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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SALVADOR ALVAREZ CHAVEZ

PETITIONER,

vs.

POLLY KAISER, ACTING FIELD OFFICE
DIRECTOR OF THE SAN FRANCISCO IMMIGRATION
AND CUSTOMS ENFORCEMENT OFFICE; TODD
LYONS, ACTING DIRECTOR OF UNITED STATES
IMMIGRATION AND CUSTOMS ENFORCEMENT;
KRISTI NOEM, SECRETARY OF THE UNITED
STATES DEPARTMENT OF HOMELAND SECURITY,
PAMELA BONDI, ATTORNEY GENERAL OF THE
UNITED STATES, ACTING IN THEIR OFFICIAL
CAPACITIES,

RESPONDENTS.

CASE No.: 3:25-cv-06984-LB

HONORABLE LAUREL BEELER
UNITED STATES MAGISTRATE JUDGE

**PETITIONER'S REPLY IN SUPPORT
OF EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

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RESPONSE

Petitioner Salvador Alvarez Chavez (“Petitioner”) files this short Reply in support of his Ex Parte Application for a Temporary Restraining Order (“TRO”) to address issues raised by the government.

First, in its opposition the Respondents state “Until recently, the government interpreted § 1226(a) to be an available detention authority for aliens PWAP placed directly in full removal proceedings under § 1229a. *See, e.g., Ortega-Cervantes*, 501 F.3d at 1116. In view of legal developments, the government has determined that this interpretation was incorrect.” (Dkt. 19 at 4). Essentially, Respondents admit that until recently Petitioner would have been eligible for release on bond. Further, Respondents do not fully explain the “legal developments” that resulted in this change or determination that the prior interpretation was incorrect. Presumably, the “legal developments” include the July 8, DHS Guidance Notice directing Officers to treat all persons who have entered the United States without inspection in the same manner that “arriving aliens” have been historically treated.

As noted in the opening memorandum in support of the TRO, and as acknowledged by Respondents, DHS has long considered people like the Petitioner as detained under § 1226(a). For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within the United States long after their entry. 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 interpretation and practice to reject government’s new proposed interpretation of the law at issue).

1 Indeed, agency regulations have long recognized that people like Petitioner are subject to
2 detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the regulatory basis for the
3 immigration court’s jurisdiction—provides otherwise. In fact, EOIR confirmed that § 1226(a)
4 applies to Petitioners when it promulgated the regulations governing immigration courts and
5 implemented § 1226 decades ago. Specifically, EOIR explained that “[d]espite being applicants
6 for admission, [noncitizens] who are present without having been admitted or paroled (formerly
7 referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond
8 redetermination.” 62 Fed. Reg. at 10323.3.¹

9 Next, the government argues that Petitioner lacks a liberty interest and should not be
10 treated “better” than those who appear at a port of entry. (Dkt. 19 at 16). But, what Respondents
11 are saying is that that Petitioner, a man who has lived here for almost thirty years, should have no
12 due process rights. It defies logic that a person who has been in the United States for more than
13 twenty-five years would not be entitled to due process protections of § 1226(a). It also defies
14 logic that that Petitioner would be treated the same as an applicant for admission, as though he
15 just showed up at the border seeking entry. Petitioner was arrested in the interior of the United
16 States on a warrant almost thirty years after he entered the United States. The plain language of §
17 1226(a) applies to this exact scenario.

18 As previously noted in the opening brief “[i]t is well established that certain
19 constitutional protections available to persons inside the United States are unavailable to aliens
20 outside of our geographic borders.” *Zadvydas*, 533 U.S. 678 at 693 (citing *United States v.*
21 *Verdugo-Urquidez*, 494 U.S. 259, 269 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784
22 (1950)). “But once an alien enters the country, the legal circumstance changes, for the Due
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27 ¹ In fact, Respondents state that the government has an interest in enforcing their immigration laws. (Dkt. 19 at 18).
28 This supports Petitioner’s position since Respondents are changing their own rules. There is an interest in the
consistency of the governments’ own interpretation of its own laws.

1 Process Clause applies to all ‘persons’ within the United States, including aliens, whether their
2 presence here is lawful, unlawful, temporary, or permanent.” *Id.*

3 Finally, many district courts, including the Ninth Circuit have found the government’s
4 recent reinterpretation of 8 U.S.C. § 1225 to be incorrect and unconstitutional.

5 For example, in *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at
6 *16 (W.D. Wash. Apr. 24, 2025), the Court granted Petitioner’s preliminary injunction, and
7 finding that petitioner is likely to succeed on the merits, that his detention should be governed
8 under Section 1226(a), ordering a bond hearing, and enjoining Respondents from denying bond
9 on the basis that he is detained pursuant to 8 U.S.C. § 1225(b)(2). In *Bautista v. Santacruz*, No.
10 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, *24 (C.D. Ca. Jul. 28, 2025), the
11 Court ordered that “Respondents are enjoined from continuing to detain Petitioners unless they
12 are provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. §
13 1226(a) within 7 days of the date of this Order”.

14 In addition, in *Beltran Barrea v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025),
15 the Court disagreed with the BIA’s interpretation of Section 1225. Because it is the
16 “responsibility of the court to decide whether the law means what the agency says” the Court
17 disagrees with the holding of *Matter of Yajure* and declines to follow it. *Perez v. Mortgage*
18 *Bankers Assn.*, 575 U.S. 92, 109, (2015) (Scalia, J., concurring in judgment). *Id.*

19 The Court concluded “Courts across the country have been faced with similar questions
20 of law and fact presented by the United States. And *every court* who has examined this novel
21 interpretation of Section 1225 by the United States has rejected their theory and adopted
22 Petitioner’s.”. *Id.* Petitioner’s Writ of Habeas Corpus was granted and the Court directed
23 Petitioner to be released from custody.
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1 Even more recently, in *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025), the
2 Court found that Petitioner's continued detention after being granted bond pursuant to the
3 automatic stay "is a violation of his Due Process rights under *Matthews*" *Singh v. Lewis*, 2025
4 WL 2699219 (W.D. Ky. Sept. 22, 2025). "Based upon the language, text, structure, and recent
5 congressional action, Section 1226 governs Singh's detention. The post-hoc addition of Section
6 1225 is neither applicable, nor correct. Further, the Court finds Singh's detention pursuant to the
7 automatic stay codified at 8 C.F.R. § 1003.19(i)(2) is in violation of his Due Process rights under
8 *Matthews*." *Id.* at 5.

9 Finally, in *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025), Petitioner
10 entered the United States without inspection and was issued a Notice to Appear. After Petitioner
11 was ordered released on bond by the IJ, ICE invoked the automatic stay under 8 C.F.R. §
12 1003.19(i)(2). *Id.* at 3. Petitioner filed a Writ of Habeas Corpus. The Court found that the
13 government's argument that Petitioner was considered an applicant for admission "fails for
14 several reasons", including: that Petitioner was arrested on an administrative warrant and that it
15 upends "decades of immigration practice". *Id.* "For all these reasons, the Court agrees with the IJ
16 who entered Hasan's release order and finds that Hasan's detention is governed by § 1226(a)'s
17 discretionary framework, not § 1225(b)'s mandatory detention procedures." *Id.* at 9.

18 The facts of the present case are nearly identical to the facts of *Hasan* and the present
19 petition warrants the same result.

22 CONCLUSION

23 For the foregoing reasons, and all the other reasons submitted previously in this matter,
24 Petitioner respectfully asks the Court to grant their Application for a Temporary Restraining
25 Order and Order to Show Cause. Petitioner respectfully asks the Court to order them released
26 from immigration detention.
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DATED: September 26, 2025

By: /s/ Nicole A. Gorney

Nicole A. Gorney

Pro Bono Attorney for Salvador Alvarez Chavez

PROOF OF SERVICE

I, Nicole A. Gorney, certify that I served a copy of this Response, on September 26, 2025, by placing it in the U.S. Mail on the same date, addressed to:

Sarah Ellen Balkiss | Assistant United States Attorney
United States Attorney's Office | Northern District of California
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DATED: September 26, 2025

By: /s/ Nicole A. Gorney

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