UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ESMATULLAH KAZEMI,
([redacted])
Petitioner

v.

MARKWAYNE MULLIN, in his official capacity as acting 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

Respondents.

Case No. **1:26-cv-949**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Esmatullah Kazemi ("Mr. Kazemi"), a native and citizen of Afghanistan, challenges his detention by Immigration and Customs Enforcement ("ICE") as an unconstitutional and unjustified deprivation of his physical liberty, and seeks immediate relief from this Court.
2. Mr. Kazemi entered the United States without inspection in who has resided in the United States since he first entered the country nearly three ago.
3. Despite attending all of his immigration hearings and his limited criminal history, Immigration and Customs Enforcement ("ICE"), ICE took him into custody on March 3, 2026 at a scheduled check-in.

4. He 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. Kazemi is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), concluding that Mr. Kazemi is "seeking admission" into the country he has lived in since in or around May 2023, and that Mr. Kazemi is subject to the mandatory detention provisions that govern individuals in expedited removal proceedings under 8 U.S.C. § 1225(b), even though Mr. Kazemi received a grant of parole and was placed into removal proceedings under 8 U.S.C. § 1229a(a).
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. Kazemi's petition for writ of habeas corpus and order his release from immigration custody or, in the alternative, require a bond hearing under 8 U.S.C. § 1226(a) at which the immigration court and DHS are precluded from denying bond on the basis that Mr. Kazemi is subject to mandatory detention under § 1225(b)(2).
7. Separately, Mr. Kazemi brings this petition for a writ of habeas corpus to seek *enforcement* of his rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

JURISDICTION AND VENUE

8. 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.
9. 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).

10. 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.

11. Respondents are currently detaining Mr. Kazemi at the Baltimore Hold Room, which sits in the District of Maryland. Venue lies in the judicial district in which Mr. Kazemi 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

12. 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.*

13. 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).

14. Mr. Kazemi, who has resided in the United States since in or around May 2023, has been unlawfully detained without the opportunity to challenge his continued detention since on or about March 3, 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. Kazemi, has been almost universally rejected by district courts across the country, including this Court. Allowing Respondents to continue detaining Mr. Kazemi 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.

15. Similarly, DHS's application of the mandatory detention provisions at 8 U.S.C. § 1225(b)(2) to individuals who were previously granted parole, who were placed in removal proceedings under 8 U.S.C. § 1229a(a), and who were re-detained without proper notice or a material change in circumstances has been rejected by numerous courts, including multiple district courts within the jurisdiction of the Fourth Circuit Court of Appeals. Allowing Respondents to continue detaining Mr. Kazemi without the opportunity to seek release on bond violates the INA and Mr. Kazemi's due process rights for this reason as well.

16. Mr. Kazemi 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 OUTSIDE THE DISTRICT; ALL WRITS ACT

17. 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."

18. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the "judicial district unless and until the Court issues a contrary order." *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).

19. Mr. Kazemi requests that this Court invoke the All Writs Act to prevent any transfer out of the District of Maryland or the neighboring Commonwealth of 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. Kazemi's counsel operates primarily in Virginia. Transferring Mr. Kazemi out of the district will make it more difficult for Mr. Kazemi 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 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

20. Petitioner Mr. Kazemi is a native and citizen of Afghanistan who has been in immigration detention since in or around March 3, 2026. ICE is currently detaining him at the Baltimore Hold Room in Baltimore, Maryland.

21. Respondent Markwayne Mullin is the Acting Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, the agency responsible for Mr. Kazemi's detention. Acting Secretary Mullin has ultimate custodial authority over Mr. Kazemi and is sued in her official capacity.

22. 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.

23. 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

24. The failure to exhaust administrative remedies does not bar Mr. Kazemi'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)).

25. 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.").

26. Critically, the Board of Immigration Appeals issued another precedent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), concluding that all individuals who entered the United States without inspection, who were detained soon thereafter, and who received a grant of parole pursuant to 8 U.S.C. § 1182(d)(5)(A), are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) even if they were never placed into expedited removal proceedings under 8 U.S.C. § 1225. As discussed below, the redetention of Mr. Kazemi without requiring the Government to justify his renewed detention violates his right to due process. Yet, all immigration judges—including those at the Board of Immigration Appeals—are obligated to apply the Board's published precedent and deny any bond application or administrative appeal filed by Mr. Kazemi. 8 C.F.R. § 103.10(b).

27. For this reason, Mr. Kazemi 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.").

28. Finally, because Mr. Kazemi'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

29. Mr. Kazemi entered the United States without inspection in May 2023. Mr. Kazemi was apprehended approximately four days after his arrival in the United States and detained by immigration officials.

30. Mr. Kazemi was served with a Notice to Appear on June 7, 2023, and later released on parole pursuant to 8 U.S.C. 1182(d)(5)(A) after passing a credible fear interview. He has resided continuously in this country since being paroled, most recently in Baltimore, Maryland.

31. Over the past three years, Mr. Kazemi has developed strong ties to his community. He is now married and is the primary source of care and support for his wife and two step-children, one of whom suffers from serious disabilities including autism. Mr. Kazemi's wife and step-children all hold refugee status.

32. Mr. Kazemi also regularly attends and is an active member of the Mahdi Islamic Education Center of Baltimore.

33. Mr. Kazemi has attended approximately five removal hearings since he entered the United States and was scheduled for a final merits hearing on his pending asylum application on November 19, 2027, in Baltimore, Maryland. Mr. Kazemi also has a history of reporting to ICE since being paroled into the United States.

34. On March 3, 2026, Mr. Kazemi reported to ICE as required and was promptly taken into custody.

35. Mr. Kazemi remains detained at Baltimore Hold Room, in Baltimore, Maryland.

36. After apprehending Mr. Kazemi in or around May 2023, DHS subsequently placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged him as being inadmissible under sections 212(a)(7)(A)(i)(I) and 212(a)(6)(A)(i) of the Immigration and Nationality Act.

LEGAL BACKGROUND

37. 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).

38. 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.*

39. 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).

40. 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).

41. 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").

42. 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").

43. 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).

44. 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).

45. 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).

46. 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.

47. 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.

48. 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.

[1] Nearly 30 years of agency interpretation of the law would have provided Mr. Kazemi 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

49. Yet, courts that have reviewed this issue have overwhelmingly rejected Respondents' new reading of the statute. *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).

50. Mr. Kazemi's initial detention does not render him subject to mandatory detention under § 1225, because he was subsequently released, has remained in the United States for over two years, and is currently in removal proceedings under 8 U.S.C. § 1229a(a), not in expedited removal pursuant to 8 U.S.C. § 1225.

51. Indeed, courts in this circuit have rejected the argument that an individual is subject to § 1225(b)(2) if initially detained soon after entry, and then re-detained years after being paroled by immigration authorities. *See, e.g., Lopez v. Lyons*, No. 25-CV-1838-AJT-IDD, 2025 WL 3285493 at *5-*6 (E.D. Va. Nov. 25, 2025) (citing *Henriquez-Perez v. Crawford*, No. 1:25-cv-01782, slip op. at 4 (E. D. Va. Nov. 21, 2025) and *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 916 (E.D. Va. 2024)).

52. As one district court in this circuit reasoned, Mr. Kazemi "was not 'arriving' at the time of his detention, and so § 1225(b)(1)(A)(i) does not apply." *Villanueva v. Bondi*, No. 25-CV-4152-ABA,

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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).

2026 WL 100595, *2 (D. Md. Jan. 14, 2026). Mr. Kazemi "has been present in the United States for more than two years, so § 1225(b)(1)(A)(iii) does not apply." *Id.* And as "numerous district court decisions" have concluded, "§ 1225(b)(2) does not apply to persons like Petitioner who were previously taken into custody and then released (such as under *parole* or supervised release)." *Id.* at *2-*3 (emphasis added) (citing *Afghan v. Noem*, No. 25-CV-4105-SAG, 2025 WL 3713732, *1 (D. Md. Dec. 23, 2023)).[2]

53. These decisions are in accordance with outcomes both in this circuit and elsewhere in the United States. *See, e.g., Darwich v. Kemerling*, 2026 U.S. Dist. LEXIS 11447 (M.D. N.C. Jan. 22, 2026) (granting habeas petition and ordering immediate release where noncitizen was detained at a port of entry, paroled under 8 U.S.C. § 1182(d)(5)(A), and later re-detained without proper notice of parole revocation); *Said v. Noem*, No. 25-CV-00938-MOC, 2025 WL 3657217 (W.D. N.C. Dec. 17, 2025) (granting habeas petition and ordering bond hearing for individual who was detained shortly after entry without inspection, released on parole under 8 U.S.C. § 1182(d)(5)(A), and subsequently re-detained); *see also Cantillo v. Noem*, No. 1:26-CV-70, 2026 U.S. Dist. LEXIS 12004 (W.D. MI. Jan. 22, 2026) (granting habeas petition and ordering bond hearing where petitioner entered the United States without inspection, was detained shortly thereafter and released on his own recognizance, then re-detained approximately 17 months later); *Karanjit K. v. Albarran*, No. 26-CV-00467-TLN-EFB, 2026 U.S. Dist. LEXIS 11996 (E.D. Cal. Jan. 22, 2026) (ordering immediate release and finding likelihood of success on the merits where petitioner entered the United States without inspection, was apprehended shortly thereafter and paroled into

[2] *Lopez-Sorto v. Garland*, 103 F.4th 242, 251-52 (4th Cir. 2024), is not to the contrary, because Petitioner does not claim to have been admitted to the United States, nor is Petitioner located outside the United States and seeking re-entry through a new grant of parole. Instead, Petitioner merely contends that the mandatory detention provisions do not apply where, as here, a *prior* grant of parole was terminated without sufficient prior notice or process.

the country, then re-detained without proper notice or hearing to show materially changed circumstances since grant of parole); *Saavedra Hernandez v. Bondi*, No. 26-CV-00510-ESK, 2026 U.S. Dist. LEXIS 11647 (D. N.J. Jan. 22, 2026) (granting habeas petition and ordering bond hearing where petitioner entered the United States without inspection and was released on his own recognizance, then subsequently re-detained); *Bances v. Noem*, No. 25-CV-13840-PBS, 2026 U.S. Dist. LEXIS 11722 (D. Mass. Jan. 22, 2026) (granting habeas petition and ordering bond hearing where petitioner entered the United States without inspection, was detained one day later and released on parole under 8 U.S.C. § 1182(d)(5)(A), then re-detained over one year later); *Rojas-Lara v. United States*, No. 2:25-CV-02544-RFB-EJY, 2026 U.S. Dist. LEXIS 11412 (D. Nev. Jan. 22, 2026) (granting habeas petition and ordering bond hearing where petitioner was paroled shortly after entry, transferred from expedited removal proceedings to proceedings under § 1229a(a), and re-detained while his proceedings were pending); *Hernandez-Hernandez v. Sukkar*, No. 25-25773-CV-WILLIAMS, 2026 U.S. Dist. LEXIS 10078 (S.D. Fla. Jan. 20, 2026) (granting habeas petition and ordering bond hearing where petitioner entered the United States without inspection, received a grant of humanitarian parole, and was re-detained many years later shortly after securing reopening of his immigration proceedings under 8 U.S.C. § 1229a(a)); *Suarez-Duarte v. Harper*, No. 2:25-CV-03142-TMP, 2026 WL 84217 (W.D. Tenn. Jan. 12, 2026) (granting habeas petition and ordering bond hearing where petitioner was paroled shortly after entry, transferred from expedited removal proceedings to proceedings under § 1229a(a), and re-detained while his proceedings were pending); *Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200 (W.D. Tex. Jan. 8, 2026) (granting habeas petition and ordering bond hearing where petitioner entered without inspection, was released on a grant of humanitarian parole under 8 U.S.C. § 1182(d)(5)(A), and was re-detained upon service of a Notice to Appear for removal proceedings under 8 U.S.C. § 1229a(a)). In sum, an individualized bond hearing is required for individuals who

were paroled into the United States or released on their own recognizance and who are subsequently re-detained while removal proceedings under 8 U.S.C. § 1229a(a) are pending.

Bautista Class Membership

54. On November 25, 2025, a district court in the Central District of California certified a nationwide class of "noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231" when DHS made an initial custody determination)." *Bautista v. Santacruz*, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

55. In a separate order, the district court held unlawful the Department of Homeland Security's policy of treating all inadmissible noncitizens arrested inside the United States as "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Maldonado Bautista*, -- F. Supp. 3d --, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). On December 18, 2025, the *Maldonado Bautista* court granted a motion for reconsideration, entering final judgement on behalf of the certified class. *See Maldonado Bautista*, No. 5:25-cv-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92.

56. In its order, the *Maldonado Bautista* court vacated the Department of Homeland Security Immigration and Customs Enforcement July 8, 2025, memorandum and policy, and ruled that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) "is no longer controlling; the legal conclusion underlying the decision is no longer tenable." *Id.* at 6.

57. Mr. Kazemi is a member of the Bond Eligible Class, as he:

    (1) entered the United States without inspection nearly three years ago;

    (2) was not apprehended upon arrival; and

    (3) is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

58. As a member of the certified class in *Bautista*, Mr. Kazemi is entitled to the benefits of the declaratory judgment entered in that case declaring that he and the other class members are not subject to mandatory detention under § 1225(b).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Immigration and Nationality Act

59. Mr. Kazemi realleges and incorporates by reference the paragraphs above.

60. Mr. Kazemi 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.

61. 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).

62. 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.

63. 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. Kazemi cannot reasonably be

described as "seeking admission" to a country he has lived in for the almost three years.

64. The fact that Mr. Kazemi was apprehended shortly after arriving in the United States and paroled into the country does not alter that analysis.

65. 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.

66. 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.").

67. 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.").

68. Furthermore, Mr. Kazemi is not subject to mandatory detention under 8 U.S.C. § 1225 by virtue of his prior release on parole shortly after his arrival. With respect to the current detention being challenged, Mr. Kazemi "was not 'arriving' at the time of his detention, and so § 1225(b)(1)(A)(i) does not apply." *Villanueva v. Bondi*, No. 25-CV-4152-ABA, 2026 WL 100595, *2 (D. Md. Jan. 14, 2026). Mr. Kazemi "has been present in the United States for more than two years, so § 1225(b)(1)(A)(iii) does not apply." *Id.* And as "numerous district court decisions" have concluded, "§ 1225(b)(2) does not apply to persons like Petitioner who were previously taken into custody and then released (such as under *parole* or supervised release)." *Id.* at *2-*3 (emphasis added) (citing *Afghan v. Noem*, No. 25-CV-4105-SAG, 2025 WL 3713732, *1 (D. Md. Dec. 23, 2023))

69. Thus, this Court must find that subjecting Mr. Kazemi 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

70. Mr. Kazemi realleges and incorporates by reference the paragraphs above.

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

72. 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.

73. 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).

74. 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.").

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

76. Mr. Kazemi 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

77. Mr. Kazemi realleges and incorporates by reference the paragraphs above.

78. "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. Kazemi.

79. After living in the United States continuously since March 3, 2026, Mr. Kazemi 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. Kazemi is properly detained under § 1225(b)(2)—which he is not—his mandatory detention does not comply with due process.

80. As an individual who has "passed through our gates," Mr. Kazemi 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.

81. 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).

82. Each of these factors weigh in Mr. Kazemi's favor and support a finding that he may not be

detained without an opportunity to seek release on bond before an immigration judge.

83. Mr. Kazemi 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).

84. While the Government has an interest in ensuring Mr. Kazemi's appearance at his removal proceedings and protecting the community, *see id.*, the bond procedures established under § 1226(a) adequately serve 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. Kazemi who have established a presence in the United States after previously entering without inspection.

85. Finally, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Kazemi without any opportunity to challenge their detention before the administrative agency. Without a bond hearing, there is a high probability that Mr. Kazemi 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.

86. In short, denying Mr. Kazemi 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.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Kazemi 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 Ms. Barahona's detention by U.S. immigration authorities;

(4) Order that Ms. Barahona 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 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: March 5, 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. 28 U.S.C. § 2242.

Dated: March 5, 2026

Respectfully submitted,

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