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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ABDALLAH ALI MAHMOUD ETOOM,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center, MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, GREGORY J. ARCHAMBEAULT, Acting Field Office Director, San Diego Field Office,

Respondents.

Case No.: '26CV2458 LL BJW

Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief

INTRODUCTION

On June 30, 2024 Mr. Abdallah Ali Mahmoud Etoom came to the United States border. After entering the United States without inspection, Mr. Etoom surrendered himself to U.S. authorities. DHS decided he did not pose a flight risk or a danger, and released him on recognizance so that he could pursue his asylum claim. He timely filed his asylum application shortly after entering the United States. He moved to Texas and had a master hearing scheduled for March 8, 2027.

In early of April of 2026, ICE detained Mr. Etoom. It did not provide him with a basis for his detention; the reason it was revoking his grant of release on recognizance, or an opportunity to contest that revocation or request alternative conditions of release. This civil immigration habeas petition explains that his detention violates the Fifth Amendment's Due Process Clause.

This Court should order Mr. Etoom's immediate release onto his existing conditional parole conditions and order that Respondents "not cause Petitioner to be re-detained during the pendency of his removal proceedings without prior leave of this Court." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1147 (D. Or. 2025); *see also Darji v. LaRose*, No. 26-cv-549-JLS-DEB, 2026 WL 323076 (S.D. Cal. Feb. 6, 2026); *Noori v. LaRose*, __ F. Supp. 3d __, 2025 WL 2800149, *9–*13 (S.D. Cal. Oct. 1, 2025); *Delfin-Ricardo v. Noem*, No. 26-cv-136-RSH-BJW, 2026 WL 353357, *1–*2 (S.D. Cal. Feb. 9, 2026); *Modrekiladze v. LaRose*, No. 26-cv-271-JEW-DEB, 2026 WL 242041, *2–*4 (S.D. Cal. Jan. 29, 2026); *Lozada v. LaRose*, No. 25-cv-3614-LL-KSC, 2026 WL 184205 (S.D. Cal. Jan. 23, 2026) (finding similar violations for unlawful revocations of humanitarian or conditional parole and ordering release).

Custody

Petitioner is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center, San Diego, California. *See* Ice Locator Search Results as Exhibit D. He is therefore in "'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

Jurisdiction

This court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq.*

This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Requirements of 28 U.S.C. §§ 2241, 2243

The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C.§ 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

Venue

Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of California. Petitioner is currently detained at the Otay Mesa Detention Center, San Diego, California. *See* Exhibit D.

Exhaustion of Administrative Remedies

Exhaustion is required only when Congress specifically mandates it. *McCarthy v.Madigan*, 503 U.S. 140, 144 (1992). Here, no statute specifically mandates exhaustion.

The agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct.

936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

Additionally, exhaustion is unnecessary as it would be futile given precedent from the Board of Immigration Appeals ("the Board"). *See McCarthy*, 503 U.S. at 148 (exhaustion may not be required if the "administrative body [...] has otherwise predetermined the issue before it"); *Garza v. Davis*, 596 F.3d 1198, 1203–04 (10th Cir. 2010) (recognizing a "narrow exception to the exhaustion requirement" where "a petitioner can demonstrate that exhaustion is futile."); *Molina Ochoa v. Noem*, Case No. 1:25-cv-00881-JB-LF, at *21–22 (D.N.M. Nov. 7, 2025) (report and recommendation) (finding *Matter of Yajure Hurtado* renders exhaustion futile and is therefore not required).

Petitioner is currently subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) in light of two recent decisions from the Board: Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), which concluded that anyone who entered the U.S. without inspection is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), which concluded that individuals apprehended shortly after entering without inspection, even if not at a port of entry, are "arriving aliens" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). These decisions render exhaustion of his claims before an administrative agency futile.

Parties

Petitioner is an asylum-seeker from Jordan who is currently detained by ICE at the Otay Mesa Detention Center in San Diego, California.

Respondent Christopher Larose is sued in his official capacity as Warden of the Otay Mesa Detention Center. He is Petitioner's immediate custodian.

Respondent Gregory J. Archambeault is sued in his official capacity as Field Office Director, San Diego Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement ("ICE"). In his official capacity, Respondent Gregory J. Archambeault is the legal custodian of Petitioner.

Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE.

As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.

Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

Respondent Todd Blanche is sued in his official capacity as the Attorney General of the United States. As Attorney General, he has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

STATEMENT OF FACTS AND BACKGROUND

Abdallah Ali Mahmoud Etoom is a Jordanian national who entered the United States without inspection on or about June 30, 2026. *See* NTA as Exhibit A.

On July 1, 2024 Mr. Etoom was given an "Order of Release on Recognizance" under "section 236" of the INA. *See* Order of Release on Recognizance as Exhibit B. This order is one of "conditional parole." *Garcia-Henriquez v. LaRose*, 2026 WL 323328, *2 (S.D. Cal. Feb. 6, 2026). To issue conditional parole, DHS determined that Mr. Etoom "was detained pursuant to Respondents' discretionary authority under [8 U.S.C.] § 1226." *Faizyan v. Casey*, No. 25-cv-2884-RBM-JLB, 2025 WL 3208844, * 5 (S.D. Cal. Nov. 17, 2025). It also made an individualized determination that he was neither a danger to the community nor a flight risk. *See Ramirez-Bibiano v. LaRose*, No., 2025 WL 3632748, *4 (S.D. Cal. Dec. 15, 2025) (explaining this point).

Mr. Etoom relocated to Texas following his release and subsequently applied for asylum with the Immigration Court. He was granted employment authorization in March 2025 and has since maintained lawful employment in the United States. At all times, Mr. Etoom has complied with the terms of his release, has no criminal history, and has not been charged with or convicted of any offenses. His master calendar hearing was scheduled for March 8, 2027 prior to his recent detention. *See* Notice of Hearing as Exhibit C.

On or about April 4, 2026, Mr. Etoom was stopped in San Diego, California at a U.S. Border Patrol checkpoint where he was asked to provide identification. He complied and presented valid identification, while also informing the agents that he had a pending asylum

case before the Immigration Court. Despite this, the agents arrested Mr. Etoom and transferred him to ICE custody at the Otay Mesa Detention Center in San Diego, California where he has remained detained since that date. *See* Ice Locator Search Results as Exhibit D.

Mr. Etoom never received written notice that his order of release on recognizance had been revoked. He never learned why or had a chance to explain why his parole should not be revoked.

LEGAL ARGUMENT

I. Summarily revoking Mr. Etoom's parole and subjecting him to detention violates Due Process.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty 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 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

An individual released from immigration custody has a constitutionally protected liberty interest in remaining free from detention. *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also Sanchez v. LaRose*, 25-cv-2396, 2025 WL 2770629, at * 3 (S.D. Cal.). Thus, Petitioner has a fundamental interest in liberty and being free from official restraint.

"Even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody." *Pinchi* v. *Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted). That liberty interest "is not limited to a bond hearing;" people who receive conditional parole have "a protected liberty interest in remaining out of custody." *Kumar v. LaRose*, No. 25-cv-3796-JLS-DDL, 2026 WL 40873, *2 (S.D. Cal. Jan. 6, 2026); *accord, e.g.*, *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL

1898025, at *13 (D. Or. July 9, 2025).

To determine which procedures are constitutionally sufficient to satisfy the Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). Courts must consider: (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, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*

All three factors support a finding that the government's revocation of Mr. Etoom's conditional parole without reasoning or an opportunity to be heard denied him of his due process rights. First, Mr. Etoom has a significant liberty interest in remaining out of custody pursuant to his parole. "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. He also has an interest in remaining with his family, friends and in the community. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) ("Subject to the conditions of his parole, he can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.").

Second, the risk of an erroneous deprivation of such interest is high as Mr. Etoom's parole was revoked without providing him a reason for revocation or giving him an opportunity to be heard. When he was paroled, the government made a finding that he did not pose a danger to the community and was not a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). "Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings." *Id.* "Rather, the federal agents must be able to present evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk." *Id.* "Where, as here, 'the petitioner has not received any bond or custody hearing,' 'the risk of an erroneous deprivation of liberty is high' because neither the

government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for [his] detention." *Pinchi*, 2025 WL 2084921 at *5 (cleaned up).

Third, the Government's interest in detaining Mr. Etoom without proper notice and reasoning or a hearing is "low." *Id*; *see also Matute*, 2025 WL 2817795 at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) ("If the government wishes to re-arrest [Petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low.").

Thus, Mr. Etoom's detention is unlawful. *See, e.g., Alegria Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11, 2025) (granting a TRO based on a procedural due process challenge to a revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from custody to the conditions of her preexisting parole on due process grounds).

II. Alternatively, Petitioner is subject to detention under Section 1226(a) and, as such, should be afforded a bond hearing:

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." 8 U.S.C. § 1226(a) (punctuation altered). "Federal regulations" implementing this statute "provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

Section 1225(b)(2)(A) provides that "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" certain immigration proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people detained under that section. Instead, "DHS has the sole discretion to temporarily release on parole 'any alien applying for admission to the United States' on a 'case-

by-case basis for urgent humanitarian reasons or significant public benefit.'" *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

By their terms, these statutes apply to different groups of immigrants. "Section 1226(a) sets out the default rule," which governs unless some other, more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an "applicant for admission" who is also an "alien seeking admission." 8 U.S.C. § 1225(b)(2)(A).

Yajure Hurtado considered which of these provisions—the default rule in § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to immigrants who enter the United States without inspection but live for years in the country's interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had entered without inspection in November 2022, before obtaining Temporary Protected Status ("TPS"). *Id.* at 216–17. He was arrested after his TPS expired in April 2025. *Id.* An immigration judge ("IJ") ruled that he was subject to mandatory detention under § 1225(b)(2)(A). *Id.* at 217.

On appeal to the BIA, the respondent conceded that he was an "applicant for admission" in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been legally "admitted"—that is, he had not effected a "lawful entry . . . into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)'s ambit because he was not actively "seeking admission" at the border. 29 I&N Dec. at 221. He had crossed the border and proceeded to the country's interior years ago. *Id.*

The BIA disagreed, holding that only noncitizens who were legally admitted retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that conclusion.

First, the BIA rejected the distinction between immigrants who are "applicants for admission" and those who are "seeking admission." In the BIA's view, that distinction would leave people like Mr. Yajure Hurtado without any "legal status" and would create a line-drawing problem. *Id.* at 221.

Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover

noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c). Instead, it asserted without explanation that limiting the reach of § 1225(b)(2) would render that provision superfluous. *Id.* at 221–22.

Third, the BIA claimed that the legislative history supported its construction of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of the prior statutory scheme, which provided greater procedural and substantive rights to noncitizens who entered without inspection (and were placed in deportation proceedings) than those who presented themselves to authorities for inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA did not cite any legislative history specifically addressing detention statutes or custody determinations that would support its interpretation. *Id.*

For these reasons, the BIA concluded that noncitizens who enter without inspection have no right to seek bond from an IJ, regardless of how long they have been residing in the country and irrespective of whether they were apprehended by immigration authorities. *Id.* at 228.

III. Courts disagree with the BIA's reasoning in Yajure Hurtado.

Since *Yajure Hurtado* was decided, many immigrants who otherwise would have received bond hearings under § 1226(a) have challenged that decision in the federal courts. Courts broadly agree that the BIA's novel constructions of § 1225(b)(2)(A) and § 1226(a) are not correct. The government has lost this argument in districts across the United States, *see, e.g.*, *Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including this one, *see Vasquez Garcia v. Noem*, 2025 WL

2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.). This Court should reject that argument, too, and order Petitioner's immediate release on the bond imposed by the immigration judge ("IJ").

Section 1225(b)(2)(A) is best read to apply to immigrants who are at or near the border or other ports of entry, for at least three reasons.

First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. at 297, 287. Throughout its text, the statute refers to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2) (referring to "inspections" in their titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"). Many statutory provisions, various regulations, and BIA precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's interpretation accords

Second, consistent with the statute's overall focus on the moment of physical entry, § 1225(b)(2)'s plain language limits the statute's reach to persons actively attempting to enter the United States. The statute applies only to those who are *both* "applicants for admission" *and* in the process of "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Because the statute's first clause already limits the provision to "applicants for admission," the phrase "seeking admission" must have a different meaning. Any other reading would constitute "an obvious violation of the rule against surplusage." *Romero*, 2025 WL 2403827, at *10.

On its face, the phrase "seeking admission" suggests an active attempt to enter the

country. Congress's use of the present and present progressive tenses "necessarily requires some sort of present-tense action," excluding noncitizens in the interior who are no longer in the process of seeking admission to the U.S. *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the statute's "present-tense active language"). "Realistically speaking," it is hard to accept that the statute's plain language could mean anything else: "[I]f Congress's intention" to detain everyone who entered without inspection "was so clear, why did it take thirty years to notice?" *Romero*, 2025 WL 2403827, at *12.

Third, the statutory history supports a limited reading of § 1225(b)'s reach. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b).

The BIA's contrary reading of the legislative history is not persuasive. True, IIRIRA "altered the typology of immigration *proceedings* to 'place[ ] on equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*, 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the outcome of those proceedings." *Id.* (emphasis added). All these indicators suggest that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry, not people who have already entered the country.

On the other hand, § 1226(a) is best read to apply to some inadmissible persons. It cannot plausibly be the case that all inadmissible persons fall under § 1225(b)(2)(A) and none fall under § 1226(a).

First, § 1226(a)'s statutory structure makes clear that it reaches some individuals who

have not been admitted and have entered without inspection. Section 1226(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 1226(a). "Among the individuals carved out and subject to mandatory detention are certain categories of 'inadmissible' noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D), (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category" of persons not eligible for bond "includes those noncitizens who are deemed inadmissible, including for being 'present in the United States without being admitted or paroled,' and who have been arrested, charged with, or convicted of certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to inadmissible noncitizens, then the longstanding carve outs that refer to inadmissibility and Congress' most recent amendments would all be surplusage. *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's in *Jennings*: that § 1226(a) "applies to aliens already present in the United States." 583 U.S. at 303.

Second, § 1226(a)'s legislative history supports Petitioner's reading. "After passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed inadmissible "were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA," § 1226(a) must "allow for a discretionary release on bond for" inadmissible noncitizens, too. *Id.*

Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is eligible for bond. And under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S. 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225, 1226; is not

guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, this Court should give it no weight. If anything, the government's "decades of practice" providing bond hearings to those who entered without inspection is a more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238, at *4.

Count I

Violation of Fifth Amendment Right to Due Process

Petitioner restates and realleges all paragraphs as if fully set forth here.

Petitioner's re-detention without an individualized determination violates his right to procedural due process under the Fifth Amendment of the U.S. Constitution.

Considering the Mathews factors, Petitioner respectfully requests that this Court order his immediate release from custody.

COUNT II

Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Release on Bond

Petitioner restates and realleges all paragraphs as if fully set forth here.

Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f). Petitioner has not been, and will not be, provided with a bond hearing as required by law. Petitioner's continuing detention is therefore unlawful.

COUNT III

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

Petitioner restates and realleges all paragraphs as if fully set forth here.

In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained 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." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

CLAIM AND PRAYER FOR RELIEF

For the reasons just given, the statute, the regulations, and the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Petitioner.

Accordingly, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;
2) Order that Petitioner not be transferred outside of this District;
3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
4) Declare that Petitioner's detention is unlawful;
5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days;
6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: April 17, 2026

s/ David Semaan

David Semaan, Esq.
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Abdallah Ali Mahmoud Etoom, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 17th day of April, 2026.

s/*David Semaan*
David Semaan