UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LIDIA YESENIA YAT SALAM, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	Civ. No. 1:25-cv-03240

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner has been granted deferred action, valid through October 2028, and accordingly she is lawfully present in the United States. Respondents have no basis to currently detain her, her habeas petition should be granted and she should be immediately released from detention. Alternatively, Respondents arrested Petitioner under their authority pursuant to 8 U.S.C. § 1226 – at a minimum this entitles Petitioner to a discretionary bond hearing before an immigration judge under § 1226(a). Indeed, for two decades, Respondents recognized without controversy that individuals like Petitioner, who were detained in the interior of the United for immigration removal proceedings States years after entering, were properly detained pursuant to 8 U.S.C. § 1226(a). Now, suddenly, Respondents consider Petitioner to be an applicant for admission "seeking admission" to the United States pursuant to 8 U.S.C. § 1225(b)(2). Such legal interpretation has been rejected by a considerable number of District Courts.[1] This Court should reject it as well.

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[1] *See, e.g.*, *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Rivera Zumbi v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 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-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *S.D.B.B. v. Johnson*, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept, 17, 2025); *Hernandez Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

FACTS

Petitioner is a citizen of Guatemala. She entered the United States without inspection between ports of entry, across the U.S.-Mexico border, in 2007. Petitioner then made her way to Maryland, where she established a life. She has two U.S.-born children, ages 15 and 11. On or about October 2024, Petitioner was granted deferred action by U.S. Citizenship and Immigration Services ("USCIS") as an applicant for a "U" visa with an approved bona fide determination ("BFD"). *See* Ex. 1, USICS Notice re: I-918 BFD. Petitioner's work authorization and deferred action were issued on October 9, 2024, valid through October 8, 2028. *See e.g.* Ex. 2, USCIS Employment Authorization Document ("EAD") issued under category C14.

On or about September 30, 2025, Petitioner was arrested by ICE agents. At the time of filing this action, Petitioner was detained at the ICE Baltimore Hold Room, within the territorial jurisdiction of this Court. Removal proceedings have now been instituted against Petitioner, and she is not subject to a final order of removal. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to request a bond from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.

ARGUMENT

I. THIS COURT RETAINS JURISDICTION TO GRANT RELIEF IN THIS CASE.

Petitioner challenges her detention, not the removal proceedings against them. This Court is not stripped of jurisdiction over this case by 8 U.S.C. § 1252(b)(9), because Petitioner solely challenges her detention while her removal proceedings play out. Subsequently, in *Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018), the high court explained that 8 U.S.C. § 1252(b)(9) also does not strip habeas jurisdiction over challenges to detention. *See also Bowrin v. INS*, 194 F.3d 483, 490 (4th Cir. 1999) ("We find, therefore, that district courts reviewing aliens' habeas petitions filed pursuant to § 2241 may consider both statutory and constitutional questions when presented. . . . Only questions of pure law will be considered on § 2241 habeas review. Review of factual or discretionary issues is prohibited."); *see also Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783800, at *3-4 (E.D. Va. Sept. 30, 2025). Rather, as the Supreme Court explained, claims for relief that "necessarily imply the invalidity of [] confinement" therefore "fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. JGG*, 145 S. Ct. 1003, 1005 (2025). Habeas courts have long entertained challenges from noncitizen detainees arguing that ICE is applying the wrong statute of detention. *See, e.g., Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

II. PETITIONER HAS BEEN GRANTED DEFERRED ACTION UNTIL 2028, AND THEREFORE IS ENTITLED TO IMMEDIATE RELEASE.

Petitioner has been granted deferred action, which carries two legal significances. First, the government has agreed not to pursue enforcement action against Petitioner, and second with deferred action Petitioner is lawfully present in the United States. Accordingly, Respondents' arrest and detention of Petitioner are unlawful.

As a victim of a crime here in the United States, Petitioner is afforded special protections even prior to the final adjudication of her visa petition. 8 U.S.C. § 1101(a)(15)(U). In 2021, USCIS modified this process introducing a streamlined Bona Fide Determination policy process, as authorized by statute, to provide benefits on a lower burden of proof and thus even more quickly. *See* 8 U.S.C. § 1184(p)(6). ("The Secretary may grant work authorization to any alien who has pending, bona fide application for nonimmigrant status under section [1101(a)(15)(U)]."); *see also* USCIS policy alert "Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners," PA-2021-13 (June 13, 2021).[2]

Today, the agency first reviews a Form I-918 Petition for U Nonimmigrant Status, to make a "bona fide determination" (BFD). USCIS Policy Manual Vol. 3, Part C, Ch. 5.[3] USCIS will only issue the BFD if all necessary components of a U visa petition are submitted. *Id.* at § A. USCIS will then consider whether to issue the discretionary benefits of deferred action and an employment authorization document (EAD), for the petitioner and any family members. *Id.* at § B. USCIS will run background checks and consider whether the petitioner or derivative family member poses a risk to national security (under 8 U.S.C. § 1182(a)(3)) or public safety, and considers other relevant discretionary factors. *Id.* As part of background checks, USCIS relies "on a variety of databases that collect information from law enforcement agencies and other federal, state, local, and tribal agencies, including information regarding arrests and convictions." *Id.* at § C.1. Only after these steps are taken, and USCIS has determined that the petitioner or derivative family member merits a favorable exercise of discretion, will deferred action and EAD issue. *Id.* After a BFD grant, the deferred action supplies the basis for the EAD. 8 C.F.R. § 274a.12(c)(14). *See e.g.* Ex. 2, Employment Authorization Document ("EAD") issued under category C14, valid from October 9, 2024 through October 8, 2028.

Deferred action is not a creature of statute or regulation, but rather is simply an act of "administrative discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). It may be granted at any phase of the removal process, including to *inter alia* to "decline

[2] Available at: https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf (last visited October 27, 2025).
[3] Available at: https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited October 27, 2025).

to execute a final order of deportation." *Id.* At bottom, deferred action "means that, for the humanitarian reasons described below, no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." *Id.* Moreover, "deferred action recipients are considered 'lawfully present' for purposes of, and therefore eligible to receive, Social Security and Medicare benefits. *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 10 (2020) (*citing* 8 C.F.R. § 1.3(a)(4)(vi); 42 C.F.R. § 417.422(h) (2012)). USCIS retains its discretion over the BFD throughout the pendency of the U visa petition, and reserves the right to revoke the BFD and benefits, including deferred action, "at any time if it determines the BFD EAD or favorable exercise of discretion are no longer warranted, or the prior BFD EAD and deferred action were granted in error." *Id.*

Petitioner filed for a U visa on June 9, 2023 and was issued a BFD notice on May 15, 2024. *See* Ex. 1 – USCIS Notice. Her C14 EAD and deferred action were issued on October 9, 2024 and valid through October 8, 2028. *See* Ex. 2. USCIS has reviewed Petitioner's I-918 petition for U nonimmigrant status and found that it is bona fide; based on that determination, Petitioner was issued work authorization and the government has already agreed to defer any action against her through October 8, 2028. To be sure, Respondents have the authority to revoke Petitioner's deferred action with as little as a letter to that effect, but they have not done so. Accordingly, because Petitioner still holds valid deferred action, and she is thus lawfully present through October 8, 2028, her detention is unlawful and she should be immediately released.

III. PETITIONER IS SUBJECT TO DETENTION UNDER 8 U.S.C. § 1226(a)

For those individuals encountered in the interior of the United States, 8 U.S.C. § 1226(a) has been "the default rule" for discretionary detention of those "already present in the United States," during their removal proceedings. *Jennings*, 583 U.S. at 303. *See also Abreu v. Crawford,* 2025 WL 51475, at *3 (E.D. Va. Jan 8, 2025) ("There is a statutory distinction between noncitizens who are detained upon arrival into the United States and those who are detained after they have already entered the country, legally or otherwise.") Respondents' new interpretation of Sections 1225(b)(2) and 1226(a) is fundamentally flawed: it ignores key statutory language, renders whole sections of Section 1226(c) nugatory, and ignores decades of settled practice without good reason.

A. Petitioner is subject to Respondents' authority under 8 U.S.C. § 1226(a).

Respondents issued Form I-200 Warrant for Arrest of Alien under their authority pursuant to INA 236 (8 U.S.C. § 1226). *See* ECF No. 7-3. As *Jennings* tells us, a warrant under § 1226 is the clearest indicator of authority to detain under 8 U.S.C. § 1226(a). 583 U.S. at 281 ("Section 1226(a)'s default rule permits the Attorney General to issue warrants for the arrest and detention of these aliens pending the outcome of their removal proceedings.") Respondents' actions towards Petitioner are the clearest indication of their detention authority over her. *See Lopez Benitez*, 2025 WL 237588, at *4-5 (holding that the presence of a recent I-200 warrant under INA 236 established discretionary detention authority under that statute.); *see also Zumba*, 2025 WL 2753496, at *9 (same). Because Respondents have issued a warrant for Petitioner's arrest with authority under 8 U.S.C. § 1226, Petitioner is thereby entitled to a bond hearing pursuant to §1226(a).

B. Respondents' new interpretation of 8 U.S.C. § 1225(b)(2), the mandatory detention statute, ignores key statutory language.

As opposed to 8 U.S.C. § 1226(a), 8 U.S.C. § 1225(b) governs detention at or near the borders of the United States. Section § 1225 applies to "applicants for admission" who are 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). Section 1225(b)(1) dictates the mandatory detention of a subset of "arriving aliens" who present for admission at ports of entry or pass credible fear interviews, neither of which is relevant here. "Section 1225(b)(2) applies to all other applicants for admission." *Jennings*, 583 U.S. at 287 (explaining that §1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)"). *See also Hasan*, 2025 WL 2682255, at *5.

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." 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). Respondents argue that Petitioner is subject to mandatory detention because, they claim, Petitioner is an applicant for admission. Opp at 6-7. Further, Respondents argue that all applicants for admission present in the U.S. are necessarily "seeking admission." Opp at 8. Respondents rely on *Jimenez-Rodriguez* though, notably, the Fourth Circuit did not hold in *Jimenez-Rodrigez* that all noncitizens who are present in the U.S. but have not been lawfully admitted are "seeking admission." 996 F.3d 190.

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). First, the statute defines an applicant for admission as an individual present who has not been admitted. Respondents argue that "[b]y simply being in the U.S. without being admitted, Petitioner is in fact actively seeking admission into the U.S." Opp at 11. But this argument empties the statutory requirement of "seeking admission" of any meaning. All applicants for admission are already subject to § 1225(b)(2), therefore "seeking admission" must require something different.

The definition of an admission requires an entry, lawful means, and "inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). This means mandatory detention under § 1252(b)(2) is required for those applicants for admission who are "seeking [lawful entry of into the U.S. after inspection and authorization by an immigration officer] and not clearly entitled to be admitted." But for those individuals (like Petitioner) already present in the United States, they are not seeking *another* entry. Many are simply seeking lawful status, without transiting the border anew. Several lawful statuses available to individuals already present in the United States do not require an admission (or entry) as part of their eligibility requirements yet would still result in lawful status in the United States. *See, e.g.*, 8 U.S.C. § 1158(a)(1) ("Any alien who is physically present in the United States *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), irrespective of such alien's status, may apply for asylum[.]"); 8 U.S.C. § 1229b(b)(1)(A) (cancellation of removal and adjustment of status for a noncitizen who "has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application"). These applications involve lawful means and an inspection and authorization by an immigration official, but do not require *entry*. So it must be possible under the statute to be an "applicant for admission" yet not necessarily "seeking admission" if they are already present in the United States.

Respondents cite several cases for their sweeping proposition that would equate all applicants for admission with those "seeking admission." However, *Lopez-Sorto* concerned an individual seeking to return to the United States in order to apply for protection, and its analysis turned on what constituted "residing" in the United States. 103 F.4th 242, 251 (4th Cir. 2024). In that context, the Circuit examined the ways by which one might enter the United States, including "admission," *id.*, but did not consider what would constitute "seeking admission."

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. "As noted, § 1225(b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297.

C. Respondents' new interpretation of 8 U.S.C. § 1225(b)(2) would render surplusage other bases of detention under 8 U.S.C. § 1226(c).

Respondents' re-interpretation of 8 U.S.C. § 1225(b)(2) would not only void language in its own subsection but also render meaningless entire other bases for detention under 8 U.S.C. § 1226, including § 1226(c)(1)(A), (D), and (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*, 2025 WL 2682255, at *8, 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) allows for detention of various classes of criminal aliens, including any alien who "(A) is inadmissible by reason of having committed any offense covered in section 1182 of this title." Or "(D) is inadmissible under section 1182(a)(3) of this title..." Or the most recently added sections pursuant to 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) (the inadmissibility ground for a noncitizen "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (the inadmissibility ground for misrepresentation), or 1182(a)(7) (the inadmissibility ground for 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. "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*, 2025 WL 2682255, at *8.

Respondents' reliance on *Chavez* is misplaced. The Southern District of California did hold that § 1226(c) is not rendered superfluous, but its analysis was flawed in two respects. *Chavez v. Noem*, 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). First, *Chavez* states, "[a]s the *Jennings* court explained, § 1226 'generally governs the process of arresting and detaining' certain aliens, namely 'aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission.' 583 U.S. at 288, 138 S.Ct. 830 (emphasis added)." *Id.* at *5. However, the court overlooks that the Laken Riley amendment adding subsection (E) was passed subsequent to this language in *Jennings* and requires detention of individuals who are inadmissible because they are present have not been admitted (under § 1182 (6)(A)) and then commit criminal acts. Second, while *Chavez* is correct that the Laken Riley amendment adding § 1226(c)(1)(E) removed the Attorney General's discretion with respect to these individuals, the court misses the import of this amendment. *Id.* 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.

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

D. 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. "[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 interpretation and implementation to the contrary. 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)]." *Id.* 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 Laken Riley Act 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. RESPONDENTS' DEPRIVATION OF BOND HEARINGS FOR PETITIONER VIOLATES CONSTITUTIONAL DUE PROCESS.

The District of Maine recently addressed the question of whether the government violates due process by holding noncitizens subject to Section 1226(a) detention without the right to a bond hearing before an Immigration Judge, and found that it did. *Chogllo Chafla v. Scott*, 2025 WL 2688541, at *9-*12 (D. Me. Sept. 22, 2025). As the *Chogllo Chafla* court explained, procedural due process claims are subject to the *Mathews* test, which balances the nature of the private interest involved, the risk of erroneous deprivation and the probative value of additional process, and the Government's interest. *Id.* at *9, citing *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See also D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (applying *Mathews* to immigration detention).

On the first prong, private interest, the *Chogllo Chafla* court cited various Supreme Court cases to note that "the Fifth Amendment entitles noncitizens to due process of law in the context of removal proceedings," and "the interest in being free from physical detention by [the] government" is "the most elemental of liberty interests[.]" 2025 WL 2688541, at *10, quoting *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

That paramount liberty interest cannot be abridged without "adequate procedural protections." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

On the second prong, risk of erroneous deprivation, the *Chogllo Chafla* court explained that "these types of factual determinations are properly decided by an Immigration Judge after a detention hearing, and only highlight the need for a hearing with properly allocated burdens to explore the risk, or lack thereof, that a noncitizen may pose to flight or dangerousness." *Id.* Indeed, since the purpose of immigration detention is to reduce flight risk and danger to the community, *see Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), it seems self-evident that a review hearing before an administrative law judge would reduce the risk of erroneously confining a noncitizen who in fact poses neither risk. *See also Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025) ("The purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people are ultimately detained.").

And on the third prong, government interest, the *Chogllo Chafla* court explained that the government cannot have an interest in detention for detention's sake alone. 2025 WL 2688541, at *10. The government cannot claim excessive burden when it is merely being asked to provide a procedure that it routinely provided in cases of this nature for decades without complaint. *See also Hyppolite*, 2025 WL 2829511, at *15 ("[U]ntil recently, the government has long provided noncitizens with bond hearings before detention pursuant to § 1226(a), and there is an established process for doing so that DHS can readily follow here. By contrast, the fiscal and administrative burdens of keeping Hyppolite — who the record suggests is not a flight risk nor a danger to the community — detained are extremely high."); *Santos Garcia v. Garland*, 2022 WL 989019, at *9

(E.D. Va. March 31, 2022) ("The calculus may differ when the only remedy an immigration detainee seeks in a federal district court is outright release from detention. But here, where the habeas petition also seeks the opportunity to present his case for release to an Immigration Judge, the Government's administrative burden of conducting such a bond hearing is minimal.").

The Fourth Circuit case *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022) applied the *Mathews* test and found that the procedures the government was, at that time, routinely applying to noncitizens like Petitioner here—namely, a bond hearing before an Immigration Judge—satisfied due process. *Id.* at 358-365. *Miranda* certainly does not stand for the principle that due process allows the government to throw out those procedures entirely.

In the end, Respondents do not dispute that if Petitioner is subject to Section 1226(a), he is entitled to an Immigration Judge bond hearing under the statute and regulations. Even taking at face value the statement of the Supreme Court in *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," it is clear that Congress intended Petitioner to have access bond pursuant to 8 U.S.C. § 1226(a); that is the process that Petitioner is due.

V. EXHAUSTION IS NOT REQUIRED IF IT WOULD BE FUTILE.

Respondents last argue that Petitioner has failed to exhaust her administrative remedies because she has not yet requested a bond hearing before an immigration judge and been denied. However, "where the relevant administrative procedure lacks authority to provide any relief or to take any action whatsoever in response to a complaint," because "[w]ithout the possibility of some relief, the administrative officers would presumably have no authority to act on the subject of the complaint, leaving the inmate with nothing to exhaust." *Booth v. Churner*, 532 U.S. 731, 736 (2003). Here, the Board of Immigration Appeals issued its decision in *Matter of Yajure Hurtado*, which is binding on all immigration judges nationwide, stripping them of jurisdiction over bond hearings for individuals arguably subject to § 1225(b)(2). This decision precludes any jurisdiction an immigration judge would have to even hear Petitioner's request for a release on bond. The immigration judges have been stripped of their authority to provide any relief to Petitioner, absent a directive from this Court.

Accordingly, Petitioner should not be required to performatively exhaust her administrative remedies, and thereby artificially prolong her own detention, merely for the sake of going through the motions to request a bond hearing that Respondents argue the immigration judge lacks statutory jurisdiction to provide. This Court should instead order Petitioner's immediate release, or in the alternatively, order Respondents to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within 15 days of the Court's order.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus should issue. This Court should declare that Petitioner is properly detained by Respondents (if at all) pursuant to 8 U.S.C. § 1226(a), and should order Respondents to provide Petitioner with a bond hearing in front of an Immigration Judge within 15 days.

Respectfully submitted,

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Date: October 28, 2025

Counsel for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LIDIA YESENIA YAT SALAM, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	Civ. No. 1:25-cv-03240

INDEX OF EXHIBITS

Ex. 1) USCIS Notice re: I-918 Bona Fide Determination.

Ex. 2) USCIS Employment Authorization Document, issued October 9, 2024.

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,

*_/s/ Simon Sandoval-Moshenberg_*
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