IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00954-RMR

LUIS DAVID SOLANO RIVAS,

Petitioner,

v.

KRISTI NOEM, et al.

Respondents.

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner filed the Petition for Writ of Habeas Corpus, seeking access to a basic immigration court bond hearing. ECF No. 1. This Court, and numerous others, have already addressed the unlawful actions of Respondents and rejected their arguments in support thereof. Moreover, Respondents concede that "[t]his issue is not materially different from an issue this Court has resolved in a prior ruling in another case. *See Mendoza Gutierrez v. Baltazar, et al.*, 25-cv-02720-RMR." Response 2. Respondents fail to identify a single fact or reason that different result should be reached here. In the abundance of caution, to preserve his legal arguments, Petitioner submits his reply:

For the first time ever, Respondents have reinterpreted 8 U.S.C. § 1225(b)(2) to empower their immigration enforcement agencies to indiscriminately subject millions of individuals present in the United States to mandatory detention without hope of bond or release during the pendency of their removal proceedings. The stakes to noncitizens caught up in this naked mass detention effort could not be higher. Individuals are now routinely subjected to horrific instances of arrest by immigration authorities; families are cleaved apart; homes, businesses, and other assets accrued over sometimes decades of hard work are put at risk or outright lost. Civil immigration detainees are systematically housed with criminal offenders in jails and subcontracted detention facilities across the United States, many never having interacted with any law enforcement in their lives, let alone been subjected to detention of any kind.[1]

[1] https://www.aclu.org/news/immigrants-rights/inside-an-ice-detention-center-detained-people-describe-severe-medical-neglect-harrowing-conditions (last visited Apr. 1, 2026).

Perhaps most importantly, Respondents gain an unquestionable advantage in removal matter outcomes on the detained docket.[2] Detained individuals are subjected to a truncated timeline of hearings and adjudications before the EOIR immigration court system.[3] Behind bars, civil detainees are severely curtailed in their ability to participate in the preparation of their own immigration court matters;[4] confidential attorney-client calls are subject to detention center scheduling;[5] detainees risk losing access to crucial records and other essential evidence that could support their requests for relief from removal;[6] they are subjected to indeterminate number of facility transfers at the whim and bed count numbers of Respondents, regardless if transfer would prevent access to family and other community support.[7] Respondents' new policy, for the first time since the statute's enactment in 1996, now leverages these conditions against millions of undocumented individuals present in the United States, without any chance of release. As the administration builds its systematic deportation machine, the mandatory detention policy at issue here is central to that effort not only because it deprives noncitizens of liberty without review, but because in most removal cases it is outcome-determinative.

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[2] *See* "Removal Order Rate," available at: https://www.americanimmigrationcouncil.org/report/immigration-court/ (last visited Dec. 22, 2025).

[3] https://forumtogether.org/article/explainer-immigration-removal-proceedings-and-expanded-mandatory-detention-in-the-u-s/ (last visited Dec. 22, 2025).

[4] https://assets.aclu.org/live/uploads/publications/no_fighting_chance_aclu_research_report.pdf, at 12-18 (last visited Dec. 22, 2025).

[5] https://slate.com/news-and-politics/2025/12/civl-rights-trump-ice-detention-fail.html (last visited Dec. 22, 2025).

[6] *Id.*

[7] https://prospect.org/2025/10/06/2025-10-06-how-ice-hides-detainees-from-their-lawyers/ (last visited Dec. 22, 2025).

To justify this stark departure from decades of precedent and practice, Respondents rely on a wholly novel reading of the mandatory detention statute. Since the first challenge to their policy in July 2025, Respondents have invoked several disparate statutory interpretation canons, most of which have largely been roundly rejected by nearly all district courts in the country that have considered the issue, including this Court and other jurists in this District. *See, e.g., Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *4 (D. Colo. Oct. 17, 2025). *See also Lopez v. Noem*, No. 25-CV-04089-NYW, 2026 WL 206220, at *3 (D. Colo. Jan. 27, 2026) (collecting cases). Petitioner seeks only access to a standard immigration bond hearing pursuant to 8 U.S.C. § 1226 that no one disputes he would have been afforded as a matter of course were he initially detained before July 2025.

FACTS AND PROCEDURAL HISTORY

The parties generally agree as to the material facts in this case. Petition (hereinafter "Pet.") at ¶¶ 34-42, ECF No. 1; *and* Response 2, ECF No. 10.

ARGUMENT

I. THIS COURT RETAINS JURISDICTION OVER THIS HABEAS MATTER.

First, Petitioner does not seek review of his removal order or removal proceedings, and therefore 8 U.S.C. § 1252(a)(5) does not bar review. *Mendoza Gutierrez*, 2025 WL 2962908 at *3. As noted by this Court, § 1252(a)(5) specifically carves out habeas challenges for individuals in custody. *Id.* "Congress did not intend the zipper clause 'to cut off claims that have a tangential relationship with pending removal proceedings.' ... A claim only arises from a removal proceeding when the parties in fact are challenging removal proceedings." *Mukantagara v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023). So section 1252(a)(5) does not preclude this Court's review.

Second, in the same vein, none of the instant claims for relief could be considered on a Petition for Review, and therefore 8 U.S.C. § 1252(b)(9) does not apply. Jurisdiction to determine under which authority the government may detain an individual unquestionably sounds in habeas. *Jennings v. Rodriguez,* 583 U.S. 281, 294–95 (2018) ("For present purposes, it is enough to note that respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.")

II. PETITIONER REMAINS SUBJECT TO DETENTION UNDER 8 U.S.C. § 1226(a)

For individuals like Petitioner encountered in the interior of the United States, 8 U.S.C. § 1226(a) is "the default rule" for discretionary detention of those "already present in the United States," during their removal proceedings. *Jennings,* 583 U.S. at 303. Petitioner was present in the United States when he was first encountered by immigration officials. Pet. ¶¶ 34, 38. Discretionary detention and release on bond is only permitted under 8 U.S.C. § 1226(a). "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). The same statute provides the authority for release. "'Except as provided in subsection (c) of this section,' the Attorney General 'may release' an alien detained under § 1226(a) 'on ...bond' or 'conditional parole.'" *Id.*

Further, Petitioner is not subject to any provision of mandatory detention. Respondents do not aver that 8 U.S.C. § 1226(c) criminal or national security provisions

apply to him. Nor do Respondents charge Petitioner as an arriving alien or one subject to expedited removal under 8 U.S.C. § 1225(b)(1). As discussed at length below, Respondents arguments that 8 U.S.C. § 1225(b)(2) apply to Petitioner are incorrect. As such, the only remaining authority to detain Petitioner is under § 1226(a). Respondents' position would rewind the clock and treat Petitioner as if those initial proceedings had never occurred, nor all the years since. This Court should find that Petitioner remains subject to 8 U.S.C. § 1226(a).

III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2).

This Court has rejected Respondents' arguments several times over. *Mendoza Gutierrez,* 2025 WL 2962908. In their Response, Respondents point to no distinction between the facts of this case the Court's prior decision in *Mendoza.* Respondents cite heavily to the Fifth Circuit decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. Feb. 6, 2026), but that decision is out of circuit and not binding on this Court. In the abundance of caution, Petitioner preserves his argument that 8 U.S.C. § 1225(b)(2) does not apply to him, as he was encountered for the first time already present inside the United States, not actively seeking admission to the United States.

A. Respondents' new interpretation of 8 U.S.C. § 1225(b)(2) erases key statutory requirements.

1) Section 1225(b)(2) requires someone to be "seeking admission."

Mandatory detention is authorized under 8 U.S.C. § 1225(b)(2) for applicants for admission when they are "seeking admission" and following a determination by an examining immigration officer. *See Kashranov v. Jamison,* No. 2:25-CV-05555-JDW, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025) ("To trigger Section 1225(b)(2)(A), an examining immigration officer must determine three elements: that the individual is (1) an

"applicant for admission," (2) "seeking admission," and (3) "not clearly and beyond a doubt entitled to be admitted.") Respondents' interpretation would redline the "seeking admission" requirement. *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025).

Beginning with the statute's text, mandatory detention under 8 U.S.C. § 1225(b)(2) applies to an applicant for admission when "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." An "applicant for admission" is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States ... shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). While, the Immigration and Nationality Act ("INA") is replete with terms of art defined by statute, the phrase "seeking admission" is not one, so we must look to surrounding language. The statute defines "admission" as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). And, as explained in *Bethancourt Soto v. Soto*, "[t]he phrase 'seeking admission' in § 1225(b)(2)(A) necessarily connotes some affirmative, present-tense action. The verb 'seeking' is a present participle, and the 'present participle is used to signal present and continuing action.'" 897 F.Supp.3d 397, 406 (D.N.J. 2025). Accordingly, to be seeking "admission" means to be presently seeking "lawful entry."

On the other hand, many individuals (like Petitioner) already present in the United States are not seeking *another* entry. Many are simply seeking lawful status, without transiting the border anew. The Fifth Circuit decision in *Buenrostro* and likewise

Respondents' arguments completely overlook this crucial distinction.[8] However, as the Supreme Court has explained, "lawful status and admission, as the [Third Circuit] below recognized, are distinct concepts in immigration law: Establishing one does not necessarily establish the other." *Sanchez v. Mayorkas*, 593 U.S. 409, 415 (2021). The INA lays out several forms of relief available to individuals already present in the United States that do not require an admission (or entry) as part of their eligibility requirements yet would still result in lawful status in the United States. Asylum does not require or constitute an admission. 8 U.S.C. § 1158(a)(1). Cancellation of removal does not require or constitute an admission. 8 U.S.C. § 1229b(b)(1)(A). Special immigrant juvenile status permits adjustment of status without requiring an admission. *See Del Cid v. Bondi*, No. 3:25-cv-00304, 2025 WL 2985150, at *3 (W.D. Pa. Oct. 23, 2025) (explaining that Special Immigrant Juvenile Status permits the individual to adjust status without another entry, because they are "deemed for purposes of [adjustment of status under § 1255(a)] to have been paroled into the United States" under § 1255(h)(1)). Per 8 U.S.C. § 1101(a)(15)(U), U nonimmigrant status may be afforded with a waiver of inadmissibility (8 U.S.C. 1182(d)(14)) and does not constitute an admission. *See* USCIS Policy Alert, dated November 3, 2025.[9] Temporary protected status, per 8 U.S.C. § 1254a(f)(4), means "considered as being in, and maintaining, lawful status as a nonimmigrant" and yet is not an admission. *Sanchez* 593 U.S. at 415. Respondents conflate seeking relief from

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[8] The recent Eighth Circuit decision in *Herrera Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *4 (8th Cir. Mar. 25, 2026), also misses this crucial distinction in the INA between seeking "admission" – a term defined at 8 U.S.C. § 1101(a)(13)(A) – and seeking "lawful status."

[9] Available at: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251103-AOSAdmission.pdf (last visited April 1, 2026).

removal as equated with "seeking admission," when the Supreme Court has clearly delineated a distinction between the two. Respondents overstate their position, because as shown here, the INA contemplates numerous forms of relief from removal, even for those defined as an "applicant for admission," that neither require nor constitute an admission but are a lawful status.

2) Respondents' interpretation erases the "seeking admission" requirement.

Respondents argue that Petitioner is subject to mandatory detention because, they claim, Petitioner is an applicant for admission, full stop. Response 2. Respondents' argument necessarily requires that *all* applicants for admission present in the U.S. are necessarily "seeking admission," (Response 3) thereby rendering that requirement redundant and superfluous. However, Respondents' interpretation is flawed for several reasons.

First, an "applicant for admission" is a clearly defined term of art in § 1225(a)(1), and yet the words "seeking admission" appear nowhere in that definition. "But it is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an 'applicant for admission' to 'an alien present in the United States who has not been admitted or who arrives in the United States.' 8 U.S.C. § 1225(a)(1)." *Castañon-Nava,* 161 F.4th at 1061. "It could easily have included noncitizens who are 'seeking admission' within the definition but elected not to do so." *Id.*

Next, the textual requirement of "seeking admission" must do some work or it is rendered mere surplusage in the statute and interpreted out of meaning. *Corley v. United States*, 556 U.S. 303, 314 (2009). Respondents' interpretation unavoidably renders the "seeking admission" portion of the mandatory detention statute superfluous. *Mejia Diaz v.*

Noem, No. 3:25-CV-960-CCB-SJF, 2025 WL 3640419, at *6 (N.D. In. Dec. 16, 2025). *See also Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3687757, at *6 (D. Mass. Dec. 19, 2025) ("Adopting the government's construction of the statute would improperly render meaningless the phrase "seeking admission" in § 1225(b)(2)(A).") "Indeed, as the Supreme Court reminds us, if an interpretation of one provision 'would render another provision superfluous, courts presume that interpretation is incorrect.'" *Castañon-Nava,* 161 F.4th at 1061, citing *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). "And this presumption is 'strongest when an interpretation would render superfluous another part of the same statutory scheme,' as would be the case here." *Id.* citing *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013). Because Respondents interpretation erases the "seeking admission" requirement this Court should reject it as the *Kashranov* court and the vast majority of courts to consider it. 2025 WL 3188399, at *6*; see also Lopez v. Noem*, No. 25-16890 (SDW), 2025 WL 3101889, at *3 (collection of cases) (D.N.J. Nov. 5, 2025).

Respondents misread 8 U.S.C. § 1225(a)(3) to support their argument that "applicants for admission" are simply synonymous with those "seeking admission." Response, Ex. A, ECF No. 10-1 at 12. Respondents cite 8 U.S.C. § 1225(a)(3): "All aliens... who are applicants for admission or otherwise seeking admission... shall be inspected by immigration officers." But Respondents misconstrue the meaning of "or otherwise" to equate these two phrases, and district courts have disagreed:

> "'Otherwise' generally means, "in a different way or manner" or "in different circumstances." *Otherwise*, Webster's Ninth New Collegiate Dictionary 835 (1984). So § 1225(a)(3)'s use of 'or otherwise' simply means that immigration officers must inspect any noncitizen who is 'seeking admission or readmission to or transit through the United States,' whether the noncitizen is an applicant for admission *or* differently situated."

Llanes Tellez v. Bondi, No. 25-CV-08982-PCP, 2025 WL 3677937, at *7 (N.D. Cal. Dec. 18, 2025). Rather, some courts have reached the exact opposite conclusion in reading § 1225(a)(3). "Surrounding language of the statute reinforces that these terms are not synonymous. For one, § 1225 elsewhere refers to "aliens who are applicants for admission *or otherwise seeking admission*." 8 U.S.C. § 1225(a)(3) (emphasis added). "Were the two requirements coterminous, that disjunctive formulation would be superfluous." *Yao v. Almodovar*, --F.Supp.3d--, No. 25 CIV. 9982 (PAE), 2025 WL 3653433, at *5 (S.D.N.Y. Dec. 17, 2025). *See also Mejia Diaz,* 2025 WL 3640419, at *6 ("The phrase "otherwise seeking admission" allows that people other than an "applicant for admission" may still be subject to inspection by immigration officers.")

Of course, there are "applicants for admission" who could also be "seeking admission," and vice versa, but neither the language of subsection (a)(3) nor (b)(2) suggests that either group necessary equates or subsumes the other. "To be sure, § 1225(a)(3) acknowledges some overlap between the categories of 'applicants for admission' and noncitizens 'seeking admission,' with the latter serving as 'a catch-all to describe non-citizens who must be inspected.'" *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938, at *27 (N.D. Cal. Dec. 19, 2025), citing (quoting *Al Otro Lado v. Executive Office for Immigration Review*, 138 F.4th 1102, 1119 (9th Cir. 2025)). Nonetheless, "[t]here may be noncitizens 'seeking admission' who are not applicants for admission. 'For example, those applying for a visa at a consulate abroad would be seeking admission but not be applicants for admission, since they are neither present in the country nor arriving in it.' *Id.* citing *Cordero Pelico,* No. 25-cv-07286-EMC (EMC), 2025 WL 2822876, at 14 (N.D. Cal. Oct. 3, 2025), citing *Matter of Lemus-Losa*, 25 I. & N.

Dec. 734, 741 (BIA 2012). As *Sanchez* observed, "[o]n the one hand, a foreign national can be admitted but not in lawful status—think of someone who legally entered the United States on a student visa, but stayed in the country long past graduation. On the other hand, a foreign national can be in lawful status but not admitted—think of someone who entered the country unlawfully, but then received asylum." 593 U.S. at 415. The same is true here, as outlined above, there are numerous groups of noncitizens who may be applicants for admission but are not actively "seeking admission" who may nonetheless apply for lawful status under the INA.

Further, the context of § 1225(b) in the Inspection section of the INA further undermines Respondents' interpretation. The court explains that "to the extent respondents argue that an applicant for admission is necessarily seeking admission, "[t]he 'otherwise seeking admission' language is simply a catch-all provision to describe individuals seeking admission and subject to inspection who may not fit the definition of 'applicant for admission,' such as a person not currently present in the United States." *Id.*, citing *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *6 n.4 (D. Colo. Oct. 22, 2025). The District of Nevada considered § 1225(a)(3), among the other subsections of 1225: "For example, § 1225's title refers to the "inspection" of "inadmissible arriving" noncitizens, while its subsections set forth procedures for "examining immigration officer[s]" §§ 1225(b)(2)(A), (b)(4), to engage in "[i]nspection[s]" of individuals "arriving in the United States," §§ 1225(a)(3), (b)(1), (b)(2), (d)." *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *13 (D. Nev. Sept. 17, 2025). The District of Nevada concluded that "the Court finds the structure of § 1225(b)(2) further indicates that it authorizes mandatory detention for noncitizens *entering,*

attempting to enter, or who have recently entered the U.S., and does not encompass individuals like Petitioner, who entered long ago, are not taking affirmative steps that could be characterized as "seeking admission," and have been residing in the U.S. for years." *Id.*

Respondents' cannot simply overlook the "seeking admission" requirement because it inconvenient to their new policy. And because "seeking admission" requires also seeking *entry* into the United States, this situates 8 U.S.C. § 1225(b)(2) back at the border (rather than the interior), as it has been understood to apply for decades.

B. Respondents' new interpretation of 8 U.S.C. § 1225(b)(2) would render subsections of 8 U.S.C. § 1226(c) surplusage.

Respondents' re-interpretation of 8 U.S.C. § 1225(b)(2) would also render meaningless other bases for mandatory detention under 8 U.S.C. § 1226, including the recently enacted § 1226(c)(1)(E). Because of this, Respondents' re-interpretation cannot be correct. "One of the most basic interpretive canons is that a statute should be construed so that effect is given to all its provisions, and no part will be inoperative or superfluous, void or insignificant." *Hasan v. Crawford*, 800 F.Supp.3d 641, 656 (E.D. Va. Sep. 19, 2025), citing *Corley v. United States*, 556 U.S. 303, 314 (2009). "If an interpretation of one provision 'would render another provision superfluous, courts presume that interpretation is incorrect.'" *Id.*, citing *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). This presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386, (2013).

Section 1226(c) requires for detention of various classes of criminal aliens and was recently amended by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025);

8 U.S.C. § 1226(c)(1)(E). "The LRA amendments mandate detention for noncitizens charged as inadmissible under Sections 1182(a)(6)(A) ("present in the United States without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation or fraud), or 1182(a)(7) (lacking valid documentation) *and* if the noncitizen has been arrested for, charged with, or convicted of certain crimes. *Id.*" *Rodriguez*, 779 F. Supp. 3d at 1246. "When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014) (quoting *Stone v. INS*, 514 U.S. 386, 397 (1995)). The LRA was enacted by Congress less than a year prior to the announcement of this new detention policy, when ICE was still applying § 1226(a) to individuals who had entered the United States without inspection. "Another 'customary interpretive tool' is the principle that '[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,' courts 'generally presume the new provision should be understood to work in harmony with what has come before.'" *Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1259 (W.D. Wash Apr. 24, 2025), citing *Monsalvo Velazquez v. Bondi*, 604 U.S. 712, 714 (2025).

If individuals present without having been admitted are already subject to mandatory detention under § 1225(b)(2)(A) as applicants for admission, regardless of any subsequent criminal acts, then an amendment to § 1226(c) to require mandatory detention for those individuals was entirely unnecessary. "This mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Hasan*, 800 F.Supp.3d at 656. Moreover, if § 1225(b)(2) already applied, then the Attorney General would already lack the very discretion that the LRA was intended to

remove.

Respondents argue that their interpretation does not render subsection 1226(c)(1)(E) superfluous. ECF No. 10-1, at 14. Respondents argue that repetition, redundancy, or "overlap" is common. ECF No. 10-1, at 24. However, while "statutes do sometimes contain surplusage and '[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text,' *Barton v. Barr*, 590 U.S. 222, 239 (2020), the Court declines to construe § 1225(b)(2)(A) and § 1226, two components of a single statutory scheme, in a manner that would render language in the latter section to be meaningless." *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *8 (D. Mass. Oct. 3, 2025).

Because Respondents' interpretation of § 1225(b)(2) would render important subsections of § 1226(c) superfluous, it should not be adopted by this Court.

C. Decades of practice in applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the united states is evidence of the agency's prior view.

Lastly, the agency's decades of practice applying 8 U.S.C. § 1226(a) to individuals encountered in the interior of the United States remains a persuasive indicator as to the broader interpretation of the statutory detention scheme, and belies Respondents' attempt to re-cast the legislative history of § 1225(b) (ECF No. 10-1 at 16-17). "[A]s the Supreme Court explained in *Loper Bright*, cases dating back centuries have considered "the longstanding practice of government" as they would "any other interpretive aid." *Rodriguez*, 779 F. Supp. 3d at 1251, citing *Loper Bright*, 603 U.S. at 386. At the time of the statutes' enactment, it was understood that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible

for bond and bond redetermination." *Rodriguez*, 779 F.Supp.3d at 1260-61, citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Respondents do not dispute that their new position was announced for the first time on July 8, 2025, after decades of implementation to the contrary. ECF No. 10-1 at 18. By the policy's own language, ICE announced a sea-change for immigration detention. "Effective immediately, it is the position of DHS that such aliens are subject to detention under [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)]." Pet. ¶¶ 20-23. DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.*

The Board's decision in *Yajure Hurtado* was its first to take the position that 8 U.S.C. § 1225(b)(2) applied to all individuals present without having been inspected and admitted. 29 I. & N. Dec. at 216. Indeed, in an unpublished decision just one year prior, the Board stated that it was "**unaware of any precedent** stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here." *Rodriguez*, 779 F. Supp. 3d at 1261.

Lastly, the LCA was enacted by Congress less than a year prior to the announcement of this new detention policy, when ICE was still applying § 1226(a) to individuals who had entered the United States without inspection. "Another 'customary interpretive tool' is the principle that '[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,' courts 'generally presume the new provision should be understood to work in harmony with what has come before.'" *Rodriguez*, 779 F.Supp.3d at 1259, citing *Monsalvo Velazquez v. Bondi*, 604 U.S. --, 145 S.Ct. 1232 (2025).

For these reasons, Respondents' interpretation of § 1225(b)(2) should be set aside, and Petitioner should be found eligible for a bond hearing under § 1226(a).

IV. PETITIONER'S ONGOING DETENTION VIOLATES DUE PROCESS.

Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Bethancourt Soto v. Soto,* 2025 WL 2976572, at *8, citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). *See also* After entering the United States unlawfully in 2004, Petitioner went on to develop ties to the community over the course of many years. Petitioner is therefore a "person" within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution. As such, the three-part *Mathews* test determines what process is due to Petitioner. *Id.*, citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The first factor favors Petitioner, as his private interest in physical liberty is affected by Respondents' unlawful actions, and is an essential right protected by Due Process. *Id.* "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. "However, the fact that some detention is permissible does not change the fact that a detainee suffers significant liberty deprivations. Moreover, the government's exercise of its power to detain immigrants pending removal is subject to important constitutional limitations." *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024),

The second factor of risk of erroneous deprivation also favors Petitioner in that Petitioner is currently *erroneously* detained under mandatory detention. *Betancourt Soto*, 2025 WL 2976572, at *8. Petitioner is currently held while being denied his statutory right to release on bond. *Id.* Further, it is clear from Respondents' actions, that Petitioner will continue to be deprived of a bond hearing for the foreseeable future.

The third factor, the government's interest, also militates in favor of Petitioner. The government cannot articulate an interest in civilly detaining an individual without a bond hearing. *Id.* "It would stand to reason if a noncitizen was neither a flight risk nor dangerous, there would be no government or public interest in detention." *L.G. v. Choate*, 744 F. Supp. 3d at 1185. Moreover, as a family man and breadwinner, "Petitioner's mandatory detention is not authorized by § 1225, serves no legitimate purpose, and amounts to punitive detention, warranting habeas relief." *Id.* Moreover, the public interest strongly favors avoiding the substantial and unnecessary costs of pre-removal detention. *Chogllo Chafla v. Scott,* No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025). "Simply put, the government interest in avoiding any pre-detention process in this instance is minimal." *Id.*

Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives him of his rights without due process of law. *Lopez v. Noem*, 2026 WL 206220, at *4 ("The Court concurs with the numerous other district courts that have concluded that denying a bond hearing to a noncitizen detained under § 1226(a) violates the noncitizen's due process rights."). Therefore, the writ should issue, and the Court should order his release.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus should issue. This Court should order Petitioner's immediate release. Alternatively, this Court should enjoin Respondents from subjecting Petitioner to detention without a bond hearing under 8 U.S.C. § 1225(b)(2), and should order Respondents to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) in front of an Immigration Judge within 15 days.

Respectfully submitted,

Date: April 1, 2026

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

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