UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA VIRGINIA

MARLON EDISON CRUZ LOPEZ LOPEZ, *et al.*,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 1:25-cv-1780-RDA-WEF

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

INTRODUCTION

For decades it has been universally understood that individuals like Mr. Lopez Lopez, Mr. Lopez Vail, and Mr. Cabrera Aguilar ("Petitioners") who have entered the United States, even unlawfully, are entitled to seek release on bond absent past criminal convictions that would subject them to mandatory detention. Yet on July 8, 2025, the government abruptly reversed the statutory interpretation it embraced for decades, choosing to interpret the Immigration and Nationality Act ("INA") to mandate the detention of anyone who entered without inspection pending their removal, regardless of how long they have resided in this country. The Department of Homeland Security ("DHS") took this position when it apprehended Mr. Lopez Lopez and Mr. Lopez Vail while they were driving to work on October 10, 2025, and Mr. Cabrera as he was walking to work that same day. Since that time, all three men have been held in custody without any opportunity to challenge their detention before a neutral arbiter.

Petitioners filed a joint petition for a writ of habeas corpus on October 15, 2025, challenging Respondents' insistence that they are detained under 8 U.S.C. § 1225(b)(2), despite

the fact that neither individual was an applicant for admission who was in the process of seeking admission to the United States when encountered by Immigration and Customs Enforcement ("ICE"), and also arguing that their warrantless arrests were unlawful and in violation of their Constitutional rights.

This Court should conclude, as a threshold matter, that DHS's apprehension of Petitioners was unlawful and warrants their immediate release. Respondents claim (without providing the documents themselves) that warrants were issued for each Petitioner but also admit that they were issued after Petitioners were already detained. As such, they cannot justify—much less explain—any of the circumstances surrounding the stops or arrests at issue here. *See* Opp. 23-24; ECF No. 5-1. They contend that Petitioners cannot challenge the arrest—which led to their detention—because a Petitioner can only challenge his current detention in habeas. Opp. 23. This is nonsensical; each Petitioner's current detention is pursuant to an unlawful, warrantless arrest and the Court should grant his release.

Even if the Court does not grant outright release, the Court should conclude that Petitioners are detained under 8 U.S.C. § 1226(a). They are not "applicants for admission" who are "seeking admission" and whom an immigration officer determined are "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Furthermore, Respondents barely challenge the due process arguments raised with respect to this claim, much less provide analysis or persuasive reasoning for this Court to not follow the more-than one hundred cases across the country that have agreed that individuals similarly situated to Petitioners are entitled to bond hearings.

Accordingly, the Court should grant the petition, and order Petitioners' release alongside the groundswell of district courts that have repeatedly and consistently declared that individuals, like Mr. Lopez Lopez, Mr. Lopez Vail, and Mr. Cabrera, who entered the United States many years

ago are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

I. Petitioners' Warrantless Arrests were Unlawful and Violative of Due Process.

The Court should order each Petitioner released because their warrantless arrests were unlawful and unconstitutional. In responding to the petition, Respondents do not engage with any of the arguments Petitioners raise on this issue. Opp. 22-24. Critically, they make no attempt to justify the warrantless arrest, either in regard to Count One (no probable cause for arrest) or Count Two (no flight risk analysis). In fact, they all but admit that there was no lawful basis for the initial detention. The Court should thus grant the petition on the basis that the warrantless arrests violated Petitioners' due process rights.

Instead of challenging the merits of the petition, Respondents assert that there is no jurisdiction. But this Court clearly has jurisdiction to review the lawfulness of Petitioners' detention; that is the crux of a habeas petition. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001). And Respondents' arguments otherwise are unavailing. The government's reliance on both *D.B. v. Cardall*, 826 F.3d 721, 734 n.10 (4th Cir. 2016) and *Doe v. Perry*, No. 1:21-cv-01364-MSN-IDD, 2022 WL 1837923, at *2 (E.D. Va. Jan. 31, 2022) misapprehends the holdings in those cases. Opp. 23-24. In both cases, the courts held that the petitioner's current detention was authorized by law, and thus, it was unnecessary to address the circumstances leading to that detention, regardless of the claim. *See D.B.*, 826 F.3d at 734 n.10 (noting that because the Court upheld the subsequent determination that the child at issue was an unaccompanied child, the Court did not need to "address the propriety of the Border Patrols initial UAC determination with respect to R.M.B."); *Doe*, 2022 WL 1837923, at *2 ("Because the validity of petitioner's administratively final removal order is not at issue here, the Court finds no basis to conclude that petitioner's current

detention under Section 1231 violates the law."). But here, Petitioners specifically argue that DHS is not within its legal rights to hold them in detention pursuant to 8 U.S.C. § 1225(a)(2). And as such, the downstream effects of the unlawful arrest – initiated contrary to the Constitution, statute, and regulations – led to the continued violation of Petitioners' constitutional rights as they continue to be held contrary to law, as described below, and recognized by almost every Court that has reviewed the issue, including this one. *See Quintero Flores, et al., v. Noem*, et al., No. 1:25-cv-1614-RDA-LRV (E.D. Va. Oct. 29, 2025). In fact, even assuming arguendo that the issuance of a warrant could excuse the Constitutional violations caused by the warrantless arrest, the only way to square Respondents' argument is that, as described below, the issuance of a warrant under 8 U.S.C. § 1226(a) perfected the arrest and detention pursuant to § 1226(a).

Respondents also defend the detention here on the grounds that, irrespective of Petitioners' unlawful arrests, DHS eventually provided an arrest warrant for each individual. Respondents see no issue with the fact that the warrants were (purportedly) issued under 8 U.S.C. § 1226(a), and in each case, the individual was taken to the detention facility before the warrant issue, in the case of Mr. Lopez Lopez and Mr. Lopez Vail, the day after their apprehension. ECF 5-1 ¶¶ 8, 15, 21. Yet, Respondents neither submit a copy of these warrants, nor explain their basis. *Id.* Without a copy of or information of what is contained in those purported warrants, it is impossible for this Court to evaluate whether it is a proper basis for detention. Accordingly, the Court should conclude that Respondents have not "show[n] cause as to why this writ should not be granted." 28 U.S.C. § 2243.

In any event, even if there was somehow a lawfully issued warrant under 8 U.S.C. § 1226(a) that also somehow excused the unlawful and warrantless arrest, Respondents are incorrect that a warrant *under 8 U.S.C. § 1226(a)* justifies what Respondents claim is lawful detention *under 8 U.S.C. § 1225(b)(2)(A)*. In a footnote Respondents assert that they can have it both ways: they can

issue a warrant under § 1226(a) but someone can be detained under § 1225(b)(2)(A). Opp. 23 n.9. But they provide no authority for their position that Respondents can choose to detain someone under one statute, but keep them detained under another. Indeed, Respondents' inability to provide any sort of arrest warrant justifying detention under § 1225(b)(2)(A) further undermines their argument that § 1225(b)(2)(A) is the proper statute of detention for individuals apprehended within the United States. Accordingly, this Court should grant the petition because, as outlined in Counts One and Two, because Petitioners' arrests violated their due process rights where the ICE agents did not follow the law or their own regulations in detaining Petitioners without probable cause or any analysis of flight risk. Alternatively, it must determine that Petitioners are being held under 8 U.S.C. § 1226(a) and is not subject to mandatory detention.

II. Petitioners are Subject to Detention Under 8 U.S.C. § 1226(a), not § 1225(b)(2).

Even if the Court does not order Petitioners' release outright, it should order a bond hearing because they are not detained under 8 U.S.C. § 1225(b)(2)(A). District courts across the country, including this one, have almost universally concluded that noncitizens like Petitioners who have entered the United States without inspection and have continued residing in the United States for years after entry are subject to detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2) as Respondents assert. *See, e.g.*, *Quintero Flores*, No. 1:25-cv-1614-RDA-LRV (E.D. Va. Oct. 29, 2025); *Hernandez Hernandez v. Crawford*, No. 25-cv-1565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Hasan v. Crawford*, No. 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *see also Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Lopez Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y.

Aug. 8, 2025); *Martinez v. Hyde*, -- F. Supp. 3d --, 2025 WL 2084238 (D. Mass. July 24, 2025). The plain text of the INA and Supreme Court precedent should compel this Court to reach the same conclusion.

A. Petitioners' Detention is Contrary to Law

Respondents submit that Petitioners are subject to detention under § 1225(b)(2)[1] because they were not lawfully admitted when they entered the United States. Opp. 6. But Respondents ignore that immigration law has long recognized a clear distinction in available constitutional rights between noncitizens who are stopped at our borders and those who have entered the United States, even illegally. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *United States v. Verdugo Urquidez*, 494 U. S. 259, 269 (1990) (The Fifth Amendment's protections do not extend to noncitizens outside the territorial boundaries); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). The Supreme Court has stressed that once noncitizens "enter the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. at 693. This distinction is reflected in the INA. As numerous courts have held, Section 1225 governs the detention and procedures available to individuals encountered at a port of entry or who are in the process of "arriving in the United States," 8 U.S.C. § 1225(b)(1)(A)(i), while § 1226 "'sets forth the default rule' for detaining and removing aliens 'already present in the United States." *Hasan*, 2025 WL 2682255, at *6 (quoting *Jennings*, 538 U.S. at 303); *see Mendoza Gutierrez*, 2025 WL 2962908, at *5 (stating that the

[1] Respondents submit that DHS elected not to utilize expedited removal in this case, Opp. 6; however neither of the Petitioners was encountered at a port of entry or in the process of arriving in the United States, nor were they encountered within two years of entry into the United States. Thus, it is unclear how any of Petitioners could have been placed in expedited removal proceedings.

"plain text, overall structure, and uniform case law interpreting" § 1225 and § 1226 "compels the conclusion that § 1225's provision for mandatory detention of noncitizens 'seeking admission' does not apply to someone like Mr. Gutierrez, who has been residing in the United States for more than two years") (cleaned up) (collecting citations). As one court recently recognized, "[t]his statutory interpretation appears to align with the Supreme Court's prior analysis" in *Jennings*. *Mendoza Gutierrez*, 2025 WL 2962908, at *6 (quoting *Jennings*, 583 U.S. at 289, which recognized that §1225(b) "'authorizes the Government to detain certain aliens *seeking admission into the country*'" whereas § 1226(a) "'authorizes the Government to detain certain *aliens already in the country* pending the outcome of removal proceedings[.]'").[2]

Respondents ask the Court to deviate from *Jennings* and the overwhelming weight of authority and conclude that 8 U.S.C. § 1225(b)(2) mandates the detention of *all* applicants for admission as defined at 8 U.S.C. § 1225(a)(1), notwithstanding the plain text limiting its scope to "applicant[s] for admission" who are "seeking admission" and who an inspecting immigration officer determined to be not clearly and beyond a doubt entitled to be admitted. *See Mendoza Gutierrez*, 2025 WL 2962908, at *6 (recognizing that § 1252(b)(2)(A) is "a catchall provision" that applies to noncitizens seeking admission who are not otherwise covered by § 1252(b)(1), but concluding that such "catch-all" status "does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted."); *see also Lopez Benitez*, 2025 WL 2371588. Respondents further assert that Petitioners are actively seeking admission by "simply being in the U.S. without being admitted." Opp. 8. But as the District of Colorado just held, "[t]his argument is a nonstarter." *Mendoza Gutierrez*, 2025 WL 2962908, at *6 (concluding that "an

[2] Respondents assert that *Jennings* applies to applicants for admission, not just arriving aliens. Opp. 12. But Respondents fail to grapple with the text of *Jennings* clearly distinguishing people seeking to enter the U.S. from those who have been in the U.S. for some time.

applicant for admission" is not synonymous with "seeking admission"). Critically, § 1225(b)(2)(A) contains three "criteria": (1) that the noncitizen is an "applicant for admission"; (2) that the noncitizen is actively "seeking admission"; and (3) that the "examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'" *Lopez Benitez*, 2025 WL 2371588, at *6 (quoting *Martinez*, 2025 WL 2084238, and 8 U.S.C. § 1225(b)(2)(A)). If "applicant for admission" was the same as "seeking admission," the statute would violate the rule against surplusage. *See id.*; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). Respondents do not materially engage with this distinction or argument, and have thus waived any challenge to it. *See generally* Opp.; *see also Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) (recognizing that "the onus is upon the parties to formulate arguments").

Notwithstanding such waiver, in considering the two phrases, an "applicant for admission" who is "seeking admission," Section 1225(b)(2)(A) clearly applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4); *Quispe v. Crawford*, No. 25-cv-1471-AJT-LRV, 2025 WL 2783799, at *5 (E.D. Va. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626-KSH, 2025 WL 2753496, at *7-8 (D.N.J. Sept. 26, 2025). To read the statute as applying to all applicants for admission regardless of when and how the noncitizen was encountered both ignores the titles and headings of the sections,[3] *see Zumba*, 2025 WL0 2753496, *8, and reads the phrase "seeking admission" out of the statute, *Martinez*, 2025 WL 2084238, at *6. And as numerous courts have

[3] Section 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Section 1226 is titled "Apprehension and detention of aliens." *See Zumba*, 2025 WL 2753496, *8 ("§ 1225 repeatedly cabin[s] its application to "Inspections," which, as petitioner convincingly argues, occurs as ports of entry, their functional equivalent, or near the border.").

concluded, individuals like the three Petitioners here, who have resided continuously in the United States for years, cannot reasonably be described as "seeking admission." *See id.*; *Quispe*, 2025 WL 2783799, at *5; *Lopez Benitez*, 2025 WL 2371588, at *5 (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission").

Instead of materially engaging with this distinction, Respondents rely on cases involving wholly separate issues—mootness of a petition for review after a noncitizen was removed, and a provisional waiver of inadmissibility and temporary admission into the United States. Opp. 8-9 (citing *Lopez-Sorto v. Garland*, 103 F.4th 242 (4th Cir. 2024), and *Jimenez-Rodriguez v. Garland*, 996 F.3d. 190. 194 n.2 (4th Cir. 2021)). Globally, the Fourth Circuit's consideration of legal terms surrounding admission in those separate contexts should not be imported to issues surrounding admission and entry across the border. More specifically, the attempted comparison does not meet the moment. In *Lopez-Sorto*, the Fourth Circuit considered the definition of admission in recognizing that a parole—based on ICE's facilitation of returning a previously removed criminal noncitizens—would not constitute an "admission." 103 F.4th at 251-52. That determination has no bearing on the issues presented in this case, as Petitioners are neither seeking parole nor asking for ICE's facilitation of return after an allegedly unlawful removal. And Respondents' reliance on *Jimenez-Rodriguez* fares no better. In *Jimenez-Rodriguez*, the Fourth Circuit interpreted the phrase "seeking admission" in § 1182(d)(3)(A)(ii)—a provision allowing for a waiver of inadmissibility and temporary admission into the United States—to apply to a noncitizen who was never lawfully admitted. *Jimenez-Rodriguez*, 996 F.3d at 194 n.2. But Respondents make no other comparison (and there is none) between the content and context of § 1182(d)(3)(A)(ii) and § 1225(b)(2)(A). In addition, the footnote Respondents rely upon was provided in dicta, while addressing a question

that the court acknowledged "[wa]s beyond the scope of th[at] appeal." *Id.* at 194. This dicta is not binding on the Court. *See United States v. Norman*, 935 F.3d 232, 241 (4th Cir. 2019) ("[A]n unchallenged and untested assumption is simply not a holding that binds future courts."). Furthermore, while canons of interpretation may aid in statutory analysis, no canon is absolute, and the Supreme Court has singled out the consistent usage canon as "particularly defeasible by context." *Feliciano v. DOT*, 145 S. Ct. 1284, 1304-05 (2025) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 170-71 (2012)). Here, prior Supreme Court case law, context, and competing canons of statutory interpretation overcome Respondents' consistent usage argument. *See Jennings*, 583 U.S. at 288 (acknowledging that "once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission," and explaining that "Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.").

Respondents' interpretation also would nullify recent amendments to the INA in the Laken Riley Act, now codified within 8 U.S.C. § 1226(c). *See Hasan*, 2025 WL 2682255, at *8. Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds *and* meet certain criminal criteria. 8 U.S.C. § 1226(c)(1)(E). Such a statute would be entirely redundant if a noncitizen's inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *See id*; *Lopez Benitez*, 2025 WL 2371588, at *3. Respondents counter that the Laken Riley Act amendment to § 1226(c) "pertains to the mandatory detention of *criminal* aliens, and is *not* limited to any subset;" Respondents then note that "lawful permanent residents who are inadmissible at the time of their initial entry to the U.S. or time of adjustment may be subject to this mandatory detention provision." Opp. 10. Not only is this

untrue—§ 1226(c)(1)(E) specifically applies only to noncitizens inadmissible under certain sections of § 1182(a) whom Respondents now assert are categorically subject to detention under § 1225(b)(2)(A)—this argument ignores the statute's use of the present tense. Section 1226(c)(1)(E) does not mandate detention of a noncitizen who *was* inadmissible at the time of their initial entry or at some point in the past. Rather it applies to a noncitizen who *is* inadmissible—*i.e.*, a noncitizen Respondents claim is already subject to mandatory detention under § 1225(b)(2). *See* 8 U.S.C. § 1226(c)(1). And Respondents provide no reasoning or citation for any insinuation that the Laken Riley Act amendments to § 1226(c) were intended to only apply to lawful permanent residents who were subject to inadmissibility after traveling abroad. *See* Opp. 10.

In addition, Respondents argue that the "specific mandatory language" in § 1225(b)(2) should govern rather than "§ 1226(a)'s general discretionary and permissive language." Opp. 11. "But the differences between § 1225 and § 1226 do not indicate the former should prevail over the latter— rather, they indicate that Congress intended for different classes of noncitizens to be subject to each provision, *i.e.*, mandatory versus discretionary detention." *Vasquez v. Feeley*, No. 25-cv-1542-RFB-EJY, 2025 WL 2676082, at *14 (D. Nev. Sept. 17, 2025). Indeed, the statutory provisions are not irreconcilable such that one must prevail over the other; rather they are mutually exclusive such that a noncitizen must be subject to either one or the other. *See id.*; *see also Quispe*, 2025 WL 2783799, at *5; *Hasan*, 2025 WL 2682255, at *8. Finally, with respect to the statutory interpretation, the Court should reject Respondents' arguments that Congress intended § 1225(b)(2)(A) to apply broadly to everyone in the United States who has not been admitted. Opp. 11-12. The quoted phrase from *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958), in fact *supports* the position that Congress has always distinguished between individuals seeking to enter (or, post IIRIRA, be "admitted" to) the United States and those who are already physically within the

country. *Compare* Opp. at 12, *with* Pet. ¶ 53, 57. For the reasons discussed in the petition and outlined above, Petitioners are subject to § 1226(a) and are accordingly entitled to a bond hearing and subsequent release on the bond set by the immigration judge. The government's insistence that they are ineligible for bond under § 1226(a) is a violation of the INA.

B. Petitioners' Detention Violates his Constitutional Rights

The government's insistence that Petitioners are subject to mandatory detention also violates their Constitutional rights. Respondents assert that Petitioners are only entitled to the due process provided by the INA, which, they argue, is limited because they are seeking admission into the United States. Opp. 14-16. But the cases relied upon by Respondents focus on due process rights for those encountered on the threshold of entry into the United States. *See, e.g., Dep't of Homeland Sec. v. Thuraissigiam* 591 U.S. 103, 139 (2020) (noting petitioner was apprehended 25 yards into U.S. territory); *Nishimura Ekiu v. United States*, 142 U.S. 651, 658 (1892) (addressing whether arriving alien should be permitted to land in the United States); *Pipa Aquise v. Bondi*, No. 1:25-cv-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (petitioner stopped near border and subject to expedited removal under 8 U.S.C. § 1225(b)(1)); *Olaya Rodriguez v. Bondi*, No. 1:25-cv-791, 2025 WL 2490670, at *1 (E.D. Va. June 24, 2025) (same); *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 693 (E.D. Va. 2020) (addressing due process claim brought by "a self-described 'arriving alien'"). Neither of the Petitioners here is on the threshold of initial entry; they have each been living in the United States for years. Indeed, it is well-established that noncitizens who have "passed through our gates, even illegally," are entitled to greater constitutional protections than those encountered on the threshold of entry. *Mezei*, 345 U.S. 206, 212 (1953); *Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."); *Miranda v.*

Garland, 34 F.4th 338, 346-47 (4th Cir. 2022) (recognizing due process rights for those who have entered without inspection). This Court need not create new law in this regard, but instead consider the constitutional protections that the Supreme Court has explained apply to individuals who are long-time residents of the United States.

Moreover, Respondents' reliance on *Demore* is misplaced because none of the Petitioners have a criminal history, so the policy reasons for mandatory detention of criminal noncitizens do not apply here. *See* Opp at 17-18 (incorrectly relying on *Demore v. Kim*, 538 U.S. 510, 528 (2003), to compare mandatory detention for criminal aliens with Petitioners' detention at the outset of proceedings, where bond should be available); *see also Doe v. Moniz*, --- F. Supp. 3d ---, 2025 WL 2576819, at *10 (D. Mass. Sept. 5, 2025). And Respondents' assertion that Petitioners are impermissibly challenging indefinite detention misses the point of the petition. They are challenging their present detention and DHS's incorrect application of the law in support of that detention. *Cf.* Opp. 18.

Indeed, Petitioners have met the standard under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In *Mathews*, the Supreme Court created a three-factor balancing test to assess a due process challenge, requiring the weighing of: (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, or additional or substitute procedural safeguards"; and (3) "the Government's interest." *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335). First, the government is undeniably restricting Petitioners' liberty and freedom from custody. While Respondents attempt to minimize the liberty interest and assert that Petitioners' release from custody "would be an assistance to an ongoing violation of U.S. law," they have not charged any of the Petitioners with violating 8 U.S.C. § 1325, nor have they

explained how providing Petitioners with a bond hearing is in furtherance of a crime. Opp. 20. Second, providing a bond hearing is the applicable safeguard to protect against erroneous deprivation of Petitioners' liberty interest. While Petitioners can also seek parole, Respondents wholly fail to acknowledge that the agency who would evaluate any parole request is the agency arguing that Petitioners are subject to mandatory detention despite more than one hundred cases across the country concluding otherwise. Opp. 20. Finally, the government has articulated no claim that Petitioners are either a flight risk or a danger to the community warranting their continued detention – nor could it. Thus, the government interest is minimal at best. Accordingly, the Court must conclude that the government's insistence that Petitioners are subject to mandatory detention violates both their substantive and procedural due process rights. *Zadvydas*, 553 U.S. at 693.

CONCLUSION

For the foregoing reasons, the Court should conclude that DHS's arrests of Petitioners were contrary to the agency's own regulations and therefore contrary to Due Process and should order their release. Alternatively, the Court should determine that Petitioners are detained under 8 U.S.C. §1226(a). The Court should also order that each Petitioner cannot be re-detained unless he commits a criminal violation or does not attend any of his immigration court hearings.

Dated: November 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 11/3/2025, I filed the foregoing motion with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all parties.

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