UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

Jose de Jesus CERVANTES MORALES, Petitioner, v. KEVIN RAYCRAFT, in his official capacity as Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, in her official capacity as U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, Respondents.	Civil No. 25-13434 Hon. Judge Thomas L. Ludington Mag. Judge Patricia T. Morris

PETITIONER'S REPLY BRIEF
IN SUPPORT OF
<u>PETITION FOR WRIT OF HABEAS CORPUS</u>

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INTRODUCTION

Respondents do not dispute that Petitioner has lived in the United States for years. Nor do Respondents dispute that the government has interpreted the Immigration and Nationality Act (INA) for decades to provide for bond hearings for people like Petitioner, or that many courts have rejected Respondents' new "strained interpretation." *Valencia Zapata v. Kaiser*, No. 25-cv-07492, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025). Instead, Respondents rely on arguments repeatedly rejected by the courts.

I. Section 1226(a), Not Section 1225(b)(2)(A) Applies to Petitioner.

A. Respondents Ignore Both Section 1226 and the INA's Structure.

Respondents invite this Court to read § 1225 in isolation, ignoring not just § 1226, but the INA's overall structure. Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," while § 1225 authorizes detention of "certain aliens seeking admission into the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).[1] As their titles state, § 1226 relates to "[a]pprehension and detention" of noncitizens living in the

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[1] Respondents admit that *Jennings* described § 1226(a) as applying to noncitizens "present" in the U.S., but claim that by citing § 1227(a) (referring to admitted non-citizens), *Jennings* "made clear" that § 1226(a) applies only to those present and admitted. Resp. Brf, ECF No. 7, PageID.103. Respondents conveniently ignore that the Court cited § 1227(a) just as an "example" of people who are present and can be detained under § 1226(a) pending removal proceedings. *Jennings*, 583 U.S. at 288.

U.S., while § 1225 covers procedures at the border, including "[i]nspection by immigration officers" and "expedited removal of inadmissible arriving aliens."

Respondents do not respond to the fact that the plain text of § 1226(a) applies here: Petitioner was arrested "on a warrant . . . pending a decision on whether [they are] to be removed from the United States."[2] Respondents also cannot explain why § 1226 does not render bond-eligible most people who reside here but have not been admitted when it specifically carves out "inadmissible" non-citizens charged or convicted of certain crimes for mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D)-(E). A "plain reading of this exception implies that the default discretionary bond procedures in section 1226(a) apply to noncitizens who … are 'present in the United States without being admitted or paroled'" unless § 1226(c) applies. *Rodriguez v. Bostock*, -- F. Supp. 3d --, 2025 WL 2782499, *17 (W.D. Wash., Sept. 30, 2025).

Congress just amended § 1226(c) in the Laken Riley Act. If Respondents' interpretation of § 1225(b)(2) were correct, that "would render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Cordero Pelico v. Kaiser*, 2025 WL 2822876, *12 (N.D. Cal., Oct. 3, 2025). Respondents say the Court should ignore Laken Riley

[2] *See* Resp. Exh. 3 (BIA Dec.) where the BIA rejected the Respondent's argument, stating that when an individual is arrested pursuant to a warrant of arrest in conjunction with a notice to appear, the individual is detained under Section 1226, not 1225(b)(2). ECF. No 7-4, PageID.130.

because it does not apply to Petitioner. Resp. Brf, ECF No. 7, PageID.102. But the fact that *Petitioner* cannot be detained under Laken Riley doesn't alter the fact that Respondents' reading renders Laken Riley meaningless.

The government tries to explain away the conflict between their reading of § 1225(b)(2)(A)—that it mandates detention for *all* non-admitted non-citizens—and § 1226—which mandates detention for *some but not all* non-admitted non-citizens—as a mere redundancy. Resp. Brf, ECF No. 7, PageID.100-103. But,

> even allowing for some redundancy in statutory drafting, it is a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." Defendants' expansive reading of section 1225 ... would render section 1226(c)(1)(E) "entirely redundant."

Rodriguez, 2025 WL 2782499, *19 (citing *Kungys v. United States*, 485 U.S. 759, 778 (1988)).

B. Respondents Misunderstand How Section 1225 Works.

Respondents say that § 1225 distinguishes "between recently arrived noncitizens ('arriving aliens') and those like Petitioner who were successfully able to evade apprehension for many years ('applicants for admission')." Resp. Brf, ECF No. 7, PageID.99. Respondents assert that § 1225(b)(1) covers "arriving aliens", while § 1225(a) and (b)(2) apply to "applicants for admission." Not so.

First, the distinction Respondents invent between "arriving aliens" (i.e. people at the border) and "applicants for admission" (i.e. people already in the U.S.) is textually unmoored. Section 1225(a)(1) defines "applicants for admission" to *include* arriving non-citizens. Meanwhile, in describing "arriving aliens," Respondents themselves cite provisions in *§ 1225(b)(2)* about "crewmen, "stowaways" etc., even though Respondents contend that § 1225(b)(2) only concerns "applicants for admission." Resp. Brf, ECF No. 7, PageID.97. There is no plausible reading of § 1225(b)(2) that covers only people who have lived in the U.S. for years.

Second, Respondents misunderstand the structure of § 1225. Section 1225(b)(1) provides for expedited removal and detention of certain non-citizens. Section 1225(b)(2) applies to other "applicants for admission" who are "seeking admission" who are *not* subject to expedited removal but instead are in full removal proceedings. Depending on their circumstances, people arriving at the border may fall under either (b)(1) or (b)(2). *See Jennings*, 583 U.S. at 287 ("applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," with (b)(2) serving "as a catchall provision" that applies to those not covered by (b)(1)).

Recognizing that § 1225 is a border inspection scheme—as dozens of courts have done—does not nullify § 1225(b)(2), which continues to apply to non-citizens arriving at the border who are *not* subject to expedited removal. In other words:

> § 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than … the grounds that put an arriving noncitizen on the track for expedited removal[]. The statute governing inadmissibility lists ten grounds for inadmissibility…. There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1).

Cordero Pelico, 2025 WL 2822876, at* 13. Respondents' argument that § 1225(b)(2) has no purpose unless applied to Petitioner is wrong.

C. Respondents Misinterpret Section 1225(b)(2).

Even if one reads § 1225(b)(2) without regard to the statutory structure, it does not support Respondents' reading. Respondents ignore § 1225(b)(2)'s requirement for a determination by an "examining immigration officer." *See* Pet. Brf, PageID.47-48 (explaining that Petitioner is seeking relief before an immigration *judge*, not examination by an immigration *officer*). Instead, Respondents focus on whether Petitioner is an "applicant for admission" who is "seeking admission." Oddly, Respondents point to the definition of "admission"— "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." Resp. Brf, ECF No. 7, PageID.92-93. (citing 8 U.S.C. § 1101(a)(13)(A)). Not only does this definition take us right back to inspections by immigration officers, but "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definition[]." *Chafla v. Scott*, 2025 WL 2688541, *6 (D. Me., Sept. 22, 2025).

Respondents—constrained by the present tense nature of "seeking admission" —engage in verbal gymnastics to obfuscate the obvious: "the active language implies that the noncitizen is actively engaged in the exercise of being admitted to the United States, rather than currently residing here and seeking to stay." *Id.*

Respondents say seeking immigration relief to *remain* is the same as seeking to *enter*. Resp. Brf, ECF No. 7, PageID.93-95. But Petitioner is not seeking permission to enter from an immigration officer, but rather adjustment of status from an immigration judge. If Petitioner obtains cancellation of removal (a form of relief available both to people who were and were not lawfully admitted, 8 U.S.C. § 1229b(a)(1)), that would result in adjustment of legal status, not entry into the U.S.

D. Respondents Misunderstand the Legislative History.

Respondents ignore the legislative history and relevant regulations showing that § 1226(a) applies here. *See* Pet. Brief, PageID.39-42. Instead, they argue that in enacting IIRIRA, Congress wanted to ensure that people seeking to enter lawfully are not treated worse than those who entered without inspection. Resp. Brief, ECF No. 7, PageID.104-107. But the government errs by "identifying *one* of Congress's concerns in enacting IIRIRA and then treating it as Congress's sole concern driving the statute." *Cordero Pelico*, 2025 WL 2822876 at 13. Respondents cannot

> enlarge Congress's stated concern that noncitizens living in the United States had an advantage during *removal* proceedings pre-IIRIRA to an unarticulated aim to mandate *detention* for all such noncitizens post-IIRIRA.

Rodriguez, 2025 WL 2782499, *24 (cleaned up).

To adopt Respondents' interpretation would violate the "no-elephants-in-mouseholes canon," which "recognizes that Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions." *Bostock v.*

Clayton County, 590 U.S. 644, 680 (2020). If Congress intended to upend its prior scheme and mandate that thousands, if not millions, of people who have lived here for years be held without bond hearings, then (1) Congress would have clearly said so; and (2) it is inconceivable that immigration authorities would have simply carried on for three decades without implementing that Congressional directive. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) ("longstanding practice of the government" can inform court's interpretation of statutory provisions).

II. Due Process Requires a Bond Hearing.

Respondents do not attempt to show a special justification for detaining Petitioner without a bond hearing. Nor weigh the factors of *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Nor identify a single case where courts found it constitutional to deprive long-time residents of their liberty without any consideration of flight risk, dangerousness, or criminal history. Rather, Respondents argue that because procedural protections exist in *removal* proceedings (i.e., hearings on immigration relief), Petitioner has no right to due process concerning *detention*. But Petitioner has a liberty interest in freedom from detention distinct from their liberty interest in remaining in the U.S. Deprivation of either requires due process.

Respondents also point to inapposite cases concerning the more limited due process protections for people apprehended upon entry or with significant criminal history. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) concerns the due process rights of "an alien at the threshold of initial entry" who lack "established connections in this country." *Id.* at 107. Petitioner is not "at the threshold of initial entry," and has "established connections" here. *See Cordero Pelico*, 2025 WL 2822876, at *6 (distinguishing government's cases on exactly this basis).

Respondents' also rely on *Demore v. Kim*, 538 U.S. 510 (2003), which rejected a facial challenge to 8 U.S.C. § 1226(c), concerning mandatory detention of certain noncitizens with criminal convictions. Presuming that such people are a danger/flight risk, the Court found the government's interest in detaining them for "a very limited time" outweighed their liberty interest. *Id.* at 529, n.12. *Demore* does not create an irrebuttable presumption of dangerousness/flight risk even for people with significant criminal history,[3] much less for law-abiding people as Petitioner. And *Zadvydas v. Davis*, 533 U.S. 678 (2001), contrary to Respondents' depiction, emphasizes that immigration detention must be tied to the civil purposes of preventing flight and protecting the public. *Zadvydas* held that even where non-citizens (unlike here) had been ordered removed, there were "serious constitutional problem[s]" with reading the INA to allow for prolonged detention. *Id.* Respondents' cited cases do not support their claim. *Id.*, at 690.

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[3] Non-citizens detained under § 1226(c) remain free to bring as-applied constitutional challenges to their detention. *See Nielsen v. Preap*, 586 U.S. 392, 420 (2019); *Black v. Decker*, 103 F.4th 133, 151-155 (2d Cir. 2024).

III. Requiring Administrative Exhaustion Would Be Futile.

Respondents admit that administrative exhaustion would be futile. Resp. Brf., ECF No. 7, PageID.90. (admitting that *Yajure Hurtado* bars administrative relief).

IV. There Are Multiple Proper Respondents.

The parties agree that the ICE field office director is Petitioner's "immediate custodian" and thus a proper respondent. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). But it does not necessarily follow, as Respondents assert, that because the director is *a* proper respondent, he is the *only* proper respondent. *See* Exhibit A (listing several similar cases where Court found multiple respondents).

First, Petitioner is not just seeking a writ of habeas corpus, but also declaratory relief, an injunction on transfer, fees and any other proper relief. Pet., PageID.24. This Court has jurisdiction both in habeas (28 U.S.C. § 2241; U.S. Const. art. I, § 9, cl. 2), and over federal questions (28 U.S.C. § 1331). It can grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. *See* Pet., PageID.5.

Second, Petitioner is detained under a new ICE directive issued in coordination with DOJ. If Respondents Noem, Bondi and the Department of Homeland Security (DHS) rescinded the directive, Petitioner could be released, either based on ICE setting bond, 8 C.F.R. § 236.1(8), or through bond hearings. Bond hearings are held in immigration courts, which are under the Executive Office of Immigration Review (EOIR), itself a component agency of DOJ. Respondents EOIR and Bondi can—but have failed to—ensure that Petitioner gets a bond hearing.

Third, Secretary Noem and DHS are proper Respondents with respect to the requested injunction on transfer, over which they have ultimate authority.

Nonetheless, if Respondents concede and stipulate that this Court can order all relief requested in the Petition against Respondent Raycraft, Petitioner will not object to the dismissal of the other Respondents.

CONCLUSION

Petitioner requests that the Court grant the relief requested in the Petition.

Respectfully submitted,

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Dated: November 7, 2025

Certificate of Service

I hereby certify that on November 7, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Sabrina Balgamwalla
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