SCOTT KEITH WILSON, Federal Public Defender (#7347)
BENJAMIN C. McMURRAY, Assistant Federal Public Defender (#9926)
FEDERAL PUBLIC DEFENDER OFFICE
Attorneys for Defendant
46 West Broadway, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Email: Benji_McMurray@fd.org

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

ADAM BRYANT PEÑA BECERRA, Petitioner, v. KELLY SPARKS, Davis County Sheriff; EVAN TJADEN, Acting Field Office Director, Salt Lake City Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE/ERO); KRISTI NOEM, Secretary, United States Department of Homeland Security; PAMELA BONDI, U.S. Attorney General, Respondents.	**REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS** Case No. 2:26-cv-212 JNP

The government's theory for mandatory detention without bond boils down to a single claim:

> Petitioner was an "applicant for admission" when he arrived in 2023 and remains an "applicant for admission," regardless of the amount of time he has been in the United States or whether he arrived at a designated port of entry (which he did not). Accordingly he is subject to mandatory detention without bond under 8 U.S.C. § 1225(b)(2)(A), "In the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

(ECF No. 11 at 13.) This argument has several problems.

ARGUMENT

I. The superior reading of the INA is that § 1225 is applied at the border, while § 1226 is applied in the interior of the United States.

The government argues that a noncitizen "remains an 'applicant for admission,'" and therefore subject to mandatory detention under § 1225(b)(2), "regardless of the amount of time he has been in the United States." *Id.* The better reading of the INA is the one described in *Tanchez*:

> INA proposes two detention schemes that are relevant here. The first, under §1225, applies "primarily to aliens seeking entry into the United States" and requires the detention of noncitizens who do not pass muster during the inspection process. Noncitizens detained under this framework may only be released under the parole provisions contained in § 1182(d)(5). The second detention scheme, under § 1226, is a "default rule" for "aliens already present in the United States" that allows noncitizens to challenge their detention through a bond hearing in front of an Immigration Judge. Noncitizens detained under this framework may be released with a bond or under conditional parole.

Tanchez v. Noem, No. 2:25-cv-1150, 2026 WL 125184, at *7 (D. Utah Jan. 16, 2026). For the reasons articulated at length in *Tanchez*, this court should hold that "Section 1225 is applied at the border, while Section 1226 is applied in the interior of the United States." *See also Velasquez Montillo v. Brooksby*, No. 4:26-cv-18 DN, ECF No. 23 at 13 (D. Utah Mar. 3, 2026), *available at* 2026 WL 592355. This court should hold that Respondents cannot hold Mr. Peña without a bond hearing under § 1225; because he was arrested in the interior of the United States, he is eligible for bond under § 1226.

II. Mr. Peña is not one of the noncitizens described in § 1225(b)(2)(A) because he is not currently "seeking admission" to the United States.

Even if the court is unpersuaded that § 1226 is the "default rule" for those arrested in the interior, the government's argument must fail because Mr. Peña does not fit the description of noncitizens subject to mandatory detention under § 1225(b)(2)(A). This statute requires an "examining immigration officer" to detain a noncitizen who is "[1] an applicant for admission"

who is [2] "seeking admission" and [3] "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Mr. Peña cannot be a member of this category of noncitizens because he is not currently "seeking admission."

The government observes that the court in *Cisneros* rejected this second element as a distinct requirement from the first, inferring from "the structure of this sentence" "no plausible basis for interpreting the phrase 'an alien seeking admission' to have a narrower meaning than 'an alien who is an applicant for admission.'" (ECF No. 11 at 10 (discussing -- F. Supp. 3d --, 2026 WL 396300, at *2). However, this construction ignores the fact that "applicant for admission" is a statutorily defined term of art, but "alien seeking admission" is not.

It is well described in the caselaw how IIRIRA combined "exclusion" and "deportation" under the INA with a single term: "removal." Part of the reason for doing this was the concern that people who would be subject to exclusion could avoid being excluded by entering without inspection, thereby benefitting from perceived benefits attendant to deportation. Thus, Congress created a new mechanism of "expedited removal," which would apply to a class of noncitizens it called "applicant[s] for admission." 8 U.S.C. § 1225(a)(1).

An ordinary understanding of "applicant for admission" would be someone who has actually applied to be admitted. Indeed, IIRIRA promulgated laws related to admission and admissibility. *See, e.g.,* 8 U.S.C. § 1181 (admission of immigrants), § 1184 (admission of nonimmigrants), and § 1182 (grounds of inadmissibility). However, this new term in § 1225 did not require the noncitizen to have actually applied for admission. Rather, the term was statutorily defined as anyone "present in the United States who has not been admitted or who arrives in the United States." *Id.* 1225(a)(1). By using a term of art to describe the category of noncitizens subject to expedited removal, Congress was able to expand that form of removal beyond those

who presented their request for admission at a port of entry, thereby including noncitizens anywhere in the country who had been here for less than two years. *Id.* § 1225(b)(1)(A)(i).

For aliens present in the U.S. for more than two years, Congress added another requirement in (b)(2). Those subject to this provision must also be "seeking admission." *Id.* § 1225(b)(2)A). This requirement, written in the present tense, meaningfully distinguishes between groups of noncitizens. Under § 1225(a)(1), anyone who enters unlawfully is deemed to be an "applicant for admission" for purposes of § 1225, even if that person was not actually "seeking admission" when they entered, thus exposing them to expedited removal if they are apprehended within two years. But this legal designation does not continue forever. To come within the scope of § 1225(b)(2) a noncitizen must, in fact, be "seeking admission."

Under § 1181 and § 1184, "admission" is a formal process that Mr. Peña is not "seeking," so he does not fall within the requirements of § 1225(b)(2). An asylum application is not a request for admission. *See* 8 U.S.C. § 1181, 1184. Rather, it is a separate remedy that is raised as a defense to removal. 8 U.S.C. § 1158(c)(1)(A). And it is available to anyone "who is physically present in the United States . . . irrespective of such alien's status." *Id.* § 1158(a)(1). Thus, a person who entered without inspection and is now subject to removal can defend against removal without bringing himself into the category of noncitizens who are currently "seeking admission."

This rule makes much more sense than the government's proposed reading of the statute. It would be senseless and punitive—and for these reasons unconstitutional—to subject noncitizens who are eligible for asylum to be forced to litigate their cases from jail. By now, it should be obvious that § 1225(b)(2) does not require it. Respondents are wrong to subject Mr. Peña to mandatory detention under this statute.

III. The choice to release Mr. Peña under § 1226 after arresting him near the border controls the outcome in this case.

However, the court decides to construe § 1225(b)(2), that construction is ultimately not dispositive here. The undisputed facts show that Mr. Peña was apprehended near the border and taken into custody, where he would have been subject to § 1225(b)(1)(A), not § 12251(b)(2).

However, even then it was not inevitable that DHS would subject him to expedited removal under § 1225(b)(1)(A). The government does not deny, and therefore concedes, that DHS had discretion at initial processing to choose between expedited removal under § 1225 and removal proceedings under § 1229a. (*See* ECF No. 1 at 11 (citing cases).) But this discretion at the outset does not mean that the government can switch tracks once it has granted release under § 1226. *Velasquez Montillo*, Order at 14 (citing cases).

The record here shows that Mr. Peña was placed in standard removal proceedings under § 1229a. (ECF No. 1-2.) And he was granted release under § 1226. (ECF No. 1-4.) In light of that decision, there can be no serious argument that his release or detention is now governed by § 1226, not § 1225. As the court found in *Velasquez Montillo*: "Because Federal Respondents released [Petitioner] at the border over [two and a half] years ago under 8 U.S.C. § 1226 they may only reconsider [his] release status under Section 1226." Order at 13.

The government tries to distinguish *Velasquez Montillo* on the ground that "Petitioner's asylum claim has been denied, and he has violated his conditions of Release on his Own Recognizance." (ECF No. 11 at 14.) However, the government concedes elsewhere that the asylum ruling is not yet final, so he is not subject to mandatory detention under 8 U.S.C. § 1231 (*Id.* at 4 n.1.) Thus, the detention authority remains in § 1226.

With respect to the supposed violation of ORR conditions, the government's argument has two problems. For one thing, they offer no evidence that a material violation occurred in the first place. Mr. Peña does not doubt that they "believe" he violated the conditions of his release,

but that belief is not evidence, and ultimately the government cannot say that he *did* violate those conditions, only that "there *may* be a basis to revoke his release conditions." (*Id.* at 16-17 (emphasis added).) As it stands, he is presumed innocent.

More importantly, release under § 1226 cannot be revoked without first providing procedural protections to the noncitizen. Arrest under § 1226 must be preceded by a warrant. 8 U.S.C. § 1226(a). Here, there is no warrant. Unless the government produces a warrant prior to this court's ruling, this court must order Mr. Peña's immediate release because his rearrest without a warrant was unlawful. *Velasquez Montillo*, Order at 16 (discussing *Gabriel J. v. Bondi*, 2026 WL 295192 (D. Minn. Feb. 4, 2026)). Even if a warrant is produced, this court should order that Mr. Peña be given a bond hearing, as required by 8 U.S.C. § 1226(a)(2).

IV. Detention without the possibility of release violates Due Process.

However the court construes the various statutes, the government's ability to deprive a noncitizen of his liberty is nevertheless constrained by the Constitution's Due Process clause. Rather than address the due process balancing required by *Matthews*, the government addresses instead an argument that Mr. Peña did not make. (ECF No. 11 at 19-20.) Quoting *Cisneros* and *Buenrostro*, the government argues: "*Zadvydas* . . . has no direct application to aliens who are detained and being given due process—that is, notice and the opportunity to be heard—'during removal proceedings.'" (*Id.* at 17-18.)

But Mr. Peña doesn't rely on *Zadvydas* for his due process claim. The Supreme Court already explained that the constitutional limits imposed on the statute at issue in *Zadvydas* (under the doctrine of constitutional avoidance) did not require the court to infer a *statutory* limitation on detention authority that was not written into either § 1225 or § 1226. *Jennings v. Rodriguez*, 138 S.Ct. 830, 842-44 (2018.) But this was a matter of statutory construction, and the Court remanded so the lower courts could consider whether the detention requirements violated Due

Process in the first instance. *Id.* at 851. *Jennings* explicitly left open the possibility that some aspects of § 1225 and § 1226 violate due process. And the framework the Court has given us to assess the constitutionality of a deprivation of liberty is the balancing test described by *Mathews v. Eldridge*, 424 U.S. 319 (1976). (*See* ECF No. 9 at 17-18.)

Even before *Buenrostro*, some district courts within the Fifth Circuit granted habeas petitions for similarly situated petitioners solely on procedural due process grounds, analyzed under *Mathews*. *See, e.g., Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025) (Cardone, J.); *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690 (W.D. Tex. 2025) (Briones, J.); *Hernandez-Fernandez v. Lyons*, No. 25-cv-00773, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (Pullman, J.); *Parada-Hernandez v. Johnson*, No. 25-cv-2729, 2025 WL 3465958 (N.D. Tex. Oct. 29, 2025), *R. & R. adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025) (Kinkeade, J.).

Since *Buenrostro*, district courts in the Fifth Circuit have acknowledged that *Buenrostro* speaks only to the statutory construction and says nothing about what Due Process requires. These courts have granted relief on constitutional grounds. *See, e.g., Clemente Ceballos v. Garite*, No. 26-cv-00312, 2026 WL 446509, at *2 n.2 (W.D. Tex. Feb. 10, 2026) (Briones, J.) (holding *Buenrostro* does not change the procedural due process analysis and collecting cases); *Cumbe Lema v. De Anda-Ybarra*, No. 26-cv-249, ECF No. 7 (W.D. Tex. Feb. 9, 2026) (Cardone, J.) (similar).

Moreover, detention serves no purpose for noncitizens who are neither a danger to the community nor a flight risk, as evidenced by strong ties to the community, pathways to removal relief, and no or limited criminal history. *See, e.g., Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."); *Zadvydas v. Davis*, 533 U.S.

678, 690 (2001) (the only lawful purposes of immigration detention is to prevent flight risk and danger to the community); *see also Jacobo Ramirez v. Noem*, --- F.Supp.3d ----, 2025 WL 3270137, at *8–9 (D. Nev. Nov. 24, 2025) (finding petitioners who entered without inspection likely to prevail on substantive due process claim).

The deprivation of liberty under § 1225 (if such is allowed and/or required) implicates the Due Process clause. Even if it is required by statute, that statute must survive scrutiny under the balancing test in *Mathews*. At a minimum, due process requires that noncitizens like Mr. Peña—who have extended time in the United States, are contributing members of the community, and have no or limited criminal history—must be given at least *the chance* to seek release on bond after a hearing. This is especially true for a noncitizen who was previously encountered by ICE and granted release under § 1226 so he could seek asylum in the United States.

CONCLUSION

The best interpretation of the INA is the one adopted by *Tanchez* and *Velasquez Montillo*, which concludes that detention of noncitizens unlawfully present in the United States for more than two years is governed by § 1226. Nevertheless, having been apprehended near the border, placed in removal proceedings under § 1229a, and released under § 1226, the government cannot credibly argue that he is now subject to mandatory detention under § 1225(b)(2). Rearrest is permitted only under the authority of § 1226, where he can seek release on bond or ORR.

DATED this 20th day of March 2026.

/s/ Benjamin C. McMurray
BENJAMIN C. McMURRAY
Assistant Federal Public Defender