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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

L.A.M.A.,

Petitioners,

v.

JULIO HERNANDEZ, et al.,

Respondents.

Case No. 6:26-cv-01233-MTK

RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents, through counsel, submit this return to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. This return is supported by the Declaration of an Immigrations and Customs Enforcement ("ICE") deportation officer ("Decl. ISO Return") and its accompanying exhibits.[1]

BACKGROUND

Petitioner is a national and citizen of Mexico who entered the United States at an unknown date, time, and location without being inspected by an Immigration Officer. Decl. ISO Return at ¶ 3.

Petitioner L.A.M.A. was arrested by the Corvalis, Oregon Police for Driving Under the Influence of Intoxicants ("DUII") on December 7, 1996. Decl. ISO Return at ¶ 4. He was later arrested by the Linn County, Oregon Sheriff's Office for Driving Under the Influence of Intoxicants ("DUII") on July 9, 2013. *Id.* at ¶5. That arrest led to Petitioner L.A.M.A.'s first encounter with United States Border Patrol officers on July 11, 2013. *Id.* at ¶ 6. Records from that encounter established that Petitioner L.A.M.A. was a national and citizen of Mexico without lawful status to be present in the United States. *Id.;* Ex. A (Form I- 213, 2013). Petitioner was served a Notice to Appear("NTA"), charging inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States

[1] The declarant's name has been redacted for purposes of safety and privacy. Petitioner does not oppose this redaction and has been provided with an unredacted copy of the declaration, which Petitioner has agreed to keep confidential.

without being admitted or paroled. *Id.*, Ex. B (NTA). Petitioner was released on an Order of Recognizance ("OREC") that provided conditions he must comply with that included that he not commit any crimes. *Id.*, Ex. C (OREC).

On June 13, 2014, an Immigration Judge administratively closed Petitioner L.A.M.A.'s removal proceedings at the joint request of both parties. Decl. ISO Return at ¶ 7, Ex. D. DHS filed a motion to recalendar Petitioner L.A.M.A.'s removal proceedings on June 23, 2025. *Id.* at ¶ 8, Ex. E. That motion was granted on July 21, 2025. *Id.*, Ex. F.

On June 18, 2026, ICE Enforcement and Removal Operations ("ERO") was in Albany, Oregon conducting enforcement actions. Decl. ISO Return at ¶ 11. While stationed in the parking lot of a Walmart conducting record checks, officers observed a vehicle that was registered to the Petitioner. *Id.* at ¶ 11. ICE performed records checks that revealed his recent arrest records. *Id.* ICE reviewed immigration records and determined that Petitioner L.A.M.A.. was a native and citizen of Mexico who did not have any lawful status in the United States. *Id.*, Ex. G (Form I-213, 2026). A further review revealed that Petitioner L.A.M.A.'s removal proceedings had been re-opened on July 21, 2025 and that he had previously been arrested on May 3, 2026 for Assault II and Reckless Driving by Linn County Sheriff's Office. *Id.* ICE prepared a Form I-200, "Warrant for Arrest of Alien" on that date. *Id.*, Ex. H (Warrant).

ICE officers observed Petitioner L.A.M.A. return to his truck and approached

him. When he was asked for his name, where he was born, and whether he had papers to be lawfully in the United States, Petitioner L.A.M.A. stated that he was born in Mexico and had an Employment Authorization Card. Decl. ISO Return, Ex. G. Following this interview, ICE officers arrested Petitioner L.A.M.A. *Id.*, Ex. I (Form I-285).

Petitioner was transferred to the ICE office in Portland, Oregon for processing. Decl. ISO Return at ¶ 11. Petitioner was in the process of being transferred to the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, but was released in Portland, Oregon pursuant to the Court's order not to transfer Petitioner out of the District of Oregon without 48 hours' notice because there is no long-term immigration detention facility in Oregon. *Id.*

The day of his arrest, Petitioner filed a petition for Writ of Habeas Corpus in this District and obtained a no-transfer order that prohibited ICE from moving Petitioners' out of district. ECF No. 1 (habeas petition); ECF No. 5 (no transfer order). The order had the practical effect of prompting the Petitioner's release, as ICE lacks overnight detention facilities in Oregon. The petition offered no facts about the terms of Petitioner's arrest beyond that Petitioner was detained and arrested by Respondents. ECF No. 1 at ¶ 28.

LEGAL STANDARD

"The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]" *Exxon*

Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

ARGUMENT

I. PETITIONERS' DETENTION IS JUSTIFIED UNDER 8 U.S.C. § 1225.

To obtain habeas relief, Petitioner must prove that their custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. Petitioner's detention is lawful under 8 U.S.C. § 1225, which provides in pertinent part:

> [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 for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A). An "applicant for admission" is defined as,

> 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)….

8 U.S.C. § 1225(a)(1). Thus, the plain text of Section 1225 provides that applicants for admission, which, by definition, includes all aliens such as Petitioner who entered the United States without admission, "shall be detained."

The history of Section 1225 supports this straight-forward reading. Prior to the passage of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), the INA

"provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Aliens who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Matter of Hurtado*, 29 I&N Weiss Decl. 216, 223 (BIA 2025); *see* 8 U.S.C. §§ 1225(a)-(b) (1995), 1226(a) (1995). In contrast, aliens who evaded inspection and physically entered the United States would be placed in deportation proceedings and thus "were entitled to request release on bond." *Matter of Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)); *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Thus, the INA's prior framework had the

> 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection' … were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see Hing Sum*, 602 F.3d at 1100 (similar).

Congress implemented the "applicants for admissions" scheme of Section 1225 in 1996 to remedy this unintended consequence and ensure that aliens who cross the border between ports of entry, without inspection, are not given better treatment than those who bother to come to the port of entry and subject themselves to inspection. *See Hurtado*, 29 I. & N. Dec. at 223–24; H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("[Congress] intended to replace certain aspects of the

current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection"). As the Board of Immigration Appeals recently noted, to apply Section 1225(b)(2)(A) only to aliens who arrive at the port of entry would contravene Congress's purpose by "rewarding" aliens who enter without inspection with a bond hearing while punishing those who present themselves for inspection with mandatory detention. *Matter of Hurtado*, 29 I. & N. Dec. at 228.

Petitioner is likely to argue that the phrase "seeking admission" in § 1225(b)(2)(A) narrows the scope of the mandatory detention requirement to those who are actively or formally seeking to be admitted to the United States at the time of arrest, excluding aliens who have already entered without inspection and are residing in the United States. To be sure, courts, including courts in this district, have held such. *See, e.g.*, *A.B.D., v. Wamsley,* No. 6:25-CV-02014-AA, 2026 WL 178306, at *8 (D. Or. Jan. 22, 2026); *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1315 (W.D. Wash. 2025): *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).[2]

[2] In *Maldonado Bautista*, the district court in the Central District of California reached a similar conclusion in extending declaratory relief to a certified class that includes, among other things, aliens who entered without inspection and were not apprehended upon arrival. 2025 WL 3713987, at *11, 32. Because Petitioner *was* apprehended upon arrival, Petitioner is not a class member. And in any event, the *Maldonado Bautista* decision is not binding on this Court because the *Maldonado Bautista* court lacks jurisdiction over a habeas proceeding located outside of that

But, respectfully, this conclusion not only cuts against the plain language of the statute and Congress's express purpose in enacting it, but it also ignores other provisions in Section 1225 that make clear Congress intended all applicants for admission to be treated as "seeking admission." For example, § 1225(a)(4) provides that "[a]n 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." By referencing the "purposes and intentions of the applicant [for admission] in seeking admission," this provision assumes that applicants for admission are, either in fact in fact or as a matter of law, "seeking admission." Similarly, § 1225(a)(3) requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected. Again, this language assumes all applicants for admission are seeking admission by requiring inspection not only of applicants for admission, but also of aliens who are "otherwise"—that is, in a different way—seeking admission. *See Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or

district. *See Alberto Rodriguez v. Jeffreys,* No. 8:25-cv-714, 2025 WL 3754411, at *6-10 (D. Neb. Weiss Decl. 29, 2025) (finding that the Central District of California had no jurisdiction over petitioner's habeas petition because petitioner "has never been detained in" that district).

otherwise" means "the first action is a subset of the second action"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019); OTHERWISE, Black's Law Dictionary (12th ed. 2024). In sum, the surrounding provisions in Section 1225 treat the proposition that applicants for admission are seeking admission as obvious. Section 1225(b)(2)(A) should be read in light of that treatment.

Relatedly, the Board of Immigration Appeals has explained that "seeking admission" is "a term of art" that includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful," but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743 (emphasis in original). For example, an alien who previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, applies for a visa—is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743–44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*

Petitioner may also argue that the following language from the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) undermines Respondents' interpretation of § 1225(b)(2)(A):

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Id. at 289. But nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority for *every* "alien[] already in the country," and the passage's use of the word "certain" conveys the opposite. Indeed, elsewhere in the decision, *Jennings* equates "aliens seeking entry" with "applicants for admission" and recognized that Section 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287, 297 ("As noted, § 1225(b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute).")

More broadly, the Court in *Jennings* was considering a separate question entirely. *Jennings* reviewed a Ninth Circuit decision that applied the constitutional avoidance principle to "impos[e] an implicit 6-month time limit on an alien's detention" under Sections 1225(b) and 1226. *Jennings*, 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296–306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens

subject to Section 1225(b) or Section 1226. As such, nothing in *Jennings* should be read to narrow the scope of § 1225(b)(2)(A).

Finally, Petitioner may argue that Respondents' reading of § 1225(b)(2)(A) renders parts of § 1226(c) superfluous. *See, e.g.*, *Rodriguez*, 802 F. Supp. at 1325. But § 1226(c)'s mandatory detention provisions, including as amended by the Laken Rily Act, govern a significant swath of aliens who are *not* covered by Section 1225(b)(2) at all—for example, admitted aliens. And even if there is some overlap, the Supreme Court has on multiple recent occasions explained that while surplusage is disfavored, it is not dispositive, especially "[i]n a wide-ranging scheme" where "some provisions will inevitably cover some of the same conduct." *Fischer v. United States*, 603 U.S. 480, 496 (2024); *see also Barton v. Barr*, 590 U.S. 222, 239 (2020) ("redundancies are common in statutory drafting" and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text"). One would be hard-pressed to find a statute more complex and "wide-ranging" than the INA. And the importance of Congress's belt-and-suspenders approach is evident in the very context in which this case arises: in case courts carve out exceptions to the mandatory detention statutes, Congress is well within its power to make sure at least the aliens who commit the most egregious crimes do not slip through the cracks and receive the windfall benefit of a bond hearing.

In sum, the plain text, purpose, history, and surrounding provisions all make clear that all aliens deemed "applicants for admission" under Section 1225 must be

detained while in removal proceedings. This includes aliens, such as Petitioner, who entered without inspection and, at the time of re-arrest, resided in the interior of the United States.

Here, Petitioner does not appear to contest that he entered the United States without admission and is therefore an applicant for admission. Petitioner also does not appear to contest that he is in active immigration proceedings. Because the statute provides that applicants for admission must be detained while in removal proceedings, Petitioner's detention is lawful under §1225(b)(2)(A).

II. THE COURT SHOULD FOLLOW THE FIFTH AND EIGHTH CIRCUITS BECAUSE THEY CORRECTLY ANALYZED THE TEXT, PURPOSE, AND HISTORY OF 8 U.S.C. § 1225

Much of the Eighth Circuit's analysis in *Avila* mirror's the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*. *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). There are several portions of the *Avila* opinion worth highlighting.

First, the Eighth Circuit in *Avila* analyzed the text of § 1225(b)(2)(A), concluding that the "ordinary meanings of the phrases 'applicant for admission' and 'seeking admission' are the same" and that merely using the two terms as synonyms "does not make it surplusage." *Avila*, 170 F.4th at 1133–34, 1135.

The court correctly explained that the grammatical structure of § 1225(b)(2)(A) supports this conclusion. "Seeking admission" is not styled in § 1225(b)(2)(A) as a condition precedent to mandatory detention. *Avila*, at 1134. The only condition

described by the statute is that the alien be "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Had Congress intended "seeking admission" to be an additional condition of mandatory detention, it could have easily phrased the statute as applying only when an alien *is* seeking admission *and* is not clearly and beyond a doubt entitled to be admitted. *See Avila*, at 135. That is not how Congress phrased it because that is not what Congress intended.

Finally, the Eighth Circuit in *Avila* pointed out that Congress's purpose in enacting § 1225 supports this interpretation. As other courts, including the Ninth Circuit, have observed, Congress's purpose was to "ensure[ ] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings." *Id.* at 1135–36 (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). Interpreting the statute to give aliens who cross the border illegally a benefit not available to those who come to a port of entry would be "incongruous" with this intent. *Id.* at 1136.

The Fifth and Eighth Circuits got it right. The plain text, purpose, history, and context of § 1225 make clear that *all* applicants for admission—including those who resided in the interior of the United States when they were encountered—must be detained.

III. IN THE ALTERNATIVE, PETITIONER IS SUBJECT TO DETENTION UNDER 8 U.S.C. § 1226(a) FOR VIOLATING THE TERMS OF RELEASE BY BEING ARRESTED FOR A FELONY

Even if the Court disagrees that Section 1225 is the governing

detention authority here, Petitioner's detention is also lawful under Section 1226(a).

By regulation, an alien previously released may have their release revoked "at any time…in which event the alien may be taken into physical custody and detained." 8 C.F.R. § 236.1(c)(9). Although this authority is at the discretion of DHS, an alien detained under §1226(a) can request a custody redetermination (*i.e.,* a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination hearing, the immigration judge, as an initial matter, determines whether the noncitizen is detained pursuant to 8 U.S.C. § 1226(a) and therefore eligible for custody redetermination. If the immigration judge makes such a finding, the immigration judge may continue detention or release the noncitizen on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Factors immigration judges consider in bond hearings under § 1226(a) include "danger to others," "threat[s] to the national security," and "flight risk." *Matter of Guerra*, 24 I. & N. Dec. 37, 37 (BIA 2006).

Here, DHS was well within its discretion to re-arrest Petitioner because Petitioner violated the conditions of his release by committing a crime. After being initially released by ICE on an OREC in 2013, Petitioner was arrested for Assault in the second degree and Reckless Driving. Decl. ISO Return, Ex. G.. This shows that even the most basic conditions of release—to commit no crimes— is not being followed by the Petitioner. Petitioner's open criminal case also increases the risk

that Petitioner will flee; being arrested for a felony is not likely to help Petitioner's immigration case and will greatly increase Petitioner's incentive to abscond.

In sum, Petitioner's detention is lawful under Section 1226(a), in the alternative, because Petitioner violated his release by being arrested for a felony.

V. IF THE COURT FINDS THAT PETITIONER IS SUBJECT TO DETENTION UNDER SECTION 1226, THE PROPER COURSE OF ACTION IS TO ORDER A BOND HEARING WITH THE IMMIGRATION JUDGE

If the court finds that the detention authority is § 1226(a) and granting habeas is appropriate, the proper course of action in this case is not to order release. Rather, the proper course is to order an in-custody bond hearing before an immigration judge in a detained immigration court upon the request of Petitioner to the immigration court. Not only do immigration judges have the specialized knowledge and experience to make bond determinations specifically under the INA, but the administrative system also contains robust due process protections, including avenues to appeal a bond determination. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Ordering release would circumvent the system that was designed to address these concerns and turn this Court into a de facto immigration bond venue. Given the notice Petitioner received in the OREC form and the process provided to aliens in bond hearings, *see* supra, there is little doubt this course of action would satisfy Due Process. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a

meaningful time and in a meaningful manner.").[3]

In sum, an immigration court bond hearing, not release, is the appropriate course of action if the Court finds Section 1226(a) is the proper detention authority.

CONCLUSION

Petitioner's detention is mandatory under 8 U.S.C. § 1225. Alternatively, Petitioner is subject to detention under 8 U.S.C. § 1226(a) for violating the terms of his release by committing a felony and the Court should order a bond hearing with the immigration judge. This Court should deny the petition.

DATED this 20th day of July 2026.

Respectfully Submitted,

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[3] Although there is binding BIA precedent holding that immigration judges do not have jurisdiction to grant bond to aliens in Petitioner's position, *Matter of Hurtado*, 29 I. & N. Dec. at 228; *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), it is reasonable to believe that immigration judges would obey a district court's order in a habeas case requiring them to take jurisdiction in that specific case and hold a bond hearing.