into the United States."). Conversely, § 1226(a) focuses on individuals who are already in the United States and who the Government is seeking to remove through removal proceedings. *Id.* at 303.

51. The INA further clarifies that the term "application for admission" has "reference to the application for admission into the United States," making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4). Mr. Giraldo cannot reasonably be described as "seeking admission" to a country he has lived in for the more than three years.

52. Conversely, to apply the statute to "all applicants for admission" regardless of whether they are "seeking admission" (as the Board did in *Matter of Hurtado*) would render the phrase "seeking admission" redundant. *See Martinez*, 2025 WL 2084238, at *2. And to "treat[] the terms 'applicant for admission' and 'alien seeking admission' as synonymous [would] violate[] the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Benitez*, 2025 WL 2371588, at *6.

53. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render recent amendments to the INA in the Laken Riley Act redundant. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez*, 779 F. Supp. 3d at

1259; *Gomes*, 2025 WL 1869299, at *7. Specifically, the recent amendment to § 1226(c)(1) require mandatory detention for individuals who are present in the United States without being admitted or paroled *and* who have committed certain criminal offenses. *Sampiao*, 2025 WL 2607924, at *8. Yet if all noncitizens who are inadmissible are subject to mandatory detention under § 1225(b)(2), as Respondents contend, there would be no need for Congress to identify subcategories of inadmissible noncitizens who are subject to mandatory detention under § 1226(c), rendering the provision completely redundant. *Sampiao*, 2025 WL 2607924, at *8 (citing the *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

54. Finally, even if the text of the statute were unclear, the statutory titles and headings reinforce the distinction between noncitizens who entered without inspection and are subject to discretionary detention under § 1226(a) and arriving aliens inspected upon initial entry to the United States who are subject to mandatory detention under § 1225(b). *Compare* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 302, 110 Stat. 3009 (entitled "*Inspection* of Aliens; Expedited Removal of Inadmissible *Arriving Aliens*; Referral for Hearing) (codified at 8 U.S.C. § 1225) (emphasis added), *with* IIRIRA, § 303 (codified at 8 U.S.C. § 1226) (entitled "Apprehension and Detention of Aliens"). *See also Zumba v. Bondi*, No. 25-cv-14626-KSH, 2025 WL 2753496, at *6 (D.N.J. Sept. 26, 2025) (concluding that "§ 1225 repeatedly cabin[s] its application to 'Inspections,' which, as petitioner convincingly argues, occurs at ports of entry, their functional equivalent, or near the border.").

55. Thus, this Court must find that subjecting Mr. Giraldo to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and denying him the bond hearing he is entitled to under § 1226(a) violates the INA.

COUNT TWO

Violation of Substantive Due Process

56. Mr. Giraldo realleges and incorporates by reference the paragraphs above.

57. As a person living within the United States for more than three years, Mr. Giraldo is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

58. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

59. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). Substantive due process "prevents the government from engaging in conduct that . . . interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

60. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings, and indeed even those who have already been ordered removed from the United States on account of past criminal violations. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

61. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 FU.S. 507, 529 (2004).

62. Mr. Giraldo has a fundamental interest in liberty and being free from arbitrary detention. His detention without a bond hearing before a neutral arbiter to determine whether that continued detention is necessary to ameliorate any flight risk or protect the community violates his substantive due process rights.

COUNT THREE
Violation of Procedural Due Process

63. Mr. Giraldo realleges and incorporates by reference the paragraphs above.

64. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). While the Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), this maxim does not apply to Mr. Giraldo.

65. After living in the United States continuously since on or about December 1, 2022, Mr. Giraldo is not on the threshold of initial entry. Indeed, it is well established that noncitizens who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). Thus, even if the Court were to agree that Mr. Giraldo is properly detained under § 1225(b)(2)— which he is not—his mandatory detention does not comply with due process.

66. As an individual who has "passed through our gates," Mr. Giraldo is entitled to greater constitutional protections than those at the threshold of initial entry for whom due process is defined by the procedures set by Congress. *Mezei*, 345 U.S. at 212.

67. A procedural due process challenge is governed by a three-factor balancing test weighing: (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, or additional or substitute procedural safeguards"; and (3) "the Government's interest" *United States v. White*, 927

F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335).

68. Each of these factors weigh in Mr. Giraldo's favor and support a finding that he may not be detained without an opportunity to seek release on bond before an immigration judge. Mr. Giraldo has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up)

69. While the Government has an interest in ensuring Mr. Giraldo's appearance at his removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) have, historically, adequately served both interests by allowing an immigration judge to make an individualized assessment of a noncitizen's flight risk and the danger he may pose to the community. And the Government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Giraldo who have established a presence in the United States after previously entering without inspection. Without a bond hearing, there is a high probability that Mr. Giraldo will be detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at removal proceedings. In short, denying Mr. Giraldo any opportunity to demonstrate that his continued detention is unnecessary to protect the community or ensure his appearance at proceedings violates his

procedural due process rights.

PROPOSED REMEDY

70. The recent institutional transformation of the immigration court system has further eroded due process protections precluding the impartial adjudication of Petitioner's bond request that 1226(a) and due process requires. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). In short, the immigration court system has morphed into a body that is structurally incapable of ensuring Petitioner's statutory and constitutional rights. See Exhibit 4 (Affidavit of Jorge Artieda), Exhibit 5 (Affidavit of Lawrence O. Burman), & Exhibit 6 (BIA Provisional Rule).

71. As a result, Petitioner is asking the Court to order a remedy that fully addresses the statutory and constitutional violations in this case. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted"). Here, because ordering a 1226(a) bond hearing before the Executive Office for Immigration Review (EOIR)–a largely compromised adjudicatory body–would not properly redress the statutory and constitutional violations present in this matter, Petitioner submits that immediate release is the most appropriate remedy particularly given Petitioner's lack of criminal history, strong family ties to the United States, and long duration of residency.[2]

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[2] "In recent months, courts across the country have ordered the release of detainees in similar situations." *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing). (*citing Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025).

72. In lieu of immediate release or a bond hearing before an immigration judge, it is also within this Court's power to hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Mr. Giraldo must remain in custody, or whether he may be released on recognizance.[3]

PRAYER FOR RELIEF

Based on the foregoing, Mr. Giraldo requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue an order requiring Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that 8 U.S.C. § 1226(a) governs Mr. Giraldo's detention by U.S. immigration authorities;

(4) Order that Mr. Giraldo be immediately released from immigration custody; or, in the alternative, order a bond hearing be conducted before this Court to ensure that due process is followed for the bond determination; or, in the alternative,

(5) Order the Petitioner be afforded a bond hearing before the Immigration Court as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied in which the

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Santiago v. Noem, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025)("Without a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.")

[3] *See e.g. L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached*, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings).

Department of Homeland Security has the burden to demonstrate that bond is not warranted in this case with this Court retaining jurisdiction to review the immigration judge's bond decision to ensure compliance with the Court's order and due process; and/or

(6) Grant any other and further relief this Court deems just and proper.

Dated: February 25, 2026

Respectfully submitted,

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CERTIFICATE OF REPRESENTATION

Undersigned counsel submit that they represent Petitioner in this action and submit this pleading on his behalf. *See* 28 U.S.C. § 2242.

Dated: February 25, 2026

Respectfully submitted,

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