

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

JACIEL CIRRUS ROJAS,

Petitioner,

v.

Case No. 25-3127

SAMUEL OLSON, Field Office Director,
Chicago Field Office, Immigration and Customs
Enforcement; SCOTT SMITH, Jail Administrator,
Dodge County Jail,

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF HIS EMERGENCY
MOTION FOR RELEASE PENDING APPEAL**

INTRODUCTION

The government has now incarcerated Jaciel Cirrus Rojas for 202 days (over six months), notwithstanding an immigration judge's finding that he poses no flight risk or danger, and corresponding order that he be released on the lowest possible bond and another immigration judge's representations that if Cirrus Rojas insists on a Chatino interpreter during his asylum hearing, to which he is entitled, he may be in for a long wait. For the reasons outlined in his original Emergency Motion for

Release (Dkt. 8-1), as well as those provided below in reply to the government's arguments opposing release (Dkt. 13), Cirrus Rojas respectfully reiterates his request for an emergency order granting him release pending appeal pursuant to Federal Rule of Civil Procedure 23(b). He further requests that said relief be granted ahead of his Master Calendar hearing, now set for January 6, 2026, at 9 a.m., to ensure he is afforded the opportunity to effectively present and support his fear-based claims.

ARGUMENT

- I. **Cirrus Rojas is likely to succeed on the merits of his appeal because, as highlighted in *Castañon-Nava*, the applicable statutory text, canons of statutory interpretation, and broader context of immigration law establish that Cirrus Rojas is not subject to mandatory detention under § 1225(b)(2).**

As Cirrus Rojas detailed in his Emergency Motion—and as a growing number of similarly-situated petitioners across the country have succeeded in showing—he is detained under § 1226(a) and therefore bond eligible, and should be released pending appeal because he is likely to succeed on the merits. Dkt. 8-1, at 9–18.

- A. **The *Castañon-Nava* panel correctly concluded that a noncitizen at the border is subject to mandatory detention while one already in the U.S. is bond eligible**

under a discretionary framework, and Respondents’ arguments to the contrary are unpersuasive.

Just two days after Cirrus Rojas filed his Emergency Motion, this Court’s motions panel in *Castañon-Nava v. U.S. Dep’t of Homeland Security* addressed, on a preliminary basis, the exact question at issue in this case. No. 25-3050, --- F.4th ----, 2025 WL 3552514, at *8–10 (7th Cir. Dec. 11, 2025). As part of a larger analysis of the issues in that case, the *Castañon-Nava* panel reasoned that the government was “likely to fail on the merits” of its argument that noncitizens who have been unlawfully present in the U.S. for years, as opposed to those who present themselves at its borders, are subject to mandatory detention under § 1225(b)(2)(a). 2025 WL 3552514, at *9.

Respondents’ arguments in support of their now-rejected position are unpersuasive. *First*, Respondents’ discussion of Congress’s intent in passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) attempts to imply that, in changing the Immigration and Nationality Act’s (INA’s) removal proceeding framework, Congress also changed the INA’s detention framework. Dkt 13 at 2–4. Not so. “[T]he legislative history suggests that Congress did *not* intend to alter the detention authority for noncitizens who entered the country

unlawfully.” *Guerrero Orellana v. Moniz*, --- F.Supp.3d ----, 2025 WL 2809996, at *9 (D. Mass. Oct. 3, 2025) (emphasis added). In fact, IIRIRA “restates the current provisions . . . regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” H.R. Rep. No. 104-828, at 210 (1996). Under those pre-IIRIRA provisions, “noncitizens who entered the country unlawfully were subject to discretionary detention with the possibility of release.” *Guerrero Orellana*, 2025 WL 2809996, at *9 (citing 8 U.S.C. § 1252(a)(1) (1994)).

In the face of this common understanding, Respondents seem to imply that Congress’s changes to the removal process somehow silently upended the relevant detention rules in IIRIRA to subject an entirely new group of people to mandatory detention. But as this Court explained in *Castañon-Nava*, it is not anomalous for Congress to distinguish between noncitizens already in the country and noncitizens who have not yet entered. *See Castañon-Nava*, 2025 WL 3552514, at *9. Indeed, “[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). And in any

event, “Congress’[s] concern about adjusting the law in some respects to reduce inequities in the *removal* process did not mean Congress intended to entirely up-end the existing *detention* regime.” *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *12 (N.D. Cal. Sep. 12, 2025) (emphases added).

Second, Respondents rely on 8 U.S.C. § 1225(a)(3)’s use of the phrase “or otherwise” to argue that “applicant[s] for admission” are a subject of those “seeking admission.” See Dkt 13 at 13–14. As the government puts it, “Section 1225(a) provides that ‘[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected.” *Id.* at 14. But Respondents ignore the rest of § 1225(a)(3) and fail to explain why “applicants for admission” are a subset of those “seeking admission” when the provision also refers to people who are “otherwise seeking . . . readmission to or transit through the [U.S.]” See 8 U.S.C. § 1225(a)(3); *see also Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020) (“a basic rule of statutory construction is to ‘[r]ead on’”). Applicants for admission are undisputedly not subsets of those other actions that the government ignores.

Third, according to Respondents, it follows from their “or otherwise” argument that “[m]ere presence without admission *is* seeking admission.” See Dkt 13 at 14–15. But even setting aside the flaws with the government’s “or otherwise” argument, mere presence cannot be seeking admission. That reading ignores the meanings of both “seeking” and “admission.” “Congress’ use of a verb tense is significant in construing statutes,” *United States v. Balint*, 201 F.3d 928, 933 (2000) (quoting *United States v. Wilson*, 503 U.S. 329, 333 (1992)), and “seeking” “implies a continuing action,” *Corona Diaz v. Olson*, No. 25 CV 12141, 2025 WL 3022170, at *5 (N.D. Ill. Oct. 29, 2025). Reading “seeking” as passive defies its ordinary meaning.¹ “Admission,” meanwhile, is defined by the statute as “the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Contrary to the government’s reading, people who are merely present in the country are not a subset of people who are seeking lawful entry into the country.

Finally, Respondents’ argument that “applicants for admission” are a subset of those “seeking admission” does not help them with their

¹ *Seeking*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/Seeking> (last visited Dec. 23, 2025) (defining “seeking” as “pursuing,” “requesting” or “trying”).

superfluity problem. *See* Dkt 8-1 at 13 (describing problem). The government fails to explain, under their reading of the statute, what additional work the supposedly broader category of “seeking admission” would do when the supposedly narrower and more precise category of “application for admission” is already in the first clause.

Cirrus Rojas is likely to succeed on the merits of his claim and therefore meets the most important factor of the Rule 23(b) standard. *See Haggard v. Curry*, 631 F.3d 931, 935 (9th Cir. 2010) (explaining that “[t]he most important factor is the first”).

II. Cirrus Rojas need not demonstrate “extraordinary circumstances” to satisfy the Rule 23(b) standard, and he has shown “special reasons” justifying release pending appeal.

Federal Rule of Appellate Procedure 23(b) authorizes this Court, and any individual member thereof, to order a prisoner’s release, with or without bail. Critically, the Rule itself contains no limitations or mandatory factors that must be considered in making a determination as to release. This Court has yet to establish a standard for applying Rule 23(b), but the Supreme Court has at least suggested that Rule 23(c)’s stay-pending-appeal standard also applies to Rule 23(b). *See Hilton v. Braunskill*, 481 U.S. 770, 777 (1987). Citing cases from other circuits,

Respondents nevertheless claim that release is unwarranted because Cirrus Rojas “cannot show exceptional circumstances meriting a release” Dkt 13 at 21. But this has never been the standard in the Seventh Circuit, and in any event, when other courts invoke this standard, it is either in the context of *post-conviction criminal* habeas cases or cases where the court is relying on its own inherent authority—and not Rule 23(b) authority—to grant release.

A. Respondents attempt to apply an “exceptional circumstances” test outside of a post-conviction criminal habeas.

Having identified no authority in this Circuit, Respondents cite *United States v. Mett*, 41 F.3d 1281, 1282 (9th Cir. 1994) and *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992)) in an attempt to inject an “exceptional circumstances” test into *all* requests for relief under Rule 23(b), including immigration detention cases where petitioner has not been found removable.

To begin with, both cases involve prisoners who sought to be released on bail while awaiting appeal from denial of their motions to vacate sentences of incarceration—that is to say, those cases involved requests for post-conviction release. This is in stark contrast to

immigrant detainees, many of whom, like Cirrus Rojas, have not been charged with, let alone convicted of, a crime (and, in Cirrus Rojas’s case, has been affirmatively found to be neither a flight risk nor a danger to the community).

Equally as problematic, and contrary to Respondents’ interpretation, *United States v. Mett* does not say that petitioners collaterally challenging criminal convictions can only be granted release if they show “exceptional circumstances.” See Dkt 13 at 21 (citing *Mett*, 41 F.3d 1281, 1282 (9th Cir. 1994)). *Mett* instead held that release on bail is reserved for “extraordinary cases involving special circumstances *or* a high probability of success.” *Mett*, 41 F.3d at 1282 (emphasis added) (internal citation omitted). Accordingly, even if *Mett* *did* apply in the civil immigration habeas context, Cirrus Rojas would need to prevail only in showing a high probability of success on the merits—which, as discussed above, he has done.

Landano does even less to help Respondents, as it reinforces the idea that “a greater showing of special reasons for admission to bail pending review should be required” only where the petitioner “is incarcerated because he has been tried, convicted, and sentenced by a

court of law.” *Landano*, 970 F.2d at 1238 (quoting *Aronson v. May*, 85 S. Ct. 3, 5 (1964) (Douglas, J., in chambers)).

Respondents’ other out-of-circuit cases fare no better. *United States v. Dade*, 959 F.3d 1136 (9th Cir. 2020), like *Mett* and *Landano*, concerned a collateral challenge to a criminal conviction. The same is true of *Armengau v. Hildebrand*, No. 22-4049, 2023 WL 6475859, at *3 (6th Cir. June 1, 2023), and *Morris v. Story*, 803 F.2d 721 (Table) (6th Cir. Sep. 30, 1986), both unpublished opinions. *Elkimya v. DHS* involved a habeas petitioner moving for release pending appeal of his Petition for Review of a BIA order of removal. 484 F.3d 151, 152 (2d Cir. 2007). The Second Circuit did not rely on its Rule 23(b) release authority in that case, however. Instead, it relied on its inherent authority as a federal court to order the release of habeas petitioners who challenge their immigration detention pending the disposition of their immigration cases. *Id.* at 153. *Elkimya* actually does impose an “extraordinary circumstances” standard, but again, not in the context of the court exercising authority under Rule 23(b). *See id.* at 154.

Respondents’ attempts to inject an “extraordinary circumstances” requirement into the standard for motions for release pending appeal

under 23(b)—with no distinction between post-conviction criminal habeas cases and civil detention cases—should be rejected.

B. Cirrus Rojas’s indeterminate detention, which has been prolonged by the Immigration Court’s inability to provide a suitable interpreter in his removal hearing, provides a “special reason” justifying release.

In denying Cirrus Rojas’s habeas petition, the District Court wrote that, “at most, if ICE prevails on appeal [of the bond order to the BIA], Cirrus Rojas’s detention will be limited to the conclusion of his removal proceedings.” Dist. Ct. Dkt. 20, at 14. And those proceedings, the Court reasoned, were “moving forward, with a hearing scheduled for late October.” *Id.* Cirrus Rojas’s detention “has an end point, whether he prevails or loses,” the Court concluded. *Id.*

That October hearing, however, was continued by the IJ due to the apparent unavailability of a Chatino interpreter (Cirrus Rojas’s primary language) and rescheduled for December 17, 2025. App’x E, Laureano Decl. ¶¶ 4, 5. At the time of that continuance, Cirrus Rojas was led to believe that the Immigration Court intended to secure a suitable Chatino

interpreter, and diligently prepared to proceed with the December removal hearing. *Id.* at ¶ 10.²

An interpreter still not having been found, the hearing was continued a second time and rescheduled as a Master Calendar Hearing on January 6, 2026. *Id.* at ¶ 16 (App’x D.) Because the proceeding has been set as a Master Calendar Hearing, Cirrus Rojas’s individual hearing has yet to be scheduled.³

Cirrus Rojas is entitled to a Chatino interpreter in his immigration proceedings. In the context of removal hearings, “[i]t is well established that the provision of an interpreter is a ‘minimum’ requirement of a fair hearing for asylum applications who have limited English proficiency.” *B.C. v. Att’y Gen. of U.S.*, 12 F.4th 306, 314 (3d Cir. 2021); *see also* 8 C.F.R. § 1003.42(c); Dep’t of Justice, Language Access in Immigration Court DM-23-02, *available at* <https://www.justice.gov/eoir/book/file/1586686/dl> (June 6, 2023), at 1 (“[N]oncitizens with limited

² Undersigned counsel notes that the audio recordings of these respective proceedings were not made available with adequate time to have a transcript prepared, even on an expedited basis. Counsel intends to obtain said transcripts as quickly as possible.

³ Respondents argue that Cirrus Rojas’s concerns about being released in time to prepare for his asylum hearing are now moot because “Petitioner’s removal hearing has already occurred.” Dkt. 13 at 24. This is inaccurate now and was inaccurate when the government submitted its brief—two days *after* the hearing was continued. *See* App’x D (Notice of Hearing, issued Dec. 17, 2025). Petitioner brought that continuance to the Court and government’s attention the day after it occurred. *See* Dkt. 12 at 1–2.

proficiency in English must be provided with in-court interpretation into their preferred language.”). Based on the representations of the IJ, EOIR does not appear to have access to a single qualified Chatino interpreter. *See* App’x E, Laureano Decl. ¶ 13. And what’s more, either the IJ or EOIR is limiting its consideration of potential interpreters to those who are both “certified” and U.S. citizens. *Id.* This has the effect of artificially narrowing the pool of interpreters, apparently to zero, despite there being no authority supporting that winnowing. *See* 8 C.F.R. § 1003.22 (requiring only that “[a]ny person acting as an interpreter in a hearing” who is not a federal employee to “swear or affirm to interpret and translate accurately”).

Bottom line, Cirrus Rojas’s detention has been unduly prolonged by the government’s own operational decisions. Without explanation, the pool of interpreters has been limited to those with U.S. citizenship, apparently resulting in a lack of “qualified” Chatino interpreters and no way for Cirrus Rojas to proceed in his asylum case.

CONCLUSION

For the foregoing reasons, Cirrus Rojas respectfully requests that an order be entered granting his Emergency Motion for Immediate Release from Detention Pending Appeal.

Dated December 24, 2025.

Respectfully submitted,

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*Attorneys for Petitioner-
Appellant Cirrus Rojas.*

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25 and Circuit Rule 25, I hereby certify that on December 24, 2025, I caused a copy of the below-listed documents to be served on Respondents using the Court's CM/ECF system:

- Petitioner-Appellant's Reply in Support of His Emergency Motion for Release Pending Appeal
- Appendix D – Immigration Court Notice of Hearing, issued Dec. 17, 2025
- Appendix E – Declaration of Lyneshka Cruz Laureano

Dated December 24, 2025.

s/ Ryan V. Cox
RYAN V. COX

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a), 32(g) and 27(d), I hereby certify that this reply is compliant with the type-volume limitations contained in the rules. This reply uses a proportionally-spaced font and contains 2,564 words, excluding those sections excluded by Rule 32(f).

s/ Ryan V. Cox
RYAN V. COX

APPENDIX D

NOTICE OF HEARING
IMMIGRATION COURT
55 E MONROE, SUITE 1500
CHICAGO, IL 60603

DATE: Dec 17, 2025

TO: George M. Gomez & Associates
Lyneshka Cruz Laureano
1585 N. Milwaukee Ave
Suite 111
Libertyville, IL 60048

RE: CIRRUS-ROJAS, JACIEL

FILE: 240-155-901

Please take notice that the above captioned case has been scheduled for a hearing before the Immigration Judge on Jan 6, 2026 at 09:00 A.M.. The alien will be present via video conferencing. All other parties should report to the Immigration Court located at:

CHICAGO DETAINED
55 E. Monroe, Suite 1500
CHICAGO, IL 60603

Since you are the attorney/representative of record, it is expected that you will appear at the scheduled hearing. Anyone wishing to attend the hearing is subject to Correction Department policies and procedures regarding entry. The court will assist in obtaining the necessary clearance if requested in writing at least a week in advance of the hearing. All correspondence, motions, requests or inquiries concerning this matter should be directed to the address at the top of this page.

Your client's failure to appear at this hearing, other than for exceptional circumstances beyond his/her control may result in an order of removal being entered in his/her absence under Section 240(b) (5) of the Immigration and Nationality Act.

IF YOUR CLIENT IS RELEASED FROM CUSTODY, within five days of such release you or your client must provide to this Court a written notice (or completed form EOIR-33) of the address and telephone number at which your client can be contacted. Correspondence from the court, including hearing notices, will be sent to you as long as you remain the attorney of record, and will be considered sufficient notice for the proceedings to go forward in your client's absence. It is NOT NECESSARY to provide address change information as long as your client remains in Corrections' custody.

For information regarding the status of this case, call toll free 800-898-7180 or 304-625-2050.

CERTIFICATE OF SERVICE

This document was served by:

Mail [M] Personal Service [P] Fax [F] Electronic Service [E]

TO: [] ALIEN [] ALIEN c/o Custodial Officer [E] ALIEN's Atty/Rep [E] DHS

DATE: 12/17/25 BY: Court Staff TD

Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other _____

APPENDIX E

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

JACIEL CIRRUS ROJAS,

Petitioner,

v.

Case No. 25-3127

SAMUEL OLSON, Field Office Director,
Chicago Field Office, Immigration and Customs
Enforcement; SCOTT SMITH, Jail Administrator,
Dodge County Jail,

Respondents.

DECLARATION OF LYNESHKA CRUZ LAUREANO

I, Lyneshka Cruz Laureano, declare from my personal knowledge that the following facts are true and correct:

1. I currently represent the Petitioner in this matter, Jaciel Cirrus Rojas, in his immigration removal proceedings before the Executive Office for Immigration Review Immigration Court (EOIR) in Chicago, Illinois.

2. As counsel of record in that matter, on September 16, 2025, I submitted to the Immigration Court a Form I-589, Application for Asylum and for Withholding of Removal, and Seeking Protection Under the Convention Against Torture.

3. Cirrus Rojas was originally scheduled to appear at an Individual Calendar Hearing before the Immigration Court on October 29, 2025, at 1 p.m., before Immigration Judge (IJ) Luskin.

4. Cirrus Rojas is most comfortable speaking in his native language, Chatino. Chatino is a group of indigenous Mesoamerican languages originating in the Mexican state of Oaxaca. While I have communicated in Spanish with Cirrus Rojas throughout the course of my representation of him, our ability to fully understand each other has been limited by his nonnative proficiency in Spanish.

5. Cirrus Rojas has told me that in order to ensure the most complete communication possible, he prefers speaking in Chatino.

6. A Master Calendar Hearing was initially scheduled to take place before IJ Jennifer Peyton on June 24, 2025 at 8:30 a.m.

7. IJ Peyton, who served as the assistant chief immigration judge for the Chicago Immigration Court, EOIR was fired from her position in early July 2025. See Paul Caine, *Former Chicago Immigration Judges Discuss Trump Administration Firings*, WTTW News (July 17, 2025), <https://news.wttw.com/2025/07/17/former-chicago-immigration-judges-discuss-trump-administration-firings>.

8. The termination of IJ Peyton's employment came amidst waves of terminations of IJs. See Emily Ngo, *Immigration courts thrown into chaos as Trump administration purges dozens of judges*, Politico (Dec. 6, 2025), <https://www.politico.com/news/2025/12/06/trump-immigration-court-judge-purges-00679376>.

9. Cirrus Rojas's October 29, 2025 hearing was continued due to various factors but most importantly the apparent unavailability of a Chatino interpreter, and was rescheduled to take place on December 17, 2025.

10. At the time the October 29 hearing was continued to December 17, my understanding was that the Immigration Court intended to secure a suitable Chatino interpreter. Accordingly, I diligently prepared to proceed with the removal proceeding on December 17.

11. On December 4, 2025, I became aware that Cirrus Rojas's case had been reassigned from IJ Luskin to IJ Breese.

12. At the rescheduled hearing on December 17, IJ Breese informed the Parties that he had been unable to locate a Chatino interpreter and that the hearing would need to be continued a second time.

13. IJ Breese further explained that he was unaware of any Chatino interpreter who meets EOIR requirements, and thus it appeared unlikely that a Chatino interpreter would be provided at any point in the proceeding. IJ Breese stated that the criteria for interpreters are as follows: an interpreter must be (1) certified; and (2) a U.S. citizen.

14. I am unaware of any legal requirement that interpreters be U.S. citizens as a condition to providing interpretation in EOIR proceedings.

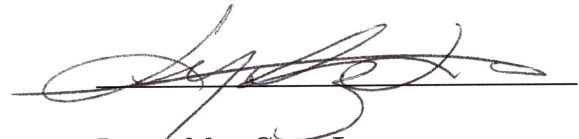
15. IJ Breese directed the Parties to confer and attempt to reach a stipulation as to how to proceed in the absence of an interpreter.

16. IJ Beese then set the case for a Master Calendar Hearing to take place on January 6, 2026 at 9:00 a.m. (App. D (Notice of Hearing).)

17. I expect that Cirrus Rojas's individual hearing will be scheduled during the Master Calendar Hearing on January 6, 2026.

I declare under penalty of perjury that the foregoing is true and correct.

Dated December 22, 2025.

A handwritten signature in black ink, appearing to read 'Lyneshka Cruz Laureano', is written over a horizontal line.

Lyneshka Cruz Laureano
Attorney at Law