UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CENTENO IBARRA, Elder Ismael
[redacted]

Petitioner,

v.

WARDEN of Federal Detention Center Philadelphia; DAVID O'NEILL, in his official capacity as the acting Philadelphia Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; and KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAMELA BONDI, in her official capacity as United States Attorney General,

Respondents.

Case No. 2:25-cv-06312-CMR

PETITIONER'S REPLY BRIEF
IN SUPPORT OF THE
PETITION FOR WRIT OF HABEAS CORPUS

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ISSUES PRESENTED

1. Does the District Court have jurisdiction over Petitioner's Writ of Habeas Corpus?
2. Is Exhaustion of Administrative Remedies Required When Such Efforts Would Be Futile?
3. Are Respondents unlawfully detaining Petitioner without a bond hearing under 8 U.S.C. § 1225(b)(2)(A), which applies only to the inspection and detention of recent arrivals at or near the border?
4. Is Petitioner entitled to a bond hearing conducted by an Immigration Judge under 8 U.S.C. § 1226(a), which almost all courts to consider the question have found applies to noncitizens like Petitioner who were residing in the United States when they were apprehended and charged with inadmissibility, and which Respondents themselves have historically applied to such noncitizens?
5. Have Respondents violated the Due Process Clause by detaining Petitioner, without any individualized determination that his civil detention is necessary to facilitate removal because he is a flight risk or danger?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

8 U.S.C. § 1225
8 U.S.C. § 1226

Other Cases Raising Same Merits and Issues
Lopez-Campos v. Raycraft, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)
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Matter of Yajure Hurtado, 29 I&N Dec. 216, 220 (BIA 2025)

PRELIMINARY STATEMENT

"Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Justice Clark for the majority in *Mapp v. Ohio*, 367, 359 U.S. 643 (1961)

The greatest compliment that can be paid to a nation is when the world's oppressed, persecuted, and downtrodden seek safety on its shores. The words of Emma Lazarus on the Statue of Liberty are so well known that they need not be repeated here, except maybe the last line, "I lift my lamp beside the golden door." Respondents have lowered that lamp and seek to slam the golden door shut. What Respondents, specifically the Trump Administrative respondents, are currently engaged in, the mandatory detention of immigrants pursuant to 8 U.S.C. § 1225(b), is illegal. District courts all across the country have repeatedly held as such, but Respondents continue to engage in this illegal behavior. This illegal behavior is not the action of rogue actors, but an administration policy of lawlessness. We respectfully request that this Honorable Court impose remedies that will begin to address this illegality. We ask that Petitioner be immediately released from detention, with no further restrictions on his liberty, including, but not limited to, electronic monitoring.

The Petitioner (hereinafter referred to as "Elder") is a 23-year-old Nicaraguan citizen who entered the United States without inspection on September

28, 2022, seeking refuge from political persecution in his native land, Nicaragua, through asylum. *See* Pet'r's Ex. A, Parole Document, ECF No. 1.

Customs and Border Patrol ("CBP") encountered Elder upon his entry onto U.S. soil and he was briefly detained before the Department of Homeland Security ("DHS") paroled him into the United States pursuant to INA § 212(d)(5), Humanitarian Parole on November 29, 2022. *See* Pet'r's Ex. A, No. 1.

Elder then affirmatively applied for asylum with the United States Citizenship and Immigration Services ("USCIS") on or about April 21, 2023. *See* Pet'r's Ex. B, Form I-797C Asylum Application Receipt Notice. While reporting at a regular check-in with ICE at the Philadelphia Field Office on November 3, 2025, Elder was detained by ICE. Enforcement and Removal Operations ("ERO") took Elder into custody and placed him at the Philadelphia Federal Detention Center ("FDC") despite being compliant with all restrictions placed upon him, applying timely for asylum as the law requires, and never having been arrested here in the United States. Currently, Elder is detained at the Moshannon Valley Processing Center and awaits his first Master Calendar Hearing before an immigration judge out of the Elizabeth, New Jersey Immigration Court on November 24, 2025.

For nearly thirty years, Respondents and the federal courts recognized that noncitizens who entered the United States without inspection and were apprehended years later were eligible for a bond hearing before an immigration judge under 8 U.S.C. § 1226(a). Presently, Elder and similarly-situated immigrants

have been denied a bona fide bond determination in immigration court because Respondents advance a new statutory interpretation that defies the text, structure, and purpose of the Immigration and Nationality Act (INA), and reverses decades of consistent agency practice. The government's novel position mandates the detention, without a bond hearing, of millions of longtime United States residents. It is contrary to the plain language of the statute; Congress's intent and understanding of the detention statutes, expressed most recently in January 2025; long-standing agency practice; and the agency's conduct in this case. It is no surprise that, to the best of counsel's knowledge, this new interpretation has been squarely rejected by a majority of federal courts to address this issue, including in *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486 (E.D. Mich. Aug. 29, 2025), and *Pizarro Reyes v. Raycraft*, 2:25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

Many District Courts have rejected the holding of *Matter of Yajure Hurtado*. Some of the more than 280 district courts have rejected the government's new interpretation of the interplay between § 1226(a) and § 1225(b)(2), including many within Pennsylvania and New Jersey. *See*, e.g., *Kashranov v. Jamison*, No. 25-5555, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025), *Demirel v. Federal Detention Center Philadelphia, et al.*, No. 2:25-cv-05488 (E.D. Pa. Nov. 18, 2025), *Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 WL 317639 (E.D. Pa. Nov. 13, 2025); see also *Bethancourt Soto v. Soto, et al.,* No. 25-16200, 2025 WL 2976572 (D.N.J.

Oct. 22, 2025), *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Lomeu v. Soto, et al.*, No. 25-16589, 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025); *del Cid v. Bondi*, No. 25-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *see also Mugliza Castillo v. Lyons*, No. 25-16219, 2025 WL 2940990 (D.N.J. Oct. 10, 2025); *Buestan v. Chu*, No. 25-16034, 2025 WL 2972252, at *1 (D.N.J. Oct. 21, 2025).

Multiple district courts have ordered bond hearings and have held that § 1226(a), and not § 1225(b)(2), authorizes detention. As court after court has held, § 1225 is a border inspection scheme that does not apply to noncitizens who were already residing in the United States when they were apprehended. Instead, § 1226(a) plainly applies. And those courts all rejected the government's argument that exhaustion is a barrier to habeas relief.

A handful of courts have sided with the government's position. *See Vargas Lopez v. Trump*, No. 25-0526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-2325, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde,* No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *see also C.B. v. Oddo*, No. 25-0263, 2025 WL 2977870, at *2 (W.D. Pa. Oct. 22, 2025).

As Elder's detention under § 1225(b)(2)(A) is unlawful under the INA and violates his procedural due process rights, and the Respondents have not argued in the alternative that Petitioner should be detained under § 1226(a), the Court should

not construe the record to authorize his continued detention on that basis. *See Bethancourt v. Soto,* No. 25-cv-16200 at 17 (D.N.J. Oct. 22, 2025).

This Court should grant Elder's petition and order Respondents to immediately release him and permanently enjoin Respondents from re-detaining him under § 1225. *See, e.g.*, *id. and Zumba*, 2025 WL 2753496, at *11.

ARGUMENTS

I. This Court Has Jurisdiction Over This Matter

Respondents claim that 8 U.S.C. § 1252(g) bars Petitioner's claim, contending this claim is a challenge to Respondents' actions to commence removal proceedings. Resp'ts' Resp. 6-7, ECF No. 12. Respondents further argue that 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction because it is an action taken by Respondents to remove the Petitioner. Resp'ts' Resp. 8-10. Lastly, Respondents argue that 8 U.S.C. § 1252(a)(2)(B)(ii) shields discretionary decisions like what charges of inadmissibility to lodge. Resp'ts' Resp. 11. All of Respondents' arguments are unavailing.

Respondents' opposition adopts a much broader reading of 8 U.S.C. § 1252(g) than the law supports. Respondents' reading ignores controlling precedent limiting § 1252(g) to three narrow actions, none of which are at issue here. The Supreme Court cautioned that the jurisdiction bar under § 1252(g) is "narrow" and only "limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders.'" *Dept. of Homeland*

Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 12 (2020) (emphasis added). "We have previously rejected as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'" *Id*. (emphasis added) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). "Section 1252(g)'s bar on judicial review of claims arising from the government's decision to execute removal orders does not preclude jurisdiction over the challenges to the legality of the detention at issue here." *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023) (emphasis added). Petitioner's unconstitutional detention is not tied to a decision to "commence" removal proceedings, rather the claimed statutory basis for his detention.

In this matter, Respondents misstate Petitioner's claim. Petitioner is not challenging Respondents' right to commence proceedings, adjudicate his case, the execution of any final removal order that may result, or even their discretionary decision to detain him. *Demirel v. Federal Detention Center Philadelphia, et al.*, No. 2:25-cv-05488 (E.D. Pa. Nov. 18, 2025). Petitioner is challenging the legality of his current detention, specifically, his detention pursuant to 8 U.S.C. § 1225(b)(2). "Habeas corpus proceedings have long served as a mechanism by which aliens challenge Executive interpretations of immigration laws. They also have served as a means through which aliens have challenged the legality of immigration-related

detention." *See Rico-Tapia v. Smith*, No. 25-00379, 2025 WL 2950089 (D. Haw. Oct. 10, 2025) (citing *I.N.S. v. St. Cyr*, 533 U.S. 289, 301-07 (2001)).

Additionally, Respondents' reliance on 8 U.S.C. § 1252(b)(9) is an answer to a question that has not yet been asked. Section 1252(b)(9) prohibits habeas corpus review of final orders of removal, or, as Respondents frame it, "an action taken to remove" the Petitioner. Petitioner has not yet been ordered removed; thus, this action is not brought to contest what has not yet happened, or may never happen.

Respondents' argument regarding the applicability of 8 U.S.C. § 1252(a)(2)(B)(ii) also misses the point. First, Petitioner is not challenging the grounds of inadmissibility brought against him, but the statutory authority for his detention. While district courts may not review discretionary decisions made by immigration authorities, they may review immigration-related detentions to determine whether they comply with requirements of the Constitution. *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). Whether Petitioner's detention is subject to Section 1225 or 1226 is not a discretionary decision; it is a matter guided by the plain text of those statutes.

The District Court of Hawaii, in *Rico-Tapia v. Smith*, tackled the same jurisdictional issue that Respondents raise here and found, "Rico-Tapia has brought this habeas action to challenge the constitutionality of his detention without a bond hearing. "As '[h]abeas is the exclusive remedy . . . for the prisoner who seeks "immediate or speedier release" from confinement,' *Skinner v. Switzer*, 562 U.S.

521, 525 (2011) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)), Rico-Tapia's challenge is properly within this Court's habeas jurisdiction." *See Rico-Tapia v. Smith* at 9.

As the vast majority of the district courts have found, this Court has jurisdiction over this matter.

II. Exhaustion of Administrative Remedies is Not Required in This Matter, as Such Would Be Futile

Respondents further argue that Petitioner failed to exhaust his administrative remedies. Respondents begin this argument by acknowledging the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) controls the applicability of § 1225(b)(2) and the availability of a bond hearing. *See* Resp'ts' Resp. 11. Despite this, Respondents insist that Petitioner should first redress his concerns administratively so that the court of appeals could be provided with a complete record. *Id.* at 12. "Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003); *see also del Cid v. Bondi*, No. 25-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025).

Respondents go on to state that "[e]xhaustion is particularly appropriate because agency expertise is required as to the applicability of § 1225(b) as opposed

to § 1226(a).” *See* Resp’ts’ Resp. 12. The BIA has already spoken through *Matter of Yajure Hurtado.* There is no other executive branch agency that oversees the BIA to which Petitioner can appeal, and an appeal to the BIA, regarding an issue that they issued a precedential decision on, is futile. *See del Cid*, 2025 WL 2985150, at *13 (stating exhaustion “is likewise not required when it would be futile”) (citing *Rose v. Lundy*, 455 U.S. 509, 516 n.7 (1982)).

III. Because § 1225 Only Applies to the Inspection of Recent Arrivals, § 1226 Governs the Detention of Residents like Elder.

The text, structure, and purpose of the INA all support Elder’s argument that § 1226(a) governs his detention, and not § 1225(b)(2)(A). *See Lopez-Campos*, *supra*. The Court does not owe any deference to the agency’s new interpretation of §§ 1225 and 1226. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). Here, the agency believes that the language of the statute is plain such that there are no gaps for the agency to fill. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025).

Many District Courts have rejected the holding of *Matter of Yajure Hurtado*. *See, e.g.*, *Oliveira Gomes v. Hyde*, 2025 WL 1868299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025);

Sampiao v. Hyde, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025); *Chogllo Chafla v. Scott*, 2025 WL 2531027 (D. Me. Sept. 2, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept.11, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex., Sept. 22, 2025); *Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept.19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, 2:25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Santiago Helbrum v. Williams,* 4:25-cv-00349 (S.D. Iowa Sept. 30, 2025); *Hernandez Marcelo v. Trump* (S.D. Iowa Sept. 10, 2025); *Brito Barajas v. Noem,* No. 4:25-cv-00322 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D.

Minn. Apr. 15, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Apr. 27, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aniscasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 251539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Lorenzo Perez v. Kramer*, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Oruna Carlon v. Kramer*, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Genchi Palma v. Trump*, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Duenas Arcey v. Trump*, 2025 WL 2676934 (D. Neb. Sept. 18, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379235 (C.D. Cal. Aug. 15, 2025); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2951930 (C.D. Cal. Sept. 8, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Guerrero Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Sanchez Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 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); *Gamez Lira v. Noem*, 2025 WL 2676729 (D.N.M. Sept. 24, 2025); *Hernandez Lopez v. Hardin* (M.D. Fla. Sept. 25, 2025). In decision after decision, federal courts have rejected Respondents' sudden reinterpretation of the statutory scheme, and have instead held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

A. The rules of statutory interpretation show that § 1226 applies here.

Sections 1226(a) and 1225(b)(2)(A) work in tandem to cover different categories of noncitizens: § 1226 provides a discretionary detention scheme for individuals who are "already in the country" and are detained "pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while § 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *Id*. at 287. Conversely, § 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Indeed, there is a "line historically drawn between these two sections" and the categories of noncitizens they respectively

cover. *Martinez v. Hyde*, No. 25-11613,—F. Supp. 3d—, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

This understanding situates each detention provision "in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted). *See also Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (looking to statutory structure to inform interpretation of INA provision). Placing a provision in its larger context is especially important where the provision "may seem ambiguous in isolation" but can be "clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). And the one meaning which permits a logical and compatible effect here is that § 1225 and § 1226 each cover different categories of noncitizens.

Section 1225's plain text shows that it focuses on inspecting people who are arriving in or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)-(b), (d). That section repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4); sets out procedures for "inspection[s]" of people "arriving in the United States," *id*. § 1225(a)(3), (b)(1), (b)(2), (d); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id*. § 1225(a)(2), (b)(2)(B), (b)(2)(C). Even the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens (emphasis

added). *Cf. Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (relying on section title to help construe statute). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the U.S. border. Elder, of course, arrived at the border over two years ago and has been residing in the United States since.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested "on a warrant . . . pending a decision on whether [they are] to be removed from the United States." *See also Jennings,* 583 U.S. at 289 (§ 1226(a) applies to those "already in the country" who are detained "pending the outcome of removal proceedings"). On its face, the provision plainly applies to Elder, who was arrested "on a warrant" years after he entered the U.S. and is now detained "pending a decision on" his removal. *See* Resp'ts' Ex. A, ECF No. 12. Thus, § 1226(a), and not § 1225(b)(2)(A), is clearly the proper detention authority for Elder.

1. Section 1225(b)(2) cannot apply to Elder because he is not an "applicant for admission."

Respondents first argue that, despite having lived in this country for years, Elder is an "applicant for admission" and can be detained under § 1225(b)(2)(A) as

if he were fictionally at the border attempting entry.[1] Respondents zoom too far into the statute. The term "applicant for admission," when viewed in its statutory context, cannot be understood without acknowledging Congress's choice to deploy the term within § 1225's border inspection scheme. By contrast, the term "applicant for admission" appears nowhere in § 1226. This comparative context thus clarifies that the term refers to a specific category of "arriving" noncitizens being "inspected" at or near the border. *See* 8 U.S.C. § 1225. Indeed, in *Bautista v. Santacruz Jr.*, the court rejected this exact argument, finding that the petitioners—who had been residing in the U.S.—were not "applicants for admission." No. 25-01873, 2025 WL 2670875 (C.D. Cal. July 28, 2025), Dkt. 14 at 7-8.

Thus, when § 1225(a)(1) describes "applicants for admission" as a noncitizen "present in the United States who has not been admitted," the larger context of § 1225 clarifies that this definition refers to individuals who were apprehended in the interior of the country after having recently crossed the border. In sum, Elder—who has resided here for more than three years—is not an "applicant for admission" as that term should be understood within the INA, and thus he cannot be mandatorily detained under § 1225(b)(2)(A).

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[1] Respondents' reliance on *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020), to support this statutory fiction is misleading at best. The Supreme Court was clearly referring to the scope of due process protections in the context of people who physically "arrive at ports of entry" (airports are offered as an example). *Id*.

2. Section 1225(b)(2) cannot apply to Elder because he is not "seeking admission" to the United States.

Even if Elder were an "applicant for admission," § 1225(b)(2)(A) also requires an independent and separate showing that he is "seeking admission" to the United States. Respondents' interpretation of "seeking admission" has even less statutory footing: they argue that the term encompasses anyone seeking "a lawful means of entering" the country without regard to where or when that right may be granted, thus mandating the detention of any noncitizen present in the United States who has not been lawfully admitted or paroled. Such a broad interpretation of "seeking admission" flies in the face of the INA's text, structure, and purpose, and defies the common-sense meaning of the term.

Interpreting the INA properly shows that "seeking admission" describes a much narrower class: recent arrivals who are presenting themselves for admission at or near the border. Again, the text and structure of § 1225 clearly show that it deals with inspections of recent arrivals at or near the border. *See supra* Section I. By deploying "seeking admission" within § 1225's border inspection scheme—and not § 1226—Congress intended for this term to cover the detention of noncitizens seeking admission at or near the border. That is why the statute's implementing regulations, which were "promulgated mere months after passage of the statute and have remained consistent over time," *Lopez Benitez v. Francis*, No. 25-5937,—F. Supp. 3d—, 2025 WL 2371588 at *7 (S.D.N.Y. Aug. 13, 2025), describe those

seeking admission as "arriving aliens," 8 C.F.R. § 235.3(c)(1), who are "coming or attempting to come into the United States," 8 C.F.R. § 1.2 (emphasis added). See *Martinez*, 2025 WL 2084238 at *6 (the regulations' use of "arriving alien" is "roughly interchangeable with an 'applicant . . . seeking admission'" as used in § 1225(b)(2)(A)); see also *Lopez Benitez*, 2025 WL 2371588, at *7 (same). Thus, only those who take affirmative steps to seek admission while "coming or attempting to come into the United States" can reasonably be said to be "seeking admission" under § 1225(b)(2)(A). *See Gonzalez v. Noem*, No. 25-02054, 2025 WL 2633187 at 8 (C.D. Cal. Aug. 13, 2025).

The word "seeking" is the present participle of the verb "seek." It thus has a temporal element-Petitioner must have been in the process of seeking admission at the time of the inspection. *United States v. Balint*, 201 F.3d 928, 933 (7th Cir. 2000) ("[U]se of . . . the present participle, or '-ing' form of an action verb, generally indicates continuing action."). It is difficult to see how Elder could be deemed to be "seeking" admission at the time of his encounter with ICE. By that point, he had been present in the U.S. for about two and a half years. If he became an "applicant for admission" at the time of his initial entry, by Respondents' interpretation he would be in a perpetual state of seeking admission the entire time between his entry and encounter. This "would seem to push the statutory text beyond its breaking point." *Echevarria v. Bondi*, No. 25-03252, 2025 WL 2821282 at *12 (D. Ariz. Oct. 3, 2025).

Elder is not presenting himself for admission at the border; he arrived there over three years ago and has been residing in Philadelphia ever since. He simply wishes to remain in the country, not to enter it. All that Respondents can say in response to this obvious fact is that noncitizens like Elder must be seeking admission. But even Respondents' massive presumption does not make their case. Regardless of whether Elder desired a lawful means of entering, the reality is that he is not trying to enter the United States; he is already here. Thus, he cannot be considered "seeking admission" in any reasonable way, rendering § 1225(b)(2)(A) wholly inapplicable to his detention.

B. Congressional intent shows that § 1226(a) applies to Elder.

Congress intended for § 1226 to govern the detention of noncitizens who entered the U.S. without inspection. Congress most recently expressed this understanding earlier this year in the Laken Riley Act. This act added a subsection to § 1226 that specifically mandated detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025).

Respondents' interpretation of the statutes renders this recently amended section superfluous. *Lopez-Campos*, *supra*. If Congress intended or understood

§ 1225 to govern the detention of noncitizens like Elder, who were apprehended years after entering the country, it would have placed these amendments within § 1225, not § 1226.

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

C. Long-standing agency practice shows that § 1226(a) applies here.

Petitioner's position is not a novel interpretation of the INA. It has been Respondents' own understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course four months ago in a policy ICE issued "in coordination with the Department of Justice."

Following IIRIRA, the agency drafted new regulations that provided: "[a]liens 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." Inspection and Expedited Removal of Aliens; Detention

and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The relevant regulations restrict only "arriving aliens" from an immigration court bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). An "arriving alien" is, as relevant here, "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q).

In fact, as recently as August 4, the Attorney General designated for publication a decision in which the BIA reviewed under § 1226(a) the merits of a bond request by a noncitizen who unlawfully entered the United States. *Matter of Akhmedov*, 29 I&N Dec. 166, 166 n.1 and 166-67 (BIA 2025). "The longstanding practice of the government can inform a court's determination of 'what the law is.'" *Loper Bright*, 603 U.S. at 385-86.

IV. Due Process Entitles Elder to a Bond Hearing.

Respondents claim that Elder is only due the removal procedures provided by Congress. While that may be true for some people apprehended while crossing the border, *see Thuraissigiam*, 591 U.S. at 139, that is not true for people like Elder who have resided in the United States and "develop[ed] the ties that go with" that longtime residence, *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Indeed, there has long been a legal "distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry,

irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added).

And the process due here is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Elder invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Elder is limited to ensuring his appearance at future immigration proceedings and preventing danger to the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). But because Respondents denied Elder a proper bond hearing, "there is nothing in the record demonstrating that [Elder] is a flight risk or a danger to the community." *Lopez Benitez,* 2025 WL 2371588 at *12. Therefore, the risk of erroneously depriving Elder of his physical freedom continues to be unbearably high. *See id.* Without the bond hearing that he is entitled to under § 1226(a), Elder will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Due process thus requires that Elder be afforded a bond hearing under § 1226(a). *See Lopez-Campos, supra*.

Importantly, Respondents contend that Elder's detention is not unreasonably prolonged, citing that other courts in this District have held that detentions under § 1225(b) considerably longer than Elder's detention were not unreasonable; however, "[i]t is well established that the deprivation of constitutional rights

unquestionably constitutes irreparable injury." *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

CONCLUSION

Elder respectfully requests that this Honorable Court grant his petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests that this Court order his immediate release from custody. We ask that this Court take into consideration the overwhelming number of decisions holding that the government's conduct is illegal, and its persistence not only in continuing to engage in this unlawful conduct, but also in fighting these cases across the land.

Over 280 courts have ruled against Respondents, but that likely is only a small fraction of the individuals affected by this illegal activity. Affected immigrants who do not have the resources to hire an attorney to file their habeas cases will sit in mandatory detention, unable to obtain a bond. The cost of a private attorney to handle the habeas portion and the removal proceedings is quite daunting. Adding to that burden, the cost of a bond hearing and the bond will mean most immigrants will sit in detention, without the ability to obtain a bond they are lawfully entitled to.

If the result of all this litigation is that petitioners are afforded what they should have been afforded to begin with, while spending weeks or months detained as the federal court process plays out, the government may have incentive to change its policy.

Dated: November 20, 2025

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Certificate of Service

I hereby certify that on November 20, 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/Matthew J. Archambeault
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