Marti L. Jones, (Utah 5733)
Adam L. Crayk, (Utah 9443)
STOWELL CRAYK, PLLC
4252 South 700 East
Millcreek, Utah 84107
Email: marti@lawscb.com
adam@lawscb.com
Telephone: (385) 549-1260
(385) 358-1038
Facsimile: (801) 483-0705
Attorney for Petitioner, Pro Hac Vice

Peter L. Ashman, 2285
LAW OFFICES OF PETER L. ASHMAN
617 S. 8TH Street, Suite B
Las Vegas, NV 89101
Telephone: (702) 735-1112
Email: pla@ashmanlaw.com
Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Marlon Omar Baca Beltrand Petitioner, v. Jason KNIGHT, Acting Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); John MATTOS, Warden, Nevada Southern Detention Center; Kristi NOEM, Secretary, United States Department of Homeland Security, Pamela BONDI Attorney General of the United States, Executive Office for Immigration Review (EOIR) Respondents.	PETITIONER'S REPLY TO RESPONDENTS' RESPONSE PETITION FOR WRIT OF HABEAS CORPUS Case No. 2:25-cv-01430-CDS-EJY Agency Case Number: [redacted]

I. INTRODUCTION

Petitioner, by and through the above-named counsel of record, submits this Reply to Respondents' Response to his Second Amended Petition for Writ of Habeas Corpus.

Respondents incorrectly assert that Petitioner seeks to override Congress's detention scheme. On the contrary, Petitioner is requesting that this court ***require Respondents to reinstate***, ***and properly apply*** the Congressionally designed and enacted detention scheme that Respondents have recently chosen to reinterpret and ignore. It is Petitioner's position that Respondents' recent reinterpretation of the nearly thirty-year-old statutory detention scheme and retroactive application of that reinterpretation to this Petitioner violates the statute, the regulations, agency and judicial precedent, and is an unconstitutional violation of Petitioner's constitutional right to due process of law.

Government Respondents argue that the Court should agree with and allow them to impose a novel interpretation of 8 U.S.C. § 1225(b)(2)(A), on Petitioner. Respondents claim that nearly 30 years ago, in 1996, Congress in this statute acted to bar Petitioner permanently from any right to release from detention, to a bond hearing, to any review of the Government Respondents' exercise of alleged mandatory detention authority. Petitioner asserts, in response, that the evidence in support of Congressional intent for this specific outcome is not only non-existent, but that the evidence of Congressional intent weighs squarely against Respondents' interpretation: the Congressional Record, the enabling regulations, and continuing Congressional legislation as recently as January 2025, all challenge Respondents' proposed reading of the statute. This Court owes no deference to Defendants' proposed interpretation; this is the case in part due to the length of time that occurred between the enactment of the statute and this new interpretation. Nevertheless, the length of time is not the sole flaw in the Respondents' statutory

interpretation. Among other issues, the government's precedent decision in support of this interpretation fails to grapple with the purposely awkward syntax of the statutory language, the agency's own contradictory precedent, the governing regulations implemented contemporaneously, and the constitutional context of the statutory language. Finally, the government issued this decision in a case that presented no case or controversy and was in fact moot when the decision was issued. *See*, Appendix C: Motion to Reconsider Yajure Hurtado, p. 1. The individual respondent involved in that precedent case has asked the agency to reconsider that precedent. Id.

II. ARGUMENT

A. CONGRESSES' DETENTION SCHEME

The crux of the issue presented by Petitioner is the question of whether he and his family were detained by the government pursuant to 8 U.S.C. § 1226(a), and are therefore statutorily and regulatorily eligible for a bond hearing before an IJ, or whether, as "applicants for admission" their detention is pursuant to 8 U.S.C. § 1225 therefore mandatory, with no statutory or regulatory right to a bond hearing. Petitioner's claim that he is detained pursuant to 8 U.S.C. § 1226(a) is solidly grounded in the explicit language of the documents he was given when he was arrested, placed in removal proceedings, and released with his partner and their children on recognizance, subject to government monitoring and removal proceedings. *Second Amended Petition for Writ of Habeas Corpus* (hereinafter, *2nd Amended Petition*) Exhibits A-C. Petitioner's claim is further supported by the Immigration Judge's affirmative recognition of his detention pursuant to 8 U.S.C. § 1226(a) when granting him bond on July 22, 2025. *2nd Amended Petition* Exhibit M; Exhibit A, attached (IJ written decision granting Petitioner bond).

By contrast, Respondents' statutory and legal claims begin with their bald assertion that because Petitioner is "an applicant for admission" he is therefore, inevitably, inescapably, and permanently subject to mandatory detention pursuant to 8 U.S.C. § 1225. According to Respondents, Congress in 1996 clearly intended the detention provisions of 8 U.S.C. § 1225 to apply to all "applicants for admission." But Respondents' recent reinterpretation of that statutory language misunderstands and misinterprets the statutory term "applicants for admission," conflating two subgroups that Congress purposefully and explicitly chose to treat differently for detention purposes. While Congress classed them together for purposes of formal removal proceedings, Congress explicitly recognized that—when it comes to detention, the two subgroups are not identical and therefore cannot, constitutionally, be subject to the same detention regime.

As numerous federal courts have found in the last few months, Respondents' reinterpretation contradicts and ignores the Congressional history, the regulatory history, the regulations themselves, and the intervening precedent. *See, e.g., Martinez v. Hyde,* 1:25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025)[1]; *Herrero-Encarnacion v. Moniz*, 25-12237-LTS (D. Mass. Sept. 5, 2025); *Hernandez-Nieves v. Kaiser*, 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo-Hinestroza v. Kaiser*, 3:25-cv-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Salcedo Aceros v. Kaiser*, 25-cv-06924-EMC, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Pablo-Sequen v. Kaiser*, 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025), subsequent decision 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Lopez-Arevalo v. Ripa,* EP-25-cv-337, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Acosta-Roa v. Albarran*, 3:25-cv-07802-RS, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Valencia-Zapata v.*

[1] Memorandum and Decision on Respondents' Motion for Reconsideration also available at https://storage.courtlistener.com/recap/gov.uscourts.mad.285495/gov.uscourts.mad.285495.28.0.pdf

Kaiser, 25-cv-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Santiago-Helbrum v. Williams*, 4:25-cv-00349-SHL-SBJ, (S.D. Iowa Sept. 30, 2025); *Quispe-Ardiles v. Noem,* 1:25-cv-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Cordero Pelico, et. al. v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Sanchez-Ballesteros v. Noem, et.al.,* 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Ochoa-Ochoa v. Noem*, 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *J.S.H.M. v. Wofford*, 1:25-cv-01309-JLT-SKO, 2025 WL 2938808 (E.D. Cal. Oct. 16, 2025); *Sabi Polo v. Chestnut*, 1:25-cv-01342-JLT-HBK, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025).[2]

1. 8 U.S.C. § 1225 or 8 U.S.C. § 1226?

The government asserts that because Petitioner, as an individual present in the U.S. without lawful admission, is deemed by 8 U.S.C. § 1225(a) to be an "applicant for admission," he is inescapably and permanently subject to mandatory detention pursuant to the terms of 8 U.S.C. § 1225, including 8 U.S.C. § 1225(b)(2)(A). The government's analysis fails to recognize the explicit distinctions between Immigration and Nationality Act's (INA) precise classifications and sub classifications. More specifically, the government's analysis erases a deliberate, congressionally created, subdivision in the larger class of noncitizens classified by law as "applicants for admission." The government then asserts, having erased the subdivision, that statutory provisions congress explicitly made applicable solely to a *subdivision* of the larger class are now applicable to the entire class.

i. The Statutory Text and the Record of Congressional Intent

As a starting point, compare the largest of the INA's classifications--found in 8 U.S.C. § 1101 (a)(15). That section defines two classes of non-citizens or aliens: immigrants and non-

[2] Petitioner has attached as complete a list as possible of the favorable court decisions reviewing this issue as Attachment A. A list of the unfavorable court decisions is attached at B.

immigrants. In that section, the sub-classes of non-immigrants are precisely and exhaustively defined, while the immigrant class is defined as "every alien except an alien who is within one of the following classes of nonimmigrant aliens. . ." 8 U.S.C. § 1101 (a)(15). Similarly, in 8 U.S.C. § 1225(a), revised and enacted as section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (IIRIRA), Congress defines another large class, that of "applicants for admission" in opposition to aliens who have been lawfully admitted, specifically in order to collapse the prior legal distinctions between exclusion and deportation proceedings. Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, 225, Part I (March 1996). ("This subsection is 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 at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted.") *Id.* In other words, in IIRIRA, Congress deliberately created and defined the class of "applicants for admission" and explicitly added provisions to 8 U.S.C. § 1182 so as to collapse what it saw as prior procedural advantages gained by aliens subject to deportation as opposed to exclusion, and to explicitly combine into one single "removal" proceeding all efforts to remove noncitizens unlawfully present in the U.S., regardless of how and when they arrived. In other words, Congress intended with the enactment of IIRIRA to divide all non-citizens into two large classes: admitted aliens and inadmissible aliens. The class of admitted aliens can be further subdivided into admitted aliens who remain in lawful status, and those admitted aliens who are subject to the grounds of removal found at 8 U.S.C. § 1227, while the class of inadmissible

aliens is also known as "applicants for admission" and was also deliberately subdivided by Congress in IIRIRA.

As the statutory language makes clear, while Congress definitely intended to collapse the prior legal distinctions between those who have made an entry, and those who have not, and to combine both exclusion and deportation into one single removal procedure, Congress in 1996 also recognized the constitutional constraints of due process. Consistent with that awareness, IIRIRA draws very careful lines. The class of inadmissible aliens, also known as "applicants for admission" is defined in opposition to the class of "admitted but removable" aliens. IIRIRA added 8 U.S.C. § 1182(a)(6)(A)(i) explicitly to ensure that all noncitizens who had not been lawfully admitted or paroled would be charged with a ground of inadmissibility:

> This subsection will conform the grounds of inadmissibility under section 212(a) with the new doctrine of ''admission'' established in section 301(a) of the bill. Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B). Under the new ''admission'' doctrine, such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission. (Deportation grounds will be reserved for aliens who have been admitted to the United States.)

Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, 226, Part I (March 1996). But because Congress also explicitly understood the constitutional constraints of due process, the definition of "applicants for admission" includes two separate and clearly identifiable subclasses: aliens "present without admission" and aliens "who arrive in the United States." 8 U.S.C. § 1225(a). Note that these two groups are parallel, although not identical, to the two groups that under prior law fell within each of the two separate procedures—deportation and exclusion. As part of the enabling regulations, the government precisely defined the second subclass, also known as "arriving aliens." 8 C.F.R. § 1.2.

Congress had solid constitutional reasons for distinguishing between the subclass of "arriving alien" applicants for admission at the nation's borders, and those merely deemed 'applicants for admission' as a legal fiction for purposes of removal proceedings. Principal among those reasons is the recognition that aliens are persons included within the protections of the U.S. Constitution, and that the constitutional requirements of due process are at their strongest when the government is depriving a human person of her liberty:

> But this Court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution.
>
> One of these principles is that no person shall be deprived of his liberty without opportunity at some time to be heard before such officers in respect of the matters upon which that liberty depends -- not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore it is not competent for the Secretary of the Treasury or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.

Yamataya v. Fisher (Japanese Immigrant Case), 189 U.S. 86, 100-101 (1903). [As referenced in *Reno v. Flores*, 507 U.S. 292, 306 (1993). When Congress drafted and passed IRRIRA, it deliberately chose to define the class of all aliens who have not been lawfully admitted to the U.S. as "applicants for admission." But Congress just as deliberately recognized and enshrined in the statute the two subclasses composing "applicants for admission:" actual arriving aliens--actual aliens seeking admission—and individuals present in the United States who have not been admitted. In other words, individuals who are present without having ever sought admission,

who Congress nevertheless deems "applicants for admission" as a legal fiction. The distinction between these two subclasses is squarely based in the long history of Supreme Court precedent recognizing that A) the requirements of constitutional due process are lowest for those arriving at the nations' borders, and B) aliens arrested and detained within the United States, regardless of how they entered, and especially when they have been present for extended periods, cannot be taken into custody and held arbitrarily. e.g., *Yamataya; Reno v. Flores*. *See also,* the extended discussion of these intertwined issues in *Make the Road New York, el. al. v. Noem* 1:25-cv-190 (D.D.C.) Memorandum Opinion August 29, 2025, pp. 23-25; and *Coalition for Humane Immigrant Rights v. Noem*, 1:25-cv-872 (D.D.C.) Memorandum Opinion August 1, 2025.

It is precisely because of these constitutional due process lines that, following the combination of "arriving aliens" and "aliens present without admission" into one single class of "applicants for admission" in 8 U.S.C. 1225(a), Congress carefully distinguishes and focusses on actual "arriving alien" applicants for admission throughout 8 U.S.C. 1225(b)(1). The provisions of (b)(1)(A) are explicitly applied to any "alien who is arriving" in the U.S., with the separately authorized inclusion of the special class described in clause (iii).[3] For the same constitutional reasons, Congress deliberately drafted the syntactically convoluted text of 8 U.S.C. § 1225(b)(2)(A) so as to maintain this distinction between the two sub-classes of "applicants for admission." There is no other explanation for the addition of the "seeking admission" qualifier. The BIA's reading of the text in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), supported and argued to be controlling by the Respondents, renders that 'seeking admission' superfluous. The BIA and Respondents seek to interpret the text to expand the most restricted

[3] Clause (iii) is now outside the scope of this Petition. If it were still a consideration, Petitioner would point the Court to the thorough analysis of *Coalition for Humane Immigrant Rights v. Noem*, 1:25-cv-872 (D.D.C.) Memorandum Opinion August 1, 2025.

form of constitutional due process—that provided to non-citizen aliens seeking admission at the U.S. borders—throughout the entire territory of the United States. As the Supreme Court wrote in *Landon v. Plascencia*, 459 U.S. 21, 33 (1982) "an alien seeking initial admission to the United States requests a privilege, and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Plascencia* at 33. In order to reduce the constitutional rights of noncitizens within the U.S., the BIA and the Defendants would read the "seeking admission" qualifier completely out of the text. They would read 8 U.S.C. § 1225(b)(2)(A) to say: "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ~~[seeking admission]~~ is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." In essence, this reading would convert every immigration agent throughout the United States into an examining officer. But Congress included that "seeking admission" phrase to reemphasize that the examination procedures laid out in 8 U.S.C. § 1225 are applicable *at the nation's borders*. Threaded through the Report of the House Judiciary Committee's explication of the text of INA § 235/8 U.S.C. § 1225, are the qualifiers: "arriving alien" "aliens seeking admission" "an alien applying for admission" "aliens arriving". Regarding the (b)(2) provisions at issue here, Congress explicitly applies them to "inspection of other *arriving aliens*". *House Judiciary Report*, *supra*. at 229.

ii. The Implementing Regulations

The regulations published in 1997 by the Respondent departments, agencies and their predecessors, *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), also directly contradict Respondents' current interpretation, and instead squarely support the intended distinction between the two sub-classes of "applicants for admission." To begin, the

caption of 8 C.F.R. § 236 explicitly includes within the scope of its detention provisions *both* inadmissible and deportable aliens. If, as Respondents argue, all "applicants for admission" are always and only covered by the detention provisions of 8 C.F.R. § 235, then which inadmissible aliens is 8 C.F.R. § 236 referencing? As noted above, the primary Congressional purpose for creating the "applicant for admission" class was to separate the "inadmissible" noncitizens, who had never been lawfully paroled or admitted from the "deportable" aliens who had been admitted, but were now removable. Inadmissible aliens and "applicants for admission" are two different terms for the same class.

But the caption is not the only challenge to Respondents' new interpretation of the statutory language. That is the case because Respondents' predecessor agencies initially proposed regulations which *would have done precisely what Respondents now assert Congress intended.* That is, the proposed regulations published in January 1997 included explicit language stating "An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to: (i) inadmissible aliens in removal proceedings." 62 F.R. 444, 483 (January 3, 1997) [236.1(c)(5)(i)]. Had that regulation remained as proposed, the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) would not be novel, in fact, it would have been the law for the past nearly thirty years. But in 1997 when the government published the final regulations they explicitly and deliberately removed that proposed language, as having been included erroneously in the proposed regulations:

> The supplementary information stated the Department's intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.

62 F.R. 10312, 10323 (March 6, 1997). *Compare* 62 F.R. 10312, 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)]. In other words, the BIA's assertion that the Immigration Judges do not have authority to adjudicate bonds *for any inadmissible* alien, (otherwise defined in 8 U.S.C. § 1225(a) as an "applicant for admission") was considered and explicitly rejected when the implementing regulations were published in 1997. The Ninth Circuit has held that an executive branch agency such as the BIA cannot 'overrule' by adjudication regulations that were promulgated after notice and comment. *Patel v. INS,* 638 F.2d 1199, 1202 (9th Cir. 1980). ["Thus, by adjudication, the Board attempted to add a requirement to the 1973 regulation which had been expressly discarded during its rule-making proceedings."] And yet that is precisely the act that Respondents are here asking this Court to support, as they ask this Court to sustain the BIA's decision in *Yajure Hurtado* that Immigration Judges do not have authority to grant bond to any member of the entire class of "inadmissible aliens" otherwise known as "applicants for admission."[4]

2. *PETITIONER WAS PROCESSED AND RELEASED UNDER 8 U.S.C. § 1226*

i. *Governing DHS Policy in 2023*

The government's argument boils down to the claim that—read and interpreted as they now chose to read and interpret the statutory language—*because Petitioner was detained on entry, the documents processing him under 8 U.S.C. 1226 are clear legal error, and he could only ever, as a matter of law, have been detained at the border and processed pursuant to 8 U.S.C. 1225.* But as the above statutory and regulatory history documents, the Respondents'

[4] The Motion to Reconsider filed by Respondent Yajure Hurtado with the BIA cites these and other reasons, such as mootness, in arguing that the BIA should reconsider this decision as improvidently issued and contrary to the law. A redacted copy of this Motion to Reconsider is filed at Attachment C, for this court's consideration.

preferred interpretation of the statutory text finds little to no support in the legislative history, and is directly opposed to the clear choice of the March 1997 implementing regulations.

As Petitioner noted in his Second Amended Petition, paragraphs 81-85, the governing statutory interpretation at the time he entered the U.S. with his partner and their children in 2023 was that with regard to persons detained, like the Petitioner, at the border after an unlawful entry, the government had full authority and flexibility with regard to how it chose to process the noncitizens, whether by detaining them and processing them for expedited removal, or by detaining them for regular removal proceedings under INA § 240, 8 U.S.C. § 1229a, or by issuing warrants for their arrest under 8 U.S.C. § 1226(a), as the government explicitly chose to do with Petitioner and his family. This is supported by the judge's finding in *Cordero Pelico*:

> [T]he government has conceded in other contexts that "DHS's long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Dkt. No. 17 (citing Solicitor General, Transcript of Oral Argument at 44:24–45:2, Biden v. Texas, 597 U.S. 785 (2022) (No. 21-954)). And in its briefing before this Court, the Government acknowledges that "until recently," it considered § 1226(a) to be an available detention authority for noncitizens who might also be subject to § 1225.

Cordero Pelico, supra, at 6. *See also, Martinez v. Hyde, supra,* at 9, ftnt 9. When the government detained Petitioner in 2023 it deliberately chose to avoid any mention of 8 U.S.C. § 1225. The warrant issued for Petitioner's arrest derives its authority from "Section 287 of the Immigration and Nationality Act." Second Amended Petition for Writ of Habeas Corpus (hereinafter, 2nd Amended Petition) Exhibit A. The Order of Release on Recognizance states "In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions." 2nd Amended Petition, Exhibit C.

The U.S. Supreme Court's analysis of 8 U.S.C. 1225 and 1226 in *Jennings v. Rodriguez,* 583 U.S. 281, (2018) explicitly recognizes the distinctions at issue, stating:

> 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).

Jennings at 289. Note the clear recognition that while "aliens seeking admission" (or arriving aliens, as defined in the regulations) are subject to detention under §§1225(b)(1) and (b)(2), "aliens already in the country may be detained . . . under §§1226(a) and (c)." The Supreme Court further wrote "As noted, §1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.* at 303. In other words, contrary to Respondents' assertions in their Response, pp. 8-9, the Supreme Court in *Jennings* recognized that 8 U.S.C. §1225(b) applied only to the subclass of "applicants for admission" who were actually "seeking admission" at the border. The other subclass of "applicants for admission," "an alien present . . . who has not been admitted" or "certain aliens already in the country" or "aliens already in the country" may be detained under §1226(a).

As documented above, when Petitioner and his family crossed the U.S. border without inspection in October 2023, it was the declared position of the U.S. Government that the government itself could freely choose which detention regime it wished to apply to them: whether mandatory detention or parole pursuant to 8 U.S.C. 1225(b), or the more flexible detention regime of 8 U.S.C. 1226. The governments' re-detention of Petitioner and retroactive attempt to change that choice has no basis in the law. The governments arguments amount to an after-the-fact assertion that for nearly thirty years, the legal interpretation that the government

had the freedom of choice regarding which detention regime to impose on immigrants like Petitioner, detained at the U.S. border, has been illegal and contrary to the clear statutory provisions. But merely because Congress has suddenly granted the U.S. government enormous sums of money to fund detention does not magically erase all the government's prior arguments for choice and flexibility in detention regimes. *Jennings* does not support a legal conclusion that individuals who are not seeking admission, who have already entered without inspection, *may only be detained pursuant to 8 U.S.C. 1225.* Inasmuch as the legal context applicable to Petitioner's detention and release in 2023 granted that initial choice to the government, the choice that the government made in 2023, to process him pursuant to 8 U.S.C. 1226, rather than 1225, still governs, and Petitioner remains under that regime at the present time.

ii. After Nearly Three Decades of Government Policy and statutory interpretation, retroactive application by the Government of a new policy is unconstitutional.

In that context, the application of the Respondents' new statutory interpretation to detain Petitioner arbitrarily, suddenly, with no change in his circumstances, nearly two years after his entry into the U.S., is unconstitutionally retroactive. *See, e.g., Ruangswang v. INS,* 591 F.2d 39, 43-44 (9th Cir.1978); *De Niz Robles v. Lynch*, 803 F.3d 1165 (10th Cir. 2015). As Petitioner noted in his 2nd Amended Petition for a Writ of Habeas Corpus, it is a substantive violation of his right to be free of retroactive application of changing government policy (policy that violates the published regulations) for the government to now assert that Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), based on its revised reading of the statute disseminated internally to ICE officers on July 8, 2025, no more than 24 hours before Petitioner was arbitrarily re-detained with no showing of changed circumstances on July 9, 2025. *Compare, 2nd Amended Petition* Exhibit P, and Exhibit F. The Respondents claims that Petitioner is detained pursuant to the provisions of 8 U.S.C. § 1225(b)(2) amounts to nothing more nor less

than an attempt by the government to retroactively change the legal provisions pursuant to which this Petitioner was inspected and released into the U.S. on recognizance. The governments' arguments that its policies and procedures over the past 29 years have been invalid and illegal, and that the statutory language can only be read as they now propose to read it, are unsupported by the Congressional record or the statutory text, and, finally, is a procedurally invalid attempt to impose via adjudication a statutory interpretation rejected in the Congressional Record and thereafter proposed and then explicitly rejected as part of the implementing regulations.

B. THE AUTOMATIC STAY REGULATION AT 8 C.F.R. § 1003.19(i)(2) IS ULTRA VIRES AND UNCONSTITUTIONAL AS APPLIED TO PETITIONER

As Petitioner noted in his Petition for a Writ of Habeas Corpus, he is presently detained solely by virtue of DHS' invocation of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2). Were it not for DHS' invocation of that regulation, Petitioner would have posted the bond granted by the IJ and been released in July. As Petitioner asserted in his Petition for Writ of Habeas Corpus, the automatic stay regulation, invoked by DHS to overrule the IJ's grant of a bond, is both *ultra vires* and unconstitutional. Petitioner will not restate those arguments here. Petitioner will, however, point the court to further persuasive analysis and evaluation not previously cited. See, e.g., the analysis of the constitutionality and ultra vires nature of the regulation in *Garcia Jimenez v. Kramer*, 4:25-cv-03162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025). The court in *Garcia-Jimenez* held:

> By permitting DHS to unliterally extend the detention of an individual, in contravention of the findings of an agent (the IJ) properly delegated the authority to make such a determination, 8 C.F.R § 1003.19(i)(2) exceeds the statutory authority Congress gave to the Attorney General. "Because this back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is ultra vires to the statute." *Zavala v.*

> *Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004). Accordingly, the challenged regulation is invalid and Petitioner's detention on that basis is unlawful.

Garcia Jimenez at 10. Other courts reaching the same conclusions regarding the either or both the unconstitutionality and ultra virus nature of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) include *Encarnacion v. Moniz, supra*; *da Silva v. ICE*, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Ayala Casun v. Hyde,* 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, 1:25-cv-01408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Campos-Leon v. Forestal*, 1:25-cv-01174, 2025 WL 2695763 (S.D. Ind. Sept. 22, 2025).

Petitioner further notes, as many of these decisions have also held, that requiring him to remain detained and separated from his family while the government seeks to overrule the IJ's decision granting him bond, would constitute a further violation of his constitutional rights. The government has detained him unlawfully. There is no foundation in the statutory language to support the retroactive application of the government's new border detention and expanded expedited removal policy, to override and reverse the prior government decision to process the Petitioner pursuant to 8 U.S.C. § 1226, rather than 8 U.S.C. § 1225. The regulation that keeps him detained is ultra vires to the statute and unconstitutional.

III. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully asks that this Court grant his Petition for a Writ of Habeas Corpus, and order Respondents to allow him to post the bond as ordered by the Immigration Judge, and to release him immediately.

Petitioner further respectfully requests that this court declare that his re-detention by ICE without any showing of changed circumstances or individualized determination of danger or flight risk will violate the Due Process Clause of the Fifth Amendment.

Petitioner also respectfully requests that this Court issue an Order prohibiting the Respondents from transferring Petitioner from the district prior to his release, and, finally,

Petitioner requests that this Court award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the law; and

Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 30th day of October, 2025.

STOWELL CRAYK PLLC

/s/ Marti L. Jones

/s/ Adam L. Crayk
Attorneys for Petitioner

ATTACHMENTS

A. List of District Court Cases holding detention is pursuant to 8 U.S.C. 1226(a) and not 8 U.S.C. 1225(b)(2)

B. List of District Court Cases holding bond is not available.

C. Copy of Motion to Reconsider, filed with the BIA in *Matter of Yajure-Hurtado.*