UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Santiago ORTIZ MARTINEZ, et al.,

Petitioners,

v.

Cammilla WAMSLEY, et al.,

Respondents.

Case No. 2:25-cv-1822

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

INTRODUCTION

Petitioners in this case are class members of the certified Bond Denial Class in *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash.). They are all subject to the same draconian policy of being considered subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because the Department of Homeland Security (DHS) alleges that they entered the United States without admission or parole and are therefore "applicants for admission." That policy—which is also the policy of immigration courts, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—is plainly unlawful, as this Court has already recognized. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). Following this Court's lead, dozens of other courts have recognized the same in recent weeks. But because of their policy, Respondents are unlawfully denying consideration for release on bond to Petitioners, who are properly considered detained under 8 U.S.C. § 1226(a). Accordingly, and because of the limitation on classwide injunctive relief under 8 U.S.C. § 1252(f)(1), Petitioners bring this separate action to seek individual relief while the motion for summary judgment is pending in *Rodriguez Vazquez*, or, in the alternative, to enforce any declaratory relief the Court may issue in that case, should it precede a ruling here, and should Defendants fail to apply it to Petitioners.

STATEMENT OF FACTS

I. Legal Framework

This case concerns the detention authority for people who entered the United States without admission or parole, were not apprehended upon arrival, and are not subject to one of the Immigration and Nationality Act's (INA) special detention provisions.[1] For decades, people in this situation—who have been residing in the United States, often for years—were entitled to

[1] These special provisions include the detention authority for people in expedited removal, *see* 8 U.S.C. § 1225(b)(1), and those with final removal orders, *see id.* § 1231.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

consideration for release on bond, and if not released by DHS, to bond hearings before an IJ. *See Rodriguez Vazquez*, 779 F. Supp. 3d at 1260–61.

Two provisions of the INA governing the detention of noncitizens are at issue here: 8 U.S.C. § 1226(a) and § 1225(b). Noncitizens detained pursuant to § 1226(a) are entitled to consideration for release on bond or conditional parole, *see* 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If ICE denies release, the person can seek a custody redetermination—better known as a bond hearing—before an immigration judge (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 framework 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) (1994). 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. §

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

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 admission or parole 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.").[2]

II. Respondents' Policies and the *Rodriguez Vazquez* Litigation.

As this Court has previously found, beginning in 2022, the Tacoma Immigration Court adopted a policy of denying bond hearings to all persons who entered the United States without admission or parole, reasoning that such persons must be classified as "applicants for admission" who are "seeking admission" under 8 U.S.C. § 1225(b)(2). 779 F. Supp. 3d at 1244. In March

[2] The exception is for those separately subject to the expanded expedited removal scheme under § 1225(b)(1)(A)(iii)(II).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

2025, the plaintiff in that case, Ramon Rodriguez Vazquez, filed a class action lawsuit to challenge that policy, in which he also requested an individual preliminary injunction. Following briefing on the motion for a preliminary injunction, this Court ruled that the Tacoma Immigration Court's policy was likely unlawful, and that Mr. Rodriguez Vazquez is not detained under § 1225(b)(2), but rather § 1226(a). The Court also subsequently certified the following Bond Denial Class:

> All noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (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 noncitizen is scheduled for or requests a bond hearing.

Rodriguez Vazquez v. Bostock, 349 F.R.D. 333, 365 (W.D. Wash. 2025).

Following these rulings, an individual class member sought a temporary restraining order (TRO). The Court denied the TRO motion, reasoning that it was unclear whether the Court had the authority to issue injunctive relief for an unnamed class member, and concluding that granting the motion would change the status quo. *See* Order, *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. June 2, 2025), Dkt. 38 at 6–9. The Bond Denial Class in *Rodriguez Vazquez* subsequently sought summary judgment. That motion remains pending before the Court.

Since the *Rodriguez Vazquez* case was filed and class certification granted, two key developments have formalized these policies nationwide. First, on July 8, 2025, ICE issued a memo entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," announcing that "[e]ffective immediately, it is the position of DHS" that anyone "who has not been admitted" is "subject to detention under [8 U.S.C. § 1225(b)] and may not be released from

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

ICE custody except by [8 U.S.C. § 1182(d)(5)] parole." Decl. of Aaron Korthuis Ex. A.[3] Such noncitizens are "also ineligible for a custody redetermination hearing . . . before an [IJ] and may not be released for the duration of their removal proceedings absent a parole by DHS." *Id.*

Second, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *Matter of Yajure Hurtado* adopts the same interpretation of the INA's detention authorities as DHS and the Tacoma IJs, reasoning that all noncitizens who entered without admission or parole are subject to detention under § 1225(b)(2)(A). As a result, both DHS and the Executive Office for Immigration Review (EOIR) (i.e., the immigration court system) have now stated that, as a matter of nationwide policy, they consider people like Petitioners subject to mandatory detention, regardless of whether they were apprehended upon arrival and have since resided in the United States.

III. Petitioners' Cases

Petitioner Santiago Ortiz Martinez is a long-time resident of the United States who has lived here since at least 2015. On August 11, 2025, ICE arrested Mr. Ortiz, and he is now detained at the NWIPC. Ex. B (Ortiz I-213). Following his arrest, ICE placed Mr. Ortiz in removal proceedings before the Tacoma Immigration Court pursuant to 8 U.S.C. § 1229a. Ex. C (Ortiz Notice to Appear (NTA)). The agency has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission or parole at an unknown place and an unknown time. *Id.*

After Mr. Ortiz's arrest and transfer to NWIPC, ICE issued a custody determination to continue his detention without an opportunity to post bond or be released on other conditions. *Id.*

[3] All citations to exhibits are to the exhibits filed with the Korthuis declaration.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Ex. B. Mr. Ortiz subsequently requested a bond redetermination hearing before an IJ. On September 2, 2025, a Tacoma IJ issued a decision holding that the court lacked jurisdiction to conduct a bond redetermination hearing because Mr. Ortiz is an applicant for admission seeking admission under § 1225(b)(2)(A). Ex. D (Ortiz IJ bond order). The IJ ruled that, in the alternative, if mandatory detention did not apply, the IJ would have set bond at $10,000. *Id.* As a result, Mr. Ortiz remains in detention.

Petitioner Josefina Rojas is a long-time resident of the United States who has lived here since at least 1986. On August 13, 2025, ICE arrested Ms. Rojas, and she is now detained at NWIPC. Ex. E (Rojas I-213). Following her arrest, ICE placed Ms. Rojas in removal proceedings before the Tacoma Immigration Court pursuant to 8 U.S.C. § 1229a. Ex. F (Rojas NTA). The agency has charged her with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission or parole at an unknown place and an unknown time. *Id.* Ms. Rojas has not had a bond hearing, and pursuant to DHS policy and *Matter of Yajure Hurtado*, Respondents consider her subject to mandatory detention. As a result, Ms. Rojas remains in detention.

Petitioner Horacio Romero Leal is a long-time resident of the United States who has lived here since at least 1998. Mr. Romero was initially arrested and placed in removal proceedings in 2018. Ex. G (Romero I-213). At that time, the agency charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission or parole at an unknown place and an unknown time. Ex. H (Romero NTA). He was subsequently released on bond. Ex. G. On April 28, 2025, ICE re-arrested Mr. Romero, and he is now detained at NWIPC. *Id.* After his most recent arrest, ICE continued Mr. Romero's removal proceedings before the Tacoma Immigration Court pursuant to 8 U.S.C. § 1229a.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Following his arrest and transfer to NWIPC, ICE issued a custody determination to continue Mr. Romero's detention without an opportunity to post bond or be released on other conditions. *Id.* Mr. Romero subsequently requested a bond redetermination hearing before an IJ. On August 29, 2025, a Tacoma IJ issued a written decision holding that the court lacked jurisdiction to conduct a bond redetermination hearing because Mr. Romero is an applicant for admission seeking admission under § 1225(b)(2)(A). Ex. I. The IJ ruled that, in the alternative, if mandatory detention did not apply, the IJ would have set bond at $7,500. *Id.* As a result, Mr. Romero remains in detention.

Petitioner Adolfo Barajas Cano is a long-time resident of the United States who has lived here since at least 2007. On June 9, 2025, ICE arrested Mr. Barajas, and he is now detained at NWIPC. Ex. J (Barajas I-213). Following his arrest, ICE placed Mr. Barajas in removal proceedings before the Tacoma Immigration Court pursuant to 8 U.S.C. § 1229a. *Id*. ICE has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission or parole at an unknown place and an unknown time. *Id*.

After Mr. Barajas' arrest and transfer to NWIPC, ICE issued a custody determination to continue his detention without an opportunity to post bond or be released on other conditions. Mr. Barajas subsequently requested a bond redetermination hearing before an IJ. On June 23, 2025, a Tacoma IJ issued a decision holding that the court lacked jurisdiction to conduct a bond redetermination hearing because Mr. Barajas was an applicant for admission seeking admission under § 1225(b)(2)(A). Ex. K. The IJ ruled that, in the alternative, if mandatory detention did not apply, the IJ would have set bond at $10,000. *Id.* As a result, Mr. Barajas remains in detention.

Petitioner Pepe Lopez Lopez is a long-time resident of the United States who has lived here since at least 1989. Decl. of Pepe Lopez Lopez ¶ 2. On September 11, 2025, ICE arrested

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Mr. Lopez, and he is now detained at NWIPC. *Id.* ¶ 3. Following his arrest, ICE placed Mr. Lopez in removal proceedings before the Tacoma Immigration Court pursuant to 8 U.S.C. § 1229a. The agency has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without admission or parole at an unknown place and an unknown time. Ex. L. Mr. Lopez has not had a bond hearing, and pursuant to DHS policy and *Matter of Yajure Hurtado*, Respondents consider him subject to mandatory detention. As a result, Mr. Lopez remains in detention.

ARGUMENT

I. Petitioners' Detention is Unlawful.

This Court previously recognized the Petitioners are likely subject to unlawful detention when it issued a preliminary injunction decision in *Rodriguez Vazquez*. *See* 779 F. Supp. 3d at 1255–61. Since the *Rodriguez Vazquez* decision, DHS and EOIR adopted the Tacoma IJs' policy on a nationwide basis, and dozens of district courts have agreed with this Court that Respondents' policy is unlawful. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same). Consistent with the Court's decision in *Rodriguez Vazquez*, courts have rejected Respondents' reading of the statute for four main reasons, as described below.

First, "[a] plain reading of" the language of § 1226(a) demonstrates that "the default discretionary bond procedures in Section 1226(a) apply to . . . noncitizen[s] who, like [Petitioners, are alleged to be] present without being admitted or paroled but *ha[ve] not been* implicated in any crimes as set forth in Section 1226(c)." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1256.

As an initial matter, the plain text of 8 U.S.C. § 1226(a)—which affords access to bond—includes people who are inadmissible, like Petitioners. This is because § 1226(a) applies to

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

noncitizens who are detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). As the INA later expressly provides, this language of "removal" includes both (1) people who entered without inspection, were never formally admitted to the country, and thus are charged as "inadmissible" under the INA, as well as (2) people who were originally admitted to the country and thus are charged as "deportable" under the INA. See *id.* § 1229a(a)(3) (providing that removal proceedings "determin[e] whether a [noncitizen] may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States"); *see also id.* § 1229a(e)(2) (similar).

The statute's structure underscores this point. Subsection 1226(a) provides the general right to seek release on bond. Subsection 1226(c) then carves out discrete categories of noncitizens from being released (primarily those convicted of certain crimes) and subjects them to mandatory detention instead. *See, e.g.*, *id.* § 1226(c)(1)(A), (D). These carve-outs include noncitizens who are inadmissible for entering without inspection *and* who meet certain other crime-related criteria. *See id.* § 1226(c)(1)(E). Because § 1226(c)'s exception expressly applies to people who entered without inspection (as DHS alleges Petitioners have) and who meet certain other criteria, it reinforces the default rule that § 1226(a)'s general detention authority otherwise must generally apply to Petitioners. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co*., 559 U.S. 393, 400 (2010); *see also Rodriguez Vazquez*, 779 F. Supp. 3d at 1256–57.

Recent amendments to § 1226 strongly reinforce this point by explicitly including people who are inadmissible for being present without admission or parole, i.e., for having entered without admission or parole. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A)(i) (the

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress expressly reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6)(A) or (a)(7). "[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1256–57 (quoting *Shady Grove*, 559 U.S. at 400); *see also Gomes*, 2025 WL 1869299, at *6 (similar); *Diaz Martinez*, 2025 WL 2084238, at *7 (similar).

Several canons of interpretation further support this point. To begin, Respondents' interpretation "would render significant portions of Section 1226(c) meaningless." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1258. As the *Rodriguez Vazquez* court explained, this is so because if "Section 1225 . . . and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." *Id.* (citation modified). That would violate the well-established rule that courts "must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (citation omitted).

The *Rodriguez Vazquez* court also noted that the Laken Riley Act's (LRA) recent amendments to § 1226 should be "presume[d] . . . to have real and substantial effect." 779 F. Supp. 3d at 1259 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). As the Court explained, these amendments explicitly provide that § 1226(a) covers individuals like Petitioner who enter

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

without admission or parole. The "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention." *Id.*

The last canon the *Rodriguez Vazquez* court turned to in its PI decision was the presumption that "'[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,' courts 'generally presume the new provision should be understood to work in harmony with what has come before.'" *Id.* (alteration in original) (quoting *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025)). As the Court observed, this canon also supports Petitioners, because "Congress adopted the new amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [the Petitioners]." *Id.*

Second, in addition to the text and structure of § 1226(a), the text and structure of § 1225(b) further demonstrate why it is that § 1226(a) applies to Petitioners. While § 1226(a) applies to those who are "already in the country" who are detained "pending the outcome of removal proceedings," *Jennings*, 583 U.S. at 289, § 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," *id.* at 287. Indeed, in contrast to § 1226(a), the whole purpose of § 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 . . . .").

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

The text of paragraph (b)(2) underscores this point. The paragraph specifies that it applies only to "applicants for admission" (who are defined at § 1225(a)(1)) who are "seeking admission." 8 U.S.C. § 1225(b)(2), (b)(2)(A) (emphasis added). This language is important in limiting the temporal scope of the statute. By stating that (b)(2) applies only to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like class members, who have already entered and are now residing in the United States, and who did not take affirmative steps to obtain admission when they arrived. *See generally* 8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. In fact, until recently, Defendants took the same position, explaining that "[t]o 'seek admission' . . . entails affirmative actions to gain authorized entry." Reply Br. for Fed. Appellees at 14–15, *Crane v. Johnson*, No. 14-10049 (5th Cir. Sept. 29, 2014), Dkt. 78-1; *accord* Tr. of Oral Argument at 44:23–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ("[Solicitor General]: . . . DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

"This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A) by requiring both that a person be an "applicant for admission" and "also [be] doing something" following their arrival to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at *6–7; *see also Lopez Benitez*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (concluding that this is 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*, 2025 WL 2371588, at *7. By contrast, under Respondents'

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

construction, "seeking admission" is simply redundant of "applicant for admission," as inadmissibility alone—i.e., being an applicant for admission—triggers mandatory detention under § 1225(b)(2).

Moreover, consistent with *Jennings*' description of § 1225 as a statute that applies "at the Nation's borders and ports of entry," 583 U.S. at 287, the rest of § 1225 also reflects that its scope is limited. For example, the title explains that the statute concerns the "inspection" and the "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. Similarly, paragraph (b)(1) encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible" for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. *Id.* § 1225(b)(1). Likewise, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e., "the case of [a noncitizen] . . . who is arriving on land." 8 U.S.C. § 1225(b)(2)(C). Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," *id.* § 1225(b)(2)(A), (b)(4), and sets out procedures for "[i]nspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d).

The analysis could end here, as the statute's text and structure make plain that Petitioners are entitled to bond hearings. But a third point also shows why the INA affords such bond hearings: the legislative and statutory history. Prior to IIRIRA, people like Petitioners were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States). In passing IIRIRA, Congress explicitly explained that it was *not* upending the detention status quo, and that it intended for the new § 1226(a) to continue to govern the detention of those

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

apprehended inside the United States. Specifically, Congress stated that the new § 1226(a) merely "restate[d] the current provisions in section 242(a)(1) 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 (emphasis added); see also H.R. Rep. No. 104-828, at 210 (same). "Because noncitizens like [the Petitioners] were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports [Petitioners'] position that [they] too [are] subject to discretionary detention." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1260.[4]

Finally, Respondents' new interpretation violates EOIR's longstanding regulations considering people like Petitioners as detained under § 1226(a) and eligible for bond. Immediately following the passage of IIRIRA, in the decades since, and *still today*, EOIR's regulations have recognized that Petitioners are subject to detention under § 1226(a). Indeed, when EOIR promulgated regulations implementing the custody provisions of IIRIRA, it explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323; *see also id.* ("[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond

[4] It is true that IIRIRA was passed in part to address the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. But the new § 1225 addressed that issue, and Petitioners are not such people: each has lived here for years, or even decades. Had Congress also intended to make everyone already in the United States who entered without inspection subject to mandatory detention, it would have spoken with far more clarity. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (finding "implausible that Congress would give to the [agency] through these modest words [such] power").

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

redetermination hearings before an immigration judge, while arriving [noncitizens] do not. This procedure maintains the status quo regarding release decisions for aliens in proceedings . . . .").

The relevant regulations have not been amended in the decades since. Specifically, the regulation governing IJs' bond jurisdiction—8 C.F.R. § 1003.19(h)(2)—does not limit an IJ's jurisdiction over all inadmissible noncitizens, and instead limits jurisdiction to inadmissible noncitizens subject to § 1226(c) and certain other classes of noncitizens, like arriving noncitizens. That is how the regulation was drafted when originally promulgated, and that is how it remains today. *Compare* Procedures for the Detention and Release of Criminal Aliens, 63 Fed. Reg. 27441, 27448 (May 19, 1998), *with* 8 C.F.R. § 1003.19(h)(2).

The agency's regulatory "guidance and the agency's subsequent years of unchanged practice is persuasive." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1261. Indeed, such a longstanding and consistent interpretation "is 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); *see also 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 at issue); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) ("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.").

In sum, the plain text of § 1226 and § 1225, the statute's structure, the legislative history, and the historical application of § 1226(a) to individuals such as Petitioners all demonstrate that they are entitled to consideration for release on bond. As a result, this Court should grant their petitions for writs of habeas corpus.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

II. Prudential Exhaustion Is Not Required.

Prudential exhaustion is not required here because it would be futile. Since the Court's preliminary injunction decision in *Rodriguez Vazquez*, the BIA has issued a precedential decision adopting the Tacoma IJs' interpretation of the INA's detention authorities. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. As a result, an administrative appeal would serve no purpose. *See, e.g.*, *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (futility exception applied where the BIA rejected same proposed particular social group (PSG) in asylum case as the PSG advanced by petitioner).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their petitions for writs of habeas corpus. Specifically, they request that for those Petitioners with alternative bond orders, that Respondents be required to honor immediately the terms of those alternative orders. As for those who have not received a hearing, the Court should order that those Petitioners must receive bond hearings under § 1226(a) within fourteen days.

Respectfully submitted this 19th day of September, 2025.

s/ Matt Adams
Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
leila@nwirp.org

s/ Glenda M. Aldana Madrid
Glenda M. Aldana Madrid, WSBA No. 46987
glenda@nwirp.org

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 957-8611

Counsel for Petitioners

WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,234 words.

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 816-3872
aaron@nwirp.org