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.

On Appeal from the United States District Court
for the Eastern District of Wisconsin

PETITIONER-APPELLANT'S EMERGENCY MOTION FOR RELEASE FROM DETENTION PENDING APPEAL PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 23(b)

(Relief Requested by December 15, 2025)

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INTRODUCTION

The government has now incarcerated Petitioner Jaciel Cirrus Rojas for 189 days, separating him from his family and causing unnecessary suffering—despite the fact that an Immigration Judge (IJ) ordered he be released on the lowest possible bond, as neither a flight risk nor a danger to public safety. Dkt. 1, at 23, 83. He has been subjected to this lengthy detention because of a sudden change in the Department of Homeland Security and Department of Justice's interpretation of the statutory provisions at issue here, an interpretation subsequently approved by the Board of Immigration Appeals (BIA). The district court held that Cirrus Rojas's detention under that interpretation of the statute was lawful. That decision is the only order denying a habeas petition among at least thirty cases brought by similarly situated habeas petitioners, on the same issues, in district courts across the Seventh Circuit. *See* Appendix A (List of Cases). To correct this injustice, mitigate the ongoing harm, and allow him to properly prepare for his upcoming asylum hearing on December 17, 2025, movant requests an emergency order granting him release pending appeal, and respectfully requests relief be granted by December 15, 2025.

Undersigned Counsel conferred with Counsel for Respondents, who oppose this motion.

BACKGROUND

This matter involves the appeal of the District Court's Order (Dkt. 20) denying Cirrus Rojas's Petition for a Writ of Habeas Corpus and Complaint for Emergency Injunctive Relief (Dkt. 1).

I. Arrest, Detention, Bond Hearing, Automatic Stay

Cirrus Rojas, a native of Mexico who has been present in the United States since 2018, was detained by Immigration and Customs Enforcement (ICE) on June 3, 2025, and was thereafter placed in detention to await a hearing before an IJ on his claims for withholding of removal, asylum, and protection under the Convention Against Torture (CAT). Dkt. 1, at 1–2.

On July 15, 2025, Cirrus Rojas appeared before an IJ for a bond hearing. The IJ granted Cirrus Rojas release from custody on a $1,500 bond, the statutory minimum (*see* 8 U.S.C. § 1226(a)(2)(A)). *Id.* at 2, 5; Dkt. 1-7, at 5 (Order of the Immigration Judge (July 15, 2025)).

The government immediately filed a Notice of Intent to Appeal Custody Redetermination (Form EOIR-43), Dkt. 1-6, at 5, which automatically stayed the IJ's decision to release Cirrus Rojas on bond. *See* 8 C.F.R. § 1003.19(i)(2). On July 24, the government filed its Notice of Appeal (Form EOIR-26). Dkt. 1, at 5, 27. Under 8 C.F.R. § 1003.6(c), the government's filing of the Notice of Appeal within ten business days of the issuance of the IJ's order meant that the automatic stay remained in place and Cirrus Rojas remained detained.

On September 4, 2025, the IJ issued a written decision explaining his prior custody determination. *See* Appendix C, at 1. The IJ noted the government's position that Cirrus Rojas was subject to mandatory detention, and thus not entitled to a bond hearing, under 8 U.S.C. § 1225. *See id.* According to the IJ, this position departed from "longstanding practice applying [§ 1226] to inadmissible noncitizens already

residing in the country," and the government had "cited no controlling or persuasive authority for their revised position." *Id.*

II. Petition for Writ of Habeas Corpus

On September 17, 2025, Cirrus Rojas filed a combined Petition for Habeas Corpus and Request for Emergency Injunctive Relief in the Eastern District of Wisconsin. Dkt. 1. He challenged both the automatic stay provision and the government's argument that he was subject to 8 U.S.C. § 1225. *See id.* On September 25, he filed a Motion for a Temporary Restraining Order and Preliminary Injunction seeking an order for release. Dkt. 4, 4-1. The District Court considered Cirrus Rojas's motion in a hearing on October 14. Dkt. 17, 18.

On October 21, 2025, the BIA vacated the IJ's order granting bond. In doing so, it relied on a new BIA decision, *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). *Yajure Hurtado* was decided on September 5, 2025, while Cirrus Rojas's own BIA appeal was pending. *See id.* In *Yajure Hurtado*, the Board held that noncitizens who are present in the U.S. without admission (*i.e.*, those who have entered without inspection) are subject to § 1225 (mandatory detention), instead of § 1226 (possibility of release on bond). *See id.* at 228–29. Because such noncitizens are subject to mandatory detention, the *Yajure Hurtado* Court reasoned, IJs lack authority to hear their requests for bond. *Id.*

On October 30, 2025, the District Court denied Cirrus Rojas's habeas petition and motion for a TRO and preliminary injunction. Dkt. 20, 21. Despite a significant volume of adverse precedent from district courts across the country, the Court held

that Petitioner was subject to Section 1225. Cirrus Rojas filed his timely Notice of Appeal on November 24, 2025. Dkt. 27.

III. *Maldonado Bautista* Class Certification and Declaratory Judgment

As Cirrus Rojas's cases in immigration court and the District Court were progressing, a nationwide class action case in the Central District of California was also underway. *See* Pls.' Class Action Compl. & Am. Pet. for Habeas Corpus ("Pls.' Class Action Compl."), *Maldonado Bautista v. Noem*, 25-cv-01873, Dkt. 15. Cirrus Rojas is a member of that class. The *Maldonado* plaintiffs requested that the court (1) grant declaratory relief in the form of a declaration from the Court that the government defendants' policy and practice of denying consideration for bond to the class members on the basis of § 1225(b)(2) violates the Immigration & Naturalization Act (INA), the Administrative Procedure Act (APA), and the Due Process Clause; (2) set aside the defendants' detention policy under the APA, 5 U.S.C. § 706(2), and (3) certify the requested classes. Pls.' Class Action Compl., Dkt. 15, at 34–35.

On November 20, 2025, the District Court granted the plaintiffs' motion for partial summary judgment, thereby granting their request for declaratory relief. *See Maldonado Bautista*, --- F. Supp. 3d ----, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025).

On November 25, the Court granted the plaintiffs' Motion for Class Certification, certifying the following nationwide class:

> Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

See Maldonado Bautista, --- F.R.D. ----, ----, 2025 WL 3288403, at *1 (C.D Cal. Nov. 25, 2025).

On December 4, 2025, the plaintiffs—having learned that the respondents were continuing to deny class members bond hearings—filed an Application for Reconsideration and Clarification. *See Maldonado Bautista*, No. 25-cv-01873, Dkt. 87. It asked, among other things, for the court to clarify that, in granting the plaintiffs' motion for partial summary judgment and request for declaratory relief, the court's order also vacated or "set aside" the respondents' unlawful policies under the APA, as well as the BIA's decision in *Matter of Yajure Hurtado*. *Id.* at 11. As of this filing, that request is pending.

ARGUMENT

I. Legal Standard

Federal Rule of Appellate Procedure 23(b) provides:

> While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:
>
> 1. detained in the custody from which release is sought;
> 2. detained in other appropriate custody; or
> 3. *released on personal recognizance*, with or without surety.

Fed. R. App. P. 23(b) (emphasis added). "[Rule 23] authorizes the court of appeals to order the release with or without bail of a prisoner pending review of the district court's decision on his petition for habeas corpus, whether that petition was a grant or a denial of relief." *Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007) (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1083 (9th Cir. 2006)).

When courts consider whether to release a habeas petitioner pending the *State*'s appeal (that is, when a habeas petitioner has been successful below), "the general standards governing stays of civil judgments should . . . guide courts." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (discussing standard for applying Rule 23(c)). Thus, courts must consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.*

Neither the Supreme Court nor the Seventh Circuit has decided whether the stay-pending-appeal standard should apply when courts consider whether to release a habeas petitioner pending the *Petitioner*'s appeal, but at least one Court of Appeals has said it does, and the Supreme Court has intimated at the same. *See United States v. Dade*, 959 F.3d 1136, 1138 (9th Cir. 2020) ("Rule 23(b) does not itself set forth any substantive criteria for determining detention or release, and our decision is instead governed by equitable considerations."); *Hilton*, 481 U.S. at 777 (noting that the presumption of correctness given to the initial custody determination, "whether that order directs release or *continues custody*," "may be overcome if the traditional stay factors so indicate.") (emphasis added).

Other courts have adopted a less formalistic approach, however, viewing Congress to have authorized habeas relief "whenever a petitioner is in custody in violation of the Constitution or laws or treaties of the United States." *See Black v.*

Decker, No. 20-cv-3055, 2020 WL 4260994, at *5 (S.D.N.Y. July 23, 2020), *aff'd*, 103 F.4th 133 (2d Cir. 2024). Regardless of the approach used, it is important to note habeas's historical nature as "above all, an adaptable remedy" whose "precise application and scope changed depending upon the circumstances." *Boumedine v. Bush*, 553 U.S. 723, 779 (2008).

In addition to applying the traditional stay factors pursuant to Rules 23(b) and (c), in cases where there is an initial order governing the petitioner's custody or release, the court of appeals is also governed by Federal Rule of Appellate Procedure 23(d). That rule provides:

> An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for *special reasons* shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

Fed. R. App. 23(d) (emphasis added).

II. Cirrus Rojas is likely to succeed on the merits of his argument that he is subject to 8 U.S.C. § 1226.

Unlike the District Court below, dozens of cases in this Circuit have already agreed with Cirrus Rojas and the legal arguments that follow.

A. Legal Framework of the Immigration and Nationality Act

Two provisions of the INA govern detention of noncitizens: 8 U.S.C. § 1226(a) and § 1225(b). The distinction between the two is critical. Noncitizens subject to § 1226(a) are arrested "[o]n a warrant," and once detained, the statute allows ICE to release a person on bond or conditional parole, *see* 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 1236.1(c)(8). If release is denied, the person can seek a custody redetermination—

better known as a bond hearing—before an IJ. *See* 8 C.F.R. § 1236.1(d). At that hearing, the noncitizen may present evidence to show they are not a flight risk or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people detained under § 1225(b) are subject to mandatory detention and receive no bond hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under humanitarian parole at the arresting agency's (*i.e.*, ICE's) discretion. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5).

The difference between these two statutes reflects immigration law's longstanding distinction in the detention structure for noncitizens arrested after entering the country and those arrested when attempting to enter the country. Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for custody determinations was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during "deportation" proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a). Those "deportation" proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.* IIRIRA maintained the same basic detention authority and access to release on bond in the provisions now codified at 8 U.S.C. § 1226(a). As Congress explained, the new § 1226(a) merely "restate[d] the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in

the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Separately, through IIRIRA, Congress enacted new detention and removal authorities for people who are apprehended upon arriving in the United States. *See* 8 U.S.C. § 1225(b)(1)–(2). These individuals can be placed in special expedited removal proceedings (where DHS officers issue administrative removal orders without any hearings), or regular removal proceedings (before IJs). Either way, such people are subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A).

In implementing IIRIRA's detention authority, the former Immigration and Naturalization Service clarified that—just as before IIRIRA—people who entered the United States without inspection and were not apprehended while "arriving" in the country would continue to be detained under the same detention authority they always had been: § 1226(a) (previously § 1252(a)). *See Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge . . . . This procedure maintains the status quo.").

B. The District Court's opinion cannot be squared with the Act's text, canons of statutory construction, or statutory structure, all of which support Cirrus Rojas's position.

1. *"Applicant for admission" and "seeking admission" are different terms with different meanings.*

The text of the statute and canons of statutory construction demonstrate that

Petitioner was entitled to the bond hearing he received. Section 1225(a)(1) defines an "applicant for admission" as an "[a]n alien present in the United States who has not been admitted or who arrives in the United States." Section 1225(b)(2)(A) provides, "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained . . . ." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Contrary to Respondents' argument below and the District Court's reasoning, being an "applicant for admission" and "seeking admission"—the two requirements for § 1225(b)(2) to apply—are not the same thing. The fact that Cirrus Rojas is an "applicant for admission" under § 1225(a) is therefore not dispositive of whether § 1225(b)(2) applies to him. *See Corona Diaz v. Olson*, No. 25-CV-12141, 2025 WL 3022170, at *4 (N.D. Ill. Oct. 29, 2025) ("Congress did not say 'applicants for admission' are subject to mandatory detention. Instead, it said that an applicant for admission, who is 'an alien seeking admission' is subject to mandatory detention."); *Guartazaca Sumba v. Crowley*, No. 25-CV-13034, 2025 WL 3126512, at *4 (N.D. Ill. Nov. 9, 2025).

Indeed, canons of statutory construction require giving those different terms different meanings. "[W]hen Congress uses different terms in a statute, we normally presume it does so to convey different meanings." *United States v. Pulsifer*, 601 U.S. 124, 162 (2024) (describing the "meaningful-variation canon"). Had Congress intended for the different terms to have the same meaning—that is, "[i]f the

categories overlapped perfectly"—"there would [have] be[en] no need for Congress to have used the phrase 'seeking admission' in § 1225(b)(2)(A)." *Corona Diaz*, 2025 WL 3022170, at *4. Congress could simply have stated that *all 'applicants for admission' 'shall be detained for' removal proceedings*, without any reference to [noncitizens] 'seeking admission.'

The canon against surplusage similarly requires understanding "applicant for admission" as distinct from "seeking admission." "[E]very clause and word of a statute should have meaning." *Guartazaca Sumba*, 2025 WL 3126512, at *4 (quoting *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023)). "And the canon 'is strongest when an interpretation would render superfluous another part of the same statutory scheme.'" *Id.* (quoting *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013)).[1]

Reading "applicant for admission" as synonymous with "seeking admission" would also render a recent amendment to the Act, codified at Section 1226(c)(1)(E), surplusage. First consider Sections 1226(a) and 1226(c)(1)(A)–(D).

[1] To the extent Respondents assert that the terms "or otherwise" in Section 1225(a)(3)—which provides that "[a]ll aliens . . . who are applicants for admission or otherwise seeking admission . . . shall be inspected," 8 U.S.C. § 1225(a)(3) (emphasis added)—establish that being an "applicant for admission" is merely one particular "way or manner" of "seeking admission" (such that all "applicants for admission" are "seeking admission" for purposes of § 1225(b)(2)(A)), Respondents are incorrect. The ordinary use of the term "or" is "almost always disjunctive," and "otherwise" means "something or anything else." *See J.G.O. v. Francis*, 25-CV-7233, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (internal quotations omitted). "Taken together, 'or otherwise' is used to refer to something that is different from something already mentioned." *Id.* (internal quotations omitted) (quoting Merriam Webster's Collegiate Dictionary (10th ed. 2001)).

Section 1226(a) provides:

> On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States. Except as provided in subjection (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 . . . or
> (B) conditional parole

Sections 1226(c)(1)(A)–(D) provide for *mandatory* detention for certain individuals: "[t]he Attorney General shall take into custody any alien who—" is inadmissible or deportable by virtue of having committed certain criminal offenses or engaged in terrorist activity. In January 2025, Congress added to those offenses by passing the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E).

That section provides that "[t]he Attorney General shall take into custody any [noncitizen] who—"

> (i) is inadmissible under paragraph 6(A) [*noncitizen inadmissible by virtue of being present without being admitted or paroled*], 6(C) [misrepresentation], or (7) [noncitizen not in possession of valid documentation] 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 [various offenses]

8 U.S.C. § 1226(c)(1)(E).

In sum, the Laken Riley Act subjected to 1226(c)'s mandatory detention provision individuals who: (1) are inadmissible for being present without admission (*i.e.*, for having entered without inspection), *see* 8 U.S.C. § 1182(6)(A), *and* (2) who have been arrested on, charged with, or convicted of certain crimes. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). If, as the District Court held, individuals who were inadmissible for being present without admission were *already* subject to mandatory detention under § 1225(b)(2), there would have

been no reason for Congress to add the second requirement in § 1226(c)(1)(E). Inadmissibility alone would have subjected those individuals to mandatory detention—regardless of whether they had been arrested, charged with, or convicted of certain crimes. *See Corona Diaz*, 2025 WL 3022170, at *5; *Guartazaca Sumba*, 2025 WL 3126512, at *4; *H.G.V.U. v. Smith*, No. 25-CV-10931, 2025 WL 2962610, at *4 (N.D. Ill. Oct. 20, 2025). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Martinez v. Hyde*, 792 F. Supp. 3d 211, 221 (D. Mass. 2025) (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). For the Laken Riley Act to have had any effect, individuals like Petitioner must be subject to detention under § 1226(a) and not § 1225(b)(2).

2. *Petitioner is not "seeking admission" by virtue of applying for immigration relief.*

Not only did the District Court err in giving different terms the same meaning. It also erred in holding that, *even if* the terms had different meanings, Cirrus Rojas was "seeking admission" by virtue of applying for immigration relief. *See* Dkt. 20 at 12. That reasoning fails for three reasons.

First, it is contradicted by the Supreme Court's decision in *Sanchez v. Mayorkas*, 593 U.S. 409 (2021). In *Sanchez*, the Court considered whether a grant of Temporary Protected Status ("TPS")—a form of temporary relief from deportation, *see* 8 U.S.C. § 1254a—constitutes an "admission" that renders noncitizens eligible for adjustment of status to lawful permanent residence under 8 U.S.C. § 1255. 593 U.S. at 414. The Court held that the petitioner, who had originally entered the country unlawfully, but was subsequently granted TPS, had not been "admitted" and was

therefore ineligible to adjust under the relevant provisions. *Id.* at 419. As the Court explained, an "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* at 411 (quoting 8 U.S.C. § 1101(a)(13)(A)). TPS, however, provided the petitioner only a grant of "lawful status" in the country—and *not* an "admission." *Id.* at 415–16.

The Court elaborated:

> Lawful status and admission . . . are distinct concepts in immigration law: Establishing one does not necessarily establish the other. On the one hand, a foreign national can be admitted but not in lawful status—think of someone who legally entered the United States on a student visa, but stayed in the country long past graduation. On the other hand, a foreign national can be in lawful status but not admitted—think of someone who entered the country unlawfully, but then received asylum. The latter is the situation Sanchez is in, except that he received a different kind of lawful status.

Id. at 415–16 (citations omitted).

The reasoning of *Sanchez* makes clear that a noncitizen inside the country applying for forms of immigration relief like withholding of removal and asylum, like Petitioner, is seeking "lawful status"—and not "seeking admission"—because those forms of relief confer only "lawful status." *See Guerrero Orellana v. Moniz*, No. 25-CV-12664, --- F. Supp. 3d ----, 2025 WL 2809996, at *7 (D. Mass. Oct. 3, 2025). They do not constructively "admit" a noncitizen who entered the country unlawfully.

Second, the District Court's reasoning—in addition to contradicting *Sanchez* and making little sense in light of § 1101(a)(13)(A))'s definition of "admission"—collides with the plain, ordinary meaning of "seeking admission." As one judge recently analogized, "someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not

ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025); *see also Mariano Miguel v. Noem*, No. 25-CV-11137, 2025 WL 2976480, at **4–5 (N.D. Ill. Oct. 21, 2025).

Third, the district court's conclusion that seeking relief in removal proceedings is the same as "seeking admission" conflicts with the statute's structure, which, as the Supreme Court has noted, distinguishes between those who are at borders and ports of entry and those who are not. Specifically, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287. Section 1226(a), in contrast, applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings," and affords access to bond. *Id.* at 289.

The purpose of Section 1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. *See id.* at 297 ("[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the United States . . . ."); *see also Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025); *Diaz Martinez v. Hyde*, 792 F. Supp. 3d 211, 221 (D. Mass. 2025) (similar); H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (explaining that the purpose of the new provisions in § 1225 was to address the perceived problem of noncitizens arriving in the United States); H.R. Rep. No. 104-828, at 209 (same).

In sum, the text of the statute, the applicable tools of statutory construction, and the statute's structure all demonstrate that Petitioner is detained under § 1226(a), and not § 1225(b)(2)(A). Accordingly, Petitioner is likely to succeed on the merits of his appeal, and the most important stay factor cuts in his favor. *See Hilton*, 481 U.S. at 778; *see also Haggard v. Curry*, 631 F.3d 931, 935 (9th Cir. 2010) (likelihood of success most important factor).

III. Cirrus Rojas will be irreparably injured absent release pending appeal.

Unlawful deprivation of personal liberty is inherently an irreparable injury. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). These protections "appl[y] to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent," and to immigration detention as well as criminal detention. *Id.* at 693. Continuation of an unlawful detention necessarily implicates these constitutional rights, and "the deprivation of constitutional rights unquestionably constitutes irreparable injury." *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal quotations omitted) ("[Plaintiffs] established a likelihood of irreparable harm by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time."); *see also Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." (citation omitted)).

Cirrus Rojas has not seen his now one-year-old daughter since she was six months old because he has been continuously detained since his June 3rd arrest. *See* Dkt. 1–2, ¶¶ 2, 6–7. Nor has he seen his partner (the mother of his child) or brother in that time.

In addition, Cirrus Rojas's ability to prepare for his rapidly approaching removal hearing, scheduled for December 17, 2025, has been significantly hampered by the fact of his continued detention. He is represented by separate counsel in those removal proceedings, and plans to mount a vigorous defensive claim at his hearing for fear-based relief from removal. *See* Appendix C (Application for Asylum and for Withholding of Removal, and Seeking Protection Under the Convention Against Torture).

Courts have widely recognized the need for habeas petitioners who face expedited removal hearings to "prepare for [their] cancellation of removal hearing and possible appeal while detained" and have noted their lack of "unfettered access to attorneys, witnesses, evidence, and even basic technology like computers or cellphones" that would otherwise be available were they released on bond. *See, e.g.*, *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025). Like the petitioners in those cases, Cirrus Rojas "faces not only more, potentially unnecessary, months in prison, but also harm to his ability to mount a successful case against his removal." *Id.*

IV. The public interest will be served by granting Cirrus Rojas's motion for release pending appeal, and the government's interests will not be injured.

The concerns that the government may usually invoke in opposing releases from detention—concerns about flight risk and public safety—are not available to them here. Petitioner was granted bond because an IJ found that Petitioner is not a flight risk or a risk to public safety. Dkt. 1-7, at 5. And though the government may contend that the public interest lies in strong enforcement of the country's immigration laws, "the public also has an interest in the *government* following those laws"—by, for instance, not unlawfully subjecting individuals like Petitioner to mandatory detention. *Rojas Vargas v. Bondi*, No. 25-cv-01699, 2025 WL 3251728, at *4 (W.D. Tex. Nov. 5, 2025) (quotations and citations omitted). Granting this motion is precisely the remedy necessary to ensure that the government abides by its duty to follow the law.

V. "Special reasons" justify modification of the initial order on custody.

As explained above, modification of a lower court's initial order on custody requires the movant to show "special reasons" for its requested relief. Fed. R. App. P. 23(d). Here and elsewhere, *see* Dkt. 4-1, Cirrus Rojas has shown that his case presents such reasons:

1. He has been continuously detained since June 3, despite the fact that an IJ, in granting him release on bond, determined that he does not pose a danger to the community and is not a flight risk. *See* Dkt. 1-7, at 5–6.
2. There are significant reasons to believe that the district court below erred in its ruling denying his habeas petition, not the least of which is that the order in this case below is the only such order among at least thirty separate cases

decided in courts across this Circuit. *See* Appendix A (List of Cases); *see also Aronson v. May*, 85 S. Ct. 3, 5 (1964) (Douglas, J., in chambers) ("[T]he most important 'special reason' . . . [is] that the pending appeal presents substantial questions.").

3. Were it not for the district court's order below, there would be no question that Cirrus Rojas is entitled to immediate release as a member of the nationwide class in *Maldonado Bautista*, 25-cv-01873. *See also De Macedo Mendes v. Hyde*, No. 25-cv-627-JJM-AEM, 2025 WL 3496546 (D.R.I. Dec. 5, 2025) (granting habeas pursuant to *Maldonado Bautista* because, pursuant to the declaratory judgment in that case, "class members are detained under Section 1226(a) rather than Section 1225(b)(2).").

CONCLUSION

For the foregoing reasons, Cirrus Rojas respectfully requests that his motion for release pending appeal pursuant to Rule 23(b) be granted and that the Court issue such relief on an emergency basis, by no later than December 15, 2025, to allow Cirrus Rojas to prepare for his asylum hearing. Further, as part of this relief, he requests that his prior bond determination be ordered reinstated to facilitate his immediate release.

Dated December 9, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25 and Circuit Rule 25, I hereby certify that on December 9, 2025, I caused a copy of the below-listed documents to be served on Respondents using the Court's CM/ECF system:

- Petitioner-Appellant's Emergency Motion for Release from Detention Pending Appeal Pursuant to Federal Rule of Appellant Procedure 23(b)
- Appendix A – List of Directly Relevant Orders From District Courts Within the Seventh Circuit
- Appendix B – Immigration Court Bond Order (Sept. 4, 2025)
- Appendix C – Respondent's Form I-589, Application for Asylum and for Withholding of Removal, and Seeking Protection Under the Convention Against Torture (Oct. 29, 2025)

Dated December 9, 2025.

s/ Jenifer M. Bizzotto
JENIFER M. BIZZOTTO
Attorney for Appellant.

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. This motion uses a proportionally-spaced font and contains 5,144 words, excluding those sections excluded by Rule 32(f).

s/ Jenifer M. Bizzotto
JENIFER M. BIZZOTTO
Attorney for Appellant.