IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JATINDER SINGH, PETITIONER, v. MARKWAYNE MULLIN, Acting Secretary; TODD LYONS, Acting Director of ICE; PAMELA BONDI, U.S. Attorney General; ROBERT GAUDIAN, Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement; RESPONDENTS.	Case No. 1:26-cv-1183 PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241, BY A PERSON SUBJECT TO UNLAWFUL DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

RESPECTFULLY SUBMITTED,

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INTRODUCTION

1. Petitioner, Jatinder Singh, is a native and citizen of India, who entered the United States without inspection on or about March 27, 2022. Petitioner flew his country to avoid persecution and came to USA. He is a hardworking man and a law-abiding citizen. Petitioner was released on his own recognizance by ICE and timely filed his Asylum application and obtained work authorization. His aging parents and two sisters are financially dependent upon him. He took care of them financially while supporting himself working as a truck driver.

2. Petitioner has been detained by the Department of Homeland Security (DHS) since 24th February, 2026, and is currently detained at the Denver Contract Detention Facility in Aurora, Colorado. DHS has not provided Petitioner with a bond, or a bond hearing, even though she/he is not a flight risk or a danger to the community.

3. The central issue presented by this habeas petition, like countless others nationwide, is straightforward: Are noncitizens like Petitioner, who are placed in removal proceedings after being encountered in the U.S. based on being present after entering without inspection (EWI), entitled to a bond hearing before a neutral adjudicator under 8 U.S.C. § 1226? Or, as the government now claims, are they subject to mandatory detention without any possibility of a bond hearing?

4. Petitioner's position affirms nearly three decades of settled agency practice and judicial interpretation.[1] The government's position, in stark contrast, asks this Court

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[1] *See e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA's decision to pivot from three decades of consistent statutory interpretation and call for

to adopt a radical reinterpretation of a thirty-year-old statutory scheme theory announced and taken by the agencies in the last couple months. This new theory would require the Court to believe that for thirty years, the agencies charged with administering these laws and the federal courts reviewing their actions have all profoundly misunderstood the statute's "plain language."

5. This Court need not indulge such a sweeping and unsupported revision of established law. Petitioner's interpretation is consistent with historical practice as well as the U.S. constitution. Moreover, Petitioner's positions are supported by reasoned, persuasive, and detailed analysis in decisions from multiple courts granting similar habeas petitions within this district[2] as well as throughout the Tenth Circuit[3], and the United States

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[Petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.").

[2] *See e.g., Garcia Abanil v. Baltazar*, No. 25-cv-04029- WJM-STV, 2026 WL 100587 (D. Colo. Jan. 14, 2026)("And '[a]s § 1225(b)(2)(A) applies only to those noncitizens who are actively 'seeking admission' to the United States, it cannot, according to its ordinary meaning, apply to [persons who have] already been residing in the United States for several years.'")(quoting *Lopez Benitez v. Francis,* 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025)); *Loa Caballero v. Baltazar,* 2025 WL 2977650, at *6 (D. Colo. Oct. 22, 2025)(finding § 1225(b)(2)(A) does not apply to noncitizens who have been present in the country and are not actively "seeking admission"); *Garcia Bautista v. Noem*, No. 26-CV-00272-NYW, 2026 WL 532427, at *3 (D. Colo. Feb. 26, 2026)(same); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-02720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025) (same); *Moya Pineda v. Baltasar*, No. 25-cv-02955-GPG, 2025 WL 3516291 (D. Colo. Oct. 20, 2025) (same); *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025) (same); *Florez Marin v. Baltazar*, No. 25-cv-03697-PAB, 2025 WL 3677019 (D. Colo. Dec. 18, 2025) (same); *Aleman Hernandez v. Baltazar*, No. 25-cv-03688-SKC-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025).

[3] *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021, at *1 (W.D. Okla. Dec. 22, 2025)(holding § 1226, not § 1225(b)(2)(A), applies to noncitizens who are not "actively seeking admission" and encountered in the interior of the country; *Perez v. Grant*, No. CIV-25-1560-R, 2026 WL 315065, at *1 (W.D. Okla. Feb. 5, 2026) (same); *Medina-Herrera, v. Noem.*, No. CIV-25-1203-J, 2025 WL 3460946, at *3 (W.D. Okla. Dec. 2, 2025) (same); *Ramirez Rojas v. Noem*, No. CIV-25-1236-HE, 2026 WL 94641 at *2 (W.D. Okla. Jan. 13, 2026) (same); *Urbina Garcia v. Holt*, No. CIV-25-1225-J, 2025 WL 3516071, at *4 (W.D. Okla. Dec. 8, 2025)(same); *Colin v. Holt*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025)(same); *Lopez v. Corecivic Cimmaron Corr. Facility*, No. CIV-25-1175-SLP, 2026 WL 165490, at *5 (W.D. Okla. Jan. 21, 2026)((collecting cases in this judicial district concluding that § 1225(b)(2) does not

recently.[4] The government's new novel position, meanwhile, stands in direct opposition to the overwhelming majority of courts.[5]

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govern the petitioner's detention); *Lopez-Romero v. Lyons*, No. 2:25-CV-01113-MIS-JHR, 2026 WL 92873, at *4 (D.N.M. Jan. 13, 2026)(" Noncitizens who entered the country years earlier are not considered to be 'seeking admission,' and therefore fall under § 1226 rather than § 1225(b)(2)(A)."); *Melchor-Rios v. Ortiz*, Case No. 2:25-cv-01055-WJ-GJF, 2025 WL 3764775, at *2 (D.N.M. Dec. 30, 2025) ("Whether the detention of individuals like Petitioner, who previously entered and currently reside in the United States, is governed by the discretionary detention provisions of § 1226(a) or the mandatory detention provisions of § 1225(b), is a question that has been answered in near-unison by district courts nationwide: § 1226(a) governs."); *Sacvin v. Anda-Ybarra*, No. 2:25-CV-01031-KG-JFR, 2025 WL 3187432, at *3 (D.N.M. Nov. 14, 2025)(finding § 1226 applicable to noncitizen encountered in the interior and reasoning that "[n]oncitizens 'seeking admission' are those who have not 'effected an entry' into the United States"); *Cortez-Gonzalez v. Noem,* 2:25-CV-00985-MLG-KK, 2025 WL 3485771, at *3 (D.N.M. Dec. 4, 2025) (same); *Velasquez Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025)(same).

[4] *See e.g., Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi, et al.,* No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025).

[5] *See e.g., Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025);*Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025)(agreeing on substantive claim but oddly not ordering any real relief in this decision);*Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et. al.*, No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *But see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026)(holding in a 2-1 panel decision that the government's position on the statutory interpretation of § 1225(b)(2)(A) is correct).

6. Critically, Petitioner's reading gives full effect to all the INA's provisions, including the statutory definitions given to the terms "admission," "admitted," and "application for admission" by Congress when IIRIRA was passed.[6] Meanwhile, the government asks the Court to ignore those definitions as well as circuit court precedent rejecting prior attempts by the government to ignore these definitions. Similarly, Petitioner's position harmonizes the statutes, regulations, decades of agency practice, and caselaw with the U.S. Constitution in a way that gives meaning to all the relevant provisions. Meanwhile, the government's interpretation renders that entire Laken Rile Act (LRA) superfluous, violating multiple constitutional provisions, decades of agency practice, and the most basic canons of statutory construction.

7. The government's continued detention of Petitioner without a bond hearing before an IJ is unlawful. This conclusion is difficult to doubt given decades of agency practice since the passage of IIRIRA in 1996. While the statutes at issue in this case have not changed in those decades, the agencies who administer them have. Drastically. In addition to the changes in the agencies administering the statutes, the decades since IIRIRA have seen countless provisions of the INA litigated ad nauseum and the entire first Trump presidency. Not once, however, did anyone ever suggest that all EWI aliens are subject to mandatory detention for the duration of removal proceedings.

8. For these reasons and those discussed below as well as in prior filings, Petitioner respectfully requests the Court grant his Motion for a Preliminary Injunction and

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[6] 8 U.S.C. §§ 1101(a)(4) and (a)(13)(A).

Habeas Petition, and as a result, order the government to either promptly provide him with a bond hearing before a neutral IJ or release him.

JURISDICTION

9. This case arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 500-596, 701-706.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

11. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et. seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States, Respondents and Petitioner reside in this District, Petitioner is detained in this District at the Denver Contract Detention Facility in Aurora, Colorado, and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.[7]

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[7] (Ex. 1 ICE Detainee Locator.)

THE NEED FOR IMMEDIATE CONSIDERATION IN ACCORDANCE WITH HABEAS CORPUS PURPOSE AND REQUIREMENTS

13. The writ of habeas corpus is "available to every individual detained within the United States."[8] "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody."[9] "Historically, 'the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.'"[10] "A district court's habeas jurisdiction," therefore, "includes challenges to immigration-related detention."[11]

14. Pursuant to 28 U.S.C. § 2243, a court may grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the respondents "forthwith."[12] If an order to show cause is issued, respondents should generally be required to file a return "within *three* days unless for good cause additional time . . . is allowed."[13]

15. This Motion is predicated on a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, a remedy that Congress and the courts have long recognized demands swift judicial review. Indeed, 28 U.S.C. § 2243 mandates an expedited show-cause response

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[8] *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2).

[9] *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

[10] *Vazquez v. Feeley,* No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001)).

[11] *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) and *Demore v. Kim*, 538 U.S. 510, 517 (2003)).

[12] 28 U.S.C. § 2243.

[13] *Id.* (emphasis added).

precisely because the petition's central claim is an ongoing, unlawful deprivation of liberty. It is axiomatic that the loss of liberty, even for a single day, constitutes profound and irreparable harm. Therefore, the failure to rule on the requested injunction within 14 days is not mere delay; it is a constructive denial of the motion itself. Each day of inaction inflicts the very irreparable injury the petition seeks to prevent, rendering the extraordinary remedy of habeas functionally meaningless and frustrating the "swift" relief that § 2243 requires.

PARTIES

16. Petitioner, Jatinder Singh, is a native and citizen of India who entered the United States without inspection. He was encountered by DHS in the interior of the United States and was detained without being provided a bond, or a bond hearing before a neutral IJ. Petitioner is currently detained at the Denver Contract Detention Facility in Aurora, Colorado.

17. Respondent Markwayne Mullin is the Acting Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

19. Respondent Todd Lyons is Acting Director and Senior Official Performing the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to removal procedures and the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

20. Respondent ROBERT GAUDIAN is the Director of the Denver Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. GAUDIAN is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She/He is named in her/his official capacity.

STATEMENT OF FACTS

21. Petitioner, Jatinder Singh, is a native and citizen of India, who entered the United States without inspection on or about March 27, 2022.

22. Petitioner flew his country to avoid persecution and came to USA.

23. Petitioner was arrested by ICE near San Luis, AZ US border by ICE and issued a Notice of Appear on March 31st, 2022.

24. Petitioner was released on his own recognizance by ICE on March 31st, 2022.

25. He timely filed his Asylum application with the Immigration Court, and his case was pending in Concord Immigration Court in California.

26. He later obtained work authorization. His aging parents and two sisters are financially dependent upon him. He took care of them financially while supporting himself working as a truck driver.

27. Petitioner timely filed Notice of Appeal with the Board of Immigration Appeals on May 23, 2025 after his Application for asylum was denied on May 15, 2025. The appeal is still pending and it may take several months or years to be decided.

28. On or about 24th February, 2026, Petitioner was stopped at the port of entry near Cheyenne, WY while driving a truck, and upon showing his Identification documents, he was arrested and placed in ICE custody for not having a US citizenship proof.

29. Petitioner has been detained by the Department of Homeland Security (DHS) since 24th February 2026 and is currently detained at the Denver Contract Detention Facility in Aurora, Colorado. DHS has not provided Petitioner with a bond, or a bond hearing, even though she/he is not a flight risk or a danger to the community.

30. Petitioner did not violate any law to cause his arrest. Nothing changed in terms of his prior release from the ICE custody.

31. DHS has not provided Petitioner with a bond, or a bond hearing. Petitioner's detention without a bond hearing is solely a result of its new interpretation of the relevant statutes and policy refusing to provide noncitizens who entered the United States without admission or parole with an opportunity for bond—regardless of whether she/he poses a danger or flight risk.

32. Petitioner does not have any criminal history. On the contrary, he has been a benefit to, and an active member of, his community. He in no way poses a danger. Accordingly, his continued detention is a violation of the constitution and relevant laws.

LEGAL FRAMEWORK

I. Overview of Relevant Constitutional Principles.

33. Congress may expand the protections granted by the Constitution through statute, but it cannot legislate away fundamental constitutional guarantees. The Fourth Amendment's protection against unreasonable seizures applies to all persons within the territory of the United States, including noncitizens. Immigration officials may not detain individuals encountered in the interior indefinitely or without probable cause; the Fourth Amendment simply does not permit it.

34. ""Longstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"[14] The law in this area is not grey. Rather, for decades, it has been "clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."[15] The clarity of the law in this area is bolstered by the statutes proscribing its arrest authority: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357. These statutes, "[c]ourts have consistently held," "must be read in light of constitutional standards, so that 'reason to believe' must be considered the

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[14] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce,* 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi,* 394 U.S. 721 (1969); *Terry v. Ohio,* 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York,* 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

[15] *Id* at 215.

equivalent of probable cause." [16] The "robust consensus of cases [and] persuasive authority" in this area makes it "beyond debate that an immigration officer . . . would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status."[17]

35. The Due Process Clause of the Fifth Amendment guarantees that no person in the United States shall be deprived of liberty without due process.[18] These substantive and procedural due process protections apply to all people, including noncitizens, regardless of their immigration status.[19] The Due Process Clause provides heightened protection against government interference with certain fundamental rights—and freedom from detention lies at the heart of the Due Process Clause's protections. For persons in the United States (even unlawfully), courts have found that noncitizens who have established a life here—albeit without authorization—possess a strong liberty interest in their freedom from detention.

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[16] *Id.* at 216-17 (citing *Au Yi Lau,* 445 F.2d at 222; *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.,* 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu,* 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana,* 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

[17] (*Id.*)

[18] U.S. Const. amend. V.

[19] *Trump v. J.G.G.*, 604 U. S. ---145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

36. The Supreme Court has explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

> The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. 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. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.[20]

37. In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the community.[21] Where no such justification exists detention without due process is unconstitutional.[22]

38. At the nation's borders, however, the constitution's protections are lowered, even nonexistent for those who are not in the U.S. (including those who are at the border still under the legal fiction of parole). The history of the INA, the constitution's protections as well as the lowered protections at or near the border, are reflected in the INA's statutory scheme.

II. Congress specifically defined the terms "Application for Admission," "Admission," and "Admitted," to leave no doubt that that one who is

[20] *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

[21] *Id.*

[22] *Id.*

"seeking admission" must be physically outside of the United States and asking to come in."

39. Post-IIRIRA, the term "admission" and "admitted," previously absent from the INA were added and defined at 8 U.S.C. § 1101(a)(13)(A), which provides:

> The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien *into the United States* after inspection and authorization by an immigration officer.

40. Meanwhile, the related term "application for admission" (also added by IIRIRA) defined at 8 U.S.C. § 1101(a)(4), provides: "The term 'application for admission' has reference to the application for admission *into the United States* and not to the application for the issuance of an immigrant or nonimmigrant visa."[23]

41. The terms "application for admission," "admission," and "admitted" all make Congress' intent clear: Admission cannot happen anywhere other than when at the proverbial door asking to come in. Circuit courts interpreting INA provisions referencing the definition of "admission" at 8 U.S.C. § 1101(a)(13), have explained:

> This definition "is limited and does not encompass a post-entry adjustment of status," because it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry."[24]

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[23] 8 U.S.C. § 1101(a)(4) (emphasis added).

[24] *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete–Ramirez,* 741 F.3d at 1051); *see also Papazoglou v. Holder,* 725 F.3d 790, 793 (7th Cir. 2013) ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes v. Holder,* 675 F.3d 380, 385 (4th Cir. 2012) ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez v. Mukasey,* 519 F.3d 532, 544 (5th Cir. 2008) (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status").

42. By explicitly defining these terms, the "work" of determining their meaning and the meaning of statutes using them has been done by Congress.[25] And in so doing, courts analyzing such provisions have rejected the government's claims that an admission can happen from within the United States.[26] This has been repeatedly affirmed by courts interpreting INA provisions containing these terms.[27]

43. Caselaw applying these definitions to other portions of the INA has left no doubt that the single most important requirement for an "admission" post-IIRIRA is being outside of the United States and passing through a Port of Entry (POE) after inspection by an immigration officer.[28] This is true even when the alien does not have documents giving them lawful status. Subsequent to IIRIRA the BIA and every circuit court to address the issue has concluded that "the terms 'admitted' and 'admission,' as defined in [§ 1101(a)(13)(A)], denote procedural regularity . . . rather than compliance with substantive legal requirements.'"[29] This means that even an alien who does not have valid documents

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[25] *Martinez*, 519 F.3d at 543-44.

[26] *See e.g. id.* (rejecting the government's argument that an alien's adjustment of status within the United States was the equivalent of "being admitted to the United States as an alien lawfully admitted for permanent residence" as that phrase is used in 8 U.S.C. § 1182(h)).

[27] *See generally Vartelas v. Holder*, 566 U.S. 257 (2012)(discussing IIRIRA's elimination of the entry doctrine through defining admission in 8 U.S.C. § 1101(a)(13) and the application of subparagraphs (C)(i)-(vi) to LPRs who, after a departure, are returning to the U.S. and seeking admission into it which it ultimately held violated the constitution's prohibition against retroactivity).

[28] *See Papazoglou*, 725 F.3d at 792-94 (defining "admission" to "encompass the action of an entry into the United States, accompanied by inspection or authorization.").

[29] *Matter of Quilantan,* 25 I. & N. Dec. 285, 290 (BIA 2010); *see also Martinez v. Att'y Gen.,* 693 F.3d 408, 414 (3d Cir.2012); *Sum v. Holder,* 602 F.3d 1092, 1096 (9th Cir.2010); *Emokah v. Mukasey,* 523 F.3d 110, 118 (2d Cir.2008).

allowing them to enter the United States, who is nonetheless waived through a POE by an immigration officer, has been admitted and is not an applicant for admission as defined by §1225(a)(1).[30] The determining factor is whether the alien is seeking to enter the United States from outside of the country.

44. Similarly, Petitioner is not "seeking admission" into the United States, because she/he was encountered within the United States, long after her/his entry.

III. Petitioner's intepretation harmonizes *Jennings*, the U.S. Constitution, INA, and its implementing regulations.

A. Dicta or not, the fact is the *Jennings* Court understood that § 1225(b)(2)(A) was applied at the border to those seeking admission into the U.S. and § 1226 to those already present—which was constitiutionally significant and allows for a harmonious reading of all the relevant statutes and regulations.

45. In *Jennings v. Rodriguez*, the Supreme Court acknowledged that 8 U.S.C. §§ 1225 (b)(1) and (b)(2) pertain to the detention of aliens seeking admission into the United States at a of Entry, and §§ 1226(a) and (c) pertain to aliens already in the country pending the outcome of removal proceedings.[31]

46. This finding by the Supreme Court was crucial to its ultimate decision. In order to determine whether the *Jennings* respondents were entitled to ongoing bond redeterminations every six months, the Supreme Court had to first identify which detention statute authorized their detention, then interpret and apply said statute to their cases. In so doing, they made the determination that 8 U.S.C. §§ 1225(b)(1) and (b)(2) *only* pertain to

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[30] *Id.*

[31] *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

aliens seeking admission into the United States at/near the border or Port of Entry.[32] Thus, Petitioner does not fall under the detention authority of 8 U.S.C. § 1225(b)(2) as the government alleges in Petitioner's case.

47. The Supreme Court's conclusions regarding the statute's interpretation and constitutionality relied heavily on the historically limited rights afforded to aliens at the country's borders. This was not an incidental assumption; the Supreme Court is fully cognizant of the limited constitutional rights at the border, and the government itself argued this precise distinction in support of its interpretation of § 1225(b)(2) and § 1226(a). During oral argument, Justice Breyer, for instance, pointed out the difficult task aliens faced regarding § 1225 due to it being applied at the border.[33]

48. Furthermore, there is no question the Supreme Court understood § 1226(a)—not § 1225(b)—to apply to aliens who entered without inspection (EWI) and were encountered *within* the United States (and not subject to expedited removal). For example, Justice Sotomayor asked the Solicitor General, "Clarifying question. For an alien who is found in the United States illegally, has not been admitted, are they held under 1225(b) or are they held under 1226(a)?"[34] The Solicitor General responded, "So they are held under – if they are not – if they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not (c).[35]

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[32] *Id.*

[33] (Transcript of Oral Arguments in *Jennings v. Rodriguez*.)

[34] (*Id.* at p. 7.)

[35] (*Id.* at pp. 7-8.)

49. Seeking further clarity, Justice Sotomayor posed a hypothetical of an EWI alien stating, "I'm talking about an alien who has come into the United States illegally without being admitted who takes up residence 50 miles from the border.""[36] Without hesitation, the Solicitor General confirmed: "The answer is they are held under 1226(a) and that they get a bond hearing under it - - and this is at page 156a of the appendix."[37]

50. The simple reality is that the Supreme Court and all the litigants in *Jennings* recognized that 8 U.S.C. § 1225 is a statute applicable at or near the border where the warrant requirement of the Fourth Amendment and the Due Process Clause of the Fifth Amendment have little or no application. This finding is supported by the historical interpretation and application of §§ 1225(b)(2) and 1226(a), and harmonizes the statutes with other INA provisions and regulations.

51. The application of § 1225 at POEs and at/near the border is obvious. The placement of § 1225 strongly supports its border-centric application. It is preceded by statutes plainly applying at POEs: § 1221 (arrival/departure manifests), § 1222 (detention and health examinations of arriving aliens), § 1223 (contracts with transportation companies regarding arriving aliens), and § 1224 (designation of POEs for aircraft). It is immediately followed by § 1225A, governing pre-inspection at airports. Simply put, § 1225 is surrounded by statutes that obviously apply at the borders and POEs.

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[36] (*Id.* at p. 8.)

[37] (*Id.* at p. 8-9.)

52. Furthermore, the statute's implementing regulations affirm this understanding. The very first section, 8 C.F.R. § 235.1(a), states: "Generally. Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section." The subsequent regulatory sections under 8 C.F.R. § 235 *et. seq.* consistently address procedures at the point of entry. Furthermore, most of the implementing regulations have to do with airports, vessels, and other things that are clearly taking place at the border.

53. The Supreme Court recognized this when determining that §1225 only applies to applicants for admission at/near the border or at a POE. This not merely dicta.

B. Harmonization with other regulations/statutes.

54. As evidenced below, Petitioner's position—not the government's—serves to harmonize that the Supreme Court's holding and dicta in *Jennings,* the U.S. constitution, INA, and its implementing regulations.[38] Among other things, this is demonstrated by looking at the main real world application of § 1225 along with other provisions of the INA.

55. For example, millions of foreign nationals arrive at United States POEs annually, seeking entry.[39] In 2022 for example, DHS granted approximately 97 million

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[38] *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

[39] (*See* App. Ex. 3 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.)

admissions into the U.S., with an estimated 45 million of those admissions being nonimmigrants who were issued an I-94.[40]

56. Upon arrival, every such individual, regardless of their documentation, is legally deemed an "applicant for admission" pursuant to 8 U.S.C. § 1225(a)(1). This foundational statute, which governs the inspection procedures at all POEs, defines an "applicant for admission" as either "[1] An alien present in the United States who has not been admitted or [2] who arrives in the United States..." 8 U.S.C. § 1225(a)(1).

57. The inspection process mandated by 8 U.S.C. § 1225 functions as a critical sorting mechanism, resulting in one of three primary outcomes. First, an inspecting officer may determine that the alien possesses valid, unexpired documents and is admissible, thereby admitting them into the United States.

58. Or, if the officer determines the alien is inadmissible either for seeking entry through fraud or material misrepresentation (8 U.S.C. § 1182(a)(6)(C)) or for lacking valid entry documents (8 U.S.C. § 1182(a)(7)), the alien will be subject to expedited removal (ER) pursuant to 8 U.S.C. § 1225(b)(1). The alien is subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A). This is a summary process intended to be completed in a matter of hours, if not minutes, prior to entrance into the United States and the attachment of any liberty interests. Issued without anything resembling a hearing or process, the ER order is issued on a single page I-860.

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[40] (*Id.*)

59. The third outcome encompasses all "other aliens" specified in § 1225(b)(2)(A). These are applicants whom the inspecting officer does not believe to be admissible based on one of the grounds of inadmissibility set forth in § 1182 (other than § 1182(a)(6)(C) or § 1182(a)(7)).[41] Every one of the grounds of inadmissibility in § 1182—*except EWI*—may be applicable at the POEs, and therefore, may result in a referral to § 1229a proceedings.

60. In sum, far from a "detention" statute, § 1225 is the precise mechanism by which millions of applicants for admission arriving at the POEs are inspected, admitted, referred for proceedings, or summarily removed every year.

61. Additionally, a finding that § 1225 only applies at the border/POEs further explains, and harmonizes, the different rights afforded to aliens encountered in the interior of the United States, versus those encountered at/near the border.

62. As noted above, aliens who are subject to expedited removal under § 1225(b)(1) have no right to a hearing before an IJ or § 1229a proceedings. However, the overwhelming majority of all other aliens encountered within the United States are entitled to be placed in § 1229a proceedings before an IJ, and have the opportunity to seek relief from removal.

63. EWI aliens, encountered within the United States, may be placed in removal proceedings in a variety of ways, the most common of which is being encountered by ICE. Once ICE encounters the alien, they will detain them and then process them for § 1229a

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[41] 8 U.S.C. § 1225(b)(2)(A)

removal proceedings. These arrests are subject to the Fourth Amendment and require a warrant. Indeed, 8 U.S.C. § 1357 provides certain officers with the authority to make an arrest under circumstances which parallel established exceptions to the Fourth Amendment's warrant requirement, but such arrests must be followed by the issuance of a warrant by an official who has been given such authority.[42] Either way, a warrant is required to arrest any alien encountered within the interior of the United States.

64. To this end, 8 U.S.C. § 1226(a) applies to noncitizens already in the Country and authorizes the arrest and detention of noncitizens, *pursuant to a warrant,* for the purpose of removal proceedings under 8 U.S.C. § 1229a.[43]

65. Further evidence that the proper interpretation of 8 U.S.C. § 1225 only applies to those aliens at the border/POE is the differing burdens of proof placed on aliens in removal proceedings.

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[42] The first two paragraphs of 8 U.S.C. §1357(a), titled "Powers without warrant" expressly provide:

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant— (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States; (2) to arrest *any alien who in his presence or view is entering or attempting to enter the United States* in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.

U.S.C. § 1357(a)(1)-(2)(emphasis added).

[43] *See Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025) ("In *Jennings*, the Court explained that § 1225(b) governs 'aliens seeking admission into the country' whereas § 1226(a) governs 'aliens already in the country' who are subject to removal proceedings.")(quoting *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

66. Specifically, § 1229a(c)(3) allocates the burden on the government to prove removability in cases involving "deportable" aliens (i.e. aliens charges under § 1227); meanwhile, aliens in removal proceedings under § 1182, have the burden pursuant to § 1229a(c)(2), which states.

> In the proceeding the alien has the burden of establishing—(A) if the alien is an *applicant for admission*, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title; or (B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission."[44]

67. It is helpful to consider (c)(2) part (A) versus (B) in context. Paragraph (A), by its very terms applies to an alien who is arriving and seeking to be admitted, but is alleged to be inadmissible, *at the POE*. Said differently, this option is plainly for those arriving aliens referred to as "other aliens" in § 1225(b)(2)(A) seeking admission who are referred for removal proceedings under § 1229a.

68. Paragraph (B) on the other hand, turns on the alien's physical presence in the United States. The language of the statute acknowledges the difference between an alien seeking admission at the border, versus aliens already present here in the United States, and therefore, does not ask that those already present demonstrate they should be admitted. Instead, aliens already in the United States would only be successful in denying they are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) if they can demonstrate they were previously admitted. Admission, after all, cannot take place anywhere but from the outside coming in.

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[44] 8 U.S.C. § 1229a(c)(emphasis added).

69. In acknowledgment of this distinct difference in treatment, the government has, for decades, considered EWI aliens placed in § 1229a removal proceedings to be subject to bond. Since the passage if IRRIRA, it has consistently been agency policy to provide bonds and/or bond hearings to EWI aliens placed in § 1229a removal proceedings, who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2). [45] Indeed, Section 1226(a) applies by default to all persons already in the United States who are "pending a decision on whether the [noncitizen] is to be removed from the United States."

70. When the provisions related to inspection, expedited removal, and removal proceedings before an IJ were amended by IIRIRA, Congress clarified "the amendment of § 1226(a) simply "restate[d]" the detention authority previously found at § 1252(a) "to arrest, detain, and release on bond an alien who is not lawfully in the United States."[46] Meanwhile, the amendments did not disturb "the existing mandatory detention scheme for noncitizens arriving in the U.S. without a clear right to admission and expanded the scope of" expedited removal to "include certain recently arrived noncitizens."[47] These amendments and the statutory scheme simply "reflected [Congress'] understanding of

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[45] *See* 8 U.S.C. § 1229(b)(2); Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection). ("[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond.").

[46] *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996) and H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.).

[47] *Id.*

longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving."[48]

71. Thus, the only interpretation that makes sense in harmonizing all of the relevant regulations, is that Congress intended § 1225(a)(2) to apply to aliens encountered at/near the border, and § 1226(a) applies to those encountered within the interior of the United States.

IV. The Attorney General—not the Secretary of DHS or ICE Director—has always had the authority to vacate, redetermine, and change ICE's initial bond decision—8 U.S.C. § 1103(g) leaves no doubt that this remains true—even after the Homeland Security Act.

72. It is he historical and statutory framework governing immigration custody leaves little doubt that 8 U.S.C. § 1226's reference to Attorney General was not meant to be replaced by DHS Secretary following the passage of the Homeland Security Act (HAS). Indeed, the history and statutes demonstrate that EOIR retains independent authority to review detention determinations. Upon the passage of IIRIRA, the former INS and EOIR maintained a distinct separation between prosecutorial and adjudicative functions.[49] This division was explicitly preserved by the Homeland Security Act of 2002. Under 8 U.S.C. § 1103(g), the Attorney General retains all "authorities and functions" that were exercised by EOIR prior to the creation of the Department of Homeland Security (DHS).[50] This

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[48] *Id.* (citing H.R. Rep. No. 104-469, p. 1, at 163-66 (recognizing the "constitutional liberty interest[s]" of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing *Knauff v. Shaughnessy*, 338 U.S 537 (1950)).

[49] (App. Ex. 1 – Federal Register / Vol. 68, No. 40 / Friday, February 28, 2003 / Rules and Regulations, pp. 9824 – 9828.)

[50] 8 U.S.C. § 1103(g).

"savings clause" ensures that the transfer of enforcement power to the DHS Secretary did not strip the Attorney General—and by extension, Immigration Judges—of the fundamental power to review administrative determinations and prescribe forms of bond.[51]

73. While 8 U.S.C. § 1226 provides the general statutory basis for the arrest and detention of noncitizens, it is the implementing regulations that define the vesting of custodial authority. Pursuant to 8 C.F.R. §§ 1003.19 and 1236.1, the responsibility for the initial custody determination rests with DHS; however, the power to review, redetermine, and ultimately vacate those decisions is vested in the Immigration Judge. This regulatory structure creates a shared authority where the "final say" remains with the adjudicative body. For noncitizens in § 1229a proceedings—specifically those not excluded by § 1003.19(h)(2)—the right to a bond redetermination hearing is not a matter of agency discretion, but a regulatory mandate that the Executive Branch is bound to follow.

74. To date, Petitioner is unaware of any decisions directly acknowledging the existence of, much less the significance of, 8 U.S.C. § 1103(g)'s savings clause and the fact that reference to the Attorney General in § 1226 cannot be assumed as being replaced with the Secretary of DHS following the HSA.

75. Furthermore, it surely goes without saying that the ICE director—a significant ways down from the Secretary of DHS on the DHS organizational chart—may not unilaterally determine which classes of noncitizens are eligible for bond hearings before an IJ who is an employee of DOJ.

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[51] *Id.*

76. To date, Petitioner is unaware of ICE, DHS, or DOJ claiming that they have changed, altered, or otherwise intended an actual change to the validly promulgated regulations. Accordingly, this is not controlled by the APA and this claim is not an APA claim. Rather, this claim rests on the fact that the government does not claim it altered the regulations and there is no argument Petitioner is aware of that would justify simply ignoring the implementing regulations or supplanting the Attorney General's powers that existed prior to the HSA and/or over immigration removal proceedings. Accordingly, Petitioner's claim is that both ICE and EOIR are ignoring and refusing to fulfill their obligations under the implementing regulations. Allowing an internal memorandum or an ICE Director's policy to override properly promulgated regulations would be an *ultra vires* act.

V. The default rule is that aliens encountered in the U.S. and placed in § 1229a removal proceedings are, at any point prior to the entry of a final order of removal, entitled to a bond hearing before an IJ unless one of the exceptions set forth in 8 C.F.R. § 1003.19(h)(2) applies.

77. Pursuant to the INA, its implementing regulations, and decades of consistent agency practice, aliens placed into full § 1229a proceedings who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) are entitled to a bond hearing before an IJ. Indeed, Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States."***When the provisions related to inspection, expedited removal, and removal proceedings before an IJ were amended by IIRIRA, Congress clarified "the amendment of § 1226(a) simply "restate[d]" the detention authority previously found at § 1252(a) "to arrest, detain, and

release on bond an alien who is not lawfully in the United States."[52] Meanwhile, the amendments did not disturb "the existing mandatory detention scheme for noncitizens arriving in the U.S. without a clear right to admission and expanded the scope of" expedited removal to "include certain recently arrived noncitizens."[53] These amendments and the statutory scheme simply "reflected [Congress'] understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving."[54]

78. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, EWI aliens, while applicants for admission, are detained for § 1229a proceedings under § 1226(a).[55] Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible.[56]

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[52] *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996) and H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.).

[53] Id.

[54] *Id.* (citing H.R. Rep. No. 104-469, p. 1, at 163-66 (recognizing the "constitutional liberty interest[s]" of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing *Knauff v. Shaughnessy*, 338 U.S 537 (1950)).

[55] *See id.* ("The EOIR's regulations drafted following the enactment of the IIRIRA explained this distinction.") (citing Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection).

[56] *Id.* ("[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond.").

79. This, as every agency administering the INA and immigration attorney practicing when IIRIRA was passed knows, is nothing more than the obvious conclusion from the INA's statutory scheme (post-IIRIRA), the implementing regulations, and their actual application in millions of § 1229a proceedings for decades.

VI. Superfluous Language

80. The government's new (unlawful) interpretation of § 1225(b)(2)(A) deems multiple other provisions of the INA and its implementing regulatoins superfluous.[57]

81. For decades, noncitizens in removal proceedings found in the U.S., who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2), were able to request a bond hearing and obtain a bond from an IJ.[58] An illustration of the provisions in § 1226(c) and 1003.19(h)(2)(i) that are rendered superfluous under the government's new (incorrect) interpretation of § 1225(b)(2)(A) can be seen below:

> 8 U.S.C. § 1226(c): Detention of criminal aliens (1) Custody The Attorney General shall take into custody any alien who-- ~~**(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,**~~ **(B)** is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, **(C)** is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[1] to a term of imprisonment of at least 1 year, **(D)** is ~~inadmissible under section 1182(a)(3)(B)~~ of this title or deportable under section 1227(a)(4)(B) of this title, or ~~**(E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny,**~~

[57] *Buenrostro-Mendez v. Bondi*, 2026 WL 323330, at *504-505.

[58] *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3-4 ("Until DHS and DOJ adopted the policy described below, the longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to noncitizens like Petitioner, who entered the U.S. without inspection and were apprehended while residing in the U.S.").

~~shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.~~[59]

8 C.F.R. § 1003.19(h)(2)(i): ~~(A) Aliens in exclusion proceedings; (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act;~~ (C) Aliens described in section 237(a)(4) of the Act; (D) Aliens in removal proceedings subject to section 236(c)(1) of the Act . . .; and (E) Aliens in deportation proceedings subject to section 242(a)(2) of the Act.

82. One need not look any further than 8 C.F.R. § 1003.19(h)(2)(iii)(B) to see that the statutory and regulatory scheme was always intended to give Immigration Judges jurisdiction to grant bond to most noncitizens falling under the definition of "applicant for admission." This is demonstrated by the fact that the regulations governing an Immigration Judge's bond jurisdiction explicitly strip the Judge of authority over "arriving aliens" which are a subset of noncitizens who fall under the definition of "applicants for admission."[60] Specifically, 8 C.F.R. § 1.2 defines an arriving alien as:

> Arriving alien *means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry*, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section [§ 1182(d)(5)] of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section [1225(b)(1)(A)(i)] of the Act.[61]

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[59] 8 U.S.C. § 1226(c)(1)(E).

[60] 8 C.F.R. § 1003.19(h)(2)(iii)(B).

[61] 8 C.F.R. § 1.2 (emphasis added).

83. If, as the government now contends, every noncitizen who is an "applicant for admission" is subject to mandatory detention for bond purposes, there would have been no need for a regulation stating immigration judges do not have jurisdiction to grant "arriving aliens" a bond.

84. Petitioner is not an "arriving alien"; nor is he subject mandatory detention under § 1225(b). Rather, she/he is an alien arrested within the United States and detained under 8 U.S.C. § 1226(a).

85. Recently, countless courts have repeatedly pointed out that under the government's new theory, the Laken Riley Act (LRA) is completely devoid of any meaning, as every person described in § 1226(c)(1)(E)(i) was already subject to mandatory detention under the government's new interpretation of § 1225(b)(2)(A).[62] Congress, therefore, would have enacted a statute that accomplished nothing. It is a foundational principle of statutory construction that courts must "give effect, if possible, to every clause and word of a statute,"[63] and must avoid interpretations that render statutory language superfluous.[64] The government's position violates this canon in the most profound way, effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted

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[62] *See e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.").

[63] *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

[64] *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013).

§ 1226(c)(1)(E) precisely because being EWI or an "applicant for admission" alone *does not* trigger mandatory detention.[65]

APPLICATION OF THE RELEVANT LEGAL FRAMEWORK

I. DHS in Conjunction with the Immigration Court Take New Position Interpreting 8 U.S.C. § 1225(b)(2)(A) to Subject Every EWI NonCitizen to Mandatory Detention (i.e. Bond Hearings No Longer Provided for EWIs).

86. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.[66]

87. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[67] claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The "policy" ICE announced applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.[68]

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[65] Another (of many) applicable cannons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled "Mandatory detention," explicitly states that noncitizens found *not* to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

[66] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

[67] *Id.*

[68] *Id.*

88. On September 5, 2025, the BIA issued a decision in *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which acted as a rubberstamp to the new DHS interpretation taken in "conjunction with" the immigration courts.[69] The decision claimed to simply be interpreting the "plain language" of 8 U.S.C. § 1225(b)(2)(A) which states,

> [I]n 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 [noncitizen] shall be detained for a proceeding under section 1229a of this title.[70]

89. The BIA's reasoning per *Hurtado* is that the plain language above means every "applicant for admission . . . shall be detained for" removal proceedings.[71] But as several district courts have already pointed out:

> the government's "interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.[72]

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[69] *Matter of Hurtado,* 29 I&N Dec. 216.

[70] § 1225(b)(2)(A) (emphasis added).

[71] *Hurtado*, 29 I&N Dec. at 219.

[72] *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) ; s*ee also*, *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d ——, ——, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, — F.Supp.3d ——, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, — F.Supp.3d ——, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, — F.Supp.3d ——, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025).

II. The Statutory and Regulatory Framework of the Entire Act Demonstrates the Government's New Position is Simply Untenable Under Any One of Many Cannons of Statutory Construction

90. The government's new position hinges on a simplistic and overbroad reading of § 1225(b)(2)(A) and the definition of "applicant for admission" found in § 1225(a)(1).[73] More specifically, the government takes the definition of applicant for admission in (a)(1), and leaps to the conclusion that all such applicants for admission must be "seeking admission," and therefore, subject to detention under § 1225(b)(2)(A) regardless of when or where they are encountered.[74] This interpretation ignores the careful distinctions drawn throughout the INA and its implementing regulations.

91. As an initial matter, *Hurtado* ironically claims to read the plain language of § 1225(b)(2)(A), but as many courts have pointed out the BIA only reaches its conclusion by omitting "plain language" contradicting its interpretation. Specifically, to be subject to § 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted."[75] The second element of Sec. 1225(b)(2)(A)—which requires that he be *seeking admission*—is not met in the case of EWI aliens who are found miles away from the land border and years after their entry.

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[73] *See Hurtado*, 29 I&N Dec. at 216-220.

[74] *Id.*

[75] 8 U.S.C. § 1225(b)(2)(A); *see also Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

92. As explained above, Congress left no room to dispute that an admission may only take place at a designated POE when asking to enter after inspection by an immigration officer. Accordingly, EWI aliens, like Petitioner, cannot be said to be *seeking admission* when arrested and detained in the interior well after entering. Rather, consistent with pre-IIRIRA detention provisions and decades of agency action, § 1225(b)(2) only implicates noncitizens who are "*seeking admission*" into the United States.[76]

93. The government's position not only asks the Court to ignore the definitions given to "admission" in the INA, as well as the decisions from most circuits, including the Fifth Circuit, making it clear that those definitions—requiring a very specific event at the threshold of the country—must be applied where they appear throughout the INA.[77]

94. To ignore the defined terms as well as the plain language in which they are used, which limits the application of 8 U.S.C. § 1225(b)(2) to noncitizens seeking admission into the United States, is to not give effect to the meaning of words and to make the words included in the statute superfluous.[78] It would violate the most basic of interpretive canons, which is that "'[a] statute should be construed so that effect is given to

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[76] *Id.*

[77] *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete–Ramirez,* 741 F.3d at 1051); *see also Papazoglou,* 725 F.3d at 793 ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes,* 675 F.3d at 385 ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez,* 519 F.3d at 544 (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status")

[78] *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009).

all its provisions, so that no part will be inoperative or superfluous, void or insignificant ...."[79]

95. The statutory use of the present and present progressive tenses—"is an applicant for admission" "seeking admission"—excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States.[80] Throughout the country district courts have agreed with this plain reading, which gives effect to the meaning of each word, holding that 8 § 1225(b)(2)(A) must be read to apply only to noncitizens who are apprehended while seeking to enter the country, and that noncitizens already residing in the United States, including those who are charged with inadmissibility, continue to fall under the discretionary detention scheme in § 1226.[81]

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[79] . *Id.* (citing *Hibbs v. Winn,* 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp.181–186 (rev. 6th ed.2000)).

[80] *See Martinez v. Hyde,* 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *accord Lopez Benitez v. Francis*, 2025 WL 2371588, at *6–7 (S.D.N.Y. Aug. 13, 2025). *See also United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in 8 U.S.C. Sec. 1225 (1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

[81] *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 779 F. Supp. 3d 1239, 1256–59 (W.D. Wash. 2025) (granting preliminary injunction prohibiting I.J.s from denying bond to individuals apprehended in the interior based on INA § 1225(b)(2)); *see also Gomes v. Hyde*, 2025 WL 1869299 at *6-7 (D. Mass. July 7, 2025) (relying on statutory structure and Laken Riley Act amendments to § 1226 to find that recent entrant re-detained on a warrant was not subject to § 1225(b)(2)); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6–8 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025); *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *8–10 (D. Ariz. Aug. 11, 2025); *Aguilar Maldonado v. Olson*, 2025 WL 2374411, at *11–13 (D. Minn. Aug. 15, 2025); *accord Castillo Lachapel v.*

96. Further support for the overwhelming conclusion reached by courts can be found in various statutes proscribing various arrest and detention authorities depending on the circumstances.[82]

III. The bond and detention provisions rendered superflous by the government's new interpretation

97. For decades, noncitizens in removal proceedings found in the U.S. who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) were able to request a bond hearing and obtain a bond from an IJ.[83] As discussed above and by numerous courts, the government's new position renders numerous provisions of the INA completely meaningly.[84] Significantly, this includes provisions enacted as part of IIRIRA at the exact same time as § 1225(b)(2)(A). Congress, therefore, would have enacted statutes simultaneous with § 1225(b)(2)(A) (e.g. § 1226(c)(1)(A)) and more than twenty-five years later (e.g. LRA) that accomplished literally nothing. It is a foundational principle of

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Joyce, 2025 WL 1685576, at *2 (S.D.N.Y. June 16, 2025) (parties agreed that a person who had entered without inspection and was arrested in the interior was detained under § 1226(a)).

[82] *See* 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357; *see also United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) ("Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .") (internal citations omitted); United States v. Cotterman, 637 F.3d 1068, 1076 (9th Cir. 2011) ("[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine" exempting border searches and seizures from the Fourth Amendment's warrant requirement. "It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border."

[83] *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3-4 ("Until DHS and DOJ adopted the policy described below, the longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to noncitizens like Petitioner, who entered the U.S. without inspection and were apprehended while residing in the U.S.").

[84] *See e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.").

statutory construction that courts must "give effect, if possible, to every clause and word of a statute,"[85] and must avoid interpretations that render statutory language superfluous.[86] The government's position violates this canon in the most profound way, effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted § 1226(c)(1)(E) precisely because being EWI or an "applicant for admission" alone *does not* trigger mandatory detention.[87]

IV. PETITIONER'S DETENTION VIOLATES THE FOURTH AMENDMENT AND DUE PROCESS

98. As stated earlier, the Fourth Amendment applies to all seizures of a person, no matter how brief. Caselaw has "clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."[88] A "robust consensus of cases [and] persuasive authority" in this area makes

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[85] *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

[86] See Marx v. Gen. Revenue Corp., 568 U.S. 371, 385 (2013).

[87] Another (of many) applicable cannons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled "Mandatory detention," explicitly states that noncitizens found *not* to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

[88] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce,* 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi,* 394 U.S. 721 (1969).

it "beyond debate that an immigration officer . . . would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status."[89]

99. The Supreme Court, in *Zadvydas v. Davis*, explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

> The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. 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*. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance. [90]

100. Moreover, *Zadvydas* left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the community.[91] Where no such justification exists detention without due process is unconstitutional.[92]

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[89] *Id.* at 216-17 (citing *Au Yi Lau,* 445 F.2d at 222; *see, e.g.,* Tejeda–Mata v. Immigration & Naturalization Serv., 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu,* 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also* United States v. Quintana, 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

[90] *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

[91] *Id.*

[92] *Id.*

101. Despite the abundantly clear requirements of the Fourth Amendment, the government now argues that a statute with no warrant requirement (8 U.S.C. § 1225(b)(2)), historically applied at or near the border, allows DHS to arrest or detain aliens in the interior of the United States without any concern for the Fourth Amendment's protections. This is woefully incorrect, and has resulted in repeated violations of the Fourth Amendment by Respondents.

102. As applied to Petitioner's case, Petitioner must have been seized without a warrant or a probable cause finding by an appropriate official—after all, the *Jennings* decision specifically pointed out that it would "make[] little sense" to "detain an alien without a warrant at the border" under § 1225(b)(2)(A) and then require a warrant to be issued when they are placed in removal proceedings.[93] Said differently, the government has represented and is likely to respond to this petition by claiming that Petitioner is currently detained under § 1225(b)(2)(A), and therefore, it would make little sense that a warrant would be issued. The arrest therefore constituted an unreasonable seizure in violation of the Fourth Amendment.

103. Alternatively, should the government argue that a warrant was issued, then there can be no doubt that Petitioner is not detained under § 1225(b)(2)(A), but is plainly detained under § 1226. In such a case, there can be no doubt that the failure to provide a bond hearing under the implementing regulations constitutes a due process violation and an indisputable violation of the relevant agencies' regulations. Said differently, it is

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[93] *Jennings v. Rodriguez*, 583 U.S. 281, 302, (2018).

Petitioner's position that the warrant issueis a proverbial Catch-22 for the government: Either claim a warrant was not issued conceding a clear Fourth Amendment violation under long standing jurisprudence that *Jennings* certainly cannot be said to have overruled, or claim a warrant was issued in which case there can be no question that Petitioner's detention is under § 1226.

V. Lack of Notice in Violation of Due Process

104. The Fifth Amendment prevents arbitrary deprivation of liberty. In arresting Petitioner, ICE deprived Petitioner of any procedural protections.

105. "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty, or property by adjudication be *preceded* by notice and opportunity for a hearing appropriate to the nature of the case."[94] ***In Petitioner's case, this was not done. Petitioner was arrested and detained without any notice as to the basis of his detention, without any allegations of his being a danger or flight risk, and without an opportunity for a hearing on these issues. Thus, as applied, his due process rights were violated, and continue to be.

VI. DHS has consistently treated Petitioner as though they are subject to § 1226, and therefore, have created a liberty interest that cannot be abrogated by the government unilaterally deciding to "switch tracks."

106. Significantly, every DHS created, authored, and signed document issued in conjunction with Petitioner's encounter with DHS explicitly cited § 1226 for authority;

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[94] *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)(emphasis added).

meanwhile, § 1225 is not referenced anywhere in any of those documents. Nonetheless, the government now attempts to switch Petitioner's detention to being under § 1225. This attempted switch is not new to this case. Indeed, it seems to be an argument attempted by the government—and rejected by courts—from coast to coast.[95]

107. Courts faced with such arguments from the government in cases where DHS had previously consistently treated the alien as being subject to § 1226 have rejected this purported switching. In so doing, courts have explained that "settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2)."[96] In this context, courts have also found DHS' prior treatment of an alien as though they are subject to § 1226 has resulted in concluding such an alien "enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply "switching tracks."[97]

VII. Even if *Hurtado* were decided correctly (which it was not), it still would be unlawful to detain Petitioner under the new interpretation as it constitutes an expansion amounting to a new rule which cannot be applied retroactively under longstanding Supreme Court and Circuit precedent.

108. Respondent's detention of Petitioner is also unlawful because it is based on an Ex Post Facto rule change that has been impermissibly applied retroactively to Petitioner's conduct: i.e. entering the United States without inspection. A statute, order, or

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[95] *See e.g. Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Patel v. Crowley,* No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025).

[96] *Patel v. Crowley,* No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

[97] *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025) (cleaned up).

edict "operates retroactively" when it seeks to impose "new legal consequences to events completed before its" announcement.[98] "[I]n service of the due process interests of 'fair notice, reasonable reliance, and settled expectations,' the law applies a presumption that new legislation governs only prospectively."[99] "This presumption serves an important equal protection interest too, preventing the state from singling out disfavored individuals or groups and condemning them for past conduct they are now powerless to change."[100]

109. Based on "familiar considerations of fair notice, reasonable reliance, and settled expectations," the retroactivity doctrine does not permit the new rule/interpertation of § 1225(b)(2)(A) and § 1226 to be applied to Petitioner.[101] In the immigration context, where the stakes of deportation are immense, the Supreme Court has been particularly vigilant in guarding against the retroactive application of laws that alter the legal consequences of past actions.

110. Courts adressing the issue of retroactivity in the context of agency interpretations/rules have explained that "precedent on administrative retroactivity instructs that 'retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.'"[102] The Tenth

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[98] *De Niz Robles v. Lynch*, 803 F.3d 1165, 1168 (10th Cir. 2015)(quoting *INS v. St. Cyr,* 533 U.S. 289, 321 (2001)).

[99] *Id.* at 1169 (quoting *Landgraf v. USI Film Prods.,* 511 U.S. 244, 270 (1994)).

[100] *De Niz Robles*, 803 F.3d at 1169.

[101] *Vartelas v. Holder*, 566 U.S. 257, 266 (2012) (quoting *INS v. St. Cyr*, 533 U.S. 289, 323 (2001)).

[102] *Faudoa-Gonzalez v. Barr*, 836 F. App'x 242, 246–47 (5th Cir. 2020)(quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947)).

Circuit has explained that, in the context of an agency decision or rule, to determine "whether to permit retroactive agency action . . . [courts] 'weigh' the costs the petitioner would encounter against the benefits the agency would enjoy."[103] This analysis asks the Court to determine whether the retroactive application of a new agency rule/interpretation "contravenes basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'"[104]

111. In *INS v. St. Cyr*, the Supreme Court held that the repeal of a form of discretionary relief from deportation could not be applied retroactively to individuals who had pleaded guilty to criminal offenses at a time when that relief was available.[105] The Court emphasized that "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly."[106]

112. Similarly, in *Vartelas v. Holder*, the Court found that an amendment to the INA that broadened the definition of who is "seeking admission"—thereby subjecting certain returning lawful permanent residents to new grounds of inadmissibility—could not

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[103] *De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015).

[104] *Monteon-Camargo v. Barr*, 918 F.3d 423, 430-31 (5th Cir. 2019) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

[105] *St. Cyr*, 533 U.S. at 325.

[106] *Id.* at 321.

be applied to an individual whose conviction predated the statutory change.[107] The Court reasoned that to do so would "attach a new disability, in respect to transactions or considerations already past."[108]

113. This principle against retroactivity extends not only to statutory amendments but also to new judicial interpretations of existing law that dramatically shift the legal landscape.[109] In 2015 and again in 2016, the Tenth Circuit held that the retroactivity doctrine prevented the retroactive application of a BIA decision providing a new interpretation of an INA provision which significantly changed who was eligible to adjust status. Specifically, in both *De Niz Robles v. Lynch* and *Gutierrez-Brizuela v. Lynch*, the Tenth Circuit held the BIA's decision in *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007) could not be applied to a noncitizens past conduct of entering the country without inspection.[110]Like the Tenth Circuit, the United States Court of Appeals for the Fifth Circuit, has applied the retroactivity doctrine to BIA decisions that drastically change prior practice/understandings. Specifically, in in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), it addressed the retroactive application of the Board of Immigration Appeal's

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[107] *See generally Vartelas*, 566 U.S. 257.

[108] *Id.* at 266 (internal quotation marks omitted).

[109] *See e.g., De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015) (holding a BIA decision interpreting a post-IIRIRA INA provision in a manner that significantly altered/changed who is eligible for adjustment of status could not be applied retroactively); *see also Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1147 (10th Cir. 2016)(same)

[110] *See e.g., De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015) (holding a BIA decision interpreting a post-IIRIRA INA provision in a manner that significantly altered/changed who is eligible for adjustment of status could not be applied retroactively); *see also Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1147 (10th Cir. 2016)(same).

decision in *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) which significantly expanded the scope of what constitutes a "crime involving moral turpitude" (CIMT). The court conducted a balancing test, weighing the "ills of retroactivity against the disadvantages of prospectivity" and found that the frustration of the parties' expectations outweighed any benefit of retroactive application.[111]

114. This consistent and robust body of case law establishes a clear rule: new statutory provisions or judicial interpretations that impose new, adverse immigration consequences for past conduct cannot be applied retroactively. Accordingly, even if the government's new interpretation and application of 8 U.S.C. § 1225(b) was correct, its detention of Petitioner based on this indisputably new rule change violates the longstanding precedent on the doctrine of retroactivity. This is true because its retroactive application "contravenes basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'"[112]

VIII. Petitioner's Continued Detention Violates Due Process

115. In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention, including in the immigration context, requires a sufficient justification— namely

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[111] *Id.* (quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998)).

[112] *Id.* at 430–31 (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

preventing flight or danger to the community.[113] Where no such justification exists detention without due process is unconstitutional.[114]

116. Here, the notion that Petitioner, who is not a flight risk or danger to anyone, may continue to be detained without a bond hearing to determine if there is justification for such detention, is contrary to the due process everyone is afforded in this country.

117. Continued unlawful detention is, by its very nature, an irreparable injury.[115] The Supreme Court has affirmed that "[f]reedom from imprisonment...lies at the heart of the liberty" protected by the Due Process Clause.[116] "Where, as here, the 'alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary'."[117]

118. Everyday Petitioner continues to be detained in ICE custody, she/he suffers irreparable harm. The complete sudden loss of one's freedom and liberty takes a significant toll on anyone in Petitioner's circumstances.

119. Recently, many aliens in ICE custody have suffered the ultimate irreparable harm of death. On May 14, 2025, in an oversight hearing before the House Appropriations

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[113] *Zadvydas v. Davis,* 533 U.S. 678, 693-694 (2001).

[114] *Id.*

[115] *Phong Phan v. Moises Beccerra,* No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5(E.D. Cal. July 16, 2025) ("Further, '[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

[116] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[117] *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

Committee, Todd Lyons, acting director of Immigration and Customs Enforcement, testified that 9 people have died in ICE custody since January 20, 2025.[118] A month after this testimony, on June 23, 2025, a 49-year old Canadian citizen died in ICE custody.[119] Reports of overcrowding, individuals being detained at facilities that are meant for processing and not set up for detention beyond a few hours are increasing, and other inhumane detention practices continue to rise. The risk of death, emotional trauma, and/or other irreparable harm coming to Petitioner is, tragically, all too real of a possibility.

120. Meanwhile, there will be *no* harm to Respondents if Petitioner is immediately released from ICE custody.

121. Further, there are no administrative remedies for Petitioner to exhaust that would not be futile.

A. Procedural Due Process under Mathews

122. Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner.[120] Petitioner received no such opportunity and/or no such opportunity is available through the immigration courts at this time.

123. To determine whether government conduct violates procedural due process, the Court weighs three factors in *Mathews* for courts to weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an

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[118] This testimony can be found at the following link: https://www.youtube.com/watch?v=QvoURiaxBmA.

[119] The ICE press release on this death can be found at the following link: https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away

[120] *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures.[121]

Private Interest

124. Petitioner's private interest is the right to be free from government detention. Being free from physical detention by the government is at the core of due process protection, and "is the most elemental of liberty interests."[122] In our country, "liberty is the norm, and detention without trial "is the carefully limited exception."[123]

125. Even "noncitizens already in the country who have 'established a life here-albeit without authorization,' possess 'a strong liberty interest in their freedom from detention.'"[124] "This is 'consistent with the longstanding principle that due process applies to those who are present in the interior of the United States, regardless of their citizenship status.'"[125]

126. The private interest here is fundamental: freedom from detention. "No one can reasonably question that freedom from physical detention is one of the most sacred and

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[121] *Id.* at 335.

[122] *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

[123] *Id.*

[124] *Mendoza v. Noem*, Case No. 5:26-cv-0728-JKP, ECF No. 9 at 12 (W.D. Tex. Feb. 26, 2026) (quoting *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025)).

[125] *Id.*

elemental of liberty interests."[126] It weighs heavily in the consideration of the *Mathews* factors.

Risk of Erroneous Deprivation

127. The second factor—the risk of erroneous deprivation of Petitioner's liberty—is likewise substantial. The government's application of § 1225(b)(2) prevents Petitioner from access to a pre-deprivation bond hearing *at all*. In so doing, the government is attempting to evade their burden to show that Petitioner presents a flight risk or danger, in direct contradiction of the law. "There is 'a very high risk of erroneous deprivation of liberty' absent an individualized custody determination."[127]

Government Interest

128. The government has no valid interest in depriving Petitioner of a bond hearing. The government's interest is *supposed* to be upholding the Constitution and laws of the United States, both of which are plainly violated by its arrest and continued unlawful detention of Petitioner. Depriving anyone of their liberty is a serious thing that should only be done when necessary to prevent flight or danger to the community. Petitioner is neither in this case.

129. To balance liberty interests against interests in assuring appearance and safety, the INA explicitly provides bond hearings for noncitizens who are not described in

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[126] *Mendoza,* ECF No. 9 at 14.

[127] *Id.* (citing *Cruz-Reyes v. Bondi*, No. 5:26-cv-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026)).

§ 1226(c) or 8 C.F.R. § 1003.19(h). The government, however, wants to detain everyone without any regard to whether they are a danger or a flight risk.[128]

130. On balance, the private interests affected and the risk of erroneous deprivation, under the current procedures, greatly outweigh the government's interest. "In the immigration detention context involving noncitizens with a substantial presence in the United States who have not received any individualized assessment of flight risk or dangerousness, each of the three factors – affected private interest; risks of erroneous deprivation, including 'the probable value, if any of additional or substitute procedural safeguards;' and the Government's interest – support finding that the noncitizen has been denied procedural due process."[129]

131. Petitioner's detention without an individualized bond hearing by a neutral adjudicator violates Petitioner's substantive due process rights as guaranteed by the Fifth Amendment.

CLAIMS FOR RELIEF

I. COUNT I: VIOLATION OF THE INA

132. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

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[128] *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271, at *4 (D.Neb. Aug. 19, 2025) ("The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake.").

[129] *Mendoza*, ECF No. 9 at 13 (citing *Martinez*, 2025 WL 2965859, at *4-5).

133. Section 1225(b)(2)(A) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), § 1231, or 8 C.F.R. § 1003.19(h).

134. The continued detention of Petitioner, who is not described in § 1226(c) or § 1003.19(h)(2), without a bond hearing before an IJ, violates the INA as well as the U.S. Constitution. Accordingly, it is unlawful.

II. COUNT II: ICE & EOIR'S VIOLATION OF THEIR OWN REGULATIONS AND PROCEDURES

135. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

136. Petitioner's continued detention by Respondents without a bond hearing pursuant to the process set forth by 8 U.S.C. § 1226's implementing regulations found at 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1 is unlawful as ICE and EOIR failed to adhere to the law and mandatory process. As here, "'where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute ... and [ICE] fails to adhere to it, the challenged [action] is invalid.'"[130] Petitioner's detention is unlawful and his immediate release is appropriate.

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[130] *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *5 (D.Mass. June 20, 2025) (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); *see also Zadvydas,* 533 U.S. at 690 ("The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]" any "person ... of ... liberty

III. COUNT III: VIOLATION OF THE FOURTH AMENDMENT

137. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

138. Petitioner's arrest by Respondents without the issuance of a warrant is unlawful and constitutes a violation of the Fourth Amendment. Petitioner's detention is thus unlawful, and his immediate release is appropriate.

IV. COUNT IV: VIOLATION OF RETROACTIVITY DOCTRINE

139. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

140. Even if the government's new interpretation and application of 8 U.S.C. § 1225(b)(2)(A) is correct, Petitioner's detention based on the retroactive application of that new rule/interpretation is unlawful under the well-established retroactivity doctrine and precedent applying it to the INA. This is true because its retroactive application "contravenes basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'"

V. COUNT V: VIOLATION OF DUE PROCESS

141. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

142. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects."[131]

143. Petitioner has a fundamental interest in liberty, and being free from official restraint.

144. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process. Petitioner's detention is thus unlawful, and his immediate release is appropriate..

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter and issue a writ of habeas corpus requiring that Respondents release Petitioner Immediately, or provide Petitioner with a bond hearing before a neutral IJ pursuant to 8 U.S.C. § 1226(a) within three days;

b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

c. Declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that EWI noncitizens encountered in the interior long after their entry who are placed in removal proceedings and are not described in § 1226(c) or 8 C.F.R. § 1003.19(h)(2), are entitled to a bond hearing before a neutral adjudicator;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"); and

e. Grant any other and further relief that this Court deems just and proper.

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[131] *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

RESPECTFULLY SUBMITTED,

/s/ Dan Givіden
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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am her/his immigration attorney. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 19, 2026

Respectfully submitted,

s/***Nilima Patel Shah***
Nilima Patel Shah
Petitioner's Immigration Attorney
CA Bar No. 295993