[Oral Argument Not Yet Scheduled]

No. 25-3127

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

Jaciel Cirrus Rojas,

Petitioner–Appellant,

v.

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

Respondents.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN
No. 2:25-cv-01437-BHL
Hon. Brett H. Ludwig

BRIEF OF PETITIONER-APPELLANT

Judy Rabinovitz
Natalie Behr
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Hannah R. Schwarz
Jenifer M. Bizotto
Ryan V. Cox
ACLU OF WISCONSIN
FOUNDATION, INC.

Michael K.T. Tan
My Khanh Ngo
Oscar Sarabia Roman
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Counsel for Petitioner-Appellant

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-3127

Short Caption: Jaciel Rojas v. Samuel Olson, et al

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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Jaciel Cirrus Rojas

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N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Michael King Thomas Tan Date: 12/31/25

Attorney's Printed Name: Michael King Thomas Tan

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Attorney's Signature: /s/ My Khanh Ngo Date: 12/31/25

Attorney's Printed Name: My Khanh Ngo

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Attorney's Signature: /s/ Oscar Sarabia Roman Date: 1/08/2026

Attorney's Printed Name: Oscar Sarabia Roman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** [ ] **No** [✓]

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N/A

Attorney's Signature: /s/ Judy Rabinovitz Date: 1/08/2026

Attorney's Printed Name: Judy Rabinovitz

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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Attorney's Signature: /s/ Natalie Behr Date: 01/08/2026

Attorney's Printed Name: Natalie Behr

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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Attorney's Signature: s/ Jenifer Bizzotto Date: 11/25/2025

Attorney's Printed Name: Jenifer Bizzotto

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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Attorney's Signature: /s/ Hannah R. Schwarz Date: 12/01/2025

Attorney's Printed Name: Hannah R. Schwarz

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☒ **No** ☐

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Attorney's Signature: s/ Ryan V. Cox Date: 12/01/2025

Attorney's Printed Name: Ryan V. Cox

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** X

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CORPORATE DISCLOSURE STATEMENT

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Oral argument will help the Court evaluate the important issues that this case presents. *See* Fed. R. App. P. 34(a)(2); 7th Cir. R. 34(f). This case arises from the Executive Branch's new interpretation of the Immigration and Nationality Act ("INA") to mandate detention without the possibility of bond for noncitizens who entered the United States without inspection. This policy has led to the unlawful detention of Petitioner and countless noncitizens nationwide. In response, hundreds of federal district courts have rejected the government's policy and granted writs of habeas corpus. This Court has also rejected the government's theory on a preliminary basis. *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, --- F. 4th ----, 2025 WL 3552514, at *8–10 (7th Cir. Dec. 11, 2025) (granting and denying government's stay motion in part).

The district court's decision below—a decision issued prior to *Castañon-Nava*—is a stark outlier. The court held that Petitioner, who has been living in the United States for seven years and was originally granted release on minimal bond under 8 U.S.C. § 1226, must instead be detained under 8 U.S.C. § 1225(b)(2), even though that statute applies only to noncitizens "seeking admission" at the border. This case thus presents a critical legal question that impacts numerous cases in the Circuit, including several that the government has appealed. *See Campos Leon v. Lyons*, No. 25-3121 (7th Cir.); *B.D.V.S. v. Lyons*, No. 25-3213 (7th Cir.); *Patel v. Crowley*, No. 25-3255 (7th Cir.); *Ramirez Valverde v. Olson*, No. 25-3316 (7th Cir.); *Ochoa Ochoa v. Noem*, No. 25-3330 (7th Cir.); *see also Castañon-Nava v. DHS*, No. 25-3050 (7th Cir.).

JURISDICTIONAL STATEMENT

The district court had federal-question jurisdiction and habeas corpus jurisdiction over Petitioner's challenge to his detention by immigration officials under 28 U.S.C. §§ 1331 and 2241. The district court denied the habeas petition and entered final judgment on October 30, 2025, and Petitioner filed a timely appeal on November 24, 2025. App. 106–07; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

8 U.S.C. § 1226 is the default detention statute that governs detention pending removal of noncitizens arrested in the United States. It generally provides for noncitizens' release on bond. 8 U.S.C. § 1225(b)(2) imposes mandatory, no-bond detention on noncitizens "seeking admission" to the United States at the border or a port of entry. Is Petitioner—a noncitizen who entered the country without inspection and is present without having been admitted—subject to detention under § 1226 or § 1225(b)(2)?

INTRODUCTION

This case involves this administration's radical decision to reinterpret the Immigration and Nationality Act ("INA") to require the mandatory detention, without possibility of bond, of Petitioner Jaciel Cirrus Rojas and millions of other noncitizens residing in the country, solely because they entered the country without inspection. In 1996, when it enacted the detention statutes, Congress made the deliberate choice to maintain the longstanding scheme that provided for release on bond to noncitizens, like Mr. Cirrus Rojas, who are arrested in the United States and placed into removal proceedings. The Executive understood this, promulgating regulations that provided such individuals bond hearings before an immigration judge to determine if they pose a danger or flight risk. Since then, for the last three decades, *everyone*—Congress, the Executive, and the courts—has understood the detention statutes to work in this way. Indeed, five different presidential administrations, both Democratic and Republican (including the first Trump administration), have faithfully applied the statutes in this manner, as Congress intended.

But in mid-2025, the government claimed to discover a novel mandate—in a statute that by its terms applies only to noncitizens "seeking admission" into the United States—to subject every noncitizen living in the country who was not previously admitted to no-bond detention. This change was not based on any action by Congress; in fact, Congress had amended the detention statutes earlier that year and reaffirmed that noncitizens who have not been admitted like Mr. Cirrus Rojas are bond eligible.

Mr. Cirrus Rojas is one of the many noncitizens the government has imprisoned based on this about-face. He has lived in the United States for over seven years and is the father of a one-year-old U.S. citizen daughter—a daughter he has not seen since he was detained in early June 2025, when she was just six months old. Consistent with the government's prior interpretation of the detention statutes, the immigration judge initially held a bond hearing pursuant to 8 U.S.C. § 1226 and granted him release on the lowest bond allowed by statute. Yet Mr. Cirrus Rojas remains jailed over five months later (and counting) based on the government's assertion that his detention is governed by a different statute, 8 U.S.C. § 1225(b)(2), that imposes mandatory detention on people "seeking admission" to the country. The government is not detaining Mr. Cirrus Rojas because he is a flight risk or danger to the community; an immigration judge already found he is neither. Rather, the government's *sole* justification is that its novel reinterpretation of the law categorically requires his detention.

"When an agency claims to discover in a long-extant statute an unheralded power . . . [the courts] typically greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). This is especially true here, given the breathtaking consequences of the government's position. If accepted, the government's new interpretation would require the unnecessary detention of *millions* of people who, like Mr. Cirrus Rojas, are alleged to have entered the country without authorization—*regardless* of whether they present a danger or flight risk. That would be the largest expansion of mandatory detention in U.S. history—and one that escaped the notice of Congress and five different administrations tasked with enforcing the law.

Hundreds of judges in district courts across the country have rejected the government's new detention policy as irreconcilable with the statutes' text, structure, and history. *Barco Mercado v. Francis*, No. 25-cv-6582, --- F. Supp. 3d ----, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) (listing 350 decisions rejecting the government's position). And just last month this Court concluded, on a preliminary basis, that the government's interpretation violates cardinal rules of statutory interpretation. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, --- F.4th ----, 2025 WL 3552514, at *8–10 (7th Cir. Dec. 11, 2025) (order granting and denying stay motion in part, and finding that the government was unlikely to establish that noncitizens who are present without admission are subject to mandatory detention under § 1225(b)(2)).

The district court's decision denying habeas relief is a stark outlier. The decision, which predates *Castañon-Nava*, adopted the government's view that Mr. Cirrus Rojas is subject to § 1225(b)(2) mandatory detention, rather than being eligible for release on bond under § 1226(a). But as elaborated below, the district court's analysis ignored the text, structure, history, and congressional, executive, and judicial understanding of the detention statutes, and reached conclusions squarely foreclosed by Supreme Court precedent. This Court should reject the government's attempt to rewrite the statutes, reverse the district court's judgment, and order Mr. Cirrus Rojas's release.[1]

STATEMENT OF THE CASE

I. The History and Framework of the Statutes Governing Detention During Removal Proceedings

Before 1996, the INA distinguished between "deportation proceedings" and "exclusion proceedings." Deportation proceedings applied both to noncitizens who had entered lawfully but were subject to removal (e.g., as a result of criminal convictions), and to noncitizens who had entered the United States without inspection and were later apprehended in the interior. *See* 8 U.S.C. § 1252(a)(1) (1995). Exclusion proceedings applied to people encountered at the border during the inspection process, who had not "entered" the country. *See id.* §§ 1225(a)-(b) (1995), 1226(a) (1995).

For people in deportation proceedings, the statute authorized arrest and detention "[p]ending a determination of deportability" and permitted release on bond. 8 U.S.C. § 1252(a)(1) (1995). But for noncitizens apprehended at the border and placed in exclusion proceedings, the statute mandated detention without bond. *Id.* § 1225(b) (1995).

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996). IIRIRA

[1] Petitioner has also moved this Court for interim release based on his likelihood of success on appeal. That motion is fully briefed and ripe for decision. *See* Dkt. Nos. 8-1, 13, 14.

overhauled the rules for the removal of noncitizens. At the same time, Congress preserved the basic rules for detention, distinguishing between noncitizens inside the country (now subject to 8 U.S.C. § 1226) and those at the border (now subject to 8 U.S.C. § 1225(b)).[2]

First, Congress combined deportation and exclusion proceedings into a single form of proceeding—"removal proceedings"—to adjudicate the cases of individuals charged with removal, regardless of whether they had entered the United States. *See* IIRIRA, 110 Stat. 3009-587–3009-593; *see also* 8 U.S.C. § 1229a.

Second, Congress made the applicable grounds of removal (i.e., deportability versus admissibility) depend *not* on physical entry into the United States, but instead on the fact of an "admission"—that is, a "lawful entry" after inspection by an immigration officer. 8 U.S.C. § 1101(a)(13)(A). Under the new scheme, a noncitizen who has been "admitted" to the country is subject to grounds of "deportability," *see id*. § 1227(a), whereas someone who has not been admitted is subject to grounds of "inadmissibility," *see id*. § 1182(a).

Third, Congress provided that noncitizens who enter without inspection and are physically present in the country would no longer be deportable and instead would be inadmissible. Congress accomplished this by "deem[ing]" such entrants "applicant[s] for admission," *id*. § 1225(a)(1), and rendering them inadmissible for being "present in the United States without being admitted or paroled," *id*. § 1182(a)(6)(A)(i).

[2] The full text of § 1226 and § 1225 are reproduced in the Short Appendix. A1–16.

At the same time, Congress maintained the rules governing the detention of such noncitizens by subjecting them to detention, with the possibility of bond, under the new detention statute, § 1226. In creating the "inadmissible" category (on which the government relies in this case), Congress made clear that people who entered without inspection remained eligible for bond under § 1226 by making that provision apply to inadmissible noncitizens. *See* 8 U.S.C. § 1226(a); *see also infra* Section I.A.1. Thus, § 1226 served to "restate"—that is, retain—"the current provisions" allowing for the "release on bond" of noncitizens in the United States, even if they had entered without inspection. H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.).

Under the current scheme, § 1226 "authorizes the Government to detain certain [noncitizens] already in the country" for removal proceedings and is the default statute for noncitizens apprehended in the interior. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). "The first provision, § 1226(a), . . . sets out the general rule regarding their arrest and detention pending a decision on removal." *Nielsen v. Preap*, 586 U.S. 392, 397 (2019). Noncitizens detained under § 1226(a) "may seek review of [their] detention by an officer at the Department of Homeland Security ["DHS"] and then by an immigration judge . . . [and] may secure [ ] release if [they] can convince the officer or immigration judge that [they] pose [ ] no flight risk and no danger to the community." *Id*. at 397–98 (citing 8 C.F.R. §§ 1003.19(a), 1236.1(d)); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)).

As to those covered by § 1226, however, Congress did take steps to exclude some noncitizens from bond. It expressly carved out inadmissible or deportable noncitizens charged with criminal and security-related grounds of removal (so-called "criminal aliens") from bond eligibility by subjecting them to mandatory detention under subsection (c) of § 1226. *Preap*, 586 U.S. at 398; *see also* IIRIRA, 110 Stat. 3009-585, 3009-627–3009-628. That provision, which applied to both inadmissible and deportable noncitizens, prohibited release of those who would otherwise be eligible for a bond hearing.

Importantly, in enacting that mandatory detention provision, Congress took care to address the significant increase in detention that the new § 1226(c) provision would impose and the limited detention space available to the then-Immigration and Naturalization Service ("INS"). Recognizing that § 1226(c) could subject 45,000 more noncitizens annually to mandatory detention, Congress delayed implementation of the new § 1226(c) through the Transitional Period Custody Rules, for up to two years, to allow INS to increase its detention capacity to a level adequate to cover the annual population. *See* H.R. Rep. No. 104-469, pt. 1, at 120, 123, 207; IIRIRA, 110 Stat. 3009-653.

The Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), enacted last year, added a new provision to § 1226(c) specifically directed at a further category of inadmissible noncitizens who enter the country without inspection and then are accused or convicted of specified criminal conduct. *See id.* (codified at 8 U.S.C. § 1226(c)(1)(E)). In doing so, the legislation necessarily treated inadmissible noncitizens who enter without inspection as governed by § 1226(a) and eligible for bond—otherwise there would have been no need to subject a subset of this population to mandatory detention under § 1226(c).

Finally, Congress in IIRIRA also enacted a new provision at § 1225(b). Section 1225(b)(1) establishes expedited removal procedures for a limited subset of "arriving" noncitizens—that is, noncitizens arrested at a port of entry, 8 C.F.R. § 1.2—and recent entrants. *See* 8 U.S.C. 1225(b)(1). Section 1225(b)(2), on which the government relies in this case, in turn governs the inspection of "other" applicants for admission who are "seeking admission" to the country, *id.*, and are not subject to expedited removal, *see id.* § 1225(b)(2)(B)(ii). Specifically, § 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding under section 1229a of this title." *Id.*

Like the predecessor statute for noncitizens placed in exclusion proceedings, § 1225(b)(2) "mandate[s] detention of [noncitizens] throughout the completion of applicable proceedings" and does not allow for release on bond. *Jennings*, 583 U.S. at 302.[3] In contrast to § 1226(c), Congress expressed no concern in IIRIRA that the

[3] In principle, a noncitizen detained under § 1225(b)(2) can ask DHS—the jailing authority—to parole them from detention due to "urgent humanitarian reasons or significant public benefit," 8 U.S.C. § 1182(d)(5)(A). However, the current administration has adopted a policy of generally denying release on parole. *See D.N.N. v. Bacon*, No. 25-cv-01613-JRR (D. Md. June 30, 2025), Dkt. No. 40-3 (Memorandum from Monica S. Burke, U.S. Immigr. & Customs Enf't Assistant Dir. Custody Mgmt., to All ERO [Enforcement and Removal Operations] Field Office

§ 1225(b)(2) detention regime would increase the number of detainees or need for detention beds. Yet the estimated number of individuals in the United States who had not been admitted or paroled was about two million.[4]

II. Judicial and Executive Branch Interpretation and the Government's New Mandatory Detention Policy.

The Supreme Court, this Court, and other federal courts have long understood the aforementioned scope of the detention statutes: § 1225 operates "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is inadmissible," *Jennings*, 583 U.S. at 287, whereas § 1226(a) is the default detention authority for noncitizens who are "already in the country." *Id.* at 289; *see also Castañon-Nava*, 2025 WL 3552514, at *9 (observing distinction made in *Jennings* between statutes applicable to noncitizens "seeking admission" versus those "already in the country").

Likewise, since the enactment of IIRIRA 30 years ago, the Executive Branch has, until 2025, consistently understood § 1226 to afford a bond hearing to people like Petitioner who are in the interior but entered the country without inspection. Contemporaneously with the enactment of IIRIRA, the Executive Branch enacted regulations confirming that noncitizens arrested in the interior and placed into removal proceedings are eligible for release on bond under § 1226(a) (unless § 1226(c) applies). *See* 8 C.F.R. §§ 1003.19(a) & (h)(2), 1236.1(d). A March 1997 interim rule,

Directors (June 24, 2025) (noting that "ERO field offices no longer have the option to discretionarily release aliens")).

[4] *See* H.R. Rep. No. 104-469, pt. 1, at 111 (estimating that such individuals made up about half of the four million "illegal alien[s]" living in the United States).

still in place today, explains that, "[d]espite being applicants for admission," noncitizens "present without having been admitted or paroled (formerly referred to as aliens who entered without inspection)" are eligible for bond, and that "inadmissible aliens, except for arriving aliens," can seek bond hearings before an immigration judge. Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). At the same time, the rule specified who was *not* eligible for bond hearings—primarily "arriving aliens" and noncitizens subject to § 1226(c)(1). *Id.* at 10,361.

These regulations have remained essentially unchanged for three decades. And consistent with the regulations, the Executive Branch—including the first Trump administration—has, until now, consistently interpreted § 1226 to apply to those who entered without inspection. *See*, *e.g.*, *Matter of D-J-*, 23 I. & N. Dec. 572, 579 (A.G. 2003) (Attorney General "exercising [his] authority under section [1226]" to deny release on bond to Haitian immigrant who had evaded inspection); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 262 (BIA 2010) (observing that noncitizen who was present without admission or parole was released under § 1226); *Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025) (stating, as recently as June 30, 2025, that, in case of noncitizen who entered without inspection, "[t]he respondent's custody determination is governed by the provisions of section [1226]").

On July 8, 2025, however, DHS, in coordination with the Department of Justice ("DOJ"), peremptorily determined that a novel interpretation was compelled.

Inconsistent with decades of prior understanding, DHS "determined," with little explanation and in a new and unpublished guidance, "that section [1225], rather than section [1226], is the applicable immigration detention authority for all applicants for admission," including anyone who entered without inspection. App. 34. DHS instructed Immigration and Customs Enforcement ("ICE") to subject any noncitizen present in the United States without being admitted or paroled to mandatory detention under § 1225(b)(2), explaining that these "applicants for admission" would now be "treated in the same manner that 'arriving aliens' have historically been treated." App. 34.

Months later, the Board of Immigration Appeals ("BIA" or "Board") adopted that interpretation in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board concluded that noncitizens arrested in the interior and charged with inadmissibility are now exclusively subject to mandatory detention under § 1225(b)(2) and not detained under § 1226. *Id.* at 228; *see also id.* at 219 (stating that § 1226 "does not purport to overrule the mandatory detention requirements" of § 1225(b)(2)). The result is that the government is applying § 1225(b)(2) not only at the border, but also to inadmissible noncitizens apprehended anywhere within the United States, and refusing to afford such persons bond hearings under § 1226.

III. Factual Background

Petitioner Jaciel Cirrus Rojas is a Mexican national who has lived in the United States since 2018, when he entered the country without inspection. App. 1–2, 139. He fled Mexico after members of a cartel kidnapped him for a week, tortured and severely beat him, and threatened to kill him for refusing to join in their drug trafficking operations. App. 143–44. During his seven years living in the United States, he has supported his family, which includes a U.S. citizen daughter born in late 2024. App. 1, 6, 21, 25, 59, 140. He has no criminal history. App. 2, 146.

On June 3, 2025—about a month prior to DHS's change in policy—the government issued a warrant for Mr. Cirrus Rojas's arrest under § 1226, based on evidence that he "lacks immigration status" or is otherwise "removable under U.S. immigration law." App. 43. The same day, immigration officials arrested Mr. Cirrus Rojas and issued a Notice to Appear, which initiated removal proceedings against him and charged him with being a noncitizen present in the United States without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). App. 2, 45, 114. ICE also issued a Notice of Custody Determination, which indicated that he would be detained pursuant to 8 U.S.C. § 1226 pending a final determination in his case. App. 30.

On July 15, 2025, one week after the new DHS policy was announced but prior to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, an immigration judge held a bond hearing over DHS's objection and ordered that Mr. Cirrus Rojas be released from custody on a $1,500 bond, the minimum bond amount permitted under § 1226(a)(2)(A). App. 31. DHS immediately filed a Notice of Intent to Appeal Custody Redetermination and filed its Notice of Appeal to the Board on July 24, 2025. App. 36, 44. By regulation, these filings automatically stayed Mr. Cirrus Rojas's release pending the government's appeal. *See* 8 C.F.R. § 1003.19(i)(2);

8 C.F.R. § 1003.6(c). In its Notice of Appeal, the sole justification DHS provided for invoking the automatic stay was its new position that Mr. Cirrus Rojas was detained pursuant to mandatory, no-bond detention under § 1225(b)(2). App. 39.

IV. Procedural History

On September 17, 2025, Mr. Cirrus Rojas filed a habeas petition and request for emergency injunctive relief, seeking release. App. 1. He raised three claims, only the first of which is at issue in this appeal: (1) that his detention under § 1225(b)(2) violates the INA; (2) that the government's invocation of the automatic stay to prevent him from being released on bond pending appeal to the Board violated due process; and (3) that the automatic stay regulations are *ultra vires*. App. 25–28.

On October 21, 2025, the Board granted the government's appeal and reversed the bond decision of the immigration judge, holding that Mr. Cirrus Rojas was not bond eligible under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. App. 153–55.

On October 30, 2025, the district court denied the habeas petition, finding that Mr. Cirrus Rojas's detention is governed by § 1225(b)(2) because § 1225(b)(2) applies to "applicants for admission," and he is an "applicant for admission" as that term is defined within § 1225(a)(1). A34. The district court further held that even if § 1225(b)(2) only applied to noncitizens "seeking admission," it would still apply to Mr. Cirrus Rojas because he filed an application for asylum in his removal proceedings. A34. The district court rejected his arguments regarding Congress's recent enactment of the Laken Riley Act, evidence of the Executive Branch's long-held interpretation, and Mr. Cirrus Rojas's arrest warrant citing § 1226. A34–36. The district court also rejected Mr. Cirrus Rojas's two challenges to the government's automatic stay of the immigration judge's bond order pending appeal, despite the Board's decision vacating that order. A37–43.

The district court's decision that § 1225(b)(2) applies to Mr. Cirrus Rojas is inconsistent with this Court's recent order in *Castañon-Nava* and numerous district court decisions within and outside this Circuit. *See Castañon-Nava*, 2025 WL 3552514, at *8–10 (finding the government unlikely to succeed in establishing that § 1225(b)(2) governs the detention of noncitizens who are present without admission); *Barco Mercado*, 2025 WL 3295903, at *13 (listing 350 decisions rejecting the government's position); A17–22.[5]

Mr. Cirrus Rojas filed his notice of appeal of the district court's decision on November 24, 2025. App. 106. On December 9, 2025, he moved for release pending appeal pursuant to Federal Rule of Appellate Procedure 23(b). Dkt. No. 8-1. That motion has been fully briefed. Dkt. Nos. 13, 14.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's decision on legal questions in a habeas proceeding. *Gonzalez v. O'Connell*, 355 F.3d 1010, 1019 (7th Cir. 2004). Statutory interpretation is a question of law that this Court also reviews *de novo*. *Hulce v. Zipongo Inc.*, 132 F.4th 493, 497 (7th Cir. 2025).

[5] Petitioner has included in the attached Short Appendix a chart listing all the decisions from district courts in this Circuit that Petitioner is aware of. Seventy-one of those decisions agree that § 1226 is the relevant authority, compared to the three that have agreed with the government's position, including the one below. *Compare* A17–21, *with* A22.

SUMMARY OF THE ARGUMENT

Section 1226 is the INA's default detention rule for noncitizens living in the United States. It applies broadly to individuals placed into § 1229a removal proceedings after apprehension in the interior, including those who entered without inspection and are therefore charged as inadmissible. Congress made this clear by drafting § 1226 as a general authorization to detain "pending a decision on whether the alien is to be removed"—as the term "removed" encompasses individuals who are inadmissible. In contrast, the pre-IIRIRA statute providing for bond-eligible detention of those apprehended inside the United States was limited to noncitizens "pending a determination of deportability." *See infra* Section I.A.1.

Were there any doubt that Congress intended § 1226 to govern the detention of inadmissible noncitizens like the Petitioner, it would be dispelled by § 1226(c). That neighboring provision expressly carves out an exception to § 1226(a)—which provides for release on bond—for noncitizens charged with inadmissibility (or deportability) on certain criminal or terrorism-related grounds, for whom detention is mandatory. By doing so, Congress clearly understood and intended that inadmissible noncitizens who are *not* charged on these grounds are eligible for release on bond under § 1226(a). Otherwise, there would have been no need to carve them out from that subsection. *See infra* Section I.A.2. Congress's recent enactment of the Laken Riley Act reinforces this understanding. By specifically expanding the scope of § 1226(c) mandatory detention to *include* a new category of inadmissible noncitizens—namely, those who entered without inspection (i.e., are inadmissible) and committed certain criminal offenses—the legislation was intentionally taking that subset of inadmissible noncitizens out of § 1226(a) and thereby necessarily recognizing that inadmissible noncitizens in general are covered by § 1226(a). *See infra* Section I.A.2.

By contrast, § 1225(b)(2) does *not* apply to people in Petitioner's shoes. Section 1225(b)(2)'s detention mandate applies only to an applicant for admission who is "*seeking admission.*" Regardless of whether noncitizens who entered the country without inspection are considered "applicants for admission," that does not mean that they are also "seeking admission." That language—specifically chosen by Congress—reflects an activity, not a status. Consistent with the INA's definition of "admission," the term "seeking admission" means a present-tense effort to obtain "lawful entry into the United States after inspection and authorization." 8 U.S.C. § 1101(a)(13). A noncitizen who entered without inspection and has been living in the United States is not "seeking admission" in any ordinary sense. *See infra* Section I.B.1. Moreover, the broader structure of § 1225 confirms that § 1225(b)(2) applies only to noncitizens undergoing inspection at the border and ports of entry. *See infra* Section I.B.2.

The district court's interpretation of § 1225(b)(2), in contrast, cannot be squared with the statutory text or context. The court held that individuals who have entered the country without inspection are covered by § 1225(b)(2), regardless of how long they have lived in the country, because all "applicants for admission" are necessarily "seeking admission" to the United States. But as noted in *Castañon-Nava*, this interpretation ignores how Congress defined "applicant for admission" as a mere status, not an activity; how it defined "admission"; and how it used the phrase "seeking admission" in the statute. 2025 WL 3552514, at *9. The district court effectively wrote "seeking admission" out of the statute, stripping it of independent meaning and rendering it superfluous. *See id*. And the district court's conclusion that pursuing relief from removal constitutes "seeking admission" is foreclosed by the Supreme Court, which has recognized that such relief affords people "lawful status" and not an "admission." Moreover, this reading would have the absurd result of rendering a noncitizen like Mr. Cirrus Rojas ineligible for bond when they seek relief from removal, but eligible for bond if they choose to the depart the United States. *See infra* Section II.

The text of IIRIRA and staggering ramifications of the district court's interpretation further demonstrate that Congress could not have intended to mandate the detention policy. When Congress in IIRIRA expanded mandatory detention through § 1226(c) for noncitizens charged with removal based on criminal conduct, it was acutely sensitive to resource constraints and permitted the agency to delay implementation and increase its detention capacity to hold the estimated 45,000 noncitizens that § 1226(c) would cover each year. But if the district court were correct about the scope of § 1225(b)(2), that would mean the same Congress silently enacted § 1225(b)(2) to require the no-bond detention of an estimated population of two million people at that time—and closer to six million today—without giving any consideration to existing bedspace. *See infra* Section I.B.3.

Indeed, the Executive Branch's own contemporaneously-adopted regulations and three decades of unbroken practice underscore that the INA affords noncitizens who are present in the United States access to bond, regardless of whether they entered the country without inspection. The district court gave short shrift to this history without understanding its context. *See infra* Section I.A.3.

Finally, if the statute mandated what the government proposes, it would raise profound constitutional issues that the Court need not and should not decide. Mandatory detention of every noncitizen residing in the country who entered without inspection would run counter to longstanding precedent that noncitizens residing in the country are entitled to due process when deprived of liberty. Imposing mandatory detention without any opportunity for a bond hearing would contradict that core principle. *See infra* Section III.

In short, the district court incorrectly held that Mr. Cirrus Rojas's detention is governed by § 1225(b)(2), rather than § 1226. Mr. Cirrus Rojas is entitled to release on the bond that the immigration judge had originally ordered months ago. This Court should reverse the district court's judgment and remand with instructions to grant habeas relief.

ARGUMENT

I. The Detention Statutes Provide Petitioner Access to Bond.

A. Section 1226 Governs Petitioner's Detention.

1. Section 1226 provides the default detention authority for individuals arrested in the United States for a removal proceeding.

Although the district court never fully engaged with Petitioner's arguments about the applicability of § 1226, the text, structure, and history of that statute make clear that it is the detention authority for Mr. Cirrus Rojas. *See City of Chicago v.*

Barr, 961 F.3d 882, 898 (7th Cir. 2020) ("Our analysis begins with the plain language of [the statute], interpreted not in a vacuum, but in light of the context and the statutory structure as a whole."); *United States v. Liestman*, 97 F.4th 1054, 1064 (7th Cir. 2024) ("As with any statutory term, we must take each appearance as it comes, discerning meaning from a holistic analysis of text, context, purpose, and history."), *cert. denied*, 145 S. Ct. 1046 (2025).

Section 1226 provides the "default rule" for noncitizens who are apprehended "inside the United States" and detained for a removal proceeding. *Jennings*, 583 U.S. at 288. The plain language of § 1226(a) provides that DHS "may" arrest and detain a noncitizen "pending a decision on whether the alien is to be removed from the United States" while also permitting the noncitizen's release "on bond" or other conditions. 8 U.S.C. § 1226(a). By statute, removal proceedings cover people, like Mr. Cirrus Rojas, who are charged with being inadmissible after entering the country without inspection. *See* 8 U.S.C. § 1229a(a)(1) (directing the immigration judge to "conduct proceedings for deciding the inadmissibility . . . of [a noncitizen]"); *see also id.* § 1229a(a)(2), (c)(2)(A), & (e)(2)(A) (referring to charges and determinations of inadmissibility). Given that Congress wrote § 1226 to cover inadmissible noncitizens, it necessarily applies to individuals, like Mr. Cirrus Rojas, who are charged as inadmissible for being "present in the United States without being admitted or paroled," 8 U.S.C. § 1182(a)(6)(A)(i), and are detained "pending a decision on whether [they will] be removed, *id.* at § 1226(a).

"The historical context in which [§ 1226] was adopted confirms the plain import of its text." *See Biden v. Texas*, 597 U.S. 785, 804 (2022) (citing *Niz-Chavez v. Garland*, 593 U.S. 155, 165 (2021)). As it enacted IIRIRA in 1996, Congress maintained the basic detention framework that had long provided bond to people who had entered without inspection and were arrested for a deportation proceeding. Congress did so by replacing the language providing for detention and bond "[p]ending a determination of deportability" in the predecessor statute, 8 U.S.C. § 1252(a) (1995), with "pending a decision on whether the alien is to be removed" in § 1226. Through this change, Congress thus made clear that the noncitizens who entered without inspection and whom IIRIRA reclassified as inadmissible rather than deportable would remain eligible for bond. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) "restates" the provisions in former § 1252(a)(1) (1995) providing for "release on bond" to people in the country (including those who entered without inspection)); *accord* H.R. Rep. No. 104-828, at 210 (1996). Had Congress intended for § 1226 to apply only to deportable noncitizens, it could have simply retained the prior language referring to "deportability," as it did in other sections of the statute. *See, e.g.*, 8 U.S.C. § 1229c(a)(1) (retaining reference to "deportable").

2. Section 1226(c) reinforces that § 1226 provides Petitioner with access to bond.

Section 1226(c) confirms the applicability of § 1226 to inadmissible noncitizens like Mr. Cirrus Rojas through the statute's structure. Section 1226(c) is an exception to § 1226(a)'s general release authority. Section 1226(c) carves out a subset of inadmissible noncitizens from eligibility for bond under § 1226(a) where they are charged with criminal or terrorism-based grounds of removal and instead subjects them to mandatory, no-bond detention. *See* 8 U.S.C. §§ 1226(c)(1)(A) & (D), 1226(c)(4); *see also* 8 U.S.C. § 1226(a) (permitting release on bond "[e]xcept as provided in subsection (c)"); *Preap*, 586 U.S. at 397, 409.

Section 1226(c) is thus the exception that proves the rule: § 1226(a) generally affords bond to inadmissible noncitizens—including those, like Mr. Cirrus Rojas, who entered the country without inspection—*unless* the exception in § 1226(c) applies. If § 1226(a) did not generally provide bond to inadmissible noncitizens, Congress would have had no need to exclude a subset of them from bond-eligibility under § 1226(a) in the first place. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (the fact that Congress has created specific exceptions "proves" that the statute applies in general).

Congress confirmed this point just last year when it enacted the Laken Riley Act. That Act added a new ground of mandatory detention to § 1226(c) that specifically targets people, like Petitioner, who entered the country without inspection but—unlike Petitioner—are also charged with, arrested for, convicted of, or admit to committing an additional list of crimes. *See* 8 U.S.C. § 1226(c)(1)(E). The Act again makes even clearer that § 1226(c) is the exception to the general rule that people, like Mr. Cirrus Rojas, charged as inadmissible for entering the country without inspection, are eligible for bond under § 1226(a). Otherwise, there would have been no need for Congress to exclude a subset of those entrants from § 1226(a) bond eligibility.[6]

The district court wrongly dismissed the Laken Riley Act, stating that "legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996" and "nothing in the [Act] suggests any Congressional thoughts concerning the issues presented in this case." A34. The district court failed to understand the significance of the Act targeting certain people who are inadmissible based on lack of admission or parole. Courts "generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184–85 (1988). Congress set up § 1226(c) as a carveout from § 1226(a). Thus, by amending § 1226(c) in the Act to explicitly deny bond to a subset of inadmissible individuals who had entered without inspection (namely, those who also had the requisite criminal history), *see* 8 U.S.C. § 1226(c)(1)(E), Congress reaffirmed that those inadmissible individuals generally would be subject to § 1226 by default and thus be eligible for bond under subsection (a).

[6] Where petitioners have challenged their detention pursuant to the Laken Riley Act, courts agree as a threshold matter that the petitioner was *not* subject to § 1225(b)(2) but rather § 1226. *See Doe v. Moniz*, No. 1:25-CV-12094-IT, --- F. Supp. 3d ----, 2025 WL 2576819, at *4–5 (D. Mass. Sept. 5, 2025); *Helbrum v. Williams Olson*, No. 4:25-CV-00349-SHL-SBJ, 2025 WL 2840273, at *4 (S.D. Iowa Sept. 30, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at *8 (D. Nev. Oct. 14, 2025); *Mejia Arias v. Moniz*, No. 1:25-CV-13019-IT, 2025 WL 3197613, at *2 (D. Mass. Oct. 27, 2025); *Ojeda Montoya v. Joyce*, No. 2:25-CV-00558-SDN, 2025 WL 3557777, at *1 n.1 (D. Me. Nov. 17, 2025).

3. Executive Branch interpretation and practice confirm that § 1226 applies to Petitioner.

Contemporaneous Executive Branch interpretation and longstanding practice also support reading § 1226 to govern Mr. Cirrus Rojas's detention. In March 1997, just months after IIRIRA's enactment, DOJ promulgated regulations reaffirming that noncitizens "who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond." 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). And for three decades across five administrations, the government interpreted § 1226 to provide access to bond hearings to those placed into removal proceedings for having entered without inspection. *See supra* Background Section II.

Here, "the longstanding practice of the government . . . can"—and should—"inform [the Court's] determination of what the law is." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (internal citation omitted) (cleaned up). The government's contemporaneous interpretation of the statute and adherence to it for decades provides "powerful evidence that interpreting the Act in [this] way is natural and reasonable," *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting), and casts serious doubt on the government's departure from the universally-held understanding. *See, e.g.*, *Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law).

Furthermore, "Congress' failure to repeal or revise in the face of such administrative interpretation . . . constitute[s] persuasive evidence that that interpretation is the one [Congress] intended." *Zemel v. Rusk*, 381 U.S. 1, 11 (1965). Congress had multiple opportunities over three decades to correct the Executive's supposed misunderstanding of the scope of § 1226, including in post-IIRIRA legislation addressing immigration benefits and procedures, the restructuring of the immigration agencies, and judicial review of immigration matters.[7] But it never questioned the government's application of § 1226 to noncitizens like Petitioner; indeed, through the Laken Riley Act, it enacted legislation just last year *confirming* that application. *See supra* Section I.A.2.

The district court here recognized the persuasiveness of the 30-year history of the Executive Branch treating noncitizens like Mr. Cirrus Rojas as eligible for bond, but eschewed that historical practice and understanding because it could not find "a documented prior rationale" for the Executive Branch position. A35. But the history provides the rationale: prior to IIRIRA, noncitizens present without prior admission or parole were eligible for release on bond, and Congress chose to retain that rule in IIRIRA. *See supra* Section I.A.1.

B. Section 1225(b)(2) Applies to Noncitizens, Unlike Petitioner, Who Are "Seeking Admission" at the Border.

By contrast, nothing in § 1225(b)(2)—not its text, context, purpose, or history—gives the government the detention mandate it now claims in the interior of the country. Instead, § 1225(b)(2) is confined to individuals apprehended upon inspection

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[7] *See, e.g.*, USA PATRIOT Act of 2001, Pub. L. 107-56, 115 Stat. 272; Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135; REAL ID Act of 2005, Pub. L. 109.13, 119 Stat. 231.

at the border. This is consistent with both the meaning of the words that Congress chose—"seeking admission"—the statutory context, and the text and history of IIRIRA. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." (internal citations omitted)).

1. The plain language of § 1225(b)(2) applies only to individuals "seeking admission" to the United States.

By its plain language, § 1225(b)(2) applies only to those applicants for admission who are "seeking admission." Individuals who are present in the United States after having entered without inspection, like Mr. Cirrus Rojas who entered years ago, are not "seeking admission."

Start with the operative terms. A straightforward reading makes clear that § 1225(b)(2) does not apply to Mr. Cirrus Rojas and people like him. Section 1225(b)(2)(A) provides that:

> in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding under section 1229a."

Id. (emphasis added). "Admission" and "admitted" are defined in the INA to mean "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). Dictionaries define "seek" as, *inter alia*, "to go in search of; look for;" "to ask for" or "request;" "to try to acquire or gain; aim at," all of which carry a sense of affirmative, voluntary action. *See* Merriam-Webster's Collegiate Dictionary, 12th ed. (definition of "seek");

Oxford Encyclopedic English Dictionary, 3d ed. at 1311 (1996) (to "try or want to find" or "ask for; request"); Webster's Third New International Dictionary at 2055 (1993) (defining "seek" as, *inter alia*, "to go in search of;" or "to try to acquire or gain;" or "to make an attempt").

Putting these two definitions together, the term "seeking admission" means to "to go in search of, or to try to acquire or gain, lawful entry into the United States after inspection or authorization by an immigration officer." Critically, this definition connotes present-tense, affirmative action to "go in search of or to try to acquire or gain" a lawful entry into the United States. But Mr. Cirrus Rojas was arrested by ICE after living in the country for over seven years and was not seeking lawful entry by an immigration officer. Therefore, § 1225(b)(2)(A) does not apply to him and does not require his detention without bond.

2. The context of § 1225 confirms that § 1225(b)(2) is focused on noncitizens apprehended upon inspection at the border.

The context of 8 U.S.C. § 1225 confirms that § 1225(b)(2) is focused on people "seeking admission" at the border and ports of entry, not noncitizens living within the interior of the United States. *See Yates v. United States*, 574 U.S. 528, 537 (2015) ("[S]tatutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole." (internal citations and brackets omitted)).

Start with the title and headings. Section 1225 concerns the "inspection" and "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. The term "inspection" recurs throughout § 1225's titles. *See, e.g.*, *id.* §§ 1225(a), (a)(3), (b), (b)(1), (b)(2), (d). The statute sets forth a processing scheme for noncitizens who come to or cross the United States border, directing immigration officers to take certain actions with respect to categories of noncitizens as they seek admission, i.e., lawful entry into the United States. *See id.* § 1225(a)(3).

Beyond that, § 1225 is replete with examples demonstrating its border-oriented focus, including its provisions for stowaways, *id.* § 1225(a)(2), removal of arriving noncitizens inadmissible for certain security-related reasons, *id.* § 1225(c), and the inspection of vessels and aircraft bringing noncitizens "into the United States," *id.* § 1225(d)(1)–(2). And its neighboring statutes reinforce that § 1225(b) concerns inspections at the border and ports of entry. *See* 8 U.S.C. §§ 1223 (authority to contract with transportation lines for "inspection and admission of [noncitizens] coming to the United States from foreign territory or from adjacent islands" and creation of "landing stations" at "points of entry"); 1224 (designation of ports of entry for noncitizens arriving by aircraft); 1225a ("preinspection" of noncitizens at foreign airports). These procedures naturally culminate in the inspection and admission process that examining immigration officers conduct at the border and ports of entry like airports, as compared to the general arrest provisions in § 1226(a).

Section 1225(b), which contains the operative provision here, is titled "Inspection of applicants for admission." Section 1225(b)(1) and (b)(2) then describe how the government should process two categories of noncitizens: "[noncitizens] arriving in the United States and certain other aliens who have not been admitted or paroled," 8 U.S.C. § 1225(b)(1), and "other [noncitizens]," *id.* § 1225(b)(2).[8] In particular, § 1225(b)(2) contains language reflecting its focus on the border; it exempts from its detention and removal mandate "crewm[en]," "stowaway[s]," and noncitizens "to whom paragraph [1225(b)(1)] applies." *Id.* § 1225(b)(2)(B). Similarly, § 1225(b)(2)(C) describes a special processing scheme for certain noncitizens "who [are] arriving on land . . . from a foreign territory contiguous to the United States." Given that all of § 1225(b)(2) is focused on border processing, it would be unnatural to read it to impose a sweeping detention mandate for all noncitizens in the United States who entered without inspection and are living in the country. *See Whitman v. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (Congress "does not, one might say, hide elephants in mouseholes.").

This is especially so given that another provision of the INA, 8 U.S.C. § 1357(a)(2), separately mandates the "examination" of people who are arrested inside the country. Section 1357(a)(2) provides that, where the government makes a warrantless arrest, "the [noncitizen] 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." *Id.* That examination includes procedures that sensibly apply to an arrestee in these circumstances—including a determination of whether the person is "present in the United States in violation of the immigration laws," a potential referral for removal proceedings, and

[8] The expedited removal provisions in § 1225(b)(1) apply only to those inadmissible under § 1182(a)(6)(C) (fraud or misrepresentation), or § 1182(a)(7) (lacking proper "documents at time of application for admission").

a potential custody determination under § 1226. 8 C.F.R. § 287.3. Section 1357's procedures fit the circumstances of a person arrested inside the country, whereas § 1225(b)(2)'s inspections procedures do not.[9]

Finally, the groups of noncitizens to which § 1225(b)(2)(A) applies underscore its focus on the border. For example, noncitizens who do not have to comply with certain visa requirements, *see* 8 U.S.C. § 1187, may be subject to § 1225(b)(2)(A) if they are seeking to enter and are inadmissible. *See* 8 U.S.C. § 1736 (directing that visa waiver program participant who is an "applicant for admission" must be checked against government databases "at the time the [noncitizen] *seeks admission* to the United States") (emphasis added). Section 1225(b)(2) also covers a range of noncitizens who are seeking lawful entry but are inadmissible on other grounds not covered under § 1225(b)(1), for instance: someone on visa waiver program who has an Interpol Red Notice, 8 U.S.C. § 1182(a)(3)(A) (security and related grounds); someone suspected of smuggling, *id.* § 1182(a)(6)(E)(i); someone falsely claiming U.S. citizenship, *id.* § 1182(a)(6)(C)(ii); someone with an expired passport, *id.* § 1182(a)(7)(B)(i)(I); and, someone who was previously removed, *id.* § 1182(a)(9)(A)(i). And all these individuals are, unlike Petitioner, seeking lawful entry into the United States.

[9] Here, Mr. Cirrus Rojas was arrested on an administrative warrant citing both § 1226 and § 1357, App. 43, further confirming that the INA has different procedures for those apprehended inside the United States than for those at the border.

3. IIRIRA confirms that § 1225(b)(2) does not apply to millions of noncitizens living in the United States.

Finally, IIRIRA confirms that § 1225(b)(2) cannot possibly apply to Mr. Cirrus Rojas. In passing IIRIRA, Congress was acutely concerned about the strain on detention capacity that § 1226(c)'s new detention mandate would impose by requiring the detention of an estimated 45,000 noncitizens subject to removal on criminal grounds each year. *See* H.R. Rep. No. 104-469, pt. 1, at 118, 120, 123. To address the problem, Congress authorized an option to defer implementation of § 1226(c) for two years while the agency built up its detention capacity—an option the government promptly invoked. IIRIRA § 303(b), 110 Stat. 3009-586 to 3009-587; Doris Meissner, Comm'r, INS to Henry J. Hyde, Chairman, S. Comm. on the Judiciary, Letter Invoking IIRIRA Transitional Period Custody Rules (Oct. 3, 1997).[10]

It is implausible that the same Congress that showed such solicitude regarding § 1226(c)'s detention mandate simultaneously enacted the largest expansion of mandatory detention in U.S. history by imposing detention for *millions* of people under § 1225(b)(2)—without a whisper in the statutory text or congressional record.[11] Surely, "if Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point." *Chisom v. Roemer*, 501 U.S. 380, 396 (1991); *see also Whitman*, 531 U.S. at 468 (2001) (Congress does not "hide elephants in mouseholes.").

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[10] *Available at*: https://perma.cc/HFF9-MY3N.

[11] As noted, the estimated population of noncitizens in the United States who entered without inspection was about two million in 1996 and is around six million today. *See supra* n.4; Jill Wilson, et al., Cong. Rsch. Serv., R47848, Nonimmigrant Overstays: Overview and Policy Issues, at 1 n.6 (2023).

II. The District Court's Analysis of "Seeking Admission" in § 1225(b) Departs from the Statutory Text and Context.

By contrast, the district court's endorsement of the government's asserted detention mandate in § 1225(b)(2) departs from the statute's text and context. The district court concluded that Petitioner is subject to § 1225(b)(2) by dint of being an "applicant for admission." A34. Although the district court acknowledged that § 1225(b)(2) also includes reference to people who are "seeking admission," it read the phrase "as simply another way of referring to aliens who are applicants for admission." A34. This reasoning is flawed.

First, the district court's reasoning ignores the plain meaning of the phrase "seeking admission," which describes the activity of trying to make a lawful entry into the United States. *See supra* Section I.B.1. By the same token, "seeking admission" cannot be synonymous with being an "applicant for admission." This is because Congress deemed Mr. Cirrus Rojas (and people like him) an "applicant for admission" based merely on his being "*present* in the United States" without having "been admitted." 8 U.S.C. § 1225(a)(1) (emphasis added). Congress did *not* define being an "applicant for admission" in terms of the act of "seeking" admission—or, for that matter, doing anything except being in the country. In effect, the district court read the action of "seeking admission" *into* the definition of "applicant for admission" where Congress defined being such an applicant based on mere presence (or status) alone. "But it is Congress's prerogative"—not the Executive's—"to define a term however it wishes . . . ." *Castañon-Nava*, 2025 WL 3552514, at *9. Congress "could easily have included noncitizens who are 'seeking admission' within the definition [of applicants for admission] but elected not to do so." *Id.*

Second, the district court's conclusion "violat[es] one of the cardinal rules of statutory interpretation" by rendering parts of § 1225(b)(2)(A) "superfluous." *Id.* If Congress intended this reading, the statute could simply read as follows:

> Subject to subparagraphs (B) and (C), ~~in the case of an alien who is an applicant for admission,~~ if the examining immigration officer determines that an ~~alien seeking~~ **[applicant for]** admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

Congress would not have used such complicated language where much simpler text would have achieved the result the district court imagined. *See Texas*, 597 U.S. at 798 ("If Congress had wanted the provision to have that effect, it could have said so in words far simpler than those that it wrote.").

Third, the district court held that Mr. Cirrus Rojas was "in fact seeking admission to the United States" because of his pending application in immigration court for asylum. A34. But this conclusion is flatly foreclosed by Supreme Court precedent, ignores the statutory text, and leads to absurd results.

As the Supreme Court has explained, relief from removal does not afford a noncitizen "admission" to the country but instead provides "lawful status," a "distinct concept[] in immigration law." *Sanchez v. Mayorkas*, 593 U.S. 409, 415–16 (2021). Thus, the Court in *Sanchez* concluded that an individual who had entered the country unlawfully and subsequently received Temporary Protected Status ("TPS")—a form of temporary relief from deportation, *see* 8 U.S.C. § 1254a—was not constructively "admitted," but instead granted a "lawful status." *Id*. at 415–16, 419 (explaining that "a grant of TPS does not come with a ticket of admission").

The same distinction applies for other forms of immigration relief. Indeed, in *Sanchez* itself, the Supreme Court used the specific example of asylum—the relief that Mr. Cirrus Rojas is seeking—to explain how "a foreign national can be in lawful status but not admitted." *Id*. at 415–16.

Moreover, the district court's reasoning cannot be squared with the statutory text. Section 1225(b)(2) applies only to applicants for admission "if the *examining immigration officer* determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted. . . ." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). But many applications for relief from removal—like asylum—are submitted in immigration court and adjudicated by an *immigration judge*, which is expressly not an immigration officer. *Compare id*. § 1101(b)(4) (defining "immigration judge," an administrative judge housed within the Executive Office for Immigration Appeals under DOJ), *with id*. § 1101(a)(18) (defining "immigration officer," an employee of DHS). This reflects that § 1225(b)(2)(A) was not meant to apply to people detained in the interior who then seek relief before an immigration judge, like Mr. Cirrus Rojas is doing.

Finally, the district court's understanding of "seeking admission" creates absurd results. Under its reasoning, eligibility for bond will turn on whether a noncitizen decides to pursue relief. Individuals who are eligible for no relief and instead seek voluntary departure—meaning they are certain to leave in a matter of weeks—will be able to request bond. Yet, individuals who are eligible for relief—and, as a result, are the most suitable for release on bond because of their significant family and community ties, lack of criminal history, and other equities—are somehow subject to mandatory detention. It also suggests that eligibility for bond can change over time (for instance, if someone withdraws their application) but such a regime would hardly make any sense. Moreover, eligibility for bond would depend on the exact type of relief a person seeks, i.e., whether such relief is available from an immigration officer rather than an immigration judge—despite there being no evidence Congress sought to condition access to bond on this basis. The "Court [should] not construe a statute in a manner that leads to absurd or futile results." *Nixon v. Missouri Mun. League*, 541 U.S. 125, 138 (2004).

III. Constitutional Avoidance Warrants Rejecting the Government's Reading of the Detention Statutes.

If there were any remaining doubt as to the detention statutes interpretation, the canon of constitutional avoidance compels rejection of the government's novel detention mandate. Under that canon, where a statute can "fairly" be construed to avoid creating a serious constitutional problem, the court is obliged to adopt such a construction because Congress should not be presumed to have legislated so close to the constitutional line. *Almendarez-Torres v. United States*, 523 U.S. 224, 238 (1998). While Petitioner believes there is only one plausible interpretation of the statute, at a minimum, the detention statutes can and should "be construed to avoid serious constitutional doubts." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009); *see also United States v. Orona-Ibarra*, 831 F.3d 867, 876 (7th Cir. 2016) (applying avoidance canon to reject the government's interpretation). The avoidance canon has particular force when, as here, an agency claims expansive and constitutionally-suspect authority that runs contrary to how the statute has been understood. *Cf. West Virginia v. EPA*, 597 U.S. 697, 725 (2022) ("established practice" and the "want of assertion of power" by the government are "equally significant in determining whether such power was actually conferred" (internal quotation marks omitted)).

Detaining Mr. Cirrus Rojas without a bond hearing under § 1225(b)(2) raises serious due process concerns. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Fifth Amendment's Due Process Clause protects all persons who have entered the country—even those who have entered illegally—from unjustified deprivations of liberty. *See id.* at 693; *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025); *see also Castañon-Nava*, 2025 WL 3552514 at *9 (noting that "'[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.'" (citing *Zadvydas*, 533 U.S. at 693; *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Here, Mr. Cirrus Rojas's no-bond detention raises both substantive and procedural problems.

A. Petitioner's Mandatory Detention Raises Substantive Due Process Concerns.

Construing the statute to mandate Mr. Cirrus Rojas's no-bond detention raises substantive due process problems because it imposes detention that is not reasonably related to a legitimate government interest—namely, the prevention of flight or protection of public safety. *See Zadvydas*, 533 U.S. at 690–91 (civil detention violates due process unless there is a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint" (citation omitted)). Here, the government has jailed Mr. Cirrus Rojas based solely on its novel interpretation of the detention statutes, and not because he poses a flight risk or danger. In fact, an immigration judge has found he poses neither, App. 4–5, 31, yet he remains subject to detention based on the government's flawed reading of the statute.

B. Petitioner's Mandatory Detention Raises Procedural Due Process Concerns.

The government also cannot deprive individuals of liberty without "strong procedural protections." *Zadvydas*, 533 U.S. at 691. This includes a hearing before a neutral decisionmaker to ensure that detention is serving legitimate purposes. *See id*. (citing *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *United States v. Salerno*, 481 U.S. 739, 747, 750–52 (1987); *Foucha*, 504 U.S. at 81–83). An application of the classic balancing test from *Mathews v. Eldridge*, confirms that individuals like Mr. Cirrus Rojas are both entitled to a bond hearing and should be released based on the immigration judge's bond order. *See* 424 U.S. 319, 335 (1976) (weighing the nature of "the private interest" being deprived, "the risk of an erroneous deprivation," and the government's interests).

As to the private interest, Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention . . . ." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). This interest is elevated for a civil detainee like Mr. Cirrus

Rojas when, as here, he is "incarcerated under conditions indistinguishable from those imposed on criminal defendants" serving sentences "for violent felonies and other serious crimes." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020); *see Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (similar). Moreover, Mr. Cirrus Rojas is not only locked behind bars in a county jail, but also separated from his loved ones including his one-year-old U.S. citizen daughter and his partner who has had to solo parent in his absence. App. 3, 6, 140.

As to the second *Mathews* factor, the risk of erroneous deprivation is clear: Mr. Cirrus Rojas already demonstrated to an immigration judge that he is an excellent candidate for release on bond in the lowest amount provided by statute, $1,500. App. 31. Yet he remains jailed because the government has deemed him ineligible for bond.

Finally, as to the last *Mathews* factor, the government cannot identify any interest that justifies depriving Mr. Cirrus Rojas of his liberty for months (or even years),[12] when he has already demonstrated he poses no flight risk or danger. The government has no legitimate interest in "separat[ing] families and remov[ing] from the community breadwinners, caregivers, parents, siblings, and employees" like Mr. Cirrus Rojas. *Velasco Lopez*, 978 F.3d at 855. The government faces no administrative burden, as the immigration judge has already held a bond hearing and found him

[12] As explained in support of his motion for release pending appeal, Mr. Cirrus Rojas speaks Chatino, a rare language for which the government has not been able to find a certified interpreter so that he can fully participate in his removal proceedings. *See* Dkt. Nos. 12, 14-1, 14-3, 14-3. His individual merits hearing (i.e., the "trial" on his asylum case) has already been delayed because of the lack of a competent interpreter in his best language, underscoring how his detention will continue to be prolonged. *See* Dkt. No. 14-1 at 11–13.

suitable for release. Indeed, allowing for bond would *reduce* fiscal and administrative burdens associated with unnecessary detention, which saves money and *benefits* the public. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (noting that "[t]he costs to the public of immigration detention are 'staggering'").

C. The District Court Failed to Account for the Due Process Stakes.

Although the district court found no due process problem based on *Parra v. Perryman*, 172 F.3d 954 (7th Cir. 1999), that case is not on point. *Parra* addressed the mandatory detention under § 1226(c) of certain noncitizens with criminal history, *id*. at 958, that the Supreme Court later held justified a presumption of flight risk or danger for a brief period of detention, *see Demore v. Kim*, 538 U.S. 510, 528–31 (2003). Neither statute at issue here targets individuals with criminal histories, and Mr. Cirrus Rojas indisputably has none. Nor did Congress have before it any evidence that individuals who are present in the country after entering without inspection pose a heightened risk of danger or flight, as it did with respect to so-called "criminal aliens" when it enacted § 1226(c). *Contra Demore*, 538 U.S. at 518–21.

Moreover, in *Parra*, this Court based its decision on the fact that the petitioner's removal was "inevitable" where he had conceded that he was ineligible for any immigration relief. 172 F.3d at 958 (noting that the petitioner was seeking to "postpone[e] the inevitable"). In contrast, Mr. Cirrus Rojas is seeking asylum. It was therefore inaccurate for the district court to insist that he could obtain release by simply accepting removal to his homeland. A42. Choosing between staying in detention and accepting removal to a place where one fears persecution or torture is no real choice at all. *See Hernandez-Lara*, 10 F.4th at 29 (rejecting government's contention that detainees could "unilaterally decide to end their detention at any time by simply conceding to removal" and noting that "[t]he consequences of deportation are potentially most severe for meritorious asylum seekers, for whom one might fairly say that the escape from detention offered by the government could be death"). Thus, the district court erred in failing to consider the due process concerns presented by Mr. Cirrus Rojas's ongoing detention.

D. The Detention Statutes Can Be Fairly Construed to Provide Petitioner Access to Bond.

Finally, it is clear the statute can be "fairly" construed to avoid these serious due process problems, *see Almendarez-Torres*, 523 U.S. at 238, given that this is precisely how it was interpreted by the Executive for the past nearly 30 years over five administrations. Given the text, structure, and history, the Court can reasonably read § 1226(a) to apply to Mr. Cirrus Rojas because he is inadmissible for entering without inspection, and read § 1225(b)(2) not to apply to him because he is not seeking admission to the United States. Thus, the Court should interpret the statutes to avoid these serious constitutional difficulties and affirm that Mr. Cirrus Rojas was entitled to a bond hearing under § 1226(a).

CONCLUSION

The Court should reverse the district court's denial of habeas relief and remand to the district court with instructions to grant the habeas petition.

Dated: January 8, 2026

Respectfully submitted,

/s/ Michael K.T. Tan

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CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a), 32(g) and 27(d), I hereby certify that this motion is compliant with the type-volume limitations contained in the rules as follows:

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 10,642 words.
2. This brief complies with the typeface requirements of Fed. R. App. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced and easy-to-read typeface using Microsoft Word in 12-point size font.

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2026, I electronically filed the foregoing Certificate with the Clerk for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JACIEL CIRRUS ROJAS,

Petitioner-Appellant,

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-Appellees.

SHORT APPENDIX TABLE OF CONTENTS

CERTIFICATION

Undersigned counsel hereby certifies that this Appendix complies with Federal Rule of Appellate Procedure 30(d) and with Circuit Rule 30(a)-(b).

Dated: January 8, 2026.

Respectfully submitted,

/s/ *Michael K. T. Tan*
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8 U.S. Code § 1226 - Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

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

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(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 to a term of imprisonment of at least 1 year, ~~or~~

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

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Definition

For purposes of paragraph (1)(E), the terms "burglary", "theft", "larceny", "shoplifting", "assault of a law enforcement officer", and "serious bodily injury" have the meanings given such terms in the jurisdiction in which the acts occurred.

(3) Detainer

The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by the Federal, State, or local officials, shall effecively and expeditiously take custody of the alien.

(~~2~~4) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention ~~or release~~ of any alien or the ~~grant,~~ revocation~~,~~ or denial of bond or parole.

(f) Enforcement by attorney general of a State

The attorney general of a State, or other authorized State officer, alleging an action or decision by the Attorney General or Secretary of Homeland Security under this section to release any alien or grant bond or parole to any alien that harms such State or its residents shall have standing to bring an action against the Attorney General or Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable. For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of $100.

***Note*: This text is a redlined version reflecting the amendments made by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).**

8 U.S. Code § 1225 - Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

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

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B).

A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United

States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) "Credible fear of persecution" defined

For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) "Asylum officer" defined

As used in this paragraph, the term "asylum officer" means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

(3) Enforcement by attorney general of a state

The attorney general of a State, or other authorized State officer, alleging a violation of the detention and removal requirements under paragraph (1) or (2) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this paragraph to the greatest extent practicable. For purposes of this paragraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of $100.

(4) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney

General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections

(1) Authority to search conveyances

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

CHART OF DISTRICT COURT DECISIONS IN SEVENTH CIRCUIT ON 8 U.S.C § 1226 AND § 1225(b)(2)

Favorable Decisions (Total: 71)

Judge	**Relevant Decisions as of January 4, 2026**
N.D. Ill.	
Alonso, Jorge L.	*Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025)
Chang, Edmond E.	*Guartazaca Sumba v. Crowley*, No. 1:25-CV-13034, 2025 WL 3126512 (N.D. Ill. Nov. 9, 2025)
Coleman, Sharon J.	*H.G.V.U. v. Smith*, No. 25 CV 10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Padilla v. Noem*, No. 25 CV 12462, 2025 WL 2977742 (N.D. Ill. Oct. 22, 2025)
Cummings, Jeffrey I.	*Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025), *appeal filed*, No. 25-3255 (7th Cir. Dec. 15, 2025); *Castanon Nava v. DHS*, No. 18-cv-3757 (N.D. Ill. Nov. 13, 2025), ECF No. 247, *stay pending appeal denied in part*, No. 25-3050, 2025 WL 3552514 (7th Cir. Dec. 11, 2025)
Daniel, Jeremy C.	*Maldonado v. Crowley*, No. 25-12762 (N.D. Ill. Oct. 24, 2025), Dkt. 16
Ellis, Sara L.	*G.Z.T. v. Smith*, No. 25-12802 (N.D. Ill. Oct. 21, 2025), Dkt. 14
Gettlemen, Robert W.	*Flores v. Olson*, No. 25 C 12916, 2025 WL 3063540 (N.D. Ill. Nov. 3, 2025); *Pacheco Carrillo v. Noem*, No. 25-12963, 2025 WL 3101993 (N.D. Ill. Nov. 6, 2025); *Vasquez Gonzalez v. Olson*, No. 25-13162, 2025 WL 3158191 (N.D. Ill. Nov. 12, 2025)

Harjani, Sunil R.	*Aguilar v. Noem*, No. 25 C 12731, 2025 WL 3204568 (N.D. Ill. Nov. 17, 2025); *Ayala v. Olson*, No. 25 C 13317, 2025 WL 3210398 (N.D. Ill. Nov. 17, 2025); *Hernandez Balderas v. Olson*, No. 25 C 12749, 2025 WL 3210422 (N.D. Ill. Nov. 17, 2025); *Oliveros Alvarez v. Olson*, No. 25 C 13410, 2025 WL 3210461 (N.D. Ill. Nov. 17, 2025); *Lara v. Olson*, No. 25 C 13110, 2025 WL 3210403 (N.D. Ill. Nov. 17, 2025); *Gonzalez v. Olson*, No. 25 C 13439, 2025 WL 3237190 (N.D. Ill. Nov. 19, 2025); *Ramirez v. Noem*, No. 25 C 13651, 2025 WL 3227341 (N.D. Ill. Nov. 19, 2025); *Rusu v. Noem*, No. 25 C 13819, 2025 WL 3240911 (N.D. Ill. Nov. 20, 2025); *Barrera Simon v. Olson*, No. 25 C 14799, 2025 WL 3567469 (N.D. Ill. Dec. 13, 2025); *Sura Cruz v. Noem*, No. 25 C 15323, 2025 WL 3720247 (N.D. Ill. Dec. 23, 2025)
Jenkins, Lindsay, C.	*Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025), *appeal filed*, No. 25-03330 (7th Cir. Dec. 26, 2025); *Amigon Sanchez v. Olson*, No. 25-12453, 2025 WL 3004580 (N.D. Ill. Oct. 27, 2025)
Kendall, Virginia M.	*Lira Perez v. Noem*, No. 25 C 13442, 2025 WL 3140692 (N.D. Ill. Nov. 10, 2025); *Ruiz Garcia v. Olson*, No. 25 C 13621, 2025 WL 3210425 (N.D. Ill. Nov. 17, 2025)
Kennelly, Matthew F.	*Galvis Cortes v. Olsen*, No. 25-6293, 2025 WL 3063636 (N.D. Ill. Nov. 3, 2025); *Lopez Briseno v. Noem*, No. 25 C 12092, 2025 WL 3145985 (N.D. Ill. Nov. 11, 2025); *Cabrera v. Noem*, No. 25 C 12160, 2025 WL 3171288 (N.D. Ill. Nov. 13, 2025); *Pacheco v. Olson*, No. 25 C 13405, 2025 WL 3281850 (N.D. Ill. Nov. 25, 2025); *Valerio v. Noem*, No. 25 C 13648, 2025 WL 3470733 (N.D. Ill. Dec. 3, 2025)
Pallmeyer, Rebecca R.	*Reyes Arizmendi v. Noem*, No. 25 C 13041, 2025 WL 3089107 (N.D. Ill. Nov. 5, 2025)

Perry, April M.	*Rosales Ponce v. Olson*, No. 25-CV-13037, 2025 WL 3049785 (N.D. Ill. Oct. 31, 2025); *Mirzoev v. Olson*, No. 25-CV-12969, 2025 WL 3101969 (N.D. Ill. Nov. 6, 2025); *Munoz Arredondo v. Olson*, No. 25-12882, 2025 WL 3124149 (N.D. Ill. Nov. 7, 2025)
Rowland, Mary M.	*Valencia v. Noem*, No. 25-CV-12829, 2025 WL 3042520 (N.D. Ill. Oct. 31, 2025); *Garcia Rios v. Noem*, 2025 WL 3124173 (N.D. Ill. Nov. 7, 2025); *Soto-Garcia v. Olson*, No. 25-cv-13736, 2025 WL 3204594 (N.D. Ill. Nov. 17, 2025)
Shah, Manish S.	*Corona Diaz v. Olson*, No. 25 C 12141, 2025 WL 3022170 (N.D. Ill. Oct. 29, 2025)
Tharp, Jr., John. J.	*D.E.C.T. v. Noem*, No. 25 C 12463, 2025 WL 3063650 (N.D. Ill. Nov. 3, 2025); *Garcia Guevara v. Swearingen*, No. 25 C 12549, 2025 WL 3158151 (N.D. Ill. Nov. 12, 2025); *Mariscal Serrano v. Salazar*, No. 25 C 13170, 2025 WL 3171354 (N.D. Ill. Nov. 13, 2025); *Rodriguez Loredo v. Forestal*, No. 25 C 12758, 2025 WL 3187319 (N.D. Ill. Nov. 14, 2025); *Dionisa Quinonez v. Olson*, No. 25 C 13524, 2025 WL 3190598 (N.D. Ill. Nov. 14, 2025); *Perez v. Olson*, No. 25 C 13731, 2025 WL 3213967 (N.D. Ill. Nov. 18, 2025); *Lobera v. Noem*, No. 25 CV 13593, 2025 WL 3228984 (N.D. Ill. Nov. 19, 2025); *Campa Velazquez v. Olson*, No. 25 C 14360, 2025 WL 3552116 (N.D. Ill. Dec. 11, 2025); *Constantino Gomez v. Olson*, No. 25 C 15300, 2025 WL 3768242 (N.D. Ill. Dec. 31, 2025)
Wood, Andrea R.	*Ramirez Martinez v. Noem*, No. 25-CV-12029, 2025 WL 3145103 (N.D. Ill. Nov. 11, 2025); *Gallegos Valenzuela v. Olson*, No. 25-CV-13499, 2025 WL 3296042 (N.D. Ill. Nov. 26, 2025)

N.D. Ind.	
Brisco, Cristal C.	*Mejia Diaz v. Noem*, 3:25-CV-960, 2025 WL 3640419 (N.D. Ind. Dec. 16, 2025)
Leichty, Damon, R.	*Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. Ind. Nov. 25, 2025); *Singh v. English*, No. 3:25CV962 DRL-SJF, 2025 WL 3713715 (N.D. Ind. Dec. 23, 2025); *Garcia Ortiz v. Trump*, No. 3:25-CV-1009 DRL-SJF, 2025 WL 3760761 (N.D. Ind. Dec. 30, 2025); *S.N.H. v. English*, No. 3:25-CV-993 DRL-SJF, 2025 WL 3760746 (N.D. Ind. Dec. 30, 2025)
S.D. Ind.	
Barker, Sarah E.	*Campos Leon v. Forestal*, No. 25-01774, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025), *appeal filed*, No. 25-3121 (7th Cir. Nov. 24, 2025); *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025), *appeal filed*, No. 25-3213 (7th Cir. Dec. 9, 2025); *Singh v. Bondi*, No. 1:25-CV-02101-SEB-TAB, 2025 WL 3029524 (S.D. Ind. Oct. 30, 2025); *Perez Reyes v. Bondi*, No. 4:25-CV-00239-SEB-KMB, 2025 WL 3755928 (S.D. Ind. Dec. 29, 2025)
Brookman, Matthew P.	*Delgado Avila v. Crowley*, No. 2:25-CV-00533-MPB-MJD, --- F. Supp. 3d ----, 2025 WL 3171175 (S.D. Ind. Nov. 13, 2025)
Hanlon, Patrick	*Alejandro v. Olson*, No. 1:25-CV-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025)
Pratt, Tanya W.	*Quishpe-Guaman v. Noem*, No. 25-00211, 2025 WL 3201072 (S.D. Ind. Nov. 17, 2025); *Mohammed v. Olson*, No. 1:25-CV-02404-TWP-MKK, 2025 WL 3541819 (S.D. Ind. Dec. 10, 2025)

Sweeney, II, James R.	*Diaz v. Olson*, No. 2:25-CV-00631-JRS-MKK, 2025 WL 3765960 (S.D. Ind. Dec. 30, 2025); *Jimenez Reyes v. Olson*, No. 2:25-CV-00622-JRS-MG, 2025 WL 3765963 (S.D. Ind. Dec. 30, 2025); *Silva Sanchez v. Hott*, No. 1:25-CV-02137-JRS-TAB, 2025 WL 3765959 (S.D. Ind. Dec. 30, 2025); *Morales Sandoval v. Crowley*, No. 2:25-CV-00560-JRS-MKK, 2025 WL 3760760 (S.D. Ind. Dec. 30, 2025); *Felipe Gomez-Gomez v. Swearingen*, No. 2:25-CV-00606-JRS-MJD, 2025 WL 3769065 (S.D. Ind. Dec. 31, 2025)
E.D. Wis.	
Adelman, Lynn	*Rivas Alonso v. Olson*, No. 25-CV-1660, 2025 WL 3240928 (E.D. Wis. Nov. 20, 2025)
Conway, Bryan B.	*Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025), *appeal filed*, No. 25-03316 (7th Cir. Dec. 23, 2025)
W.D. Wis.	
Conley, William M.	*Guaita Quinapanta v. Bondi*, No. 25-CV-795-WMC, 2025 WL 3157867 (W.D. Wis. Nov. 12, 2025)
Peterson, James D.	*Paredes Padilla v. Galovich*, 25-cv-863-jdp, 2025 WL 3251446 (W.D. Wis. Nov. 21, 2025)

Unfavorable Decisions (Total: 3)

Judge	**Relevant Decisions as of January 4, 2026**
N.D. Ill.	
Pacold, Martha M.	*Cruz Rodriguez v. Olson*, No. 1:25-cv-12961, 2025 WL 3672856 (N.D. Ill. Dec. 17, 2025)
E.D. Wis.	
Griesbach, William C.	*Ugarte-Arenas v. Olson*, No. 2:25-cv-01721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025)
Ludwig, Brett H.	***Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025), *present appeal*, No. 25-3127 (7th Cir.)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JACIEL CIRRUS ROJAS,

Petitioner,

v. Case No. 25-cv-1437-bhl

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

Respondents.

ORDER ON PETITION FOR HABEAS CORPUS

Jaciel Cirrus Rojas is an unregistered alien and citizen of Mexico who has lived in the United States without authorization for seven years. On June 3, 2025, he was arrested by U.S. Immigration and Customs Enforcement (ICE) agents and is now being detained at the Dodge County Jail in Juneau, Wisconsin. An immigration judge ruled that Cirrus Rojas should be released on bond, but ICE has appealed that ruling and, by regulation, Cirrus Rojas's release has been stayed pending appeal. On September 17, 2025, Cirrus Rojas filed a petition for writ of habeas corpus and complaint for emergency injunctive relief, asking this Court to order his immediate release pursuant to 28 U.S.C. §2241. (ECF No. 1.) Eight days later, he filed a motion for temporary restraining order and preliminary injunction, requesting the same relief. (ECF No. 4.) The Court has screened Cirrus Rojas's habeas petition under Rule 4 of the Rules Governing Section 2254 Cases,[1] (ECF No. 5), Respondents have answered, (ECF No. 11), and the Court heard argument at an October 14, 2025 telephonic hearing, (ECF No. 18). The parties agree that the issues presented are legal and the Court should proceed directly to the merits of Cirrus Rojas's petition. *See* Fed. R. Civ. P. 65(a)(2). Because Cirrus Rojas has not shown that his detention is contrary to federal law, his petition and motion for injunctive relief will be denied.

[1] The Rules can also apply to §2241 petitions. *See* Rule 1(b) of the Rules Governing §2254 Cases in the United States District Courts; *see also* Civ. L. R. 9(a)(2) (E.D. Wis.).

BACKGROUND

Cirrus Rojas is a native and citizen of Mexico. He was never formally admitted to the United States but, without authorization, has been present here since 2018. (ECF No. 1 ¶2.) While here illegally, Cirrus Rojas has avoided criminal arrest or conviction. (*Id.* ¶4.) On June 3, 2025, however, he was arrested for immigration violations pursuant to an ICE warrant. (*Id.* ¶23; ECF No. 1-2.) ICE immediately placed him in removal proceedings and determined that he should be detained without bond pending completion of those proceedings. (ECF No. 1-4.)

Cirrus Rojas sought review of ICE's detention decision in the immigration court, which held a "bond redetermination" hearing on July 15, 2025. (ECF No. 1 ¶24; ECF No. 1-1.) ICE officials argued that aliens like Cirrus Rojas, who are present and living in the United States without permission, are "applicants for admission" under 8 U.S.C. §1225 and therefore ineligible for release on bond. This represents a change from longstanding immigration practice and is based upon recent (non-public)[2] interim guidance announced to ICE employees on July 8, 2025. The immigration judge rejected ICE's argument and ordered Cirrus Rojas released on a $1,500.00 bond. (*Id.*; ECF No. 1-1.)

ICE filed a form Notice of ICE Intent to Appeal Custody Redetermination on that same day. (ECF No. 1 ¶26; ECF No. 1-6.) Under regulations promulgated by the Attorney General, this filing automatically stayed Cirrus Rojas's release for 10 days to allow the government time to file a notice of appeal. *See* 8 C.F.R. §1003.6(c)(1) & 1003.19(i)(2). ICE perfected its appeal by filing a formal notice of appeal on July 24, 2025. (ECF No. 1-7.) Proceedings concerning Cirrus Rojas's status and ability to remain in the United States continue. ICE's appeal of the bond ruling remains pending before the Board of Immigration Appeals, and removal proceedings in which Cirrus Rojas is now requesting asylum are pending in the immigration court, which has set another hearing set for October 29, 2025. (ECF No. 1 ¶31.)

ANALYSIS

Cirrus Rojas's habeas petition asserts three interrelated claims. First, he alleges he is being held in violation of his Fifth Amendment due process rights. (ECF No. 1 at 25–26.) Cirrus Rojas admits he was initially afforded due process when he received a bond hearing before an

[2] Cirrus Rojas supplied the Court with screenshots of this guidance. (ECF No. 1-5.) The Court asked Respondents to supply a formal copy, but counsel indicates the guidance has not been "officially or publicly released" and thus he is unable to produce one. (ECF No. 19.) The Court does not doubt counsel's report and, without casting aspersions on his conduct in this case, notes that ICE could aid its credibility by being more forthright.

immigration judge. But he contends that having been granted bond by that immigration judge, he is entitled to be released immediately, and his continued detention violates due process under the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). (ECF No. 4-1 at 8, 11–13.) Cirrus Rojas's second claim is that his continued detention violates the Immigration and Nationality Act (INA). (ECF No. 1 at 26–27.) Cirrus Rojas argues that his arrest and detention are governed by 8 U.S.C. §1226, pursuant to which the immigration judge granted him release on bond. (*Id.*; ECF No. 4-1 at 8.) He insists that ICE's invocation of 8 U.S.C. §1225 to argue for his detention is incorrect and a deviation from decades of established practice in the immigration courts. (*See* ECF No. 1 ¶¶25, 41.) Cirrus Rojas's third claim challenges the automatic stay of his release pursuant to 8 C.F.R. §1003.19(i)(2), a regulation he contends is *ultra vires*. (*Id.* at 27–28.) Under this regulation, ICE's filing of a notice of appeal halted Cirrus Rojas's release while his appeal proceeds. Cirrus Rojas contends the regulation exceeds the statutory authority granted to the Attorney General, rendering his continued detention unlawful. (ECF No. 4-1 at 14.)

Respondents dispute these claims. They argue that Cirrus Rojas is receiving the process he is due under U.S. immigration law. Respondents point out they have promptly initiated formal removal proceedings and Cirrus Rojas's ongoing detention is authorized under 8 C.F.R. §1003.19(i)(2), which permits his detention pending appeal, subject to specific time limitations. (ECF No. 11 at 22–23.) With respect to the INA, Respondents argue that Cirrus Rojas is present in the United States without admission or parole and is therefore an "applicant for admission" who must be detained under Section 1225(b)(2)(A) while his removal proceedings are adjudicated. (*See* ECF No. 1-7 at 4.) They acknowledge a change from the agency's prior handling of similar unauthorized aliens but insist that the plain text of the statute trumps earlier agency practice. They further observe that their interpretation provides equal treatment to unadmitted aliens apprehended at the border and those who were initially able to evade border agents but were then later arrested. Finally, Respondents argue the automatic stay provision in 8 C.F.R. §1003.19(i)(2) is a valid rule enacted by the Attorney General that serves the legitimate purpose of maintaining the status quo while DHS appeals the immigration judge's custody order. (ECF No. 11 at 19–20.)

I. Despite Multiple Statutory Hurdles, the Court Concludes it Has Jurisdiction to Resolve Cirrus Rojas's Petition and Motion.

The Court's first order of business is to confirm that it has jurisdiction. "Federal courts are courts of limited jurisdiction [and] possess only that power authorized by Constitution and statute."

Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). The limits of the Court's jurisdiction are "not to be expanded by judicial decree." *Id*.

Congress has given Article III courts, and district courts in particular, a narrow role in immigration proceedings. In the normal course, immigration matters rarely come before the district court. By statute and regulation, immigration proceedings are entrusted to Article I courts—the Immigration Court and the Board of Immigration Appeals—established within the Department of Justice. Challenges to final orders from those administrative courts are heard directly by the courts of appeal and bypass the district courts entirely. 8 U.S.C. §1252(a)(5); *See Parra v. Perryman*, 172 F.3d 954, 956 (7th Cir. 1999) (citing *LaGuerre v. Reno*, 164 F.3d 1035 (7th Cir. 1998). But the fact that these matters do not come to this court in the ordinary course does not mean they can never properly be brought here.

As noted in the screening order, several statutory limitations might apply to Cirrus Rojas's claims. Section 1252 of Title 8 is entitled "Judicial review of orders of removal" and at least two of its subsections are facially implicated by Cirrus Rojas's petition. Under Section 1252(b)(9):

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision . . . or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Section 1252(g) places more limits on judicial review of certain immigration matters:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Congress has also enacted a jurisdiction-limiting provision for detention rulings in particular. Section 1226(e) provides that:

> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

The Supreme Court has offered limiting constructions of all three provisions. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 477 (1999), the Supreme Court adopted a narrow reading of Section 1252(g) in the context of claims by a group of resident aliens who alleged they were being selectively targeted for deportation in violation of their First and Fifth Amendment rights. The Court emphasized that Section 1252 applied "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (emphasis in original). Because the case involved a challenge to the Attorney General's decision to "commence" proceedings, it fell squarely within Section 1252 and the Court vacated lower court rulings in the resident aliens' favor for lack of jurisdiction. *Id*. at 492.

Four years later, in *Demore v. Kim*, 538 U.S. 510, 517 (2003), the Supreme Court offered a narrow construction of Section 1226(e) in connection with a lawful permanent resident alien's habeas challenge to his detention without a bail while he awaited removal after being convicted on burglary charges. The district court had granted the alien's Section 2241 petition, concluding that detaining him without a finding that he posed a danger to society or was a flight risk violated due process. *Id*. at 514. The Ninth Circuit affirmed. *Id*. at 515. Before reversing the lower court rulings, the Supreme Court questioned whether Section 1226(e) deprived the federal courts of jurisdiction to consider the habeas petition. *Id*. at 516. The Court held that Section 1226(e) was limited to challenges to the Attorney General's "discretionary judgment" regarding the detention or release of an alien. *Id*. Because the petitioner challenged the statutory framework under which he was being detained, not any discretionary judgment, the Court concluded that Section 1226(e) did not deprive the federal courts of habeas jurisdiction. *Id*. at 517–18.

Most recently, in *Jennings v. Rodriquez*, 583 U.S. 281, 294–95 (2018), a plurality of the Supreme Court concluded that neither Section 1252(b)(9) nor Section 1226(e) precluded judicial review of a lawful permanent resident's habeas challenge to his ongoing detention after being adjudicated removable and while awaiting removal. The district court and Ninth Circuit had ruled that the petitioner and a class of similarly situated aliens were entitled to periodic bond hearings, concluding that the right to such bond hearings was "implicit" in the immigration statutes, a construction necessary to avoid due process issues. *Id*. at 292. Before rejecting the lower courts' interpretation on the merits, the Court addressed its jurisdiction. *Id*. at 292–94. The Court first acknowledged that the petition could be said to raise questions of law and fact "arising from" proceedings to remove petitioners but, citing *American-Arab Anti-Discrimination Committee,* rejected an "expansive" interpretation of Section 1252(b)(9). *Id.* at 294. The Court declined to provide a "comprehensive interpretation" of the statute but held that because the case did not involve review of a removal order or a challenge to a detention or removal decision or to any part of the removal process, Section 1252(b)(9) was not a "jurisdictional bar." *Id*. at 294–95. The Court then turned to Section 1226(e) and reaffirmed its prior interpretation from *Demore*. *Id*. at 295. The Court explained that because the claimants challenged the statutory framework mandating their detention without a bond hearing as a whole, they were not challenging a "discretionary decision," and Section 1226(e) was not a jurisdictional barrier. *Id*.

Given these Supreme Court rulings, the Court concludes there is no jurisdictional bar to its consideration of Cirrus Rojas's petition. Unlike the plaintiffs in *American-Arab Anti-Discrimination Committee,* Cirrus Rojas is not challenging the Attorney General's decision to *commence* proceedings against him, to *adjudicate* his immigration case, or to *execute* a removal order. Accordingly, Section 1252(g) is not an issue. And, while Cirrus Rojas is in a different position than the habeas petitioners in *Demore* and *Jennings* – he is not a permanent resident alien and his removal proceeding remains ongoing – his challenge, like theirs, does not implicate a "discretionary judgment" of the Attorney General regarding his detention, but rather attacks her regulations and her interpretation of the statutory framework relating to his detention. While Cirrus Rojas's petition could be said to "arise from" actions taken to remove him, the Court will not adopt an expansive reading of that language. *See Jennings*, 583 U.S. at 294–95. The Court therefore concludes that neither Section 1252(b)(9) nor Section 1226(e) preclude jurisdiction either. *See Parra,* 172 F.3d at 957.

II. Jurisdictional Issues Aside, Cirrus Rojas Has Not Shown That His Detention Violates the Constitution or Federal Law.

Cirrus Rojas seeks habeas relief under Section 2241, which confers jurisdiction on district courts to order the release of a detainee who is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §2241(c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (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."). A habeas petition under Section 2241 allows persons in custody to challenge the fact or duration of their confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973); *Waletzki v. Keohane*, 13 F.3d 1079, 1080 (7th Cir. 1994). The Supreme Court has recognized Section 2241 as a forum for statutory and constitutional challenges to detention orders in immigration proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Cirrus Rojas's request for injunctive relief is governed by Federal Rule of Civil Procedure 65.

Cirrus Rojas asserts that his continued detention, after being granted bond by an immigration judge, violates the U.S. Constitution's Due Process Clause, the Immigration and Nationality Act, and is *ultra vires*. (ECF No. 1 ¶¶5, 90–106.) He asks this Court to provide affirmative injunctive relief by ordering his release pursuant to the immigration court's bond ruling and enjoining Respondents from continuing his detention contrary to that ruling and in violation of his due process rights. (*Id.* ¶10.) Central to his petition is Cirrus Rojas's contention that ICE cannot rely upon Section 1225(b) to detain him. He contends that he is statutorily entitled to a bond hearing under Section 1226(a) and, based on past agency practice, Section 1225(b) does not even apply to him. Having been granted bond by an immigration judge, Cirrus Rojas insists his continued detention violates due process. He also contends that 8 C.F.R. §1003.19(i)(2), the regulation that has stayed his release pending appeal, is *ultra vires* and beyond the Attorney General's statutory authority. Finally, he contends that ICE's use of this regulation to block his release while it appeals the bond ruling violates his due process rights.

These issues are complex and interrelated. The Court will first address the text of Sections 1225 and 1226. It will then turn to the parties' competing interpretations of those provisions. It will next address the challenged regulation and the stay of Cirrus Rojas's release pending the conclusion of his appeal. Because the Court concludes that Respondents have the better of the statutory argument, it does not find that Cirrus Rojas is being detained in violation of the INA. While a majority of district courts have agreed with Cirrus Rojas's construction, no appellate court has yet reached the issue, and the statutory text is more consistent with Respondents' position. Even if the Court were to conclude otherwise, however, the record confirms that the stay of his release pending appeal, under 8 C.F.R. §1003.19(i)(2), serves a legitimate function, is properly limited, and does not violate Cirrus Rojas's due process rights.

A. Cirrus Rojas's Detention Does Not Violate the INA.

Cirrus Rojas challenges ICE's interpretation of two provisions of the INA, codified at 8 U.S.C. §§1225 and 1226. The INA is a complicated statute that has been amended multiple times since being enacted in 1952. The relevant language in the two provisions at issue was added by

Congress in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Both sections authorize the government to detain individuals pending resolution of removal proceedings. Determining how these sections interrelate, how they apply to various categories of aliens facing removal, and how they fit into federal immigration law as a whole is a challenge.[3]

1. Section 1225 Addresses "Applicants for Admission" and Provides for Expedited Removal of Certain Undesirable or Dangerous Aliens.

Section 1225 is entitled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Subsection (a) concerns the "inspection" of aliens by immigration officers. Central to the parties' dispute is a definitional section, 1225(a)(1), which identifies those aliens who are to be "treated as applicants for admission." The text provides:

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

8 U.S.C. §1225(a)(1). Moving through the statute, Section 1225(a)(2) clarifies that stowaways are not eligible for admission and are to be ordered removed immediately after being inspected by immigration officials. Section 1225(a)(3) then provides that all applicants for admission or readmission must be inspected by immigration officers, and Section 1225(a)(4) allows aliens who are applying for admission to withdraw their applications and depart immediately from the country. Section 1225(a)(5) authorizes immigration officials to take statements from applicants under oath concerning their intentions in seeking admission.

Section 1225(b) is entitled "Inspection of applicants for admission." It mandates expedited removal proceedings for certain types of applicants for admission. Generally, if an immigration officer finds that an alien is inadmissible because of fraud or due to documentation issues, the official must order the alien removed without further hearing unless the alien indicates an intention to apply for asylum or expresses a fear of persecution. *See* 8 U.S.C. §1225(b)(1)(A)(i) & (ii). The

[3] The parties and caselaw do not make things easier by alternately referring to these provisions with citations to the INA and its amendments as enacted and to the codified form of the statute in Title 8. In an attempt to keep things simpler, this Court will stick to the Title 8 citations.

statute also authorizes the Attorney General to designate certain other aliens for similar expedited removal so long as those aliens have not been previously admitted and have not shown they were continuously physically present in the United States for the preceding two years. *See* Section 1225(b)(1)(A)(iii). In Section 1225(b)(1)(F), Congress carved out an exception to this expedited removal process for citizens of a "country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry."

Section 1225(b)(2) is central to Respondent's position. It addresses the "Inspection of other aliens" and provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding" under 8 U.S.C. §1229a. The statute also allows the Attorney General to return aliens who arrive on land from a contiguous foreign territory to that foreign territory pending removal proceedings. 1225(b)(2)(C). The balance of Section 1225 is largely procedural, describing the process for expedited removal, review by the Attorney General, the alien's right to submit information, and the authority of immigration agents to search, detain, subpoena, and administer oaths.

2. Section 1226 Authorizes the Arrest and Detention of Aliens.

Section 1226 is entitled "Apprehension and detention of aliens." Subsection (a) provides general authority to the Attorney General to issue warrants for the arrest and detention of aliens pending a decision on their removability. It also allows the Attorney General to continue the detention of the arrested alien or, with the exception of certain criminal aliens who are ineligible for admission, release them on bond or parole. *Id*. Section 1226(b) provides for the revocation of bond or parole granted under subsection (a).

Section 1226(c) mandates that the Attorney General take into custody aliens who are inadmissible or subject to removal for a variety of criminal offenses, many of which are outlined in other sections of the INA. This part of the statute was amended within the last year by the Laken Riley Act to specifically require the detention of aliens arrested for certain crimes: burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime that results in death or serious bodily injury.[4] *See* 8 U.S.C. §1226(c)(1)(E)(ii). Finally, under Section 1226(c)(4), aliens

[4] The Laken Riley Act also amended Section 1225(b) to authorize State Attorney General enforcement powers. *See* 8 U.S.C. §1225(b)(3).

who are subject to mandatory detention may only be paroled or released for witness protection purposes.

3. The Parties' Competing Constructions of DHS's Detention Authority under Sections 1225 and 1226.

Cirrus Rojas contends he is governed by Section 1226(a), not Section 1225(b)(2), and his detention is therefore discretionary, not mandatory. Having been given a bond hearing and granted bond, he argues he is statutorily entitled to be released consistent with the immigration judge's bond ruling. Cirrus Rojas defends this interpretation by invoking past immigration practice and the statutory text.

Cirrus Rojas first emphasizes that immigration officers have historically treated unadmitted aliens like him, who have been arrested within the United States (not at the border), as eligible for release on bond. (ECF No. 1 ¶¶38–39.) He represents that the government has consistently taken this approach from the time the IIRIRA was enacted in 1996 until this summer. (*Id.* ¶39.) He cites two House reports related to the IIRIRA's passage that indicate Congress's intention to continue detention practices from the pre-IIRIRA time period. (*Id.* ¶40.) He further notes that pre-IIRIRA, the Attorney General was authorized to release unadmitted aliens on bond or parole. (*Id.*) Finally, he calls ICE's change in approach under the July 8, 2025 interim guidance a dramatic shift adopted "without warning and without any publicly stated rationale." (*Id.* ¶41.) He contends that treating unadmitted aliens apprehended inside the country differently than new arrivals detained at the border is consistent with the "core logic" behind the immigration system. (*Id.* ¶43.)

Turning to the statutory text, Cirrus Rojas highlights the plain language of Section 1226(a), which authorizes the Attorney General to release aliens on bond pending resolution of removal proceedings. He then points to his arrest warrant, which cites INA "Section 236," codified at 8 U.S.C. §1226, *not* INA Section 235, codified at 8 U.S.C. §1225. He provides a long list of district courts that have adopted his and rejected ICE's interpretation of these two sections. Substantively, he argues that Section 1225 should be read to apply only to aliens who are "seeking admission" and apprehended at the border. He contends that because he was already living in the United States, he was not seeking admission and is not covered by Section 1225. (*See Id.* ¶48.) Next, he insists the INA needs to be interpreted as a whole to give a consistent and sensible reading to all sections in their entirety. (*Id.* ¶50.) Finally, he contends Respondents' interpretation renders the recently enacted Laken Riley Act superfluous. (*Id.* ¶51.)

Respondents' arguments are largely textual. They acknowledge that both Section 1225 and 1226 address the detention of aliens awaiting removal. Respondents emphasize the plain terms of Section 1225(a) and its definition of "applicants for admission." (ECF No. 11 at 3.) They also cite the INA's express definition of "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." (*Id.* citing 8 U.S.C. §1101(a)(13)(A).) Because Cirrus Rojas was arrested while present in the United States and not lawfully admitted, Respondents argue, he falls within Section 1225(a)'s definition and is subject to Section 1225's treatment of applicants for admission. (*Id.* at 13–16.)

Respondents then explain that Section 1225(b)(1) provides for the *expedited* removal of two categories of applicants for admission and concede that Cirrus Rojas does not fall into either group. As to the first statutory category, Respondents contend that expedited removal and mandatory detention are required for aliens arriving in the United States who are inadmissible for fraud or documentation issues under 8 U.S.C. §1182(a)(6)(C) and 1182(a)(7). As to the second group, Respondents state that the Attorney General is also authorized to apply the same expedited removal approach to certain other aliens who have not been admitted or paroled into the country, have not affirmatively shown they have been physically present for the preceding two years, and are not otherwise inadmissible. Respondents argue that Cirrus Rojas does not fall into either of these categories but instead falls within the coverage of Section 1225(b)(2), which they call a "catchall" provision. (ECF No. 11 at 4.) In Respondents' view, Section 1225(b)(2) requires the detention of all other "applicants for admission," pending removal proceedings, if an immigration officer determines they are not "clearly and beyond a doubt entitled to be admitted." (*Id.* at 13–14.) Under this reading, Section 1225(b)(2) mandates Cirrus Rojas's detention.

According to Respondents, Section 1226(a) does not apply to Cirrus Rojas. They maintain that Section 1226(a) applies to foreign nationals who are *not* "applicants for admission." This means that Section 1226(a) applies to lawfully admitted aliens, like lawful permanent residents, and allows for their arrest and discretionary detention or release on bond pending resolution of their removal proceedings. Applicants for admission, like Cirrus Rojas, on the other hand, are subject to the mandatory detention provisions in Section 1225. They further contend that their interpretation sensibly treats unadmitted aliens facing removal the same, regardless of whether the alien is apprehended at the border or within the country.

Based on the text, the Court concludes that Respondents' interpretation is the better one, although the statutory language and interplay between these sections could certainly be more clear. Cirrus Rojas meets the definition of "applicant for admission" in Section 1225(a)(1). He is an alien "present" in the United States and he has not been "admitted." Under the plain terms of Section 1225(a)(1), he is "deemed" an applicant for admission for purposes of Chapter 12 of Title 8, which governs Immigration and Nationality. Of all the statutory terms at issue, this is perhaps the most straightforward. Indeed, Cirrus Rojas's counsel admitted at oral argument that he fell within the plain terms of the definition in Section 1225(a)(1) but urged the Court to interpret the "applicant for admission" as not applying to Cirrus Rojas based on the INA as a whole.

The Court has attempted to review the statute as a whole, including all parts of the INA to which the parties refer, and it cannot find a statutory basis to exclude Cirrus Rojas from the definition of "applicant for admission" in Section 1225(a)(1). Cirrus Rojas directs the Court to additional language in Section 1225(b)(2) that refers to aliens who are "seeking admission" and argues the use of present tense means that it was intended to apply only to those aliens who arrive and are being detained at the border. The Court finds this argument unpersuasive. Section 1225(b)(2) also uses the term "applicant for admission" and, while it then refers to aliens "seeking admission," nothing in the provision suggests the intention Cirrus Rojas proposes. In the Court's view, this language is best read as simply another way of referring to aliens who are applicants for admission. Cirrus Rojas would pack a lot of meaning into what appears to be an alternate phrasing. Moreover, and in any event, Cirrus Rojas's argument fails on the facts. The record confirms that Cirrus Rojas is now in fact seeking admission to the United States. His petition acknowledges that he has an application for asylum pending in the immigration court and he is thus presently seeking authorization to remain in this country. (ECF No. 1 ¶9.) Indeed, one suspects that upon apprehension most unadmitted aliens promptly seek admission and permission to stay; their alternative is to elect to remove themselves voluntarily. This undercuts the logic of Cirrus Rojas's argument.

The Court is also unpersuaded that Congress's passage of the Laken Riley Act defeats Respondents' construction of Section 1225(b)(2). As Respondents note, legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996. Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case. This recent legislation was aimed at making sure that certain aliens, whom Congress deemed dangerous, were necessarily detained pending their removal, lest they commit further crimes while released. These newly added provisions do not indicate anything with respect to either party's proposed interpretation of Sections 1225 or 1226.

Cirrus Rojas's most persuasive efforts are his references to immigration officials' history of treating unadmitted aliens like Cirrus Rojas as eligible for bond under Section 1226(a). While the Supreme Court has largely ended judicial deference to agency interpretations of acts of Congress, *see Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 432–33 (2024), nearly three decades of a particular interpretation ought to inform the Court's approach. This history of performance gives the Court particular pause given the complexity of the INA and its amendments. Beyond citing *Loper Bright*, the parties provide little legal guidance on the appropriate weight the Court should give past agency practice. Cirrus Rojas has not given the Court any historical materials explaining or justifying immigration officials' prior approach or interpretation of Sections 1225 or 1226. If there was a documented prior rationale, the Court has not seen it. In the end, the Court concludes that it must follow the most natural reading of the statutory text. Prior administrations' generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it. As explained above, Respondents' reading is more consistent with the plain terms of Section 1225(b). Cirrus Rojas's argument is akin to estoppel. He wants to preclude ICE from adopting a new, different interpretation based on its past practice. But there is no estoppel against the federal government. *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 420 (1990) ("From our earliest cases, we have recognized that equitable estoppel will not lie against the Government as it lies against private litigants."); *Gutierrez v. Gonzales*, 458 F.3d 688, 691 (7th Cir. 2006) ("The Supreme Court has *never* affirmed a finding of estoppel against the government.") (emphasis in original). The Court must apply the statute as it is written.

The Court also does not agree with Cirrus Rojas that language in his arrest warrant citing Section 1226 entitles him to discretionary detention under Section 1226. The top of the DHS warrant form directs the warrant to the attention of "[a]ny immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act [codified at 8 U.S.C. §§ 1226 and 1357] and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations." (ECF No. 1-2.) This language is best read not as an invocation of Section 1226 or an admission that that provision applies to Cirrus Rojas. Rather, it describes the agents to whom the warrant is directed and identifies two sources for their arrest authority. This language does not state that Cirrus Rojas is subject to the discretionary detention provisions of Section 1226 or excepted from the provisions of Section 1225.

Cirrus Rojas repeatedly emphasizes the number of other district courts that have adopted his position. His petition and briefing bullet point more than 45 cases from other district courts rejecting Respondents' textual analysis and adopting his own. For their part, Respondents cite a handful of cases reaching the opposite conclusion. Beyond numbers, neither party directs the Court to compelling analyses from any of these decisions. While these rulings give the Court pause, they are not precedential. And only one of the cited cases is from the Seventh Circuit, *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025). Its analysis is limited and typical of the decisions adopting Cirrus Rojas's interpretation.

In *Campos Leon*, the Court analyzed the text and interplay between Sections 1225 and 1226 in just five short paragraphs. 2025 WL 2694763 at *3. It concluded that the habeas petitioner's position found "greater support from the facts and plain language of the statute." But that conclusion was based predominantly on the Court's assertion that because the petitioner was arrested and detained pursuant to a warrant, he was necessarily subject to the bond provisions of Section 1226. *Id.* The Court acknowledged for the sake of argument that the petitioner fell within Section 1225(a)(1)'s definition of an "applicant for admission" but offered little analysis of the implications of that determination. *Id.* Instead, the Court simply concluded that because the petitioner in that case was arrested pursuant to a warrant, Section 1226's bond provisions necessarily applied to him without addressing Section 1225 or how its terms might apply.[5] The case was also decided on an expedited basis and in a short time frame. The Court find its analysis unpersuasive.

The parties also refer to a Board of Immigration Appeals decision adopting Respondents' interpretation. (*See* ECF No. 1 ¶78 citing *Matter of Hurtado,* 29 I. & N. Dec. 216 (B.I.A. 2025).) In *Hurtado*, the Board of Immigration Appeals affirmed an immigration judge's decision to deny bond to a citizen of Venezuela who had crossed into the United States in November 2022 without authorization. *Hurtado,* 29 I. & N. at 220, 229. The alien was granted temporary protected status briefly, but when that status expired, he was arrested by ICE agents. He requested a bond hearing

[5] Since this case was filed, the Southern District of Indiana has decided a second case involving these issues: *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025). *B.D.V.S.* was decided by the same judge and incorporated a similar, abbreviated analysis of the issues. *Id.* at *2.

but, at the hearing, the immigration judge concluded the alien was an "applicant for admission" and ineligible for bond under Section 1225(b)(2). *Id.* at 220. That ruling was affirmed by the Board of Immigration Appeals after a detailed analysis of the statutory backdrop. *Id.* at 218–28. At the hearing, both parties agreed that *Hurtado* has no precedential value and counsel for Cirrus Rojas contended it is merely an agency interpretation to which the Court should give no deference. The Court's analysis is independent of *Hurtado*, but the Court finds its thorough analysis persuasive.

B. The Stay of Cirrus Rojas's Detention under 8 C.F.R. §1003.19(i)(2) Is Not Unlawful or Unconstitutional.

Cirrus Rojas also argues that he is entitled to habeas relief because his continued detention after being granted bond by an immigration judge violates the INA and the Constitution. He first contends that the regulation that permits his continued detention, 8 C.F.R. §1003.19(i)(2), is *ultra vires*. He further claims that ICE's invocation of that regulation to automatically stay his release pending appeal violates his due process rights. The Court's conclusion that ICE has the better argument in the parties' interpretative battle over Sections 1225 and 1226 largely undercuts Cirrus Rojas's remaining arguments. There is no dispute that the government is following the required procedures in addressing the appeal of Cirrus Rojas's bond ruling and his overall removal proceeding. The Court will nevertheless address Cirrus Rojas's *ultra vires* and due process claims in turn.

1. Cirrus Rojas Has Not Established that the Regulation Permitting the Stay of his Release Pending Appeal is *Ultra Vires*.

Cirrus Rojas complains that he remains detained, even after an immigration judge ruled that he should be released on $1,500 bond, solely because ICE has filed a Notice of Appeal. He argues that 8 C.F.R. §1003.19(i)(2), the regulation that expressly provides for a stay of his release pending resolution of ICE's bond appeal, is *ultra vires* because it exceeds the authority conferred by Congress to the Attorney General and unlawfully overrides an immigration judge's discretionary authority to make custody determinations. (ECF No. 4-1 at 14.)

Department of Justice regulations provide for a potential stay of custody orders when the government files an appeal of the custody order. *See* 8 C.F.R. §1003.19(i). The first part of the regulation gives the Board of Immigration Appeals discretionary authority to grant a stay:

> The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.

8 C.F.R. §1003.19(i)(1). The second part of the regulation provides for an "[a]utomatic stay in certain cases." More specifically:

> In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR–43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR–43 is subject to the discretion of the Secretary.

Id. at (2).

Cirrus Rojas argues that there is no congressional authority for any regulation that would allow anyone within the Department of Homeland Security, including within ICE, to unilaterally stay the immigration judge's bond decision. He insists the opposite is true: Section 1226(a) gives the discretion over bond decisions to an immigration judge. (ECF No. 1 ¶¶57-58.)

But Congress has entrusted the handling of immigration proceedings, including appeals over bond rulings, to the Attorney General and Department of Justice. 8 U.S.C. §1103(g). Exercising this authority, the Department of Justice promulgated 8 CFR §1003.19 to allow a stay of a bond ruling when the Department of Homeland Security/ICE decides to appeal. The automatic stay provision in 8 CFR §1003.19(i)(2) serves the legitimate purpose of maintaining the status quo in those cases where ICE decides to seek an expedited review of an immigration judge's custody order in the Board of Immigration Appeals. *See Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031 (E.D. Wis. 2007).

Cirrus Rojas's focus on ICE's role in initiating the automatic stay, by filing a notice of appeal, disregards that the Department of Justice, which is responsible for enacting procedures in immigration proceedings, has itself made the decision to provide for this automatic stay. The Department of Justice has decided to make the trigger point for the automatic stay the decision by

ICE to pursue an expedited appeal of a bond ruling. Nothing in the regulation exceeds the Department of Justice's authority or reflects an improper delegation of that authority to ICE.

Moreover, while Cirrus Rojas complains about ICE's "unilateral" authority to halt his release on bond, the regulations accompanying 8 CFR §1003.19(i)(2) guard against misuse. The Attorney General has required that a "senior legal official" certify that ICE's "contentions justifying the continued detention of the alien have evidentiary support" and that its legal arguments are nonfrivolous in order to preserve the automatic stay. *See* 8 C.F.R. §1003.6(c)(1)(ii). Pursuant to 8 C.F.R. §1003.6(c)(4), the automatic stay "shall lapse 90 days after the filing of the notice of appeal." Pursuant to 8 C.F.R. §1003.6(c)(5), any extension of the detention is limited to 30 days and requires that DHS provide some justification for the extension. As discussed below, these procedural limitations and protections undermine any potential due process complaints. The Court rejects Cirrus Rojas's argument that 8 CFR §1003.19(i)(2) is *ultra vires*.

2. Cirrus Rojas's Detention Pending Appeal Does Not Violate Due Process.

Cirrus Rojas's final claim is that his continued detention after being awarded bond violates the Due Process Clause under the balancing test set forth in *Mathews*, 424 U.S. at 335. Under *Mathews*, the Court must evaluate three factors in resolving due process challenges to procedures that would deprive an individual of his life, liberty or property. *Id.* The Court must consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that 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, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.*

Cirrus Rojas invokes his significant interest in being free from improper detention. He notes that he has been detained since June 2025, preventing him from seeing his family, working, and participating in his community. (ECF No. 1 ¶83.) He also contends that the current procedures do not simply risk an erroneous deprivation of his liberty but are in fact already causing one. He complains that the automatic stay provision has allowed for his continued detention without any individualized showing that he might be a flight risk or a danger to the community. (*Id.* at ¶84.) As to the third *Mathews* factor, Cirrus Rojas argues that the government's interest in maintaining the "current" procedure is minimal. He contends that the Supreme Court has recognized only two purposes for civil detention: preventing flight and mitigating the risks of danger to the community, and that both purposes are no longer in play given the immigration judge's bond ruling. And he argues that the procedures governing the appeal of the bond ruling insufficiently protect his rights and could result in lengthy and unfair delays, extending his detention. (*Id.* ¶84.)

Cirrus Rojas's due process challenge faces a steep climb. He correctly observes that the Supreme Court in *Zadvydas* recognized that an alien being detained pending removal has due process rights. 533 U.S. at 693. But *Zadvydas* concerned the detention of aliens for a potentially unlimited time after the conclusion of their removal proceedings. The Court explained that the INA generally gives the government 90 days to remove or deport aliens found to be removable and, while this was usually sufficient, the government was not always able to achieve removal within this "removal period." *Id.* at 683. In those circumstances, 8 U.S.C. §1231(a)(6) authorizes the government to continue detention but it contains no time limitation or other constraint. *Id.* Invoking the constitutional avoidance canon, a majority of the Supreme Court held that Section 1231(a)(6) should be interpreted to include an implied time limitation, allowing detention only for the period "reasonably necessary to bring about the alien's removal." *Id.* at 689.

Since avoiding the due process issues in *Zadvydas*, the Supreme Court and Seventh Circuit have affirmatively rejected due process challenges to the detention of unadmitted aliens in other settings. In *Demore*, decided just two years after *Zadvydas*, the Court rejected a due process challenge by a lawful permanent resident alien who was detained without bail while awaiting removal. 538 U.S. at 514. A district court had granted his habeas petition, concluding that the Due Process Clause entitled him a bond hearing and precluded his detention unless it was found that he posed a danger to society or was a flight risk. *Id*. The Ninth Circuit affirmed. *Id*. The Supreme Court reversed, concluding that the mandatory detention of unadmitted aliens awaiting removal without a bond hearing did not offend due process. *Id.* at 516. The Court distinguished *Zadvydas* because the aliens in *Zadvydas* were stuck in limbo; their individual circumstances were such that their removal was "no longer practically attainable." Accordingly, the governmental interest in detaining them *until* they could be removed was not present; they were likely never going to be removed. The government's detention of the aliens in *Demore*, however, served the legitimate purpose of detaining them to ensure their removability. The Court also noted that while the detention at issue in *Zadvydas* was "indefinite" and "potentially permanent," any detention of the alien in the case before it was limited and of "a much shorter duration." *Id*. at 528. Because detention was for a defined and limited period, it did not violate the Due Process Clause. *Id*. at 531

In *Jennings*, a plurality of the Supreme Court reaffirmed the reasoning in *Demore* in rejecting a habeas challenge by a lawful permanent resident who argued that his ongoing detention while he appealed his removability violated due process. 538 U.S. at 290–91. Relying on *Zadvydas*, a district court and the Ninth Circuit held the petitioner and a class of similarly situated aliens were entitled to periodic bond hearings, concluding that the right to such bond hearings was "implicit" in the immigration statutes, a construction necessary to avoid due process issues. *Id*. at 291–92. After rejecting the Ninth Circuit's use of the constitutional avoidance canon, the Court highlighted the differences between the limitless period of detention at issue in *Zadvydas* and the limited duration of detention authorized by the statute in *Demore*. *Id*. at 296, 298–301, 304. While the former implicated due process, the latter did not. *Id*. at 304.

In *Parra*, the Seventh Circuit rejected an alien's due process challenge to his mandatory detention while awaiting the conclusion of removal proceedings after his conviction on aggravated sexual assault charges. 172 F.3d at 955. Like Cirrus Rojas, the alien in *Parra*, had been granted bond by an immigration judge, but his release was automatically stayed by the government's appeal of that ruling under 8 CFR §1003.19(i)(2). *Id.* at 956. After reversing the district court's determination that federal jurisdiction was lacking, the Court of Appeals concluded that a remand was unnecessary because the record confirmed the alien's due process challenge failed. *Id*. at 958. The Court noted that the alien's criminal conviction made detention mandatory under Section 1226(c), and, barring a change to immigration law or policy, he had forfeited any *legal* entitlement to remain in the United States. *Id*. It also noted that he could withdraw his defense to the removal proceedings and return to his homeland, ending his detention immediately. *Id*. ("He has the keys in his pocket."). Applying the *Mathews* factors, the Court of Appeals emphasized that the alien's interest was not liberty in the abstract but the more-limited "liberty in the United States by someone no longer entitled to remain" in the country. *Id.* It noted that the probability of error was low given the alien's concession that he was subject to removal. *Id.* The Court then emphasized the government's substantial interest in detention given the high flight rate of those released on bail. *Id*. It finally noted that it had upheld the constitutionality of detaining an alien pending removal proceedings even before passage of the IIRIRA made detention of certain criminal aliens mandatory. *Id*. If detention did not violate due process when it was discretionary, the Court concluded, it could not be unconstitutional when detention was mandatory. *Id*.

Given the caselaw and the well-defined procedures governing (and limiting) Cirrus Rojas's detention, the Court rejects his due process challenge. Consistent with *Zadvydas* and *Demore*, Cirrus Rojas has a recognizable liberty interest in connection with his pre-removal detention. But as *Demore* held, and *Parra* explains, that liberty interest is limited. Cirrus Rojas is an alien who was found in the United States without authorization and is subject to removal proceedings. Consistent with federal law, he is being provided with the opportunity to oppose removal and using that opportunity to pursue an asylum claim. (ECF No. 1 ¶9.) As explained in *Parra*, Cirrus Rojas's liberty interest is limited, and he has the key to his release in his own pocket; he can choose to accept removal to his homeland under Section 1229a. 172 F.3d at 958.

While Cirrus Rojas complains there is a risk that current procedures will cause an erroneous deprivation of his limited liberty interest, this is undercut by the Court's ruling on the statutory interpretation question. Moreover, the record confirms that he is receiving ample procedural safeguards. While Cirrus Rojas complains that 8 C.F.R. §1003.19(i)(2) allows ICE to forestall his release unilaterally by filing a notice of appeal, Cirrus Rojas's rights are protected in multiple ways. As an initial matter, 8 C.F.R. §1003.6(c)(1)(ii) requires that a "senior legal official" certify that DHS's "contentions justifying the continued detention of the alien have evidentiary support" and that its legal arguments are nonfrivolous in order to preserve the automatic stay. These are not trivial requirements. And any stay is not indefinite. As Cirrus Rojas himself admits, the automatic stay will "lapse 90 days after the filing of the notice of appeal," under 8 C.F.R. §1003.6(c)(4), and any extensions of the detention are limited to 30 days under 8 C.F.R. §1003.6(c)(5) and require ICE to provide a justification for the extension. (ECF No. 1 ¶¶62–63.)

Cirrus Rojas nevertheless calls these procedures inadequate. He complains that ICE is merely required to "submit a motion" and criticizes the procedures for allowing ICE to incorporate by reference the arguments in its brief. (*Id.* ¶63.) He further protests that the procedures then allow for a further five-day stay if the Board of Immigration Appeals rules in a noncitizen's favor, authorizing release on bond, or denying DHS's motion for a discretionary stay, to provide ICE time for further appeals. (*Id.* ¶65 (citing 8 C.F.R. §1003.6(d).) He also does not like further procedures allowing referral of custody cases to the Attorney General, who has ultimate statutory authority over detention and removal proceedings, for a limited 15-day time period. (*Id.* ¶66.)

Just describing these many procedural protections highlights the substantial process that Cirrus Rojas is being provided. That Cirrus Rojas wants different procedures or thinks there should be no right to stay the bond ruling pending appeal, does not mean the existing framework violates due process. His argument that the automatic stay provision detains individuals indefinitely, without a "discernible termination point" is refuted by the very regulations he complains about. (*Id.* ¶72.)

Finally, the government's interest in maintaining the current procedures is significant. As the Seventh Circuit recognized in *Parra*, the United States has a "powerful interest in maintaining the detention in order to ensure that removal actually occurs." 172 F.3d at 958. Cirrus Rojas has not established that his detention exceeds that interest.

In the end, the record confirms that Cirrus Rojas's detention is being adjudicated consistent with a detailed set of procedural protections. Those procedures allow for the stay of his release on bond pending resolution of any appeals, a common practice in our legal system. Cirrus Rojas has now been detained since June 3, 2025, and the stay of his release on bond began on July 15, 2025. Under the regulations, the adjudication of the appeal of his bond ruling must be resolved quickly or the automatic stay will expire. *See* 8 C.F.R. § 1003.6(c)(3). While procedures exist to continue the stay even after that time, those procedures have time limits. And, at most, if ICE prevails on appeal, Cirrus Rojas's detention will be limited to the conclusion of his removal proceedings. And those proceedings are also moving forward, with a hearing scheduled for late October. Cirrus Rojas's detention has an end point, whether he prevails or loses. Given the Court's ruling on the underlying statutory construction issue, there can be little question that Cirrus Rojas's ongoing detention pending completion of the appeal on his bond and completion of any removal proceedings is consistent with due process.

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus, ECF No. 1, is **DENIED** and this case is **DISMISSED with prejudice**. The Clerk is directed to enter judgment accordingly.

IT IS FURTHER ORDERED that Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 4, is **DENIED**.

Dated at Milwaukee, Wisconsin on October 30, 2025.

s/ *Brett H. Ludwig*
BRETT H. LUDWIG
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JACIEL CIRRUS ROJAS,

Petitioner,

v.

SAMUEL OLSON et al.,

Respondents.

JUDGMENT IN A CIVIL CASE

Case No. 25-cv-1437-bhl

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict

☒ **Decision by Court.** This action came before the Court for consideration. The Court has decided the issues and rendered a decision.

IT IS HEREBY ORDERED AND ADJUDGED that the petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. §2241 is denied and this action is dismissed with prejudice.

Dated at Milwaukee, Wisconsin on October 30, 2025.

LINDA M. KLEMM
Clerk of Court

s/ *Julie D.*
(By) Deputy Clerk