UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSE ISAAC AREINAMO-COLMENARES,

Petitioner,

v.

Case No.: 2:26-cv-00861

DALE J. SCHMIDT, et al.,

Respondents.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Petitioner Jose Isaac Areinamo-Colmenares, a citizen of Venezuela, has resided in the United States for over five years, since March of 2021. Before he was detained by Immigration and Customs Enforcement, he lived in the Wausau area. He has never been convicted of a crime anywhere (he has received traffic citations). Petitioner was detained by ICE following an arrest for a pending traffic matter, and ICE declined to offer him a bond. His immigration case remains pending before the Chicago Immigration Court, with his next immigration hearing scheduled for May 20, 2026. He is currently detained at the Dodge County Jail pending the outcome of removal proceedings in immigration court.

Had Petitioner encountered ICE at any point during the 28 years before July 8, 2025, he likely would have been released from immigration custody on bond and would now be at home. However, as of that date, the Department of Homeland Security departed from decades of Executive Branch practice and adopted a new interpretation of the immigration laws, under which noncitizens who have been residing peacefully in the United States for years are held in immigration custody without the possibility of bond pending conclusion of their removal or

asylum proceedings. This new interpretation conflicts not only with longstanding practice, but also with the text of the relevant laws and Congress's demonstrated understanding of them, as reflected in recently passed legislation. So clear are these points that federal courts across the county have issued numerous decisions invalidating DHS's new interpretation of the statutes. These decisions also recognize that the detention without bond of noncitizens like Petitioner—who does not have a criminal record and is not a flight risk—violates due process.

Because DHS's new interpretation is contrary to both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment, Petitioner applies to this Court for a writ of habeas corpus under 28 U.S.C. § 2241 requiring Respondents to either release Petitioner or afford him with a bond hearing before an immigration judge.

I. BACKGROUND

A. Background on Relevant Immigration Laws

This case involves two sections of the Immigration and Nationality Act ("INA") that relate to the detention of noncitizens, 8 U.S.C. § 1225 and 8 U.S.C. § 1226.

Section 1225 generally applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under § 1225(a)(1), a noncitizen who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission must "be inspected by immigration officers" to ensure that they may be admitted into the country consistent with U.S. immigration law. 8 U.S.C. § 1225(a)(3).

Under § 1225, a noncitizen can fall into one of two categories, "those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1)

applies to noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" and "to certain other aliens designated by the Attorney General in his discretion." *Id.* Noncitizens covered by § 1225(b)(1) are subject to an expedited removal process under § 1225(b)(1)(A)(i). In contrast, § 1225(b)(2) applies to a noncitizen who is an applicant for admission that is also "seeking admission." 8 U.S.C. § 1225(b)(2)(A). For these noncitizens, if the examining immigration officer determines that the noncitizen "is not clearly and beyond a doubt entitled to be admitted," then the noncitizen must be detained for removal proceedings (not expedited removal) under 8 U.S.C. § 1229a. *Id.* The Supreme Court has interpreted § 1225(b)(2)(A) to require detention of the noncitizen seeking admission without bond pending the decision on removal. *Jennings*, 583 U.S. at 297–303.

Section 1226, in turn, generally governs the process of "arresting and detaining" noncitizens who are already inside the United States but who are subject to removal. *Jennings*, 583 U.S. at 288. It distinguishes between two different categories of noncitizens: those who may be released on bond pending a decision on removal, and those subject to mandatory detention due to their criminal history. *Id.* Those in the first category are governed by § 1226(a), which the Supreme Court has called the "default rule." *Id.* Those in the second category are governed by § 1226(c).

B. The Department of Homeland Security Reverses Decades of Practice under Sections 1225 and 1226.

This habeas petition arises out of the Department of Homeland Security's ("DHS") recent adoption of a new interpretation of § 1225 and § 1226. For decades, the Executive Branch had considered individuals who were present in the United States for a period of time prior to their arrest eligible for bond hearings under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum

Procedures, 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."). Section 1225, in turn, generally had been applied only to individuals who arrived at an official port of entry (*e.g.*, an international airport or border crossing) or who had been apprehended trying to enter the country at an unauthorized location. *See Jennings*, 583 U.S. at 287 (describing § 1225 as applying "at the Nation's borders and ports of entry").

Although § 1225 had long been deemed inapplicable to detainees like Petitioner, on July 8, 2025, DHS "revisited its legal position on detention and release authorities." *See Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025) (available by clicking the hyperlink, last viewed April 27, 2026). Under DHS's new legal position, all Immigration and Customs Enforcement ("ICE") employees are to consider anyone present in the United States without being admitted as an "applicant for admission" under § 1225 who is "seeking admission" and thus not eligible for bond. *Id.* The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, or even decades. This change in position has since been approved by the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. Sept. 5, 2025), and is therefore binding on all immigration judges.

C. Factual Background

Petitioner is a Venezuelan national who has lived in the United States, most recently in Wisconsin, for over five years (Petitioner's Declaration ¶¶3, 4, 6) In Venezuela he [redacted]

[redacted] He is the father of three children, two of whom are United States citizens. (*Id.*, ¶6) Petitioner is disabled and uses a cane. (*Id.*, ¶7)

Petitioner has never been convicted of any crime in the U.S. or any other country. (*Id.*, ¶8) He has several traffic matters pending in Wisconsin, and in the past has paid fines for traffic violations, including operation without a license and speeding. (*Id.*)

Petitioner last entered the United States without inspection over five years ago in March of 2021. (*Id.*, ¶4) After having contact with immigration officials near the border, he was released after several hours on his own recognizance. (*Id.*) He filed an asylum application over four years ago, which remains pending in immigration court. (*Id.*)

Over five years after being released into the United States on his own recognizance, Petitioner was detained by ICE in Wisconsin following an arrest for driving without a license. (*Id.*, ¶5) Consistent with DHS's new interpretation of § 1225, ICE issued a new custody determination to continue Petitioner's detention *without* an opportunity to post bond or be released on other conditions. As a result, Petitioner remains in detention without the possibility of bond.

Absent relief from this Court, he will remain in ICE custody until the conclusion of immigration proceedings where he is detained among individuals accused of and convicted of serious and violent crimes, it is more challenging to have meaningful access to counsel to prepare for removal proceedings, and while separated from his U.S. citizen children and other family. Petitioner therefore seeks a writ of habeas corpus from this Court directing Respondents to either release him or comply with § 1226(a) by providing him with an individualized bond hearing.

II. MERITS

A federal court may issue a writ of habeas corpus when the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). As explained below, Petitioner is in custody in violation of both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

A. Petitioner's detention without bond violates the INA.

The vast majority of federal courts that have examined this issue recognize that the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. *See, e.g., Barbosa Da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2nd Cir. April 28, 2026); *Hernandez Alvarez v. Morris*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, No. 25-1965, 2026 WL 1283891 (6th Cir. May 11, 2026); *but see Avila v. Bondi*, 170 F. 4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). The Seventh Circuit has yet to issue a majority opinion on this matter. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 2026 WL 1223250, No. 25-3050, (7th Cir. May 5, 2026). This court has examined this issue with mixed results. *Compare Morales Mejia v. Mullin*, 26-cv-515, 2026 WL 973041, at *2 (E.D. Wis. April 10, 2026) (rejecting the Respondents' new construction of § 1225) *with Cirrus Rojas v. Olson*, 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (on appeal) (agreeing with Respondents' new interpretation of § 1225).

1. The textual structure of the INA establishes that Petitioner's detention is governed by § 1226.

"In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself." *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019).

The INA's text and structure shows that § 1225 and § 1226 apply in different circumstances. Section 1226 applies when, pursuant to a "warrant" issued by DHS, a noncitizen is "arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). *See Barbosa Da Cunha,* 2026 WL 1146044 at *4 ("Here, it is undisputed that Petitioner (1) as served with a warrant issued by the Attorney General, (2) is a noncitizen, (3) is subject to a decision on whether he is to be removed from the country, and (4) does not fall within any of the enumerated grounds for mandatory detention under Section 1226(c). Thus, the Attorney General may release Petitioner on bond under the plain language of Section 1226(a).") In contrast, § 1225 applies when the noncitizen is before an "examining immigration officer" and is "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). As the title to § 1225 indicates, that generally occurs when the noncitizen "arriv[es]" at the United States. *See Jennings*, 583 U.S. at 287–88 (recognizing that § 1225 applies "at the Nation's borders and ports of entry," while § 1226 applies to aliens "once inside the United States"); *Alejandro v. Olson*, 1:25-cv-02027, 2025 WL 2896348, at *7 (S.D. Ind. Oct. 11, 2025) ("§ 1225's structure shows that it applies to aliens arriving to the United States rather than aliens like Mr. Alejandro who are already present in the United States"); *Beltran Berrera v. Tindall*, No. 3:25-cv-541, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (assigning weight to title of § 1225 and finding that "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already"); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546,

2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) ("[t]he use of 'arriving' to describe noncitizens strongly indicates that the statute governs the entrance of noncitizens to the United States"). The fact that § 1225 applies to "stowaway[s]" and "crewm[e]n" further reinforces its applicability to arriving noncitizens rather than those arrested pursuant to a warrant within the United States. *Pizarro Reyes*, 2025 WL 2609425, at *5. Finally, throughout its text, § 1225 repeatedly refers to "inspections"—a term that typically connotes an examination upon or soon after physical entry to the United States.[1] Thus, the structure of the statutory scheme indicates that detention of a noncitizen arrested under a warrant is governed by § 1226, while the detention of a noncitizen detained upon arrival in the United States is governed by § 1225.

In the present case, Petitioner was not apprehended at a port of entry, and as discussed more fully below, was not "seeking admission" to the United States at the time. Accordingly, Petitioner's detention and eligibility for bond is governed exclusively by § 1226.

2. Section 1225 does not apply to Petitioner because he was not "seeking admission" when he was detained.

Further textual support for the Executive Branch's previously longstanding interpretation of § 1225(b)(2)(A) is found in the term "seeking admission."

The relevant text 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 a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Section 1225(a)(1)

[1] The INA does not define "inspection," but the context of its use in that statute shows that it refers to the process of admission at a port of entry. *See, e.g.*, 8 U.S.C. § 1752a (providing for "model points of entry" to be established including "enhanced queue management in the Federal Inspection Services area leading up to primary inspection"); 8 U.S.C. § 1187 (requiring data sharing under visa waiver program for officers "conducting inspections at ports of entry"); 8 U.S.C. § 1225a (setting forth rules governing "preinspection" that may take place in foreign airports prior to boarding).

defines "applicant for admission" as "[a]n alien 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 an alien who is brought to the United States after having been interdicted in international or United States waters)." This definition covers someone, like Petitioner, alleged to be a noncitizen present in the United States who has not been admitted. However, for § 1225(b)(2)(A) to apply, the applicant for admission must also be "seeking admission." As other district courts have recognized, this separate term must be given its own meaning different from "applicant for admission" to prevent rendering part of the statutory text surplusage. *Alejandro*, 2025 WL 2896348, at *7; *Campos Leon*, 2025 WL 2694763, at *3. If "seeking admission" has no separate meaning from "applicant for admission," the former term would do no work. The statute would instead provide for detention of any "applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025); *See also Barbosa Da Cunha,* 2026 WL 1146044 at *6 ("We cannot ignore the phrase 'seeking admission,' as the government's interpretation would have us do. Doing so would render it 'mere surplus.'")(internal citations omitted); *Hernandez Alvarez*, 2026 WL 1243395 at *8 ("As we see it, the Government has conflated the passive condition of 'presence' with actively 'seeking' something specific, in contravention of the actual words and definitions Congress chose."); *Lopez Campos*, 2026 WL 128391 at *4 ("The parties disagree as to what Congress did not define: namely, what it means to be a noncitizen 'seeking' admission in §1225(b)(2)(A)...Noncitizens like Petitioners, who did not attempt lawful entry into the United States...are not 'seeking admission' and are thus not subject to §1225(b)(2)(A)'s mandatory detention scheme.").

Moreover, the term "seeking admission" implies continuing action, such as requesting admission to the United States at a port of entry. *See Lopez Benetez*, 795 F. Supp. 3d at 488 ("the active construction of 'the phrase "seeking admission,"' though undefined in § 1225(b)(2)(A), 'necessarily implies some sort of present-tense action.'"); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 487 (E.D.N.Y. 2025) ("the category of applicants for admission covered by § 1225(b)(2) who are 'seeking admission' is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering"). It would be inconsistent with the ordinary meaning of the words "seeking" and "admission" to describe a noncitizen like Petitioner—who was present in the United States for years at the time of detention and was not taking active steps to gain admission—as someone "seeking admission" at that time. The court in *Lopez Benitez* illustrated this point with the following analogy:

> This understanding accords with the plain, ordinary meaning of the words "seeking" and "admission." For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years.

Lopez Benitez, 795 F. Supp. 3d at 489.

Accordingly, because Petitioner has been residing in the United States for years and was not "seeking admission" at the time of his detention, § 1225(b)(2)(A) does not govern his detention or bond eligibility.

3. A recent amendment to § 1226(c) confirms that Congress does not understand § 1225(b)(2) to apply to all noncitizens present in the United States without admission.

Although § 1226 authorizes bond for most noncitizens detained pursuant to a warrant, it makes certain categories of criminal noncitizens ineligible for bond. *See* 8 U.S.C. § 1226(c). On January 29, 2025, Congress and the President amended § 1226(c) by passing the Laken Riley Act, Pub. L. No. 119-1. That Act added new subsection 1226(c)(1)(E) to the statute. The new subsection provides for mandatory detention of a noncitizen who meets two conditions: (1) the noncitizen "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title," *and* (2) the noncitizen "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 U.S.C. § 1226(c)(1)(E).

Importantly, one of the reasons for inadmissibility cited in the first condition of amended § 1226(c)(1)(E) includes the very reason DHS now contends Petitioner and others like him are subject to detention under § 1225(b)(2)(A): the noncitizen is "[a]n alien present in the United States without being admitted or paroled." *See* 8 U.S.C. § 1182(a)(6)(A). But according to the Laken Riley Act, being present in the United States without being admitted or paroled is insufficient to warrant mandatory detention. Instead, the noncitizen must *also* meet the second condition: the noncitizen must be "charged with," "arrested for," etc., theft or one of the other specified crimes.

For this reason, DHS's current interpretation of § 1225(b)(2)(A)—under which *all* "alien[s] present in the United States without being admitted or paroled" are subject to detention under that section—renders the amendments made by the Laken Riley Act meaningless, in violation of the rule against surplusage. *See Corley v. United States*, 556 U.S. 303, 314 (2009)

("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).[2] If, as DHS now asserts, *all* noncitizens present in the United States without being admitted were always subject to mandatory detention under § 1225(b)(2)(A), then Congress would have had no reason to add a new category of mandatory detention to § 1226(c) that provides for mandatory detention of a *subset* of those very noncitizens. Many district courts have already recognized this point and cited it as a primary reason for rejecting DHS's strained interpretation of § 1225. *See, e.g., Alejandro*, 2025 WL 2896348, at *8; *Barrajas v. Noem*, 4:25-cv-00322, 2025 WL 2717650, at *4 (S.D. Iowa Sept. 23, 2025) ("Under the Federal Defendants' interpretation of the interplay between §§ 1225 and 1226, the Laken Riley Act is meaningless. This is not how statutes are to be interpreted."); *See Hernandez Alvarez*, 2026 WL 1243395 at *20 ("Congress passed the Laken Riley Act just last year, which touched upon the same detention policy now in dispute. If there ever was a time to clarify the contours of § 1225 and § 1226, it was then. But Congress didn't do so; instead it sanctioned Petitioners' reading by expanding mandatory detention through § 1226(c).").

Accordingly, to avoid rendering the Laken Riley Act meaningless, the Court must limit mandatory detention of noncitizens present in the United States without inspection to those noncitizens who committed theft or are otherwise subject to § 1226(c)(1)(E). As Petitioner is not accused of theft or any of the other listed crimes, he is eligible for bond under § 1226(a).

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[2] DHS's interpretation violates other, related canons of statutory construction, including: (1) when Congress amends a statute, the court presumes it intends its amendment to have real and substantial effect, *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995); and (2) courts do not "lightly assume Congress adopts two separate clauses in the same law to perform the same work," *United States v. Taylor*, 596 U.S. 845, 857 (2022).

4. Affording bond hearings to noncitizens charged with being present in the United States without admission but denying bond to those detained at the border does not create "perverse incentives."

Respondents have argued in prior briefing that Congress's decision to afford bond hearings to noncitizens charged with being present in the United States without admission, but denying such hearings to those arriving legally at the border, creates a perverse incentive to enter at an unlawful rather than a lawful location. However, it was rational for Congress to create a statutory system under which noncitizens present in the United States for years (albeit illegally) may be released on bond while noncitizens encountered at the border may not. Noncitizens who arrive at the border have yet to establish ties to a community within the United States, and immigration authorities are unlikely to know their criminal history. Thus, bond hearings are unlikely to reliably reveal whether the noncitizens are flight risks or dangers to the community, and Congress could have mandated their detention pending removal to eliminate the risk of their fleeing or committing crimes in the United States. But noncitizens who have been in the United States for years are likely to have an established track record to present at a bond hearing. It is less risky to release these noncitizens pending a decision on removal or asylum. Accordingly, it is not "perverse" to interpret §§ 1225 and 1226 consistently with how Congress and the Executive Branch have interpreted them for nearly all of the past 28 years.

5. The cases upholding Respondents' new interpretation of § 1225 are not persuasive.

A circuit split has emerged on this issue with the Second, Sixth and Eleventh Circuits rejecting the Respondents' new interpretation of § 1225, while the Fifth and Eighth Circuits agree with the Respondents. *Compare Barbosa Da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2nd Cir. April 28, 2026); *Hernandez Alvarez v. Morris*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, No. 25-1965, 2026 WL 1283891

(6th Cir. May 11, 2026) *with Avila v. Bondi*, 170 F. 4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). The Fifth and Eighth Circuit majority opinions are unpersuasive.

The Eighth Circuit decision in *Avila* erroneously conflates "seeking admission" with "applicant for admission" as equivalent terms. 170 F.4th at 1135. Yet, as explained above, the grammatical and textual context indicate the opposite: that § 1225(b)(2) applies to noncitizens "seeking admission" and § 1226(a) applies to noncitizens "already in the country." *See Lemus-Cristales v. Arbon*, No. 2:26-cv-00217, 2026 WL 892874, at *3 (D. Utah Mar. 31, 2026). Indeed, "Courts must be cautious to read Congress's use of 'alien seeking admission' as merely a sloppy synonym for 'applicant for admission' when the consequence is a dramatic expansion of mandatory detention." *Guerrero v. Schmidt*, 25-cv-1975, 2026 WL 45263, at *2 (E.D. Wis. Jan. 7, 2026). Additionally, interpreting the distinct terms as synonyms "is inconsistent with the basic canon of statutory interpretation that when Congress uses different words in a statute it intends different meanings." *Ramirez Valverde v. Olson*, 25-cv-1502, 2025 WL 3022700, at *3 (E.D. Wis. Oct. 29, 2025) (appeal dismissed) (citing Statutory Interpretation in the Federal Courts § 3.05[2][c]). As the dissent in *Avila* explains, "[t]o get to its desired result, the court uses the statutory definition to deem Avila an 'applicant for admission,' and then turns around and uses the ordinary meaning of the same phrase to find he is also "seeking admission" when he is not." *Id.* at 1138 (Erickson, J., dissenting).

Similarly, the Fifth Circuit's split decision in *Buenrostro-Mendez*, which was irregularly rushed at Respondents' request, is not persuasive. The Fifth Circuit errs by reading § 1225(b)(2) narrowly, as the "unambiguous plain meaning of an "applicant for admission" who is "seeking admission" is a noncitizen at a port of entry seeking to cross into the United States, not one who

has already resided in the United States." *Menendez Ordonez v. Jamison*, CV 26-1683, 2026 WL 782165, at *3 (E.D. Pa. Mar. 19, 2026). Further, the *Buenrostro-Mendez* court fails to acknowledge that the phrase "seeking admission" connotes present, ongoing action. *See id.* The dissent in *Buenrostro-Mendez* is far more persuasive. 166 F.4th at 508 (Douglas, J., dissenting). As Judge Douglas explains, "The majority stakes the largest detention initiative in American history on the possibility that 'seeking admission' is like being an 'applicant for admission,' in a statute that has never been applied in this way, based on little more than an apparent conviction that Congress must have wanted these noncitizens detained—some of them the spouses, mothers, fathers, and grandparents of American citizens." 166 F.4th at 509 (Douglas, J., dissenting). Yet, "[n]o one has ever thought that § 1225(b)(2)(A) means what the government and majority say it means—because it does not mean it. Congress did not secretly require two million noncitizens to be detained without bond, when nothing like this had ever been done before, and the whole history of American immigration law suggested it would not be. We would 'expect more than simple statutory silence if, and when, Congress were to intend a major departure.'" *Id.* at 516 (Douglas, J., dissenting) (citation omitted).

This court should thus reject the Fifth and Eighth Circuits and instead follow the Second, Sixth, and Eleventh Circuits, as have various other courts. *See, e.g., Lemus-Cristales, 2026 WL 892874, at *3 (*declining to follow *Avila*); *Benitez-Villa v. Jamison*, CV 26-1926, 2026 WL 907582, at *3 (E.D. Pa. Apr. 2, 2026) (same); *Singh v. Baltazar*, 1:26-cv-00336, 2026 WL 352870, at *6 (D. Colo. Feb. 9, 2026) (declining to follow *Buenrostro-Mendez*); *Carbajal v. Wimmer*, 2:26-cv-00093, 2026 WL 353510, at *4 (D. Utah Feb. 9, 2026) (same).

B. Alternatively, if § 1225(b)(2)(A) applies to Petitioner, he is entitled to habeas relief because his continued detention without an individualized bond hearing violates procedural due process.

If the Court concludes that Petitioner is not in custody in violation of the INA, then it should grant the writ on the alternative ground that Petitioner's continued detention without an individualized bond hearing deprives him of liberty without due process of law, in violation of the Due Process Clause of the Fifth Amendment.

Noncitizens like Petitioner "who have established connections in this country have due process rights in deportation proceedings." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *see also Demore v. Kim*, 538 U.S. 510, 523 (2003) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). Indeed, "[c]ourts in this circuit and across the country regularly grant habeas relief to alien detainees whose mandatory detention without bond pending removal is unconstitutional as applied to them." *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019).

In evaluating a procedural due process claim brought by a noncitizen detainee, courts within the Seventh Circuit apply the balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999). Under *Mathews*, the Court weighs: (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." *Mathews*, 424 U.S. at 335. Ultimately, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Turning to the first *Mathews* factor, Petitioner has a significant private interest in remaining free from detention. "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). Petitioner has been living in the United States for over five years, since March of 2021. He resides in the Wausau, Wisconsin area, is a father of three (including two United States citizen children), and is disabled. His continued detention at the Dodge County Jail alongside those who have been accused or convicted of serious crimes is an extreme incursion on his liberty interest in remaining at home pending the outcome of his removal and asylum proceedings. Every hour he is detained is frightening and harms his mental well-being.

Second, "'the risk of an erroneous deprivation [of liberty] is high' where, as here, '[Petitioner] has not received any bond or custody redetermination hearing.'" *Rodriguez v. Kaiser*, 1:25-cv-01111, 2025 WL 2855193, at *6 (E.D. Cal. Oct. 8, 2025) (quoting *A.E. v. Andrews*, 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025), *report and recommendation adopted* 2025 WL 1808676 (July 1, 2025)). Civil immigration detention, which is "nonpunitive in purpose and effect[,]" is ordinarily justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690. Petitioner has never been convicted of a crime (he has received traffic citations and has pending traffic cases), and because of his ties to the community in the Wausau-area, is not a flight risk. Thus, "the probable value of additional procedural safeguards, *i.e.*, a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5.

Third, the government's interest in detaining Petitioner without a hearing is low. *Rodriguez*, 2025 WL 2855193, at *7. In immigration court, custody hearings are routine and

impose a "minimal" cost. *Id.* The government's interest is further diminished where a person does not have a criminal record. *Id.*

On balance, then, the *Mathews* factors show that Petitioner is entitled to a bond hearing. Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. *See Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). A noncitizen detainee who has lived peacefully in the United States for more than four years is entitled to the same procedural safeguard. Other district courts have recently recognized as much under similar circumstances. *See, e.g., Ochoa Ochoa v. Noem*, 25-cv-10865, 2025 WL 2938779, at *7 (N.D. Ill. Oct. 16, 2025); *Ledesma Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1203 (W.D. Wash. 2025).

Finally, Petitioner notes that, although the Supreme Court has rejected a due process challenge to Section 1226(c)'s mandatory detention of certain *criminal* noncitizen detainees who concede their removability, *see Demore*, 538 U.S. at 531, the Court's holding does not extend to the mandatory detention of *noncriminal* detainees with valid defenses to removal. In considering Section 1226(c), the Court found that it "mandate[d] detention during removal proceedings for a limited class of deportable aliens—including those convicted of an aggravated felony." *Demore*, 538 U.S. at 517–18. And in *Demore*, the habeas petitioner "[did] not dispute the validity of his prior convictions, which were obtained following the full procedural protections our criminal justice system offers." 538 U.S. at 513. The Supreme Court held that the detention of "a criminal alien who has conceded that he is deportable, for the limited period of [the detainee's] removal proceedings" did not violate due process because such detention "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings,

thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Id.* at 528.

Unlike *Demore*, this case involves a noncitizen who has not been found guilty of any crime. Thus, the concerns over flight and criminal recidivism that motivated Congress to enact § 1226(c) are not present here. Notably, one district court has already distinguished *Demore* on this basis when holding that the Lakin Riley Act amendments to § 1226(c)—which require mandatory detention of those who are merely *accused* of theft and other offenses—violate procedural due process. *See Doe v. Moniz*, 800 F. Supp. 3d 203, 216 (D. Mass. 2025) (on appeal). In the present case, Petitioner has not been convicted of any crime. Due process therefore requires that he be provided with an individualized bond hearing before being deprived of his liberty interest in remaining in his community pending resolution of his removal proceedings.

III. BURDEN OF PROOF AT THE BOND HEARING

Finally, Respondent requests that at the bond hearing in immigration court, that Respondents bear the burden to prove that the Petitioner's continued detention is necessary to prevent a risk of flight or a threat to public safety.

A district court has equitable discretion, "as law and justice require," for remedying unlawful detention in a habeas petition pursuant to § 2254. *See Brown v. Davenport*, 596 U.S. 118, 127-28 (2022). Relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court" and "must be narrowly tailored to remedy the specific harm shown." *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680 (9th Cir. 2021) (citation modified).

In *Jennings*, the Supreme Court held that, while section 1226(a) does not mandate that the Government bear a burden of clear and convincing evidence in immigration bond hearings, it

expressly declined to reach whether the Due Process Clause does. *See Jennings*, 583 U.S. at 312, 138 S.Ct. 830 (noting that because the Court of Appeals "had no occasion to consider respondents' constitutional arguments on their merits...we do not reach those arguments"). The First and Second Circuits have held that the burden of proof for continued immigration detention must be placed on the government in certain contexts. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021) (concluding "that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a)"); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020) (holding that the government must bear the burden of proving danger and flight risk by clear and convincing evidence if an individual faces prolonged detention); *see also Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024) (noting that the "the BIA properly noted that the government bore the burden to establish by clear and convincing evidence that [petitioner] is a danger to the community"). Although the Seventh and Tenth Circuits have not taken up the issue, courts within those circuits have held that due process requires that the government bear the burden of proof. *See, e.g., Molina Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 WL 3125846, at *13 (D.N.M. Nov. 7, 2025) (holding that the government must "bear the burden at a § 1226(a) bond hearing of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the community"); *Ochoa Ochoa v. Noem*, 2025 WL 2938779, at *8 (N.D. Ill. Oct. 16, 2025) (same).

Shifting the burden at the bond hearing is not overly burdensome to the Respondents and is narrowly tailored to remedy the harm to Petitioner. Respondents' have impermissibly denied Petitioner the opportunity to challenge his civil detention before an immigration judge, despite the fact that he has been living in the United States for over five years and has no criminal convictions. Denying Petitioner the opportunity to simply challenge the deprivation of his liberty

has denied Petitioner of one of the most basic due process rights. Requiring that Respondents bear the burden of proof is narrowly tailored to rectify the harm caused by Respondents.

Petitioner's request to shift the burden of proof at the bond hearing would also mitigate concerns increasingly expressed by circuit court judges that bond hearings in immigration court are not always legally and constitutionally adequate. *See, e.g., Perez Velasquez v. Bondi*, 26-cv-01759, 2026 WL 1042479, at *5-6 (S.D. Cal. Apr. 16, 2026) (ordering release after the immigration judge did not consider the correct legal standard or facts presented at the bond hearing); *see also Singh v. Valdez*, 26-cv-1109-WJM, 2026 WL 890240, at *5 (D. Colo. Apr. 1, 2026). As one circuit judge recently concluded: "Based on the observations of fellow judges across the country, the Court is far from convinced this was an isolated incident. To the contrary, the mounting evidence that bond determination hearings conducted in Immigration Court under § 1226(a) have preordained outcomes has become impossible to ignore." *Id.*

On account of these concerns, some courts have resorted to ordering immediate release rather than a bond hearing. *Zheng v. Rokosky*, 26-cv-01689, 2026 WL 800203, at *6-11 (D.N.J. Mar. 23, 2026); *Montero-Martinez v. Mattos*, 2:25-cv-02391-CDS-DJA, 2026 WL 674497, at *1-2 (D. Nev. Mar. 9, 2026); *Miri v. Bondi*, 5:26-cv-00698, 2026 WL 622302, at *9 (C.D. Cal. Mar. 5, 2026); *Rodriguez v. Greene*, 4:26-cv-0333, 2026 WL 574961, at *13-15 (N.D. Ohio Mar. 2, 2026); *Avilez Aguinaga v. Warden*, CV 4:26-0137, 2026 WL 266510 (S.D. Tex. Feb. 2, 2026); *Briceno Solano v. Mason*, 2:26-cv-00045, 2026 WL 311624, at *20 (S.D. W. Va. Feb. 4, 2026).

Other courts take a more narrowly tailored approach by shifting the burden to Respondents at the bond hearing, rather than ordering immediate release. *See, e.g., Betancourt Vivas v. Schmidt*, 26-CV-419, 2026 WL 926371, at *2 (E.D. Wis. Apr. 6, 2026) (ordering that "the government shall bear the burden of justifying, by clear and convincing evidence of

dangerousness or flight risk" at the bond hearing); *S.E. v. Noem*, 1:26-cv-00356, 2026 WL 836327, at *2 (E.D. Cal. Mar. 26, 2026) (same). That approach is appropriate here, as it is not overly burdensome to the Respondents to require that they bear the burden to justify the civil detention of an individual with no criminal convictions.

IV. CONCLUSION

For the reasons stated, Petitioner is in custody in violation of federal law (the INA) and the Constitution (the Due Process Clause of the Fifth Amendment). Petitioner respectfully requests that the Court grant his petition for a writ of habeas corpus and order that, within five days from the date of the Court's order, Respondents either release Petitioner from custody or provide him with an individualized bond hearing pursuant to 8 U.S.C. § 1226(a), and that at the bond hearing the Respondents bear the burden to prove that the Petitioner's continued detention is necessary to prevent a risk of flight or a threat to public safety. The Court should make clear that, at the hearing, the immigration judge must exercise jurisdiction to consider granting Petitioner release on bond based on an individualized determination of the usual factors considered at a bond hearing (such as whether he is a flight risk or a danger to the community) and must not consider Petitioner subject to detention without bond under 8 U.S.C. § 1225(b)(2)(A).

Dated this 15 day of May, 2026.

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