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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MAMADOU CISSE,

Petitioner,

v.

MICHAEL BERNACKE, *et al.*,

Respondents.

Case No. 2:26-cv-00387-JAD-BNW

**Federal Respondents' Response to First
Amended § 2241 Petition (ECF No. 10)**

Federal Respondents, through undersigned counsel, hereby respond to Petitioner Mamadou Cisse's First Amended § 2241 Petition. Petitioner seeks the jurisdiction of this Court to hear its Petition pursuant to 28 U.S.C. § 2241 which grants this Court authority to issue writs of habeas corpus to individuals in custody if that custody violates "the Constitution or laws or treaties of the United States (See ECF No. 10, pg. 2, lns. 17-19, pg. 3, lns. 1-6). The Subject Petition should be denied for the reasons stated below in the memorandum of points and authorities.

Memorandum of Points and Authorities

I. INTRODUCTION

Petitioner is a citizen of Senegal. Petitioner entered the United States on or about August 1, 2023, without inspection by U.S. Immigration Officers (hereinafter "ICE") and without documents sufficient for lawful admission, by illegally crossing the U.S. - Mexico international border. Upon illegally crossing the U.S. - Mexico border, Petitioner was

1 contacted by the U.S. Border Patrol, at the El Paso, Texas Border Patrol Sector, on the
2 same day he crossed the border. Also on that same day, upon being detained by U.S.
3 Border Patrol Agents, a warrant for Petitioner's arrest was subsequently issued.

4 On April 6, 2025, Petitioner was arrested by officers of the Las Vegas Metropolitan
5 Police Department (hereinafter "LVMPD") and charged with, and later pled guilty to,
6 Battery Domestic Violence which arrest related to Petitioner threatening to kill his live-in
7 girlfriend with a box cutter. Upon being arrested, ICE officers subsequently lodged an
8 immigration detainer upon Petitioner and took Petitioner into Federal custody on April 8,
9 2025, for removal. Petitioner subsequently sought asylum, through the Immigration Court,
10 which was denied. Petitioner appealed the denial of his request for asylum to the
11 Immigration Court of Appeals. His appeal is pending after being fully briefed. The denial
12 of Petitioner's appeal is likely due to its denial being based upon black letter law. Petitioner
13 will be removed upon its denial.

14 The United States Code mandates the detention of aliens, like Petitioner, who are
15 present in the United States without having been lawfully admitted, pending removal. A
16 growing body of well-reasoned and persuasive authority supports the Federal Respondents'
17 legal positions including the recent Fifth Circuit Court of Appeals decision in *Buenrostro-*
18 *Mendez v. Bondi*. The United States Code controls, even in the face of contrary, past agency
19 practices. Petitioner's temporary detention does not offend due process and has been
20 recognized by the United States Supreme Court to be of such import as to generally not
21 require the application of the *Mathews v. Eldridge* test. However, even an application of the
22 *Mathews* test to the subject case does not support the granting of the subject Writ of Habeas
23 Corpus.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 Petitioner is a citizen of Senegal (See **Exhibit A**, Record of Deportable/Inadmissible
26 Alien dated August 1, 2023, Form I-213). Petitioner entered the United States on or about
27 August 1, 2023, without inspection by ICE and without documents sufficient for lawful
28 admission, by illegally crossing the U.S.-Mexico international border. *Id.* Upon illegally

1 crossing the U.S. / Mexico border, Petitioner was contacted by the U.S. Border Patrol, at
2 the El Paso, Texas Border Patrol Sector, on that same day as he crossed the border. *Id.*

3 Petitioner admitted to illegally entering the United States on August 1, 2023. *Id.*
4 Although subsequent statements of Petitioner, in his later application for Asylum and in
5 information he provided to the Immigration Court, were inconsistent, the information
6 Petitioner provided in both his asylum application and to the Immigration Court included
7 his admission that that he traveled from Senegal, through: Morocco, Spain, Turkey,
8 Colombia, Nicaragua, Honduras, and Mexico before he illegally entered the United States
9 on August 1, 2023 (See **Exhibit B**, Opinion and Findings of Immigration Court in Removal
10 Proceedings dated July 14, 2025, pg. 8). Petitioner did not seek asylum in any of the
11 countries through which he passed prior to arriving in the United States (See **Exhibit B**, pgs.
12 6-7).

13 Upon being detained by U.S. Border Patrol Agents, a warrant for Petitioner's arrest
14 was subsequently issued (See **Exhibit C**, Warrant for Arrest of Alien dated August 1, 2023).

15 On April 6, 2025, Petitioner was arrested by officers of the Las Vegas Metropolitan
16 Police Department (hereinafter "LVMPD") and charged with Battery Domestic Violence.
17 (See **Exhibit D**, LVMPD Arrest Report and Victim Statement). Petitioner was alleged to
18 have battered his female girlfriend of a year with whom he was currently living in Las
19 Vegas, Nevada. *Id.* Specifically, Petitioner was alleged to have kicked his girlfriend,
20 knocking her to the ground, and subsequently producing a boxcutter, while telling his
21 girlfriend "I will kill you". *Id.* Based upon Petitioner's conduct, the LVMPD assessed his
22 potential risk, utilizing a standard checklist developed for such assessments. *Id.* Petitioner's
23 risk assessment was assessed as "High Risk/Danger". *Id.* Petitioner subsequently pled
24 guilty to Battery Domestic Violence on June 5, 2025 (See **Exhibit E**, Register of Actions).

25 Upon being arrested for Battery Domestic Violence on April 6, 2025 as noted above,
26 ICE officers subsequently lodged an immigration detainer upon Petitioner and took
27 Petitioner into Federal custody on April 8, 2025 for removal (See **Exhibit F**, Record of
28 Deportable/Inadmissible Alien dated April 8, 2025). Petitioner subsequently sought asylum

1 pursuant to two claims: (1) he could not return to his country of origin because of related
2 persecution due to his sexual orientation which he described as “bisexual”; and (2) he
3 would be subject to the potential of torture if he were to return to his country (See **Exhibit**
4 **B**, pgs. 6,11).

5 The Immigration Court first rejected Petitioner’s claim for asylum pursuant to black
6 letter law that prevented the claim itself. *Id.*, pg. 6-7. Specifically, Petitioner failed to
7 qualify to make such claim, at its base, since it violated the “Lawful Pathways Bar” which
8 required Petitioner to seek asylum in one of the many countries he traveled through before
9 getting to the U.S., as noted above. *Id.* Petitioner did not show he made such a claim in
10 any of the countries he traversed prior to illegally entering the United States. *Id.*

11 The Immigration Court went on to deny Petitioner’s claim for asylum on the
12 substance of the claim. In so doing, the Immigration Court first made “an adverse
13 credibility determination” as to Petitioner, *Id.*, pg. 4. This was based upon Petitioner’s
14 inconsistent contentions and recitation of facts in the case which were “internally
15 inconsistent” as well as his demeanor, candor, and responsiveness. *Id.* The Immigration
16 Court rejected Petitioner’s first claim of persecution if returned to his country due to his
17 stated sexual orientation of “bisexual”. The Immigration Court found that Petitioner made
18 no showing of a sexual orientation that would invite persecution and noted that his “sole
19 conclusive relationship occurred in the United States and that that was a heterosexual
20 relationship with a woman”. *Id.*, pg. 11. The Immigration Court found that, similar to
21 Petitioner’s first contention, there was no evidence presented by Petitioner supporting his
22 second contention of a past, present or further threat of torture if Petitioner were returned to
23 his country. *Id.*

24 Petitioner appealed the denial of his request for asylum to the Immigration Court of
25 Appeals (See ECF 10, pg. 4, lns. 13-15). The appeal is pending decision after being fully
26 briefed. *Id.*

27 **III. STANDARD OF REVIEW**

28

1 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of
2 his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show
3 the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically,
4 here, Petitioner challenges his temporary civil immigration detention pending his removal
5 proceeding.

6 Judicial review of immigration matters, including detention issues, is limited. *Ins. v.*
7 *Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525
8 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430
9 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*,
10 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character and therefore
11 subject only to narrow judicial review”). The Supreme Court has thus “underscore[d] the
12 limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that
13 over no conceivable subject is the legislative power of Congress more complete than it is
14 over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Mathews*
15 *v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

16 The plenary power of Congress and the Executive Branch over immigration
17 necessarily encompasses immigration detention, because the authority to detain is elemental
18 to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United*
19 *States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to
20 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's
21 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.
22 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*
23 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be
24 vain if those accused could not be held in custody pending the inquiry into their true
25 character, and while arrangements were being made for their deportation.”); *Demore v.*
26 *Hyung Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a
27 constitutionally permissible part of that process.”).

28 IV. ARGUMENT

Petitioner references the Immigration Court rejecting Petitioner's requests for bond and contends that such rejections were improper and that he should receive a bond hearing. Petitioner's argument must fail as Petitioner is not entitled to bail as an applicant for admission who is currently in removal proceedings. 8 U.S.C. 1225. The United States Code mandates the detention of aliens, like Petitioner, who are present in the United States without having been lawfully admitted. 8 U.S.C. 1225(b)(2). A growing body of well-reasoned and persuasive authority supports the Federal Respondents' legal positions including the recent Fifth Circuit Court of Appeals decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026). Under *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the referenced statute controls, even in the face of contrary past agency practices. Petitioner's temporary detention does not offend due process and has been recognized by the United States Supreme Court to be of such import as to generally not require the application of the *Mathews v. Eldridge* test. However, even an application of the *Mathews* test to the subject case does not support the granting of the subject Writ of Habeas Corpus.

A. The Illegal Immigration Reform and Immigrant Responsibility act of 1996 and the Statutory Framework of 8 U.S.C. § 1225 and 8 U.S.C. § 1226

The Illegal Immigration Reform and Immigrant Responsibility act of 1996 (hereinafter "IIRIRA") effected significant changes through several provisions codified in Section 1225 and 1226 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed ... an applicant for admission":

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States” are required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks — expedited removal and normal “Section 240” proceedings — and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which apply to a subset of aliens — those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission

1 is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a
2 proceeding under section 1229a of this title [Section 240]. 8 U.S.C. § 1225(b)(2)(A)
3 (emphasis added).¹ See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention
4 mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention
5 of aliens throughout the completion of applicable proceedings and not just at the moment
6 those proceedings begin”).

7 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA
8 grants DHS discretion to temporarily release an applicant for admission “only on a case-by-
9 case basis for urgent humanitarian reasons or significant public benefit.”

10 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the
11 alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the
12 Secretary determines that “the purposes of such parole ... been served,” the “alien shall ...
13 be returned to the custody from which he was paroled” and be “dealt with in the same
14 manner as that of any other applicant for admission to the United States.”

15 8 U.S.C. § 1182(d)(5)(A).

16 **Section 1226:** IIRIRA also created a separate authority addressing the arrest,
17 detention, and release of aliens generally (versus applicants for admission specifically). See 8
18 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for
19 example, lawfully enter the country but overstay, otherwise violate the terms of their visas,
20 or later determined to have been improperly admitted. The statute provides that “[o]n a
21 warrant issued by the Attorney General, an alien may be arrested and detained pending a
22 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).

23 Detention under this provision is generally discretionary: The Attorney General “may”
24 either “continue to detain the arrested alien” or release the alien on bond or conditional
25

26
27 ¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewman, (3)
28 stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of arrival)
from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-(C).

1 parole. *Id.* § 1226(a)(1)-(2).²

2 That “default rule,” however, does not apply to certain criminal aliens who are being
3 released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8
4 U.S.C. § 1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into
5 custody” certain classes of criminal aliens — those who are inadmissible or deportable
6 because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227;
7 or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must
8 detain these aliens “when the alien is released, without regard to whether the alien is
9 released on parole, supervised release, or probation, and without regard to whether the alien
10 may be arrested or imprisoned against for the same offense.” *Id.*

11 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L.
12 No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for)
13 aliens who (1) are inadmissible because they are physically present in the United States
14 without admission or parole, have committed a material misrepresentation or fraud, or lack
15 required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[]
16 having committed, or admit[] committing acts which constitute the essential elements of”
17 certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

18 **B. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who**
19 **Are Present in the United States Without Having Been Lawfully Admitted.**

20 Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens,
21 like Petitioner, who are present in the United States without admission and are subject to
22 removal proceedings — regardless of how long the alien has been in the United States or
23 how far from the border they ventured. That unambiguous language resolves this case. *See*
24 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020)
25 (“Our analysis begins and ends with the text.”).

26 Federal Respondents’ position is that Petitioner is subject to mandatory detention

27
28 ² Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

1 under § 1225(b) guided by the decision in *Matter of Q. Li*. The BIA held “[a]n applicant for
2 admission who is arrested and detained without a warrant while arriving in the United
3 States, whether or not at a port of entry, and subsequently placed in removal proceedings is
4 detained under [8 U.S.C. § 1225(b)] and is ineligible for any subsequent release on bond
5 under section [8 U.S.C. § 1226(a)].”

6 The holding of *Q. Li* matches the circumstances in which the Petitioner was
7 originally encountered by Immigration Officials immediately following illegal entry. *Matter*
8 *of Q. Li*, addressed the exact situation presented in the subject case (i.e., a petitioner
9 confronted while crossing the international boundary without being inspected by an
10 immigration officer at a designated port of entry) and concluded the application of 8 U.S.C.
11 1225 was appropriate for such situation and mandated detention until removal proceedings
12 had concluded. *Id.* *Q. Li* noted that, although a grant of parole allowed the alien in *Q. Li*
13 temporary release from custody, such parole was automatically terminated when she was
14 served with a notice to appear pursuant to which the underlying statutory scheme, also
15 applicable in the subject case, was left to operate. *Id.* Such operation of statute resulted in
16 the noted ultimate conclusion that mandated detention until removal was appropriate,
17 pursuant to 8 U.S.C. 1225, in the exact same situation as presented in the subject case. *Id.*
18 *Q. Li* is both apposite and in full support of Respondents’ position and its opposition to the
19 subject Writ of Habeas Corpus. Similar to *Q. Li*, the subject Petitioner was apprehended as
20 an arriving alien and is now subject to mandatory detention.

21 ***1. The Plain Language of Section 1225(b)(2) Mandates the Detention of the Petitioner***
22 ***Who is an Applicant for Admission.***

23 Section 1225(a) defines “applicant for admission” to encompass an alien who either
24 “arrives in the United States” or who is “present in the United States who has not been
25 admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical
26 entry, but lawful entry after inspection by immigration authorities.

27 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is, and
28 remains, an applicant for admission, regardless of the duration of the alien’s presence in the

1 United States or the alien's distance from the border.

2 In turn, Section 1225(b)(2) provides that "an alien who is an applicant for
3 admission" "shall be detained" pending removal proceedings if the "alien seeking admission
4 is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A)
5 (emphasis added). The statute's use of the term "shall" makes clear that detention is
6 mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998),
7 and the statute makes no exception for the duration of the alien's presence in the country or
8 where in the country he is located. Therefore, the statute's plain text mandates that DHS
9 detain all "applicants for admission" who do not fall within one of its exceptions.

10 Petitioner falls squarely within the statute. To be sure, Petitioner is an "alien . . . who
11 arrives in the United States", "present in the United States," and there is no dispute that he
12 has "not been admitted." 8 U.S.C. § 1225(a). Petitioner that he entered without an
13 inspection by the United States in August 2023 (See **Exhibit A**). He was arrested
14 immediately after entering without inspection. *Id.* "An alien who is detained shortly after
15 unlawful entry [into the United States] cannot be said to have effected an entry" and are
16 treated as applicants for admission under § 1225(a). *DHS v. Thuraissigiam*, 591 U.S. 103, 140
17 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).³ Moreover, Petitioner cannot
18 — and did not — establish that he is "clearly and beyond a doubt entitled to be admitted." 8
19 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is appropriately detained and "shall be
20 detained for a proceeding under [8 U.S.C. § 1229a]."

21 **2. Section 1225(b)(2)'s Reference to Aliens "Seeking Admission" Does Not Narrow Its**
22 **Scope.**

23 There is no denial that Petitioner (and others like him) are "applicants for
24 admission" under Section 1225(b)(2). Petitioner has neither referenced nor pointed out, that
25 he is anything else but an applicant for admission under Section 1225(b)(2). The statute

26 _____
27 ³ See also, *Matter of Q. Li*, at 68 ("Similarly, we have held, in other contexts that the term
28 'arriving' applies to aliens, . . . 'who are apprehended' just inside 'the southern border, and
not at a port of entry, on the same day [they] crossed into the United States.'" (quoting
Matter of M-D-C-V-, 28 I&N Dec. 18, 23 (BIA 2020)).

1 itself makes clear that an alien who is an “applicant for admission” *is* necessarily “seeking
 2 admission.” Moreover, an alien like Petitioner, who is identified by immigration authorities
 3 as one who unlawfully crossed the international border, and who does not choose to depart
 4 from the United States voluntarily, is “seeking admission” under any interpretation of that
 5 phrase. Here, the Petitioner entered the United States without an inspection. He was then
 6 initially encountered shortly after his illegal entry and processed for immigration
 7 proceedings.

8 Section 1225(b)(2) requires the detention of an “applicant for admission, if the
 9 examining officer determines that [the] alien *seeking admission* is not clearly and beyond a
 10 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory
 11 text and context show that being an “applicant for admission” is a means of “seeking
 12 admission” — no additional affirmative step is necessary. In other words, every “applicant
 13 for admission” is inherently and necessarily “seeking admission,” at least absent a choice to
 14 pursue voluntary withdrawal or voluntary departure.

15 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or*
 16 *otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)
 17 (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas*
 18 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)
 19 (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of*
 20 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*
 21 *Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) (“or otherwise” means “the
 22 first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–
 23 83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner”
 24 of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking
 25 admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary.
 26 *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not
 27 *actually* requesting permission to enter the United States in the ordinary sense are
 28 nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

1 This reading is consistent with the everyday meaning of the statutory terms. One
2 may “seek” something without “applying” for it — for example, one who is “seeking”
3 happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it.
4 Compare Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a
5 formal request (to someone for something)”, with *id.* at 1299 (“seek” means “to request, ask
6 for”). For example, a person who is “applying” for admission to a college or club is
7 “seeking” admission to the college or club. See The American Heritage Dictionary of the
8 English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o
9 request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien
10 who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is
11 “seeking admission” to the United States.

12 None of this is to say, however, that “seeking admission” has no meaning beyond
13 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”
14 is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example,
15 lawful permanent residents returning to the United States are not “applicants for admission”
16 because they are already admitted, but they still may be “seeking admission.” See 8
17 U.S.C. § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of
18 “applicants for admission,” the statute unambiguously provides that an alien who is an
19 “applicant for admission” is “seeking admission,” even if the alien is not engaged in some
20 separate, affirmative act to obtain lawful admission.

21 To be sure, the Government previously operated under a narrower understanding of
22 Section 1225(b)(2)(A). But past practice does not justify disregard of clear statutory
23 language. A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer*
24 *& White Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention
25 of *any* applicant for admission, regardless of whether the applicant is taking affirmative steps
26 toward admission.

27 That is the case here with this Petitioner. Under a straightforward reading of the
28 statute, being an “applicant for admission” is “seeking admission.” Although that reading

1 may lead to some redundancy in Section 1225(b)(2)(A), that is “not a license to rewrite”
2 Section 1225 “contrary to its text.” *Barton v. Barr*, 590 U.S. 222 at 223 (2020); see *Heyman v.*
3 *Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“The principle [that drafter do repeat
4 themselves carries extra weight where ... the arguably redundant words that the drafters
5 employed ... are functional synonyms”). And that is especially true, where that re-writing
6 would be so clearly contrary to Congress’s objective in passing the law.

7 Even if “seeking admission” required some separate affirmative conduct by the alien,
8 an applicant for admission who attempts to avoid removal from the United States, rather
9 than trying to voluntarily depart, is by any definition “seeking admission.” Section
10 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for
11 years. Although the alien may not have been affirmatively seeking admission during those
12 years of illegal presence, Section 1225(b)(2) is not concerned with the alien’s pre-inspection
13 conduct. Rather, the statute’s use of present tense language (“seeking” and “determines”)
14 shows that its focus is a specific point in time — when “the examining immigration officer”
15 is making a “determin[ation]” regarding the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A).
16 At *that* point, the alien is “seeking” — *i.e.*, presently “endeavor[ing] to obtain,” American
17 Heritage Dictionary, *supra*, at 1174 — admission into the United States; if it were otherwise,
18 the applicant would not attempt to show that he is “clearly and beyond a doubt entitled to
19 be admitted.” 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by Section 1225(a)(4),
20 which authorizes an alien to voluntarily “depart immediately from the United States.” An
21 applicant who forgoes that statutory option and instead endeavors to prove admissibility
22 and opts for Section 240 removal proceedings — proceedings in which the alien has the
23 “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted,” *id.* §
24 1229a(c)(2)(A) — is plainly “endeavor[ing] to obtain” admission to the United States.
25 American Heritage Dictionary, *supra*, at 1174.

26 Here, Petitioner entered the United States without inspection and is in removal
27 proceedings, subject to mandatory detention. A contrary view would make mandatory
28 detention turn on the fortuity happenstance of when an alien attempts to prove

admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume lightly” that statute’s application will turn on “arbitrary” issue of timing). Aliens subject to Section 1225(b)(2) must prove admissibility at two stages — first, at the time of inspection, 8 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the alien cannot show admissibility “clearly and beyond a doubt” at the time of inspection, *id.* § 1229a(c)(2)(A) (alien has “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted”). Petitioner has failed to meet these two stages. There is “no reason why Congress would desire” the applicability of something so significant as mandatory detention “to depend on the timing” of when an alien attempts to show admissibility, *Wilson*, 503 U.S. at 334 — particularly given how susceptible that rule is to manipulation by the alien.

To be sure, the Laken Riley Act’s application to aliens who are inadmissible under §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner’s* reading, which recognizes that applicants for admission who are “seeking admission” must be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 106 (2011) (“the canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute”).

C. A Growing Body of Well-Reasoned and Persuasive Authority Supports the Federal Respondents’ Legal Positions Including the Recent Fifth Circuit Court of Appeals Decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026).

In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals, *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) the Court ruled,

1 “unadmitted aliens apprehended anywhere in the United States are ineligible for release on
2 bond, regardless of how long they have resided inside the United States.” *Id.* at 9 (quoting
3 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216). See *Buenrostro-Mendez v. Bondi*, 2026 U.S.
4 App. LEXIS 3899 (5th Cir. 2026). In *Buenrostro-Mendez* the court stated, “The Supreme
5 Court has said, Section 1225(b)(2) operates as a “catchall provision that applies to all
6 applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S.
7 281, 287, 138 S. Ct. 830, 837 (2018). Section 1225(b)(2) does not include any exception that
8 permits the government to release detained aliens on bond.” *Id.* at 7. In *Buenrostro-Mendez*
9 the court explained, “unlike § 1225(b), § 1226(a)(2)(A) permits, but does not require, the
10 Attorney General to release detained aliens on “bond of at least \$1,500 with security
11 approved by, and containing conditions prescribed by, the Attorney General.” *See also* 8
12 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Because § 1226 is not limited to applicants
13 for admission, it also covers numerous grounds of deportability, including for admitted
14 aliens who overstay or violate the terms of their visas, engage in conduct that renders them
15 removable, or were improperly admitted. Not all aliens detained under § 1226(a) are
16 eligible for release on bond. If an alien has committed one of the criminal offenses
17 enumerated in § 1226(c), he loses his bond eligibility. 8 U.S.C. § 1226(c)(1)(A)-(E). The
18 Laken Riley Act, enacted in 2025, expanded § 1226(c) by adding new bases for ineligibility
19 for bond. *See* 8 U.S.C. § 1226(c)(1)(E). Aside from being ineligible for bond, aliens covered
20 by § 1226(c) also may not be granted parole under 8 U.S.C. § 1182(d)(5)(A).” *Id.* at 8. In
21 *Buenrostro-Mendez*, the court emphasized that 8 U.S.C. § 1225(b)(2)(A) requires detention
22 without eligibility for bond of individuals like Petitioner who entered the U.S. without
23 being admitted and stated “The statute unambiguously provides for mandatory
24 detention. *See* 8 U.S.C. § 1225(b)(2)(A) (providing that aliens “*shall* be detained”) (emphasis
25 added); *see also Jennings*, 583 U.S. at 302, 138 S. Ct. at 845 (“§§1225(b)(1) and
26 (b)(2) *mandate* detention of aliens throughout the completion of applicable proceedings and
27 not just until the moment those proceedings begin.”) (emphasis added). And “neither §
28

1 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583
2 U.S. at 297, 138 S. Ct. at 842. *Id.* at 11-12.

3 In *Buenrostro-Mendez* the court explained how 8 U.S.C. § 1225(b)(2)(A) and
4 8 U.S.C. § 1226(a) operate and overlap by stating,

5 "It is true that § 1226 applies to aliens in the United States. That it does so,
6 however, does not preclude § 1225 from also applying to such aliens. As the
7 government acknowledges, the two provisions overlap. Accordingly, for
8 petitioners to find support in *Jennings*, they must overread the Supreme
9 Court's language. In particular, they seem to infer that when the Supreme
10 Court specified that § 1226 applies to aliens inside the United States, it
11 implied that § 1225 does not apply to such aliens. But this is the exact sort of
12 language-parsing inquiry that the Supreme Court has cautioned lower courts
13 against. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S.
14 Ct. 1142, 1155 (2023) ("[T]he language of an opinion is not always to be
15 parsed [like the] language of a statute." (quoting *Reiter v. Sonotone Corp.*, 442
16 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979))).

17 Moreover, even if this court should conduct a granular analysis of the
18 language in *Jennings*, doing so supports the government's interpretation. In
19 claiming that the Supreme Court's pronouncement that § 1225(b) applies to
20 aliens who are seeking admission supports their interpretation, the petitioners
21 inexplicably assume that the Supreme Court understood "seeking admission"
22 in the same way that petitioners do. It demonstrably did not. Elsewhere
23 in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens
24 seeking entry into the United States ('applicants for admission' in the
25 language of the statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That
26 language supports the government's contention that "applicants for
27 admission" are according to the statute seeking entry or admission. And it
28 suggests that when the Supreme Court described § 1225 as applying to aliens
"seeking admission," it understood that to mean aliens who, like the
petitioners here, are present in the United States without admission."

Id. at 20-22.

23 In *Buenrostro-Mendez*, the court addressed the issue of government's longstanding
24 practice which allowed illegal resident aliens who are present without being admitted, to
25 seek release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A)
26 and explained,

27 "While that is true, the government's past practice has little to do with the
28 statute's text. The text says what it says, regardless of the decisions of prior
Administrations. Years of consistent practice cannot vindicate an

interpretation that is inconsistent with a statute's plain text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018). In *Pereira*, the court considered whether notices to appear for removal proceedings under 1229(a) had to specify the time and place of removal proceedings. *Id.* at 202, 138 S. Ct. at 2110. Despite 21 years during which the government consistently served notices to appear that omitted time and place information, the court rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209, 138 S. Ct. at 2111, 2114. The same approach is appropriate here. Regardless of the government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls."

Id. at 22.

Buenrostro-Mendez applies to this case, since Petitioner entered the U.S. without inspection and is an applicant for admission who is lawfully mandatorily detained under § 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a). Although *Buenrostro-Mendez* is not a case from the Ninth Circuit Court of Appeals, it is a very recent Circuit Court of Appeals decision, which is cited as persuasive authority that squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) and supports the Federal Respondents' position.

In addition, the United States notes the following recent decisions, each of which concludes that, when properly interpreted and applied, the governing statutes support the Federal Respondents' position in this case: *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

D. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices.

1 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is
2 unavailing because under *Loper Bright*, the plain language of the statute and not prior
3 practice controls. In overturning *Chevron*, the Supreme Court recognized that courts often
4 change precedents and “correct[] our own mistakes” *Loper Bright Enterprises*, 603 U.S. at
5 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).
6 *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens
7 Fishery Conservation and Management Act that itself predated IIRIRA by twenty years.
8 *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if
9 any, weight under *Loper Bright*. The weight given to agency interpretations “must always
10 ‘depend upon their thoroughness, the validity of their reasoning, the consistency with
11 earlier and later pronouncements, and all those factors which give them power to
12 persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore*, 323 U.S. at 140
13 (cleaned up)).

14 The BIA’s decision in *Matter of Q. Li* includes thorough reasoning. In *Q. Li*, the BIA
15 analyzed the statutory text applicable Supreme Court interpretations, and prior BIA
16 holdings regarding § 1225. *Id.* at 66–71. It highlights that an alien, like the Petitioner, who
17 tries to enter the United States illegally is treated as a “applicant for admission” *Id.* at 68
18 (citing *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). An “‘applicant for admission’ is
19 defined, in relevant part, as an alien ‘who arrives in the United States’ []whether or not at a
20 designated port of arrival.” *Id.* (quoting 8 U.S.C. § 1225(a)(1)). The BIA goes on to
21 distinguish aliens detained under § 1226(a) and § 1225(b) by detailing that aliens who arrive
22 in the United States who are detained under § 1225(b)(1) or (b)(2) are not eligible for bond
23 because both provisions “mandate detention for applicants for admission until certain
24 proceedings have concluded.” *Id.* (quoting *Jennings*, 583 U.S. at 298).

25 To be sure, “when the best reading of the statute is that it delegates discretionary
26 authority to an agency,” the Court must “independently interpret the statute and effectuate
27 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§
28 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain

proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support a position that the plain language mandates detention under § 1226(a) given that the Petitioner was originally apprehended at the international border.

E. **Petitioner’s Temporary Detention Does Not Offend Due Process and has Been Recognized by the United States Supreme Court to be of such Import as to Generally not Require the Application of the *Mathews v. Eldridge* Test.**

As mentioned above, Congress broadly crafted “applicants for admission” to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they — by definition — have crossed borders and traveled in violation of United States law. As explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S. at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”). And with this power to remove aliens, the Supreme Court has recognized the United States’ longtime Constitutional ability to detain those in removal proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531 (“Detention during removal proceedings is a constitutionally permissible part of that process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings.

1 Detention during those proceedings gives immigration officials time to determine an alien's
 2 status without running the risk of the alien's either absconding or engaging in criminal
 3 activity before a final decision can be made.”).

4 In another immigration context (aliens already ordered removed awaiting their
 5 removal), the Supreme Court has explained that detaining these aliens less than six months
 6 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
 7 presumptive constitutional limit has been subsequently distinguished as perhaps
 8 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
 9 explained Congress was justified in detaining aliens during the entire course of their removal
 10 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
 11 similar to undocumented aliens like Petitioner, Congress provided for the detention of
 12 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
 13 emphasized the constitutionality of the “definite termination point” of the detention, which
 14 was the length of the removal proceedings.⁴ *Id.* at 512.⁵ In light of Congress’s interest in
 15 dealing with illegal immigration by keeping specified aliens in detention pending the
 16 removal period, the Supreme Court dispensed of any Due Process concerns without
 17 engaging in the “*Mathews v. Eldridge* test” *See id. generally*.

18 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal
 19 proceedings does not violate Due Process. Petitioner has been detained since his arrest of
 20 Battery Domestic Violence in April 2025. Resolution is forthcoming. Petitioner has been
 21 granted ample available process in his current removal proceedings which has only been
 22 delayed due to Petitioner’s appeal to the Court of Immigration Appeals relative to the

23 _____
 24 ⁴ “In contrast, because the statutory provision at issue in this case governs detention of
 25 deportable criminal aliens *pending their removal proceedings*, the detention necessarily serves
 26 the purpose of preventing the aliens from fleeing prior to or during such proceedings.
 27 Second, while the period of detention at issue in *Zadvydas* was ‘indefinite’ and ‘potentially
 28 permanent,’ *id.*, at 690–691, 121 S. Ct. 2491, the record shows that § 1226(c) detention not
 only has a definite termination point, but lasts, in the majority of cases, for less than the 90
 days the Court considered presumptively valid in *Zadvydas*.”

⁵ In 2018, the Court again highlighted the significance of a “definite termination point” for
 detention of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 Immigration Court's rejection of his application for asylum. As noted above, the appeal has
2 been completely briefed and submitted for decision. Respondents would submit that the
3 appeal is likely to be denied due to the black letter issues, as noted above, which mandate its
4 denial. However, the process Petitioner has received in this removal proceeding
5 demonstrates no lack of Procedural Due Process — nor any deprivation of liberty
6 “sufficiently outrageous” required to establish a Substantive Due Process claim. *See generally*
7 *Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628
8 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply
9 made the decision to detain Petitioner pending removal which is a “constitutionally
10 permissible part of that process.” *See Demore*, 538 U.S. at 531.

11 In this case, Petitioner, who is present in the United States without admission or
12 parole, is an applicant for admission in INA § 240 removal proceedings and is therefore
13 detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and
14 the Immigration Judge does not have jurisdiction to issue a bond. As history has revealed,
15 the BIA issued its precedential decision in *Q. Li*, in which it ruled that Immigration Judges
16 lacked jurisdiction to grant bonds to illegal aliens like the Petitioner, those who are
17 apprehended shortly after crossing the international border illegally. Petitioner's Writ of
18 Habeas Corpus must be denied.

19 **F. Although the US Supreme Court has Refused to Apply a *Mathews v. Eldridge***
20 **Analysis to Immigration Cases such as This, its Application would Not**
21 **Support the Granting of the Subject Petition**

22 As noted above, the United States Supreme Court has previously noted that, in light
23 of Congress's interest in dealing with illegal immigration by keeping specified aliens in
24 detention pending the removal period, the Supreme Court has dispensed with any Due
25 Process concerns without engaging in the “*Mathews v. Eldridge* test” *See Demore*, 538 U.S. at
26 513, generally. Thus, the US Supreme Court has concluded such an analysis is not
27 controlling in the immigration context. However, even applying such test in the subject case
28 would not support the subject Petition.

1 Petitioner cites *De Leon v. Mayorkas*, 2024 WL 343437 (2024) in support of using the
2 *Mathews* test in the subject case (See ECF 8, pg. 11, lns. 19-24). In *De Leon*, the Honorable
3 U.S. District Court Judge Gloria Navarro struggled with the limitations and potential
4 application of *Mathews* in the subject context. *Id.* However, the *De Leon* case with which
5 she was dealing related to an 8 U.S.C. 1226 removal which is much different from the
6 current removal which requires mandatory custody pursuant to 8 U.S.C. 1225, as detailed
7 above, and for which the *Mathews* analysis is generally not applicable. However, such
8 analysis will be applied to the subject case to demonstrate that, even under such analysis,
9 Petitioner is not entitled to the relief he seeks.

10 Judge Navarro opined:

11 The U.S. Supreme Court in *Jennings v. Rodriguez* held “that §
12 1226(c) mandates detention of any alien falling within its scope and that
13 detention may end prior to the conclusion of removal proceedings ‘only if’ the
14 alien is released for witness-protection purposes.” *Jennings v. Rodriguez*, 138 S.
15 Ct. 830, 847 (2018). The Supreme Court overturned Ninth Circuit precedent
16 requiring periodic bond hearings for § 1226(c) detainees as statutory matter,
17 but declined to reach the merits of the petitioners’ constitutional
18 arguments. *Id.* at 851. As a result, current Supreme Court precedent does not
19 tell us when the length of detention under § 1226(c) will become unreasonable
20 without a bond hearing, making continued detention unconstitutional in a
21 particular case. The issue also remains unresolved in the Ninth
22 Circuit. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1200 (9th Cir.
23 2022) (“We in turn remanded [Jennings] to the district court, which has not
24 yet issued a decision.”); *see also Avilez v. Garland*, 48 F.4th 915, 927 (9th Cir.
25 2022) (declining to determine whether due process required a bond hearing
26 for a noncitizen detained under § 1226(c) and remanding to the district court
27 for consideration of the due process claim).

28 In the absence of clear guidance from a higher court, district courts in this
circuit have taken various approaches to determine whether due process
requires a bond hearing in a particular case. *See Lopez v. Garland*, 631 F. Supp.
3d 870, 877-78 (E.D. Cal. 2022) (discussing various approaches). Among
them is the test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), a
case in which the Court recognized that “[t]he fundamental requirement of
due process is the opportunity to be heard at a meaningful time and in a
meaningful manner.” *Mathews*, 424 U.S. at 333 (internal quotation marks and
citation omitted).

1 *Id.* Judge Navarro proceeded with an attempt to apply the Mathews analysis to her case as
2 follows:

3 The First *Mathews* factor is the private interest affected by government action. *Id.* As
4 to the first *Mathews* factor, Judge Navarro noted:

5
6 As for the first *Mathews* factor, De Leon's private interest in being free from
7 prolonged detention is clearly substantial. *See Singh v. Holder*, 638 F.3d 1196,
8 1208 (9th Cir. 2011) ("The private interest here—freedom from prolonged
9 detention—is unquestionably substantial."). *See also Aleman Gonzalez v. Barr*,
10 955 F.3d 762, 772 (9th Cir. 2020); *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92
11 (9th Cir. 2011). However, his length of detention currently falls short of the
12 one-year mark recognized as the point at which the factor begins to weigh in
13 the petitioner's favor. *See Lopez*, 631 F. Supp. 3d at 880. In addition, De
14 Leon's private interest is diminished, to some extent, by the fact that his
15 detention has likely been prolonged by his decision to challenge his removal
16 order. *See Rodriguez Diaz*, 53 F.4th at 1207-08.

17 *Id.* Similar to *De Leon*, in the subject case, the length of detention falls short of one-year and
18 will likely be concluded before then as Petitioner's asylum appeal will likely be denied as
19 noted above. Further, similar to *De Leon*, Petitioner's "private interest is diminished" by the
20 fact that his detention has likely been prolonged by his decision to challenge the denial of his
21 asylum.

22 The second *Mathews* factor is the risk of an erroneous deprivation of the private
23 interest through the procedures used, and the probable value, if any, of additional or
24 alternative procedures. *Id.* As to the second *Mathews* factor, Judge Navarro noted:

25 The record also fails to establish that the second *Mathews* factor weighs in De
26 Leon's favor because it does not show a significant risk of an erroneous
27 deprivation of his private interest through the procedures used. De Leon
28 makes broad statement that he is not a flight risk or danger to community but
provides no explanation or evidence to support the claim. . . The IJ's decision
denying De Leon's application for cancellation of removal does note his ties
to his children and parents residing in California and his history of gainful
employment, but it also recounts his history of criminal conduct extending
from his arrival in the United States in 2000 until his 2020 felony drug
conviction and subsequent imprisonment. . . In the absence of any argument
or evidence from De Leon to the contrary, this court is left to assume that an
IJ would deny De Leon's request for release or bail for the same reasons the IJ

1 denied his application for cancellation of removal and request for voluntary
2 departure.

3 Id. Similarly, in the subject case, there is no significant risk of an erroneous deprivation of
4 Petitioner's private interest through the procedures used. Petitioner provides no evidence
5 that he is not a flight risk or danger to the community. It is noted, as detailed above, that
6 Petitioner pulled a box cutter on his female girlfriend, with whom he lived and had a year-
7 long relationship, while telling her he wanted to kill her, relative to his most recent arrest.
8 He was evaluated using a standard method utilized in Las Vegas as a "High Risk/Danger"
9 which is the highest level of risk that can be assessed (See **Exhibit D**, LVMPD Domestic
10 Violence Report, DV Auxiliary LAP Questionnaire). Although Petitioner contends he has
11 family members located somewhere in the United States he provides nothing to substantiate
12 such a contention or the type of family members which might provide a court with potential
13 assurance of support or direction. Further, although Petitioner mentions having a work
14 permit, the undersigned has not been able to verify that Petitioner ever had a work permit.
15 Further, Petitioner provides no proof of such.

16 Finally, the third *Mathews* factor is the government's interest, including the function
17 involved and the burdens that additional or alternative procedures would entail. *Id.* As to
18 the third *Mathews* factor, Judge Navarro noted:

19 Moving on to the third *Mathews* factor, the Supreme Court has held that,
20 when the *Mathews* test is applied, "it must weigh heavily in the balance that
21 control over matters of immigration is a sovereign prerogative, largely within
22 the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S.
23 21, 34 (1982). In addition, "[t]he government has an obvious interest in
24 'protecting the public from dangerous criminal aliens.'" *Rodriguez Diaz*, 53
25 F.4th at 1208 (quoting *Demore*, 538 U.S. at 515). Here again, De Leon fails to
26 address this issue in any meaningful way or offer any probative evidence that
27 he is not likely to commit criminal acts if released. Thus, the record before the
28 court supports a finding that the government has a strong interest in De
Leon's continued detention.

27 *Id.* Similar to *De Leon*, ICE has a substantial interest in protecting the public from a
28 potential dangerous alien. In the face of this obvious concern, Petitioner provides no

1 objective evidence that would meaningfully support a contention that Petitioner is not likely
2 to commit criminal acts or flee if released.

3 In conclusion, Judge Navarro opined:

4 Weighing the three *Mathews* factors in light of the current record, the court
5 concludes that De Leon has received all of the due process protections to
6 which he is entitled at this time. For that reason, the court denies his claim
7 that he is entitled to habeas relief under the Due Process Clause.

8 *Id.* Similar to *De Leon*, the subject Petitioner has received all of the due process protections
9 to which he is entitled. Although, Respondents contend that the *Mathews* test is not even
10 applicable in a case such as the current case where Petitioner's detention, through removal,
11 is mandatory pursuant to statute, even applying the *Mathews* factors to the subject case does
12 not support the relief for which Petitioner now asks.

13 **V. CONCLUSION**

14 For the foregoing reasons, Federal Respondents respectfully request that the Court
15 deny the Petitioner's First Amended § 2241 Petition in total.

16 Respectfully submitted this 18th day of March 2026.

17 TODD BLANCHE
18 Deputy Attorney General of the United States
19 SIGAL CHATTAH
First Assistant United States Attorney

20 /s/ James R. Sweetin
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