UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GARVIT BHATIA, *Petitioner*, v. DAVID O'NEILL, *et al.*, *Respondents*.	Case No. 2:25-cv-06809

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

I. INTRODUCTION

In response to Respondents' response to the Court (ECF 4), Petitioner submits this reply brief. In sum, Petitioner's habeas rests on the argument that he is being unlawfully detained without bond pursuant to 8 U.S.C. § 1225(b)(2), and that his detention should be governed by § 1226(a). *See* Petition for Habeas Corpus, ECF No. 1, *generally*. Petitioner also avers that the appropriate remedy in this matter is instant release, *not* a bond hearing.

The overwhelming majority of federal district courts have rejected Respondents' argument. In over 350 cases[1] decided by over 160 different judges sitting in roughly 50 different courts across the United States, the Respondents' arguments (the same boilerplate arguments submitted at Doc. 8) have been completely rejected. *Barco Mercado v. Francis et al.*, No. 25-06582, ECF No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025).

[1] A November 28, 2025 Politico article notes that "At least 225 judges have ruled in more than 700 cases that the administration's new policy, which also deprives people of an opportunity to seek release from an immigration court, is a likely violation of law and the right to due process." *See* https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861 (Last accessed December 5, 2025).

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner generally accepts Respondents' factual summary; however, Respondents omit a few key points. Most notably, Petitioner has submitted evidence (ECF 1, Exh. A) that after his initial encounter at the border, Respondents issued a 'warrant for arrest' pursuant to § 1226(a), and thereafter released him on an Order of Release on Recognizance pursuant to § 1226(a). *See* 8 U.S.C. §§ 1226(a)(1)-(2).

III. IMMEDIATE AND UNCONDITIONAL RELEASE IS WARRANTED

Before Petitioner addresses Respondent's arguments regarding jurisdiction, Petitioner wishes to emphasize with the court that the appropriate remedy in this matter is immediate and unconditional release, *not* a bond hearing before an immigration judge.

The Supreme Court has also recognized that "Habeas has traditionally been a means to secure *release* from unlawful detention." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (emphasis in original). Several decisions from the Eastern District have ordered immediate release in similar cases. *See eg. Rodrigues Pereira v. O'Neill*, et al. No. 25-6543, Dkt. 11 (E.D. Pa. Dec. 8, 2025); *Morocho v. Jamison, et al*., No. 25-05930, 2025 WL 3296300, at *3 (E.D. Pa. Nov. 26, 2025); *Diallo v. O'Neill, et al.*, 25-06358, Dkt. 10 (E.D. Pa. Nov. 26, 2025); *Patel v. McShane, et al.,* 25-05975 (E.D. Pa. Nov. 20, 2025). The Court should not depart from this norm.

As noted above, several hundred district court decisions addressing the legal issues presented in the underlying Petition for Writ of Habeas Corpus and rejected the government's position. *Demirel v. Federal Detention Center Philadelphia*, et al., No. 25-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025). Those Courts have roundly rejected Government's interpretation of the Immigration and Nationality Act (INA); the interpretation that is part of the

Department of Homeland Security's (DHS) policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond; and the interpretation is part of the Board of Immigration Appeals' (BIA or Board) September 5, 2025 precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

Many of these decisions have found that Respondents' erroneous application of the law violates the respective detainees constitutional right to Due Process. *See eg. Cantu-Cortes v. O'Neill*, No. 25-6338, 2025 317639 (E.D. Pa. Nov. 13, 2025); *Bethancourt Soto v. Soto*, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025); *Rodriguez Serrano v. Noem*, 2025 WL 3122825 (W.D. Mich. Nov. 7, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, (N.D. Ill. Oct. 16, 2025); *Rosales Ponce v. Olson*, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Loza Valencia v. Noem*, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 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); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

Despite this *overwhelming rejection* of Respondents' new policies and *Matter of Yajure Hurtado*, and hundreds of decisions finding that Respondents are violating the constitutional rights, **Respondents refuse to relent and continue act in defiance of the law and the Constitution. It has been reported that ICE agents inform detainees that they** "have to sue us [ICE] to get out."

Petitioner is now one of the approximately 61,000 people detained by Respondents.[2] Respondents' unlawful behavior is pervasive and defies decision after decision from the Courts. As Petitioner's arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore Petitioner is to immediate release him and enjoin the Government from further similar transgressions. *See eg. Martinez v. McAleenan*, 385 F. Supp. 3d 349, 373 (S.D.N.Y. 2019).

IV. JURISDICTION

Respondents claim that this Court is statutorily barred from hearing this case because the Immigration and Nationality Act ("INA") contains a variety of jurisdiction stripping provisions, codified at 8 U.S.C. § 1252. ECF 4, p. 7-12. Respondents argue that three such provisions prevent this Court from hearing the petitioner's claim. *Id.* As numerous courts have already found, these arguments fail.

a. 8 U.S.C. § 1252(g)

The respondents first point to § 1252(g), arguing it strips this Court of jurisdiction to review the decision to detain the petitioner. ECF 4, p. 7-8. That provision states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or

[2] *See* ICE's publicly available detention data, available at: https://www.ice.gov/detain/detention-management

action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g).

Petitioner does not, at any point in his Petition or these proceedings, challenge the Attorney General's authority to commence or adjudicate proceedings.

Respondents' analysis flies in the face of (and ignores) the Supreme Court's ruling *Reno v. Am.-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471 (1999). In *AADC*, the Supreme Court held that § 1252(g) did not apply to anything beyond those "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret [the language in § 1252(g)] to sweep in any claim that can technically be said to "arise from" the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."). The *AADC* Court stated that it made sense for Congress to target these three stages because at each stage the former INS has discretion to abandon the endeavor, and at the time § 1252(g) was enacted, the former INS routinely had been defending suits challenging its exercise of discretion in deportation cases. *DeSousa v. Reno*, 190 F.3d 175, 182 (3d Cir. 1999) (internal citations omitted). Interpreting § 1252(g) beyond those three discrete actions – as Respondents ask this Court to do – would treat § 1252(g) as an extremely broad provision that would apply to every deportation-related challenge, because every such challenge could be deemed a suit related to the commencement or adjudication of removal proceedings. *Id.* The Supreme Court and the Third Circuit have explicitly rejected such a broad interpretation of § 1252(g), instead finding that it is "a narrow" provision. *Id.*

Petitioner does not, at any point in his Petition or these proceedings, challenge the three specific decisions made by the executive that are covered by § 1252(g): decisions to "*commence*

proceedings, *adjudicate* cases, or *execute* removal orders." Petitioner's detention pursuant to § 1225(b)(2) may occur during—but is nonetheless independent of—his removal proceedings. Accordingly, § 1252(g) does not strip this Court of jurisdiction.

b. 8 U.S.C. § 1252(b)(9)

Next, Respondents argue that § 1252(b)(9), deprives this Court of jurisdiction because – according to Respondents – Petitioner's claims arise from Respondents' actions taken to remove him from the United States. ECF 4, p. 9-11.

Section 1252(b)(9) provides:

> "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.... [N]o court shall have jurisdiction ... to review such an order or such questions of law or fact."

Respondents contend this section means that Petitioner's detention, which arose out of Respondents' attempt to remove him from the country, cannot be reviewed until a final removal order is issued, and then only by a circuit court. This argument relies on language of § 1252(a)(5) that states that judicial review of a removal order is only available through a petition filed "with an appropriate court of appeals." ECF 4, p. 9. Respondents thus read these two provisions (§ 1252(a)(5) and § 1252(b)(9)) as working together to divert all claims relating to removal proceedings to a court of appeals post-removal order. *Id.*

Respondents cite to *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016), in support of their claim that "[t]aken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR process. ECF 4, p. 10. Respondents' reliance is misplaced; they have again cherry-picked select wording without analysis. The Court in *J.E.F.M.,* on the very next page, goes on to "distinguish[] between

claims that 'arise from' removal proceedings under § 1252(b)(9)—which must be channeled through the PFR process—and claims that are collateral to, or independent of, the removal process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). The *J.E.F.M.* Court then re-affirmed the long-standing principal "that § 1252(b)(9) *does not apply to federal habeas corpus provisions* that do not involve final orders of removal." *Id.* (emphasis added).

Again, the Respondents construe the statutory text too broadly. A careful reader will notice that the language in § 1252(b)(9) is similar to that in § 1252(g)—the words "arising from," which the Supreme Court in *AADC* interpreted narrowly, appear again. Indeed, the Court later held in *Jennings* that § 1252(b)(9) did not bar it from hearing a petition alleging that the plaintiff's detention was overly prolonged in violation of due process. 583 U.S. at 291, 294–95. Just like the petitioner in *Jennings*, Petitioner here is not "challenging the decision to detain [him] in the first place or to seek removal; and [he is] not even challenging any part of the process by which [his] removability will be determined." *Id.* at 294. Rather, Petitioner is challenging his detention under § 1225 and his entitlement to a bond hearing. *Jennings* holds that § 1252(b)(9) does not bar this Court from hearing his claim.

c. 8 U.S.C. § 1252(a)(2)(B)(ii)

Respondents next argue that § 1252(a)(2)(B)(ii) shields from judicial review discretionary decisions like what charges of inadmissibility to lodge. ECF 4, p. 21-22. When the Government argues that a statutory scheme "prohibit[s] all judicial review" of agency decision-making, it bears a "heavy burden." *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 188 (3d Cir. 2020). The entirety of Respondents' argument is:

> "Thus, even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings, Congress added this additional jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA."

Respondents fail to meet their "heavy burden." Again, Petitioner is not challenging Respondents' "decision to detain him during removal proceedings." Nor is the Petitioner necessarily challenging the "charges of inadmissibility" lodged against him. Petitioner is challenging his detention under § 1225 and his entitlement to a bond hearing. These are threshold legal questions and are "not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

V. EXHAUSTION

Respondents assert that Petitioner has failed to exhaust administrative remedies, and as such, this matter should be dismissed. ECF 4, p. 12-14. An exhaustion requirement "is a matter of sound judicial discretion." *Cirko on behalf of Cirko v. Comm'r of Soc. Sec.*, 948 F.3d 148, 153 (3d Cir. 2020), *quoting Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 970 (3d Cir. 1980).

Petitioner interprets Respondents' argument to mean that, prior to bringing this claim, Petitioner should have first challenged *Matter of Yajure Hurtado* with the BIA. Respondents aver, in essence, that Petitioner should embark on a fool's errand at the expense of his liberty.

Indeed, Respondents' recognize:

> Pursuant to the September 5, 2025 *Hurtado* precedential decision that is binding on all immigration judges, an immigration judge has no authority to consider a bond request for any person who entered the United States without admission. The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

ECF 4, p. 4, n. 2. Respondents argue "the existence of this decision should not nullify the entire administrative process, nor should it allow an alien in Petitioner's position the ability to skip this process entirely and proceed directly to the district court for immediate review." ECF 4, p 12. Despitre recognizing that "immigration judge has no authority to consider a bond request for any person who entered the United States without admission;, Respondents apparently have no practical knowledge of how removal and bond proceedings are being handled under *Matter of*

Yajure Hurtado – immigration judges are refusing to hold bond hearings for individuals like Petitioner, stating that they do not have jurisdiction to do so. One cannot file an appeal in bond proceedings when no such bond proceedings occur.

Exhaustion is unnecessary if the issue presented is one that consists purely of statutory construction. *Vasquez v. Strada*, 684 F.3d 431, 433–34 (3d Cir. 2012). And exhaustion "is likewise not required when it would be futile." *Id.* Just two months ago, the BIA held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, if Petitioner were to move for a bond hearing, the Immigration Judge would be bound by *Matter of Yajure Hurtado* with no room for discretion.

Further, requiring Petitioner to exhaust his appeal to the BIA prior to litigating his claims before this Court is futile. Such a requirement "would almost certainly result in the BIA persisting in its earlier rulings and applying those rulings to Petitioner, all while he remains in detention without the bond hearing due him." *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *13 (W.D. Pa. Oct. 23, 2025).

Accordingly, this Court should follow the other decisions within this Court and other federal District Courts and waive exhaustion as futile.

VI. PETITIONER'S DETENTION PURSUANT TO 8 U.S.C. § 1225(b)(2) IS UNLAWFUL

Respondents aver that "Petitioner falls squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement." ECF 4, p. 15.

However, for decades, Respondents, immigration courts, and federal courts have not interpretated this "unambiguous language" in this way. "The longstanding practice of the

government can inform a court's determination of 'what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024).

Further, 160 different judges in at least 350 cases have ruled in favor of the Petitioners. *See Barco Mercado v. Francis et al.*, No. 25-06582, ECF No. 28 at *9-10, *35-40 (S.D.N.Y. Nov. 26, 2025). Indeed, within the Third Circuit, the Western District of Pennsylvania, the Eastern District of Pennsylvania, and the District of New Jersey have all rejected ICE and EOIR's new interpretation. *See Del Cid v. Bondi*, 3:25-cv-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Cantu-Cortes, v.O'Neill, et al.,* No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025)*; Kashranov v. J.L. Jamison, et al.,* No. 2:25-CV-05555-JDW, 2025 WL 3188399 (E.D. Pa. Nov. 14, 2025)*; Zumba v. Bondi*, Civ. No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Bethancourt Soto v. Louis Soto, et al*., No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Lomeu v. Soto, et al*., No. 25CV16589 (EP), 2025 WL 2981296, at *8 (D.N.J. Oct. 23, 2025).

The crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226. Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) "mandate[s] detention of applicants for admission until [removal] proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals detained following examination § 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)).

Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Under § 1226(a), "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The government then "may continue to detain the arrested" noncitizen during removal proceedings or "may release" the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either by clear and convincing evidence that he poses a danger to the community or by a preponderance of the evidence that poses a flight risk. *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 276 (3d Cir. 2018); *see also Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) [Bond should be granted unless there is a finding that the individual is a threat to public safety or national security or is likely to abscond]; *Matter of Daryoush*, 18 I&N Dec. 352 (BIA 1982).

Section 1226(c), however, "'carves out a statutory category of aliens who may not be released' during removal proceedings, outside of certain limited circumstances." *Jennings* at 289; *see* 8 U.S.C. § 1226(a) (authorizing discretionary detention "[e]xcept as provided in subsection (c)"). This mandatory detention provision applies to noncitizens who are inadmissible or deportable on certain criminal or terrorist grounds. *Id.* at 527 n.2.

a. Petitioner is neither an 'applicant for admission' nor is he 'seeking admission' to the United States

Respondents emphasize that Petitioner falls squarely within § 1225(a)(1)'s definition of an "applicant for admission" because he was not admitted. *See eg.* ECF 4, p. 15. The government

asserts that mandatory detention under § 1225(b)(2)(A) applies to any "applicant for admission" – including any noncitizen who entered the United States without inspection, regardless of how long he has been present in the country – who is not subject to expedited removal. *Id.*

The interpretation of the applicable statutes by Respondents here and by the BIA in *Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) overlooks part of the language in § 1225(b)(2)(A), gives little consideration to the overall statutory scheme, and ignores section 1226. Section 1225(b)(2)(A) requires mandatory detention of all "applicants for admission" if the examining immigration officer determines that "an alien seeking admission is not clearly beyond a doubt entitled to be admitted." An "applicant for admission" is defined in the statute as an alien "present in the United States who has not been admitted." § 1225(a)(1). It is undisputed that, when Petitioner was arrested, he was present in the United States and had not been admitted. Therefore, he would qualify as an "applicant for admission" under this broad language.

However, this does not end the interpretative inquiry. The statute that mandates detention does not state that all "applicants for admission" shall be detained. It narrows this mandatory detention to aliens who are "seeking admission." Had Congress intended for this subsection to apply to all applicants for admission, it could have said so by simply replacing the phrase "an alien seeking admission" with the term "an applicant for admission"; or to be even more succinct, it could have replaced the phrase "an alien seeking admission" with the word "alien." Under either of these constructions, it would be clear that "applicant for admission" means the same thing as "alien seeking admission," which is Respondents' interpretation of the statute. But this is not the language that Congress chose.

Instead, Congress chose the phrase, "an alien seeking admission." Because this phrase is not defined in the statute, the Court must construe it based upon its ordinary everyday meaning. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 69 (2012). "Seeking admission" is a participial phrase that modifies the noun alien. It narrows the meaning of alien to one who is attempting to obtain lawful admission to the United States. "Seek" is an active verb, not a type of status. Seek, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/seek [https://perma.cc/42LS-5YMV] (defining "seek" as "to try to acquire or gain"). The Court cannot simply disregard these words as superfluous. It must assume that Congress intended for them to have a purpose. Scalia & Garner, supra, at 174 (describing the "surplusage canon": "If possible, every word and every provision is to be given effect .... None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

Thus, based on a plain reading of the language and aided by these standard canons of statutory construction, § 1225(b)(2)(A) applies to aliens in the United States who have not been admitted ("applicants for admission" definition) ***and*** who are attempting to obtain lawful admission to the United States. *See, eg. J.A.M. v. Stereval*, et al., No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *3 (M.D. Ga. Nov. 1, 2025).

This interpretation is also consistent with the framework of § 1225, which focuses on the admission of aliens upon their arrival to the United States or upon an attempt to obtain admission after arrival. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (Kennedy, J.) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, *as well as the language and design of the statute as a whole*.") (emphasis added). This so-called "whole-text canon" calls on the interpreter to consider the entire text "in view of its

structure and of the physical and logical relation of its many parts." Scalia & Garner, supra, at 167. Its cousin canon counsels that the title and headings for statutory provisions may sometimes be indicators of meaning. *Id.* at 221. Section 1225 focuses on "inspection" of aliens upon their arrival and/or when they otherwise present themselves for admission. In addition to the statutory language previously discussed, the framework of the statute and the headings within the statute are consistent with the interpretation that the statute applies to aliens who are actively seeking admission to the United States.

At the time of his arrest, Petitioner was an alien in the United States who had not been lawfully admitted, but based on the present record, he was not attempting to be lawfully admitted. *See* ECF 1, Exh. A. Therefore, it cannot be said that he qualifies as an "alien seeking admission" subject to mandatory detention under § 1225(b)(2)(A), which requires both presence and seeking admission.

Section 1226(a) supports and bolsters this interpretation. Section 1226(a) must be read in conjunction with section 1225. *See* Scalia & Garner, supra, at 252 ("Statutes *in pari materia* are to be interpreted together, as though they were one law."). These provisions should not be interpreted in a way that renders them incompatible or contradictory. *Id.* at 180; *United States v. Butler*, 297 U.S. 1, 65 (1936) (Roberts, J.) ("These words cannot be meaningless, else they would not have been used.").

Turning to Section 1226(a), this section provides in relevant part:

> "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General–
>
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on

> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General . . .”

Thus, unlike Section 235(b)(2)(A), which limits its application to applicants seeking admission, nothing in the text of Section 236(a) indicates that it is meant to apply to a subcategory of noncitizens (such as those seeking lawful entry after having been inspected and examined by an immigration officer).

Congress clearly intended for some aliens, who are arrested and similarly situated to Petitioner, to be provided with the opportunity for a bond. The text of section 1226(a) applying to all “aliens” generally, could have been limited only to those who were lawfully admitted, but Congress failed to use such language, and there is no indication that Congress intended to limit section 1226(a) in that way.

Reading §§ 1226(a)(2) and 1225(b)(2)(A) harmoniously and in context, there is only one reasonable interpretation: for an alien seeking admission upon his arrival to the United States or at some later time, Congress has determined that his detention is mandatory while a determination is made as to whether he is allowed entry and admission. But, for aliens who are found in the country unlawfully and are arrested, an immigration officer or immigration judge has the discretion, after considering all the circumstances, not to detain such aliens and instead grant them release on bond.

Further, Respondents’ position would render Congress’s recent amendment to section 236(c) meaningless. In 2025, Congress passed the Laken Riley Act, which amended Section 236(c). Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). The Laken Riley Act mandates detention for noncitizens “present without admission or parole” and admit to committing, are arrested for, or convicted of certain theft offense. 8 U.S.C. § 1226(c)(1)(E). If Respondents’ position was correct that section 235(b)(2)(A) requires mandatory detention of all noncitizens who unlawfully entered the United States, the Laken Riley Act’s inclusion of

noncitizens present without admission or parole would be unnecessary, as those noncitizens would have all been subject to mandatory detention under section 235.

Respondents argue that this interpretation would lead to incongruous treatment of aliens and subject the lawful applicant to more stringent requirements than the unlawful alien evader. ECF 4, p. 14. Respondents, however, focus on the wrong question. The relevant distinction is not between "aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years" and those who appear at a port of entry. *Id.* Rather, it is between persons inside the United States and persons outside the United States. That distinction is consistent with the long history of our immigration laws and with the Constitution. "[O]nce an alien enters 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 v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). It is therefore reasonable to read these statutes against that backdrop. *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025).

The basic doctrine that treats arriving aliens who appear at a point of entry and apply for admission as not being considered "in the United States" despite their physical presence is known as the entry fiction doctrine. This legal principle, established by the Supreme Court in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), holds that aliens seeking initial admission are legally treated "as if stopped at the border" regardless of whether they are physically detained within U.S. territory. Under this doctrine, physical presence at a port of entry does not constitute legal "entry" or "admission" into the United States for immigration law purposes.

Indeed, the Supreme Court in *Shaughnessy* explained this "incongruous treatment" directly, stating,

> It is true that aliens who have once passed through our gates, **even illegally**, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law. But an alien on the threshold of initial entry stands on a different footing: "Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."

Shaughnessy at 212, (emphasis added).

This principal has long been upheld and so it is *not* the lynchpin issue that Respondents make it out to be. *See, eg. Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 447 (3d Cir. 2016), *citing Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883, 48 L.Ed.2d 478 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to th[e] constitutional protection [of the Due Process Clause]."); *Zadvydas*, 533 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But, once an alien enters 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." *Id.* (citations omitted).

Respondents also rely on *Jennings v. Rodriguez*, 583 U.S. 281 (2018) to support their interpretation of § 1225(b)(2). Although that decision did involve the same provisions of the INA at issue here here, the issue presented in *Jennings* was different, and therefore, the Supreme Court did not interpret the precise language of the relevant statutes involved here. The issue before the Supreme Court in *Jennings* was whether the INA implicitly requires periodic bond hearings for certain alien detainees. *Id.* at 296-97. The Supreme Court did not have to decide whether an alien arrested in the United States, after having been in the country illegally for several years, qualified as "an applicant for admission" who was "seeking admission" and thus was subject to mandatory detention under § 1225(b)(2) or whether the alien was entitled to a bond hearing under § 1226(a).

In addition to being distinct and thus not binding precedent for this matter, *Jennings* is not even analogous and thus does not constitute persuasive authority. Respondents pick certain isolated phrases from *Jennings*' general background description of the INA detention framework to bolster their position that every alien arrested in the United States—regardless of their lack of criminal history and the absence of any evidence that they would be a flight risk or a danger to the community—is now subject to mandatory detention without the opportunity for a bond hearing, notwithstanding the clear language of § 1226(a). Respondents latch on to the majority opinion's description of § 1225(b)(2) as a "catchall" provision that they argue is intended to include all aliens, including those who did not seek admission when they initially entered the United States or who never sought admission thereafter. ECF 4, p. 14. It may indeed be a "catchall," but it only catches "aliens seeking admission." Significantly, the Supreme Court did not specifically engage in any statutory construction of the phrase "alien seeking admission" in the context of § 1225(b)(2). It did not need to because that was not the issue in *Jennings*. Accordingly, this Court should find Respondents' reliance upon *Jennings* unpersuasive.

To be clear, Petitioner has always been treated by Respondents as subject to discretionary detention under § 1226, rather than mandatory detention under § 1225. *See* ECF 1, Exh. A [including "Notice of Custody Determination," releasing Petitioner on his own recognizance, *not* paroling him as required by § 1225, "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act" and his Notice to Appear, clearing indicating that he is "an alien present in the United States who has not been admitted or paroled" as opposed to "an arriving alien."]. It was not until the BIA arbitrarily decided that the uncontested law, practice, and policy of the past thirty years was suddenly incorrect did Respondents decide to treat Petitioner differently.

For these reasons, this Court should find the BIA's recent decision in *Matter of Yajure Hurtado*, and the Respondents' arguments which largely parrot the BIA's rationale as unpersuasive, in the same manner as the hundreds of other decisions deciding the same matters.

b. 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 interpretation of these provisions since they were first enacted thirty years ago. They held this view until suddenly reversing course two 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, 2025 (a mere 30 days before *Matter of Yajure Hurtado* was decided), 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 Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). Here too, Respondents' longstanding practice should inform the Court's decision.

VII. DUE PROCESS

Respondents aver that Congress's interest in regulating immigration, including by keeping specified aliens in detention pending the removal period, this Court should dispense of any due process concerns without engaging in the *Mathews v. Eldridge* test. ECF 4, p. 23. Respondents cite to *Demore v. Kim,* 538 U.S. 510 (2003) in support of their position. *Id.* In *Demore v. Kim*, the Court noted that, "it is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523. It would be beyond a stretch – an absolute fiction – to read *Denmore* as stating that the Fifth Amendment did not apply to an individual challenging what they believed was an erroneous deprivation of their liberty without due process.

The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. The Due Process Clause extends to all "persons" regardless of status, including non-citizens, whether here lawfully, unlawfully, temporarily, or permanently. *Zadvydas* at 693. To determine whether detention violates procedural due process, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Further, government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive

circumstances "where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas* at 690.

a. Petitioner's Private Interest

First, Petitioner's "private interest … affected by the official action is the most elemental of liberty interests—the interest in being free from physical detention." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, (2004). Respondent's reliance on *Demore* and the Congress's interest in regulating immigration does little to tip the scales. "It is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States,* 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (emphasis added; internal quotation marks omitted). At this stage in the *Mathews* calculus, the Court must consider the interest of the *erroneously* detained individual. *Carey v. Piphus,* 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Hamdi* at 2646–47.

b. The Risk of an Erroneous Deprivation

As to the second prong of the *Mathews v. Eldridge* balancing test, the Court should find that the risk of erroneous deprivation is particularly high here. The purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Petitioner has raised significant and supported legal arguments against Respondents' detention of Petitioner under §1225(b). Further, Respondents have presented no evidence in the record suggesting that Petitioner is a flight risk or a danger to his community; only that he is subject to mandatory detention. *See id.*

As evinced in the underlying petition before this Court, Petitioner was originally held under § 1226(a)'s discretionary provisions and is now being held in mandatory detention through an agency extension of § 1225(b)(2)(A)'s mandatory detention provisions against him. And, "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Ent*., 603 U.S. at 413.

In Petitioner's case, immigration officials, vested with authority delegated by Congress to the Attorney General and DHS, first determined that standard removal proceedings and discretionary detention under Section 1226(a) applied to his case. ECF 1, Exh. A.

The unilateral decision by the BIA to use *Matter of Yajure Hurtado* to extend a different statute to Petitioner's circumstances despite earlier determining otherwise now leaves his liberty interest at risk. Petitioner contends that the Respondents may not now extend the bounds of their authority to apply § 1225(b)(2)(A) against him, and this Court must ensure proper application of the laws against Petitioner.

c. The Government's Interest

The final *Mathews* factor concerns the United States' interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. *Mathews*, 424 U.S. at 335. Petitioner recognizes that the United States has an interest in meaningful immigration laws that advance its stated policies. However, the United States has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied under the proper means. It is not appropriate to utilize the "wrong" statute against any person to ensure their continued detention. Respondents may not choose unilaterally when and how to apply duly enacted laws.

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas,* 533 U.S. at 690, 121 S.Ct. 2491. Respondents have provided no evidence or argument that Petitioner is either a flight risk or a danger, and the record would indicate that he is neither: he has no criminal record whatsoever, and he has attended his ICE and Immigration Court appointments when required. Respondents cannot show that their interest in detaining Petitioner without a bond hearing outweighs Petitioner's liberty interests; nor can they show that the effort and cost of providing Petitioner with procedural safeguards is burdensome.

Accordingly, all three *Mathews* factors weigh heavily in support of Petitioner.

VIII. CONCLUSION

Petitioner respectfully requests that this Honorable Court grant this petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests this court order his immediate release from custody.

Respectfully Submitted,

Date: December 9, 2025

s/Christopher M. Casazza

Christopher M. Casazza (PA Bar 309567)
Palladino, Isbell & Casazza, LLC
1528 Walnut St, Suite 1701
Philadelphia, PA 19102
p. (215) 576-9000
f. (215) 689-3531
chris@piclaw.com

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 9, 2025, he served a copy of the attached:

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

by electronic service to Respondents' Counsel *via* ECF.

Date: December 9, 2025

s/Christopher M. Casazza

Christopher M. Casazza (PA Bar 309567)
Palladino, Isbell & Casazza, LLC
1528 Walnut St, Suite 1701
Philadelphia, PA 19102
p. (215) 576-9000
f. (215) 689-3531
chris@piclaw.com

ATTORNEY FOR PETITIONER