UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ANTONIO AGUIRRE VILLA A# [redacted] Petitioner, vs. TONY NORMAND, *in his official capacity as Warden of Folkston Detention center*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*, and GEORGE STERLING, *Field Office Director ICE Atlanta Field Office* KRISTI NOEM, *Secretary of Homeland Security*, and PAMELA BONDI, *Attorney General* Respondents.	)	CASE NO.: 5:25-cv-89-LGW-BWC

PETITIONER'S RESPONSE TO OBJECTIONS TO REPORT AND RECOMMENDATION

COMES NOW Petitioner, Antonio Aguirre Villa, and respectfully submits this response to the Respondents' Order and Report and Recommendation ECF 82. The Government's objections misinterpret controlling legal precedent and statutory authority, particularly concerning the scope of judicial review in immigration detention cases and the application of mandatory detention provisions.

Petitioner, a long-term resident of the United States since 2009, was detained by ICE following a minor traffic arrest in June 2025. Although an Immigration Judge determined he was neither a danger nor a flight risk and ordered his release on bond, the government invoked an automatic stay and subsequently reclassified him as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The government now objects to the Magistrate Judge's Report and Recommendation, challenging the inclusion of federal officials as

respondents, the court's jurisdiction, the sufficiency of the pleadings, and the statutory basis for detention. This reply addresses each objection, relying on controlling precedent and recent sister court decisions—including J.A.M. v. Streeval—to demonstrate that Mr. Aguirre Villa's prolonged detention is unlawful and that the relief recommended by the Magistrate Judge is both appropriate and required.

I. Proper Respondents In Immigration Habeas Cases

The Government objects to the inclusion of respondents other than Warden Normand, arguing that he is the sole proper respondent in this habeas petition and that all other respondents should be dismissed, especially since claims for injunctive and declaratory relief have been withdrawn or found duplicative. This argument, however, ignores the prevailing legal consensus in immigration habeas cases, particularly where detention occurs in contract or non-federal facilities. Courts have repeatedly recognized that supervisory federal officials—such as the ICE Field Office Director—are proper respondents because they possess the actual authority to effectuate release, not the warden, who lacks such power in these contexts. This approach is expressly supported by *J.A.M. v. Streeval*, No. 4:25-cv-00342-CDL, 2025 WL 3050094, at 1–2 (M.D. Ga. Nov. 1, 2025), **which held that federal officials with authority over ICE detention policies are proper respondents in habeas actions challenging the legal basis for immigration detention**. See also *Masingene v. Martin*, 424 F.Supp.3d 1298 (S.D. Fla. 2020), where the court held that the Director of the Miami Field Office for ICE was the proper respondent, reasoning that the warden of a non-federal facility would be "ill-equipped to respond to the merits" and would lack the authority to release the petitioner without ICE's directive. The court emphasized that ICE maintains "complete control of detainees' admission and release" at such facilities (*Id.*, 1302). This is compounded when the challenge extends beyond mere physical custody, such as in this case,

which statute governs Petitioner's detention.

These courts recognize that the nature of immigration detention, which often involves complex legal and policy decisions, necessitates naming officials who can address the underlying legal basis for detention, not just those with physical control over the detainee. Given that Mr. Aguirre Villa's petition challenges the legal basis of his detention and seeks release pursuant to a bond hearing, rather than merely questioning the conditions of his confinement, naming supervisory federal officials who oversee ICE detention policies and have the authority to grant the requested relief is entirely appropriate. Indeed, a district court need only find that one named respondent is proper to exercise personal jurisdiction. Therefore, the Government's objection on this ground should be overruled.[1]

II. Jurisdiction Under 8 U.S.C. § 1252(g) and Collateral Challenges to Detention

The government's argument that 8 U.S.C. § 1252(g) strips this Court of jurisdiction is foreclosed by both Supreme Court precedent and the overwhelming consensus of recent district

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[1] The Supreme Court's seminal decision in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), established the "immediate custodian" rule for core habeas petitions challenging present physical confinement, stating that the proper respondent is generally the warden of the facility where the prisoner is held. However, Padilla explicitly left open the question of the proper respondent for noncitizens detained pending deportation. This ambiguity has led to some confusion among lower courts, with most of the courts recognizing that in the context of immigration detention, particularly in contract facilities, such as Folkston, the ICE Field Office Director or other supervisory federal officials are proper respondents because they possess the actual authority to effectuate release. For instance, in
See also *Sanchez-Penunuri v. Longshore*, 7 F. Supp. 3d 1136 (D. Colo. 2013) ("the government inexplicably ignores a footnote appended to the language it references from *Padilla*, which in fact qualifies the *Padilla* holding by stating that the Court has "left open the question whether the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation." *Padilla*, 542 U.S. at 435 n. 8, 124 S.Ct. 2711); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1186 (N.D. Cal. 2017) (the **federal official** with most immediate control over the facility holding the petitioner is the proper respondent); *Rodriguez Sanchez v. Decker*, No. 18-CV-8798 (AJN), 2019 WL 3840977, at *2-3 (S.D.N.Y. Aug. 15, 2019) (the federal official most directly responsible for overseeing the contract facility is the proper respondent); *Ozturk v. Trump*, 779 F.Supp.3d 462 (D. Vt. 2025) (federal official proper respondent due to the power to effectuate release). See also over 150 recent authorities supplied by Petitioner in ECF 44-1, judge Land's decision in MDGA (*J.A.M. v. Streeval*, No. 4:25-cv-00342-CDL, 2025 WL 3050094 (MDGA Nov. 1, 2025)) and judge Cohen's in NDGA (*Rojano Gonzalez v. Sterling, et. al*) (ECF 45-1 and ECF 45-2) which have reaffirmed that federal officials with authority over ICE detention policies are proper respondents in habeas actions challenging the legal basis for immigration detention. These courts recognize that the nature of immigration detention—where release decisions are made by ICE, not the warden—necessitates naming officials who can address the underlying legal and policy issues, not merely those with physical custody.

courts (over 150 district court decision from around the United States).

As held in *J.A.M. v. Streeval*, § 1252(g) does not bar habeas review of collateral challenges to the legality of detention; it is limited to "three discrete actions"—the Attorney General's decision to commence proceedings, adjudicate cases, or execute removal orders—and does not extend to constitutional or statutory challenges to the authority or manner of detention itself.

The Supreme Court in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), made clear that § 1252(g) is a narrow jurisdictional bar, not a general prohibition on judicial review of all claims related to removal. This narrow interpretation was reaffirmed in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018), where the Court emphasized that § 1252(g) "refers only to the three specific actions themselves, not to any claim that can technically be said to 'arise from' those actions". Therefore, the bar **does not preclude review of collateral or constitutional challenges to detention**. The Eleventh Circuit and other courts have recognized that habeas petitions challenging the legal basis for detention—such as Mr. Aguirre Villa's—are not barred by § 1252(g) because they do not attack the government's ***discretionary*** decision to initiate, adjudicate, or execute removal, but rather the statutory and constitutional authority for continued detention.

The government's reliance on *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013) and *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194 (11th Cir. 2016) is misplaced, as those cases involved direct challenges to removal proceedings or discretionary detention decisions, not collateral attacks on the legality of detention. Here, Mr. Aguirre Villa's petition challenges only the lawfulness of his prolonged detention and the denial of a bond hearing, not the underlying removal proceedings. This distinction is critical and has been recognized by the Magistrate Judge and by sister courts, including J.*A.M. v. Streeval*, which found jurisdiction proper under 28 U.S.C.

§ 2241 for precisely these types of claims.[2]

The overwhelming weight of recent district court authority (over 150 in the recent 3-4 months) confirms that habeas jurisdiction is proper for challenges to the legality of immigration detention, and that § 1252(g) does not bar such claims. Someone can be in removal proceedings and detained, while someone can be in removal proceedings and not detained. Petitioner's detention is distinct from his removal proceedings. Petitioner's claims of unlawful detention and denial of due process are precisely such collateral challenges. He does not challenge Respondents' decision to commence proceedings or adjudicate his case and he is not yet subject to a final removal order. Instead, he challenges the legality and constitutionality of his prolonged detention and the denial of bond initially issued, based on *Matter of Yajure Hurtado*, particularly in light of his reclassification as an "applicant for admission" and ineligible for a bond. The government's objection on this ground should be overruled. See also ECF 37 for a more detailed argument.

III. The Petition is Not a Shotgun Pleading

The Government contends that the Amended Petition constitutes a "shotgun pleading" because "each count incorporates all preceding counts and also incorporates the original petition, making it difficult to discern which allegations pertain to which count and failing to give adequate notice of claims against respondents." This objection is without merit, as the Amended Petition clearly and concisely sets forth the factual basis and legal claims, providing ample notice to the government and Respondents' responses and replies in this case and countless objections to

[2] *See* also *Kong v. United States*, 62 F.4th 608, 612 (1st Cir. 2023), *Mahdawi v. Trump*, 136 F.4th 443, 450 (2nd Cir. 2025), *Ozturk v. Hyde* 136 F.4th 382, 397 (2nd Cir. 2025). Crucially, challenges to the legality of detention, such as Mr. Aguirre Villa's, are generally considered "collateral" to removal proceedings and thus not barred by § 1252(g). As the First Circuit explained in *Kong* claims challenging the legality of detention are "collateral to ICE's prosecutorial decision to execute removal and do not fall within the three discrete exercises of prosecutorial discretion covered by § 1252(g). The court further noted that "construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause".

Petitioner's claims and motion to dismiss they filed. As Magistrate judge Cheesbro aptly decided, the main issue at the heart of this case is which section of the Immigration and Nationality Act (INA) govern Petitioner's detention, whether 8 U.S.C. § 1226(a) which refers to apprehension of noncitizens in the interior, or whether § 1225 (b)(2) as the government contends applies for him as an "arriving alien" or an "applicant for admission." The government clearly understood these claims as evidenced by their robust replies to the pleadings in this case.[3]

Mr. Aguirre Villa's Amended Petition, while referencing prior allegations, clearly articulates specific challenges to the legal basis of his custody and seeks his release or a bond hearing under 8 U.S.C. § 1226(a). The factual background, as detailed in the Amended Complaint, provides a coherent narrative of his detention, the reclassification as an "applicant for admission," the Immigration Judge's bond grant, and the subsequent automatic stay. These allegations are not vague, conclusory, or immaterial. They directly support the legal claims for unlawful detention and denial of due process. Respondents' objection appears to be a boilerplate response rather than a genuine assessment of the Amended Petition's clarity. The Amended Petition provides more than sufficient notice for the Government to understand the claims and prepare a defense. Therefore, the Amended Petition is not an impermissible shotgun pleading.

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[3] Shotgun pleadings violate Federal Rule of Civil Procedure 8(a)(2) and 10(b) by failing to provide a "short and plain statement" of the claim and adequate notice to the defendants. See, e.g., *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313 (11th Cir. 2015). The underlying issue is one of substance, not form-that is, whether the complaint gave the defendants fair "notice of the specific claims against them and the factual allegations that support those claims." *Id.*, at 1325. The "unifying characteristic" of all shotgun pleadings is their **failure to give defendants adequate notice of the claims and their grounds**. *Doe v. Norwegian Cruise Lines, Ltd.* 744 F.Supp.3d 1300, 1307 (S.D. Fla. 2024). However, the court emphasized that the "short and plain statement" requirement "need only give the defendant fair notice of what the claim is and the grounds upon which it rests". *Charles v. GEO Grp.*, 22-13891, 6 (11th Cir. 2024). ("Despite the pleading deficiencies identified by the court, it is not "virtually impossible" to understand Jean Charles's claims or "which allegations of fact are intended to support which claim(s) for relief." *Id.*, 7-8. Dismissal is not appropriate if the defendants still have adequate notice of the claims against them and the factual allegations that support those claims. *Id.*

IV. Detention Governed by § 1226(a), Not § 1225(b)(2)(A)

The government contends that Mr. Aguirre Villa is an "applicant for admission" under 8 U.S.C. § 1225(a)(1), and therefore must be mandatorily detained under § 1225(b)(2)(A) without access to a bond hearing, disputing the Magistrate Judge's conclusion that § 1226(a) applies. The government's position misapplies the "applicant for admission" designation, disregards the statutory and regulatory context, and ignores the constitutional implications of prolonged detention for individuals with established ties to the United States. This argument is flawed for several reasons.

Over 150 recent district court decisions have repeatedly rejected the government's expansive reading of 8 U.S.C. § 1225(b)(2) to cover long-term residents apprehended in the interior, recognizing that such individuals are not "seeking admission" in the statutory sense and are entitled to the procedural protections of § 1226(a). The statutory text and structure, as well as the legislative history, make clear that § 1225(b)(2) was designed to govern initial border encounters, not interior arrests of individuals with established ties to the United States. Respondents go into great detail about the statutory context of INA 1225 in an effort to mislead the Court about the context of Petitioner's classification as an "applicant for admission" or an "applicant for admission."

Section 1225(b)(2)(A) mandates detention for applicants for admission who are not clearly and beyond a doubt entitled to be admitted. Under this provision, detention is generally without bond hearings or time limits until proceedings conclude. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In contrast, § 1226(a) governs discretionary detention for aliens pending a removal decision, explicitly allowing for bond hearings. The critical distinction often lies in whether an individual is truly an "applicant for admission" or has made an "entry" into the U.S.

Mr. Aguirre Villa initially entered the U.S. without inspection around 2009, and his removal proceedings were administratively closed in 2011. His current detention and reclassification as an "applicant for admission" stem from a new ICE/EOIR policy based on an interim guidance issued on July 8, 2025, which broadens the interpretation of INA § 1225(b)(2) to restrict bond eligibility.

This reclassification of a long-term resident, present in the U.S. for over a decade with administratively closed proceedings, is a misapplication of "applicant for admission" status and an arbitrary policy change that violates due process.

Respondents Ignore the Statutory Context and Misinterpret the INA

Section 1225 Is Titled "Inspection"

Section 1225 is titled "Inspection of applicants for admission" and is designed to govern the process of inspecting individuals at the border or port of entry. It is not intended to apply to noncitizens who entered unlawfully years ago and have since established residence in the interior. Congress provided a separate detention regime under § 1226(a) for noncitizens apprehended in the interior, which allows for individualized bond hearings and discretionary release. To collapse these regimes and subject all interior apprehensions to mandatory detention under § 1225(b) would render § 1226(a) superfluous and contradict decades of agency and judicial practice.

The Supreme Court has repeatedly recognized that the title of a statute and the heading of a section are "tools available for the resolution of a doubt about the meaning of a statute" and can provide important cues about congressional intent, especially where the operative text is ambiguous or subject to competing interpretations. See *Yates v. United States*, 574 U.S. 528, 539–40 (2015); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998); *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528–29 (1947). The heading of INA § 1225—"**Inspection of applicants for admission**"—signals that Congress intended this section to govern the process of

inspecting individuals who are seeking entry into the United States **at a designated inspection point**, such as a border crossing or port of entry, not those who entered years ago and are apprehended in the interior. As the Supreme Court explained in *Yates*, statutory headings are not controlling, but they "supply cues" that Congress did not intend the operative provisions to sweep more broadly than their context suggests. If Congress had intended § 1225 to apply to all noncitizens present in the United States without admission, regardless of where or when they were apprehended, it would have chosen a more expansive heading and provided a clearer indication of that intent in the statutory text. Instead, the heading confines the scope of § 1225 to the inspection process at the threshold of entry, supporting the longstanding interpretation that its mandatory detention provisions are relevant only for aliens caught at an inspection point, not for long-term residents apprehended in the interior.

8 U.S.C. § 1101's Definition of "Admission"

The term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

"Entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Matter of Ching and Chen*, 19 I&N Dec. 203, 205 (BIA 1984) (citing *Matter of Pierre*, 14 I & N Dec. 467, 468 (BIA 1973)).

The phrase "seeking admission," accordingly, means that a noncitizen must be actively "seeking" "lawful entry." See *Lopez Benitez*, 2025 WL 2371588, at *7.

> "'[S]eeking admission' implies action–something that is **currently occurring**, and in this instance, would most logically occur at the border upon inspection." (emphasis added)

Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

As the Court held in another case in which undersigned counsel represented a similarly situated client:

> "Here, Mr. Alejandro is not actively "seeking" "lawful entry" because he entered the United States over 20 years ago… Respondents also argue, however, that he is now seeking admission "because he has not agreed to depart, [and] he has not yet conceded his removability or allowed his removal proceedings to play out." Dkt. 11 at 16. But Respondents do not explain how Mr. Alejandro's inaction—not agreeing to depart; not conceding removability— shows that he is "seeking admission."

Jose Alejandro v. Olson, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025).

8 U.S.C. § 1101's Definition of "Application for Admission"

The statutory definition in 8 U.S.C. § 1101(a)(4) clarifies that an "application for admission" refers specifically to the act of seeking entry into the United States at a physical border or port of entry—not to the process of applying for a visa abroad. Congress intended "applicant for admission" to mean individuals who are at the threshold of entry, **actively seeking inspection and admission by immigration authorities**. This definition does not encompass individuals who entered the country unlawfully years ago and have since established residence in the interior. Interpreting § 1225 as applying to such long-term residents would disregard the plain meaning of the statute, collapse the distinction between border and interior cases, and vastly expand mandatory detention beyond its intended scope.

Additionally, the term "arriving alien" is defined by regulation (8 C.F.R. § 1.2) as someone coming or attempting to come into the United States at a port of entry, or interdicted at sea and brought to the U.S. The use of present-tense, action-oriented language—**"arriving," "coming," "attempting to come**"—underscores that these provisions apply to individuals in the process of seeking entry, not to those who have already entered and established residence. Once a person has entered and established presence in the U.S., they are no longer "arriving" or "seeking admission"

in the statutory sense. Thus, attempts to reclassify long-term residents as "applicants for admission" ignore both the ordinary meaning of the statutory language and the structure Congress enacted. The statutory and regulatory context makes clear that "arriving alien" and "applicant for admission" are present-progressive terms, limited to those at or near the border seeking entry—not to individuals apprehended in the interior long after entry

"Application for Admission" Is a Discrete, Temporal Event—Not a Continuous Status

The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), held that the phrase "application for admission" in the immigration statute refers to a specific, discrete event—namely, the act of physically attempting to enter the United States at a border or port of entry. It is not a status that attaches to a person indefinitely after entry. The court explained that the statutory language "at the time of application for admission" imposes a temporal requirement, meaning it applies only at the moment an individual presents themselves for inspection and seeks to be admitted, not at any later point in time.

Torres further clarified that while 8 U.S.C. § 1225(a)(1) may "deem" certain noncitizens present in the United States without admission as "applicants for admission" for procedural purposes (such as placing them in removal proceedings), this legal fiction does not transform their status for substantive purposes—such as grounds of inadmissibility or mandatory detention under § 1225(b). The Fifth Circuit in *Marques v. Lynch*, 834 F.3d 549 (5th Cir. 2016), reached a similar conclusion, holding that inadmissibility provisions like 8 U.S.C. § 1182(a)(7) apply only to those actually seeking entry, not to long-term residents seeking post-entry adjustment of status.

Thus, a petitioner who has lived in the United States for a substantial period and was apprehended far from any border or inspection point cannot be considered an "applicant for admission" in the substantive sense required by § 1225(b).

The section also addresses the government's reliance on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), clarifying that *Jennings* discussed the statutory scheme for detention of "applicants for admission" at or near the border, not for long-term residents apprehended in the interior. The Supreme Court in *Jennings* distinguished between detention of those "seeking admission" at the border (governed by § 1225(b)) and those "already in the country" (governed by § 1226(a)), making clear that § 1226(a) is the default rule for interior arrests.

In summary, both the statutory text and controlling case law establish that "application for admission" is a discrete, temporal event at the border, not a continuing status for those already present in the United States. Therefore, long-term residents apprehended in the interior are not subject to mandatory detention under § 1225(b), but rather to the discretionary detention and bond hearing framework of § 1226(a)

8 U.S.C. § 1225(b)(2)(A)'s Plain Language

It is clear from the plain language of 8 U.S.C. § 1225(b)(2)(A) that it applies to people in the process of entering the country:

> "Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, **if the examining immigration officer determines than 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."

At no point in time, other than at the border, airport or other port of entry into the country are there immigration officers examining admissions. Courts have recognized that individuals with established ties and a history of presence in the U.S., are entitled to fundamental due process protections, including an individualized bond hearing. In contrast, Section 1226 is titled "**Apprehension and detention of aliens**." (plain language argument)

Congress's intent in enacting 8 U.S.C. § 1226(a) was to provide for discretionary detention of noncitizens during removal proceedings, not to impose mandatory detention on all such

individuals. Section 1226(a) expressly authorizes the Attorney General to detain or release an arrested noncitizen on bond or conditional parole, reflecting a deliberate legislative choice to allow individualized custody determinations based on flight risk or danger to the community. Therefore, **for noncitizens subject to § 1226(a), the presumption is that they should not be detained**.

Structure and Amendments of 8 U.S.C. § 1226(c) and the Laken Riley Act Affirm Petitioner's Position

There is no delineation in the INA between noncitizens who arrived on a visa or noncitizens without inspection (EWI) in terms of eligibility for release. They are treated the same in § 1226. If, as Respondents argue, every noncitizen who EWI'd is always an "applicant for admission" subject to mandatory detention under § 1225(b), then the entire structure of § 1226(a) and (c) would be rendered largely superfluous for a vast class of noncitizens—those who entered without inspection but have been living in the interior for years. This is not how Congress has historically structured the INA, nor is it consistent with decades of agency and judicial practice.

8 U.S.C. § 1226(c): Targeted Mandatory Detention for Criminals

Section 1226(c) specifically mandates detention for noncitizens who are removable or inadmissible on certain criminal or national security grounds. The statute is detailed and precise, listing the categories of offenses and the circumstances under which mandatory detention applies. Congress's decision to enumerate these categories and to require mandatory detention **only for this subset of noncitizens** demonstrates a deliberate legislative choice: **If all EWIs were already subject to mandatory detention under § 1225(b), there would be no need for § 1226(c) to exist as a separate, carefully crafted provision.** The existence of § 1226(c) presupposes that there are noncitizens in removal proceedings who are not subject to mandatory detention—i.e., those who are not "arriving aliens" or "applicants for admission" under § 1225(b), but who are EWIs may be subject to mandatory detention if they fall within the criminal or security categories of § 1226(c).

Under the government's interpretation, all individuals apprehended in the interior of the U.S. would be subject to mandatory detention, other than visa overstays.

Laken Riley Amendments Expanded Not Duplicated Detention

The structure and legislative history of 8 U.S.C. § 1226(c), as amended by the Laken Riley Act (LRA) in 2025, directly refute Respondents' claim that all noncitizens who entered without inspection (EWIs) are subject to mandatory detention under § 1225(b). The original § 1226(c) was designed to apply primarily to lawful permanent residents (LPRs) and other admitted noncitizens, mandating detention only for those with certain criminal convictions or security concerns. Even under the government's broad reading of § 1225(b), § 1226(c) would still have independent effect for LPRs and admitted noncitizens, since they are not "applicants for admission" and thus not swept into § 1225(b) mandatory detention.

However, the LRA specifically amended § 1226(c) to expand mandatory detention to a new category: inadmissible noncitizens, including those charged under § 1182(a)(6) and (a)(7). If, as Respondents contend, every EWI is always an "applicant for admission" subject to § 1225(b) mandatory detention, then the LRA's new provisions targeting inadmissible noncitizens would be entirely redundant—there would be no one left for these amendments to reach, as all such individuals would already be mandatorily detained under § 1225(b). This result is not only illogical but also contrary to basic principles of statutory construction, which require that amendments be given effect and not rendered superfluous.

The careful drafting and expansion of § 1226(c) by Congress, including the LRA amendments, only make sense if there is a significant population of noncitizens in removal proceedings—such as many EWIs apprehended in the interior—who are not otherwise subject to mandatory detention and are instead detained under § 1226(a). The fact that Congress saw fit to amend § 1226(c) to specifically address inadmissible noncitizens confirms that it did not intend §

1225(b) to sweep so broadly as to make these new provisions meaningless. The government's interpretation would collapse the careful statutory distinction between border and interior cases, and between admitted and inadmissible noncitizens, in a manner Congress plainly did not intend. The LRA's targeted expansion of mandatory detention for certain inadmissible noncitizens is only coherent if § 1225(b) does not already cover all EWIs, further affirming that the government's reading is untenable as a matter of statutory structure and legislative intent.

Avoiding Surplusage and Giving Effect to All Provisions

The Supreme Court has repeatedly held that statutes must be interpreted to give effect to all provisions and to avoid rendering any part superfluous or redundant. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute."). **If every EWI is always an "applicant for admission" subject to § 1225(b) mandatory detention, then the entire framework of § 1226(a) and (c) for noncitizens apprehended in the interior would be largely meaningless for a vast class of cases.**

The government's reading would collapse the careful distinctions Congress drew between different categories of noncitizens (such as criminal noncitizens subject to mandatory detention under § 1226(c)), their procedural rights, and the availability of bond or release.

8 U.S.C. § 1182(a)(6) and § 1182(a)(7) Would Be Rendered Superfluous

The statutory distinction between 8 U.S.C. § 1225 and § 1226 is also underscored by the separate grounds of inadmissibility set forth in 8 U.S.C. § 1182(a)(6) (entry without inspection) and § 1182(a)(7) (lack of valid documentation). If all noncitizens who entered without inspection ("EWIs") were truly "applicant for admission" subject to § 1225, there would be no need for the INA to maintain different inadmissibility charges for those seeking entry at a port of entry versus

those apprehended in the interior. The existence of these distinct statutory grounds reflects Congress's intent to treat border cases and interior apprehensions differently in removal proceedings. For decades, the Board of Immigration Appeals (BIA) and agency practice recognized this distinction: noncitizens apprehended in the interior after years of residence—regardless of their manner of entry—were routinely charged under § 1182(a)(6)(A)(i) and afforded bond hearings under § 1226(a), with immigration judges empowered to grant release if the individual was not a danger or flight risk. This practice persisted until the abrupt policy shift in July–September 2025, when *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), reclassified all EWIs as "applicant for admission" and denied bond eligibility, overturning decades of precedent and agency guidance that had consistently applied § 1226(a) to interior apprehensions. The sudden change not only contradicts the statutory structure and legislative history, but also renders the separate inadmissibility charges superfluous, demonstrating that Congress never intended § 1225 to govern long-term residents apprehended far from any inspection point. The prior BIA decisions and longstanding EOIR guidance—consistently granted bond to such individuals, confirming that the government's new position is a radical departure from established law and practice. See, for example, *Matter of Guerra,* 24 I&N Dec. 37 (BIA 2006).

Courts have held only considering "applicant for admission" violates the rules against surplusage, because it ignores that every clause and word in a statute have meaning. If "seeking admission" meant the same as "applicant for admission," those words would not be necessary in the sentence. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant."). If "1225(b)(2)(A) were intended to apply to all 'applicants

for admission,' there would be no need to include the phrase 'seeking admission' in the statute." *Lopez Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. 2025).

Biden v. Texas and the Proper Scope of § 1225(b)(2)(A): Statutory and Practical Limits

The Supreme Court's decision in *Biden v. Texas*, 597 U.S. 785 (2022), clarifies that 8 U.S.C. § 1225(b)(2)(A) is a border-focused provision, intended to govern the inspection and processing of "applicants for admission" at or near the border or a port of entry—not individuals apprehended in the interior of the United States long after entry. The case centered on the government's obligations and resource constraints in managing "illegal entrants" at the southern border, specifically through § 1225(b)(2)(A) and (C), and did not address or suggest that these provisions apply to long-term residents encountered away from the border.

Throughout the majority, concurring, and dissenting opinions, the Justices treated § 1225(b)(2)(A) as applicable only to those encountered at the border. Justice Kavanaugh's dissent highlighted the practical impossibility of detaining every person covered by § 1225(b)(2)(A) at the border, reinforcing that the statutory scheme was designed for border enforcement, not for sweeping up long-term interior residents. The Court's analysis presupposed that § 1225(b)(2)(A) applies only to border encounters, as evidenced by its discussion of the Migrant Protection Protocols (MPP) and the government's inability to detain all border entrants.

Interpreting § 1225(b)(2)(A) to cover all noncitizens present in the U.S. without admission—regardless of when or where they entered—would be unworkable and would collapse the statutory distinction between border and interior enforcement. It would also render the individualized bond and custody review provisions of § 1226(a) superfluous and disrupt decades of agency and judicial practice. The Court's reasoning, structure, and silence on interior application all confirm that "applicants for admission" under § 1225(b)(2)(A) are those encountered at an inspection point, not long-term residents apprehended in the interior. Thus, the

government's recent attempt to apply § 1225(b)(2)(A) to such individuals is unsupported by the statutory text, Supreme Court precedent, and practical realities recognized by the Court itself.

UNTENABLE CONSEQUENCES FROM RESPONDENTS' ACTIONS

Even if § 1225(b) were applicable, under the government's interpretation it would follow that all noncitizens would be detained for years without bond

Even if § 1225(b) were applicable, the government's interpretation that it mandates indefinite detention without any individualized bond hearing raises serious constitutional due process concerns. The Supreme Court in *Jennings* addressed the statutory interpretation of § 1225(b) and § 1226(a), clarifying that § 1225(b) mandates detention for certain "applicants for admission." However, *Jennings* did not address the constitutional limits on such mandatory detention, particularly when it becomes prolonged.

The Supreme Court in *Denmore v. Kim* held that due process requires an individualized bond hearing for aliens detained for a prolonged period under § 1226(c). 538 U.S. 510 (2003). While it specifically addressed § 1226(c) which involves **mandatory detention of criminal aliens** (which is not alleged against Petitioner), its underlying principle—that **prolonged detention without individualized review violates due process**—is equally applicable to detention under § 1225(b). There are several district court decisions from around the country releasing noncitizens who have been detained under § 1225(b) for prolonged periods. The Fifth Amendment's Due Process Clause protects all persons within the United States, including noncitizens, from arbitrary governmental action. Prolonged detention, especially for an individual deemed neither a flight risk nor a danger, without a meaningful opportunity for release, constitutes such arbitrary action.

Even if the government's position were correct—that noncitizens who entered without inspection long ago are "applicant for admission"—the result would be that such individuals could be detained for years without any possibility of bond. Given the current immigration court backlog,

which numbers in the millions of cases[4], it is simply not feasible for all such cases to be resolved quickly. Removal proceedings, followed by appeals to the Board of Immigration Appeals (BIA), and potentially Petitions for Review in the federal circuit courts, routinely take several years to reach finality, even for detained clients. This problem is only exacerbated by the recent reduction of approximately 20% of immigration judges nationwide[5] and the fact that there are only 28 BIA members to handle immigration appeals. Under the government's theory, countless long-term residents in the country would face mandatory, unreviewable detention for the entire duration of these protracted proceedings—an outcome that is both unworkable as a matter of statutory interpretation and constitutionally suspect given the fundamental liberty interests at stake. This is especially true as the vast majority of these detained noncitizens are non-criminals[6] (over 71% based on tracreports.org).

Respondents cannot arbitrarily reclassify individuals to circumvent their due process rights to a bond hearing. The *J.A.M. v. Streeval*, No. 4:25-cv-00342-CDL-AGH, (MDGA Nov. 1, 2025) decision further supports that "long-term residents, even those without formal admission, acquire due process rights that mandate individualized custody determinations". Detention of long-term residents apprehended in the interior must be governed by § 1226(a), which provides for discretionary release on bond and individualized review, not by § 1225(b)(2), which mandates detention without bond for true "applicant for admission". The court reasoned that due process requires a meaningful opportunity for release and that the government cannot circumvent these protections by administrative fiat.

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[4] https://tracreports.org/phptools/immigration/backlog/
[5] https://www.npr.org/2025/09/23/nx-s1-5550915/trump-immigration-judges
[6] Over 71% of current detainees have no criminal convictions and many others have minor convictions https://tracreports.org/immigration/quickfacts/detention.html#detention_numatd

Petitioner acknowledges that the government brought 3 cases (*Vargas*, *Chavez*, *Pena*) in support of their singular claim that he is properly detained as an arriving alien. However, none of them are applicable or correct in Petitioner's case. In *Vargas Lopez v. Trump*, --- F.Supp 3d ---- 2025 WL 2780351 (D. Neb. Sep. 30, 2025), the Court dismissed petitioner's claim mainly because of inconsistencies in the petition ("The Court's consideration of this Petition has been hampered by the mistakes made in it … The Court concludes that the mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits, prevent Vargas Lopez from meeting his burden to show he is entitled to habeas relief" and he could therefore not meet his burden of proof. The court later goes on to rely on Yajure Hurtado instead of independently analyzing the statute and erroneously concluded that "Vargas Lopez May Be Detained under 1225(b)(2) Even If He is Also Subject to 1226(a)", Id., at 8, which is a legal and factual impossibility, therefore that decision is clearly erroneous). *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) was likewise erroneously concluded. *Pena* is distinguishable, however, as *Pena* did not appear to raise § 1226 and instead relied on an approved I-130 petition to support his adjustment of status. Other courts, including the same court from the District of Massachusetts distinguished *Pena*, noting the court was focused on other issues and did not analyze the precise question of which statute applied to his detention.

More importantly, most recently in October 2025, **the same judge** who decided *Pena* (Judge Gorton) issued *Lema Zamora v. Noem,* No. 1:25-12750-NMG, 2025 WL 2958879 (D. Mass Oct. 17, 2025), which addresses this issue directly and concludes that 1226(a) not 1225(b) controls.

Similarly, *Chavez v. Noem*, No. 3:25-cv-02325, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), was an erroneous decision. This cursory analysis of the statutory text has already been examined and rejected by dozens of courts around the country. See, e.g., *Cordero*

Pelico v. Kaiser, No. 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Echevarria v. Bondi,* No. CV-25-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025). The *Chavez* decision does not grapple with the reasoning in the weight of authority of dozens of court cases going the other way, does not address the meaning or importance of "seeking admission" in 1225(b)(2)(A) and does not acknowledge the superfluity issue arising from the listing of inadmissibility grounds in 1226(c). *See Cordero Pelico.*

Respondents' interpretation would allow it to indefinitely detain individuals like Mr. Aguirre Villa, who have deep community ties and no flight risk, simply by administrative fiat, which raises serious constitutional concerns. Mr. Aguirre Villa was already previously granted bond, only to have it vacated, indicating that he is not subject to mandatory detention. Respondents' objection should be rejected, and Mr. Aguirre Villa's detention should be governed by § 1226(a).

V. Relief Requested: Immediate Release

Immediate Release Is Warranted Where an IJ Has Already Found No Flight Risk or Danger

The government's objection to immediate release—arguing that Mr. Aguirre Villa should receive a new bond hearing under § 1226(a) rather than be released outright—ignores the dispositive fact that a neutral Immigration Judge has already conducted a full bond hearing and determined that Mr. Aguirre Villa is neither a flight risk nor a danger to the community. The only reason district courts typically order a bond hearing in immigration court, rather than immediate release, is to ensure that a neutral adjudicator makes the required individualized findings. Here, that safeguard has already been provided: the IJ has made the necessary findings and, in fact, set a bond amount (or ordered release on recognizance). There is no legal or practical justification for

requiring a redundant bond hearing or for continued detention pending such a hearing.

Federal courts have recognized that when an IJ has already found a detainee eligible for release—having determined that the individual poses no danger or flight risk—immediate release is the appropriate remedy, whether on the conditions already set by the IJ or without conditions if the government cannot justify further detention. See, e.g., *Grodzki v. Reno*, 950 F. Supp. 339, 343 (N.D. Ga. 1996) (ordering release unless the government could show the petitioner was a flight risk or danger at a bond hearing, and emphasizing that continued detention without such a finding constitutes irreparable injury). The government's position would serve only to delay release and perpetuate unlawful detention, contrary to the IJ's findings and the purpose of habeas relief. Recent district court decisions have granted immediate release in similar circumstances, especially where bond was previously denied or withheld based on an erroneous statutory theory, such as *Matter of Yajure Hurtado*, and where the government failed to comply with court orders or provide a timely, fair bond hearing.

Other courts within the 150+ decisions cited by Petitioner granted immediate release in some circumstances especially when bond hearings were already held or bonds were denied based on *Yajure Hurtado*. Immediate release can be ordered in extraordinary circumstances, particularly if the government fails to provide a bond hearing as ordered by the court, or a bond hearing was held and the government failed to release the individual pursuant to the Immigration Judge's order. Some recent examples from the past few months of courts that granted immediate release include: *Savane v. Francis*, No. 1:25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas petition granted, and **immediate release ordered within one business day**); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (**Petitioner unlawfully detained pursuant to 1225, government**

ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (given the deprivation of Petitioner's liberty, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, **immediate release ordered**); *Jose Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025) (**immediate release ordered within 24 hours**);

These recent cases and others demonstrate that while a bond hearing is preferred in cases where individuals were not previously provided bond hearings or where individuals were detained for short periods of time, immediate release is a viable and necessary remedy (and at times the only equitable remedy) when the Government is recalcitrant or when detention is clearly without statutory or constitutional basis or becomes too prolonged, like in Petitioner's case.

In sum, because a neutral IJ has already determined that Mr. Aguirre Villa is not a flight risk or danger, the Court need not defer to a further bond hearing. Immediate release—either without conditions or on the bond already set by the IJ—is the only remedy that vindicates the IJ's findings, protects Mr. Aguirre Villa's liberty interests, and ensures compliance with due process. Any further delay or redundant hearing would be both unnecessary and inequitable in light of the record and the IJ's prior determination.

Petitioner Has Been Detained Longer than 90 Days

While initial mandatory detention may be permissible under § 1226(a), due process demands an individualized bond hearing once detention becomes prolonged. Courts have consistently recognized that even mandatory detention statutes must yield to constitutional due process requirements when detention becomes unreasonably protracted. See *Zadvydas v. Davis*,

533 U.S. 678, 690 (2001) (holding that indefinite detention of aliens subject to **final** orders of removal is unconstitutional). While *Zadvydas* concerned post-removal order detention, its principles regarding the constitutional limits on prolonged detention are instructive here. Mr. Aguirre Villa has been detained since June 24, 2025, for almost six months (!), a period that has become prolonged, particularly in light of the IJ's prior finding that he is not a flight risk or danger. The government's shifting statutory justifications for his detention—first the automatic stay, then *Yajure Hurtado*—do not cure the fundamental due process violation of prolonged detention. At this point, **Petitioner has been detained without bond longer than individuals subject to final orders of removal, and his removal proceedings are still in their infancy**.

Mr. Aguirre Villa's detention has been prolonged by Respondents' automatic stay of the Immigration Judge's bond order. When detention becomes unconstitutionally prolonged, and the Government fails to provide a timely and fair bond hearing, immediate release is the appropriate remedy. Seeking another bond hearing would unlawfully expand Petitioner's already prolonged unlawful detention.

The Court possesses clear statutory and equitable authority to order Petitioner's immediate and unconditional release from custody where detention is found to be unlawful. The general habeas corpus statute, 28 U.S.C. § 2243, provides that the court "shall … dispose of the matter as law and justice require," affording broad discretion to fashion appropriate relief, including immediate release, when warranted by the facts and law. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) ("federal courts are afforded 'broad discretion' to fashion an appropriate remedy in connection with a grant of habeas relief"). Courts have likewise recognized that the "core of habeas corpus" is the power to order release from unlawful detention, and that the court's remedial authority under § 2243 is not limited to remand for further administrative proceedings. See,

e.g., *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1295–96 (N.D. Ga. 2007) (explaining that the habeas court "shall … dispose of the matter as law and justice require," and may order immediate release where appropriate). Accordingly, where, as here, continued detention is ultra vires and in violation of statutory and constitutional rights, the Court is fully empowered to grant immediate and unconditional release, rather than remanding for a bond hearing or further administrative process as the immigration judge's bond determination was recently vacated by the Board of Immigration Appeals.

Given Mr. Aguirre Villa's strong family and community ties, lack of significant criminal history, and the severe impact of detention on his mental health, including suicidal ideation and a suicide attempt, his continued detention is not justified. The Government cannot meet its burden of demonstrating that his continued detention is non-punitive and necessary to prevent flight risk or danger to the community. Less restrictive alternatives to detention should be considered. Therefore, while a bond hearing is the primary relief sought, the Court retains the authority to order immediate release if the Government continues to unlawfully detain Mr. Aguirre Villa or fails to provide a constitutionally adequate bond hearing in a timely manner.

Conclusion

For the foregoing reasons, Petitioner Antonio Aguirre Villa respectfully requests that this Court overrule the Government's objections and grant the relief sought in the Amended Petition, including an order for a bond hearing with the burden on the Government, or, in the alternative, immediate release. Mr. Aguirre Villa's prolonged detention is unlawful and unconstitutional, and this Court has the clear jurisdiction and authority to provide the necessary relief.

Respectfully submitted this 10th day of November, 2025.

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CERTIFICATE OF SERVICE

I certify that on 10th day of November, 2025, I electronically filed the foregoing **RESPONSE TO RESPONDENTS' OBJECTIONS** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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