Eli Goldmann
e.goldmann@icloud.com
6664 Coral Springs Cir
Las Vegas, NV 89108
Telephone: 503-893-9243

Attorney for Petitioner

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Vladislav Iylmaz, an adult,

Petitioner,

v.

John Cantu, *et al.*,

Respondents.

Case No. 2:25-cv- 03331-DJH-ESW

Petitioner's Reply in Support of Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241

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PETITIONER'S REPLY

Petitioner is a noncitizen who entered the United States without inspection and who has since lived in this country for years. For more than half a century, when immigration authorities arrested and detained people like Plaintiff, they considered them for release on bond. If release was denied, they also provided people in Plaintiff's shoes a bond hearing before an immigration judge (IJ) to determine if they present a flight risk or danger or, if not, should be released. But Respondents have now upended this decades-old legal interpretation. They now declare, based on new directives from the past few months, that regardless of how long a person has lived here, and regardless of their ties to this country, individuals like Plaintiff are subject to mandatory detention under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(A), and may not be released on bond.

Respondents' radical new policy defies both the plain text of the statute providing for release on bond, 8 U.S.C. § 1226, and the structure of the INA's detention scheme. As the Supreme Court explained in *Jennings v. Rodriguez* § 1226(a) governs the detention of those, like Plaintiff, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018). That statute provides that such people are eligible for bond. In contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's

borders and ports of entry" to noncitizens "seeking to enter the country." *Id.* at 287.

That understanding is reinforced by canons of statutory construction, the legislative history, the implementing regulations, and Respondents' long history of providing individuals like Plaintiff with bond hearings. Respondents' new policy is thus based not on the law, but instead on their well-publicized efforts to detain as many people as possible, regardless of whether detention is justified based on an individual's facts.

Respondents, a coalition of immigration agencies with considerable power and a detention apparatus at their disposal, have placed themselves above the law by continuing to confine Plaintiff without lawful authority.[1] They point to no statutory provision that can sustain Plaintiff's custody, and in fact rely on an implausible construction of the immigration statutes. Their own rules and policies

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[1]Amanda Terkel & Lawrence Hurley, "Trump, asked if he has to 'uphold the Constitution,' says, 'I don't know'", NBC News (May 4, 2025), available at https://www.nbcnews.com/politics/ trump-administration/trump-asked-uphold-constitution-says-dont-know-rcna204580(citing the President's response about providing due process where he explained that the administration would have to provide "2 million or 3 million trials," that he "was elected to get [immigrants] the hell out of here, and the courts are holding [him] from doing it"); see also, Ernst Fränkel, The Dual State: A Contribution to the Theory of Dictatorship 3, 24-25, 39 (Oxford U. Press 1941) (explaining how two states arose in Germany in the 1900s with the "co-existence of legal order and lawlessness" where executive officials "exercise[d] their discretionary prerogatives" to create the zones of "arbitrary actions" against the politically unpopular).

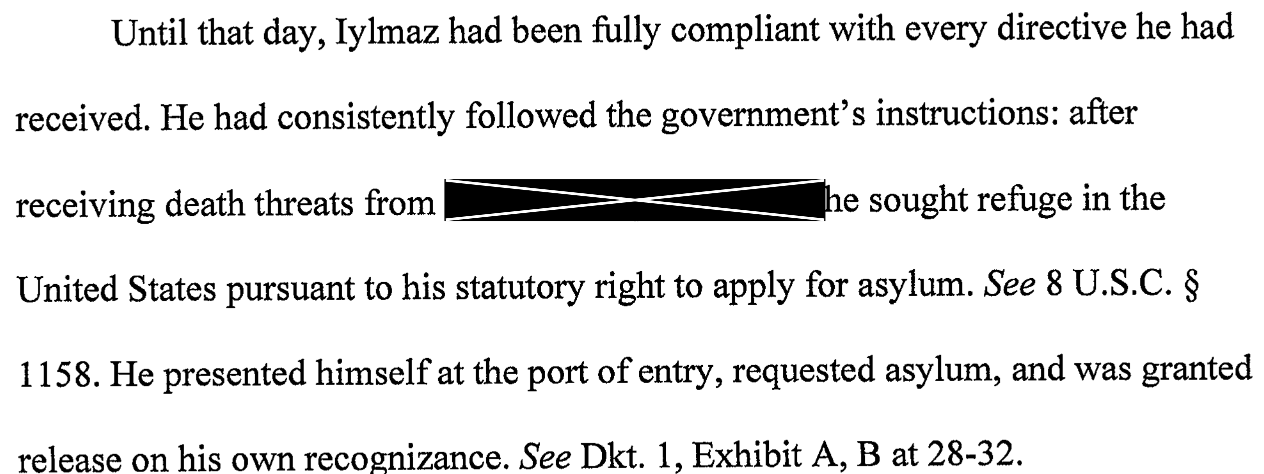
show that, on the facts here, Iylmaz should never have been taken back into custody on August 27, 2025, and every additional day he has been held is unlawful.

Nor do Respondents' jurisdictional defenses hold up. This case goes to the heart of habeas review: whether the government has lawful authority to detain. Because no removal order has been issued against Petitioner, the jurisdictional limits of 8 U.S.C. § 1252(a) and 8 U.S.C. § 1252(g) are irrelevant.

For these reasons, the Court should grant the writ and direct Petitioner's immediate release.

I. INTRODUCTION

Until August 27, 2025, Iylmaz believed that his immigration case was proceeding under the ordinary rules of law. That expectation collapsed when Respondents abruptly altered course and used those changes to justify detaining him.

Until that day, Iylmaz had been fully compliant with every directive he had received. He had consistently followed the government's instructions: after receiving death threats from  he sought refuge in the United States pursuant to his statutory right to apply for asylum. *See* 8 U.S.C. § 1158. He presented himself at the port of entry, requested asylum, and was granted release on his own recognizance. *See* Dkt. 1, Exhibit A, B at 28-32.

After relocating to New York, Iylmaz built a life consistent with U.S. law. He obtained work authorization. Iylmaz then filed his asylum application on time. He has no criminal record and has never been charged with criminal conduct.

II. THE COURT HAS HABEAS JURISDICTION TO ORDER PETITIONER'S RELEASE

The Court has subject matter jurisdiction over this Petition, which seeks Petitioner's release from custody. Respondents argue that section 1252(g) deprives this Court of jurisdiction over Petitioner's habeas petition. They are incorrect because this Court has jurisdiction under 28 U.S.C. § 2241, and no jurisdiction-stripping provision of the INA applies. This Court also retains jurisdiction under the Suspension Clause of the U.S. Constitution.

A. Section 1252(g) of the INA does not bar jurisdiction to grant release.

Respondents contend that 8 U.S.C. § 1252(g) prevents this Court from reviewing Petitioner's claims. Dkt. 12 at 7. But they misconstrue this "narrow" statutory provision. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (hereinafter "*AADC*").

Far from barring "all claims relating in any way to deportation proceedings," *Catholic Social Services, Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000), section 1252(g) simply limits review of three discrete, enumerated acts: namely, DHS's

discretionary decisions "to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *accord. AADC*, 525 U.S. at 482-83.[2]

Here, none of Petitioner's claims challenge these discrete, enumerated acts. Respondents argue that section 1252(g) strips federal courts of jurisdiction "to review a decision to commence or adjudicate removal proceedings or execute removal orders." Dkt. 12 at 7. However, Petitioner does not challenge such a decision. Instead, Petitioner challenges Respondents' decision to *detain* him without an individualized consideration of his case and circumstances. Detention decisions are not among the three discretionary acts rendered unreviewable by section 1252(g). *See Y-Z-L-H v. Bostock*, No. 3:25-cv-00965-SI, slip op. at 26 (D. Or. July 9, 2025) (holding that even if the INA's review provisions precluded review of parole termination, the court retained jurisdiction under the Suspension Clause).

Here, Respondents concede that Iylmaz is not in expedited removal proceedings; he remains in section 1229a proceedings through the conclusion of his administrative appeal. *See* Dkt. 12 at 2. And even if he were in expedited removal proceedings, habeas would still be an appropriate vehicle for him to seek

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[2] Although AADC references the "Attorney General's" discretionary determinations, that decision predates the Homeland Security Act of 2002, which transferred prosecutorial functions from the Attorney General to DHS. *See* 6 U.S.C. §§ 202, 557, 651; 8 U.S.C. § 1103(a)(1).

release from unlawful custody. *See Sissoko v. Rocha*, 509 F.3d at 949 (9th Cir. 2007) ("because *Sissoko* was never issued an expedited removal order, a habeas petition under 8 U.S.C. § 1252(e)(2) could have been successful in remedying his allegedly false arrest").

Even if Iylmaz were presently facing expedited removal, § 1252(g) would still permit this Court to review legal issues. The Ninth Circuit has explained that a "district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority." *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *see also Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [§ 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

B. No other provision of 8 U.S.C. § 1252 limits this Court's jurisdiction over Petitioner's Habeas Corpus Claims.

Respondents have not asserted that any other section of the INA limits this Court's authority, *see* Dkt. 12, and no such restriction exists. "[T]he REAL ID Act's jurisdiction-stripping provisions do not remove federal habeas jurisdiction

over petitions that do not directly challenge a final order of removal." *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 958 (9th Cir. 2012) (Thomas, J., concurring) (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006)).

The petitioner is not asking the Court to review a final order of removal, since none has been issued in this case, *see* 8 U.S.C. § 1252(a)(5), nor is he contesting "any action taken . . . to remove him from the United States." *Id.* § 1252(b)(9). Instead, he challenges his unlawful detention, a claim that "fall[s] within the core of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (internal quotations omitted). For example, The District of Oregon has confirmed that "claims that are independent of or collateral to the removal process . . . are excluded from the PFR process and, thus, may be heard in federal district courts." *Innovation L. Lab v. Nielsen*, 342 F. Supp. 3d 1067, 1076 (D. Or. 2018) (internal quotations omitted); see also *Nadarajah*, 443 F.3d at 1075–76 (upholding district court jurisdiction over a habeas petition that did not challenge a final order of removal).

C. Section 1252(e)(3)(A) Does Not Bar Review Because Petitioner Challenges the Application, Not the Validity, of the Statute.

Respondents argue that 8 U.S.C. § 1252(e)(3)(A) bars review of Petitioner's claims because challenges to expedited removal-related policies, statutes, or regulations must be filed in the U.S. District Court for the District of Columbia.

Dkt. 12 at 9. However, by its title, § 1252(e)(3)(A) limits "[c]hallenges on the validity of the system" (emphasis added). And Respondents mistake what is being challenged here; Petitioner is not challenging the promulgation of the mandatory detention. Instead, Petitioner challenges the application of the mandatory detention provision *as applied to him*, not to anyone else. It is the Respondents' unlawful decision to apply it to him that is illegal. In other words, the Petitioner in this case is not challenging the validity of § 1225(b) directly but is instead contesting the legality of his custody and removal proceedings under related provisions, such as § 1225(b)(2). The statute explicitly limits its scope to challenges to the "validity" of written policies, regulations, or procedures. It does not bar other types of claims, such as those challenging the application of these policies to specific individuals or those brought under alternative legal frameworks, such as habeas corpus or the Administrative Procedure Act (APA*). See Y-Z-L-H- v. Bostock*; *Morales Jimenez v. Bostock*, 3:25-cv-00570-MTK, (D.Or. May 13, 2025).

Thus, if the Court needs to reach Counts Three and Four, it maintains jurisdiction over this legal "backdrop" against which Respondents exercise their discretionary authority. *See Hovsepian*, 359 F.3d at 1155.

D. The Court retains jurisdiction under the Suspension Clause.

Even if a statute purported to strip this Court of jurisdiction over Petitioner's claims, the Court would nonetheless have jurisdiction under the Suspension

Clause, which provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion[3] the public Safety may require it." U.S. Const. Art. I § 9, cl. 2.

If this Court does not have jurisdiction to consider Petitioner's claims, there would be no other adequate forum for Iylmaz, an asylum seeker who has developed strong connections to the United States, to contest his unlawful detention. Such a "miscarriage[] of justice" would clearly violate the Suspension Clause, which serves as the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969).

Further, the Ninth Circuit has recognized that the Suspension Clause can be triggered when a petitioner is requesting relief from custody. *Rauda v. Jennings*, 55

[3] Respondents do not dispute that the Writ of Habeas Corpus has not been suspended. While the Executive has suggested the existence of an "invasion" and has justified sending the military to Los Angeles to "liberate" "a city of criminals;" there has been no determination from Congress that either an invasion or a rebellion exists. *See* Donald J. Trump (@realDonaldTrump), Truth Social (Jun 15, 2025 at 5:43 PM) https://truthsocial.com/@realDonaldTrump/posts/114690267066155731; Stephen Miller (@StephenM), X (Jun 9, 2025 at 2:26 PM) https://x.com/StephenM/status/1932187550598250953; Anthony L. Fisher, "Kristi Noem says the feds are coming to 'liberate' Los Angeles," MSNBC (Jun. 13, 2025, 3:00 AM) available at https://www.msnbc.com/opinion/msnbc-opinion/kristi-noem-alex-padilla-detained-los-angeles- ice-rcna212764.

F.4th 773 (9th Cir. 2021) at 780 (quoting *Hamama v. Adducci*, 912 F.3d 869, 880 (6th Cir. 2018)).

This is precisely the situation for Iylmaz, who seeks relief from unlawful executive detention. As an asylum seeker who has lived in the United States for nearly eight years, the Petitioner is entitled to rely on the protections of the Suspension Clause. *See Boumediene v. Bush*, 553 U.S. 723, 739 (2008) (considering whether particular individuals may invoke the Suspension Clause based on their status). The Clause, "at the absolute minimum . . . protects the writ as it existed" when the Constitution was adopted in 1789. *St. Cyr*, 533 U.S. at 301 (citation and internal quotation marks omitted). At that time, habeas corpus "provided a vehicle to challenge all manner of detention by government officials," and the Suspension Clause "could be invoked by aliens already in the country who were held in custody pending deportation." *D.H.S. v. Thuraissigiam*, 591 U.S. 103, 137 (2020).

Iylmaz clearly fits within this category. Unlike an individual who is "apprehended within hours of surreptitiously entering the United States," *Castro v. United States Dep't of Homeland Sec.*, 835 F.3d 422, 445 (3d Cir. 2016), or stopped just steps from the border, *Thuraissigiam*, 591 U.S. at 107, the Petitioner has built deep and lasting connections to the United States. He has lived in the country for three years, was previously released on his own recognizance, obtained

work authorization, and consistently followed all directives from immigration authorities, including attending every scheduled immigration court appearance.

Accordingly, Petitioner can properly invoke the Suspension Clause. *See Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (explaining that a noncitizen's constitutional status changes after he "gains admission to our country" and begins developing community ties); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) ("[Noncitizens] receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 178 (3d Cir. 2018) (holding that jurisdiction-stripping provision of the INA violated the Suspension Clause as applied to recipients of special immigrant juvenile status).

Because the Petitioner is entitled to the protections of the Suspension Clause, this Court has a duty to exercise jurisdiction over his claims. To prevent any unlawful suspension of the Great Writ, an individual must be given "a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene*, 553 U.S. at 779 (quoting *St. Cyr*, 533 U.S. at 302). The court reviewing such a case "must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain." *Id.* at 783. The importance of habeas review

is greatest in cases like this one, where the detention is imposed by executive action rather than through a criminal judgment, since those held under executive authority do not receive the procedural protections afforded in a criminal trial. *Id.* at 783.

Here, the Executive Branch has detained the Petitioner in violation of the legal framework that governs his release, including applicable federal regulations, the INA, and the guarantees of the Due Process Clause. Absent this Court's intervention, there is no meaningful process available for Iylmaz to contest the legality of his confinement. *See Boumediene*, 553 U.S. at 771 (considering whether, even where "a statute [purports to strip] jurisdiction to issue the writ," Congress has nevertheless "provided adequate substitute procedures for habeas corpus").

Accordingly, the Suspension Clause requires that this Court retain jurisdiction to review the Petitioner's claims.

III. RESPONDENTS ASSERT NO LAWFUL BASIS FOR PETITIONER'S DETENTION.

Respondents have invoked a basis for detention that is legally impossible and have failed to articulate any coherent justification for taking into custody a law-abiding individual who had been lawfully released on his own recognizance. Under the governing statutes, regulations, and agency policies, the circumstances

of this case make clear that Petitioner should never have been detained on August 27, 2025, and that each day of his continued confinement remains unlawful. Because Respondents cannot identify any valid legal authority supporting this detention, it is necessarily arbitrary and contrary to law.

A. The text of § 1226(a) and canons of statutory construction demonstrate that Plaintiff is entitled to bond hearings.

Contrary to Respondents' assertions, application of § 1226(a) does not turn on whether someone has been previously admitted. Instead, the plain text of 8 U.S.C. § 1226(a)—which affords access to bond— includes people who are inadmissible, like Plaintiff.[4] Here, DHS alleges in removal proceedings that Plaintiff is inadmissible because he entered the country without inspection and thus is present without admission. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Section 1226(a)—the INA's default detention authority—applies to a person who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* § 1226(a). By its plain language and statutory context, this provision encompasses both (1) those, like Plaintiff, who entered without inspection and are deemed "inadmissible" under the INA, and (2) those who were formally admitted

[4] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents and those who were admitted with temporary visas, even if they no longer have lawful status. By contrast, grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

but are later charged as "deportable." *See id.* 8 U.S.C. § 1229a(a)(3) (providing that removal proceedings determine "whether a [noncitizen] may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States"). The statute's structure makes this even more clear. Subsection 1226(a) provides the general right to seek release on bond. Subsection 1226(c) then carves out discrete categories of noncitizens from being released (primarily those convicted of certain crimes) and subjects them to mandatory detention instead. *See, e.g., id.* § 1226(c)(1)(A), (D). These carve-outs include noncitizens who are inadmissible for entering without inspection and who meet certain other crime-related criteria. *See id.* 8 U.S.C. § 1226(c)(1)(E).

Because § 1226(c)'s exception expressly applies to people who entered without inspection (like Plaintiff) and who meet certain other criteria, it reinforces the default rule that § 1226(a)'s general detention authority otherwise must generally apply to Plaintiff. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

Congress's recent amendments to § 1226 underscore this conclusion. The Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), explicitly brought within § 1226(c) certain inadmissible persons charged under § 1182(a)(6)(A)(i) (entry without inspection) or (a)(7) (lack of valid entry documentation) who have been arrested, charged, or convicted of enumerated crimes. *See* 8 U.S.C. §

1226(c)(1)(E). By specifying those limited categories of inadmissible individuals for mandatory detention, Congress reaffirmed that § 1226(a) remains the default rule for all others. As the Supreme Court has recognized, when Congress enacts "specific exceptions" to a statute, it confirms that the statute otherwise applies broadly. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025) (*quoting Shady Grove*, 559 U.S. at 400); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025).

Several interpretive canons further support this reading. First, the canon against rendering text superfluous or meaningless applies here. *See, e.g., Shulman v. Kaplan*, 58 F.4th 404, 410—11 (9th Cir. 2023). Notwithstanding the plain text noted above, DHS, IJs, and the BIA now believe that anyone present in the United States without being admitted is subject to mandatory detention under § 1225(b)(2)(A). This interpretation "would render significant portions of Section 1226(c) meaningless." *Rodriguez Vazquez*, 2025 WL 1193850, at *13. As the *Rodriguez Vazquez* court explained, this is so because if "Section 1225... and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." *Id.* at *14 (citation modified).

Second, "[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir. 2001) (citation omitted). That presumption applies here, given the LRA's recent amendments to § 1226. *See Rodriguez Vazquez*, 2025 WL 1193850, at *14 (*quoting Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). Indeed, as noted above, and as the *Rodriguez Vazquez* court explained, these amendments explicitly provide that § 1226(a) covers people like Plaintiff. This is because the "specific exceptions [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention." *Id.* (citation modified).[5]

Finally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction," courts "generally presume [] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). This canon also supports Plaintiff's understanding of the statute, because "Congress adopted the new amendments to Section 1226(c) against the backdrop

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[5] The *Diaz Martinez* court made a similar point, explaining that "if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *see also Gomes*, 2025 WL 1869299, at *7 (similar).

of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [Plaintiff]." *Rodriguez Vazquez*, 2025 WL 1193850, at *15; *see also infra* pp. 22-23.

B. The statutory framework and the express limitations of § 1225(b)(2) make clear that § 1226(a), not § 1225(b)(2), properly governs Plaintiff's detention.

The overall structure of the statute confirms the well-established understanding that § 1226(a) governs Plaintiff's detention. "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (looking to statutory structure to inform interpretation of INA provision). The Supreme Court has long described the structure of § 1226 and § 1225 to distinguish between two basic groups of noncitizens. Section 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings," and affords access to bond. *Jennings*, 583 U.S. at 289.

By contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Id.* at 287. Indeed, in contrast to § 1226(a), the whole purpose of § 1225 is to define how DHS

should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. *See id.* at 297 ("[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the United States .. . ."); *see also Rodriguez Vazquez*, 2025 WL 1193850, at *14 (similar); *Diaz Martinez*, 2025 WL 2084238, at *8 (similar); H.R. Rep. No. 104-469, pt. 1, at 157—58, 228—29 (explaining that the purpose of the new provisions in § 1225 was to address the perceived problem of noncitizens arriving in the United States); H.R. Rep. No. 104-828, at 209 (same).

The text of § 1225 confirms this interpretation of the statutory framework and demonstrates that the provision has a narrow temporal reach. By its terms, § 1225 governs the "inspection" and "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. Paragraph (b)(1) applies only to the inspection of certain "arriving" individuals and other recent entrants designated by the Attorney General who are inadmissible for either misrepresentation to an inspecting officer or lack of valid entry documents. *Id.* § 1225(b)(1). Paragraph (b)(2) is similarly confined to those seeking admission upon arrival in the United States who do not fall under paragraph (b)(1). The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," again reflecting that the statute is part of a processing scheme for noncitizens entering the United States. The paragraph's operative text reinforces that limitation: it applies only to "applicants for

admission" (as defined in § 1225(a)(1)) who are "seeking admission" and who are not already covered by paragraph (b)(1). *Id.* § 1225(b)(2), (b)(2)(A) (emphasis added).

This language sharply limits the statute's temporal scope. By specifying that paragraph (b)(2) governs those "seeking admission," Congress made clear that it did not intend the provision to extend to individuals, such the Plaintiff here, who have already entered and reside in the United States without having affirmatively sought admission. *See generally* 8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209.

Until quite recently, Respondents adhered to this very understanding. They explained that "[t]o 'seek admission' . . . entails affirmative actions to gain authorized entry." Reply Br. for Fed. Appellees at 14–15, *Crane v. Johnson*, No. 14-10049 (6th Cir. Sept. 29, 2014), Dkt. 13-1 (Att. 1); *accord.* Tr. of Oral Argument at 44:23–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ("[Solicitor General]: . . . DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended."). Courts have recognized that this "active construction of the phrase 'seeking admission'" aligns with the statutory text by requiring that an individual both qualify as an "applicant for admission" and take some action to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at *6–7; *see also Lopez*

Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2267803, at *7 (S.D.N.Y. Aug. 8, 2025) (holding that this interpretation reflects the "plain, ordinary meaning" of the term). As one court aptly analogized, "someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there." *Lopez Benitez*, 2025 WL 2267803, at *7.

Respondents' current reading erases that distinction. By treating inadmissibility itself as synonymous with "seeking admission," their approach collapses the statute's separate terms into one, making "seeking admission" redundant of "applicant for admission." Yet, as the government itself previously acknowledged, "[n]othing in [§ 1225's] structure suggests that Congress regarded [noncitizens] 'seeking admission' and 'applicants for admission' as equivalent, interchangeable terms. If that were the case, the statutory reference to [noncitizens] 'seeking admission' would be redundant; Congress could simply have stated that all 'applicants for admission' 'shall be detained for' removal proceedings, without any reference to [noncitizens] 'seeking admission.'" Att. 1 at 16.

The statute's focus on those at the threshold of entry appears throughout § 1225. Subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," explicitly referring to "the case of [a noncitizen] . . .

who is arriving on land." 8 U.S.C. § 1225(b)(2)(C) (emphases added). This language further underscores Congress's focus on those at ports of entry or who have just entered the United States, and not on those now residing here. Similarly, as noted, § 1225's title refers to the "inspection" of "inadmissible arriving" noncitizens. Every operative portion of § 1225 assumes that inspection occurs contemporaneously with arrival. The statute repeatedly refers to "examining immigration officer[s]," *id.* § 1225(b)(2)(A), (b)(4), and details procedures governing the "inspection" of persons "arriving in the United States." *Id.* § 1225(a)(3), (b)(1), (b)(2), (d).

The Board of Immigration Appeals recently confirmed this interpretation. In *Matter of Q. Li*, the BIA concluded that § 1225(b) applied to an individual apprehended "approximately 5.4 miles away from a designated port of entry and 100 yards north of the border." 29 I. & N. Dec. 66, 66–67 (BIA 2025). The Board reasoned that such an individual qualified as "arriving in the United States," because he was "detained shortly after unlawful entry" and "apprehended just inside the southern border, and not at a point of entry, on the same day [he] crossed into the United States." *Id.* at 68 (citation modified) (quoting *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020)). The BIA's analysis closely tracked the arguments Plaintiff has made here: that § 1226(a) "applies to [noncitizens] already

present in the United States," while § 1225(b) "applies primarily to [noncitizens] seeking entry into the United States." *Id.* at 70.

C. The legislative history further supports Plaintiff's argument.

The legislative history of IIRIRA further confirms that § 1226(a) governs Plaintiff's detention. When Congress enacted the statute, its attention was directed toward addressing concerns about recent entrants who lacked documentation authorizing their stay in the United States. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Nothing in that history suggests that Congress intended to mandate detention for all individuals already present in the country after an unlawful entry while their removal proceedings were pending. That omission is telling. Before IIRIRA, individuals in Plaintiff's position were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a) (1994) (authorizing the Attorney General to arrest noncitizens for deportability proceedings applicable to those within the United States). If Congress had meant to upend this longstanding framework and expose potentially millions of individuals to mandatory detention, it would have said so directly and unmistakably. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (observing that it is "implausible that Congress would give to the [agency] through these modest words [such] power").

To the contrary, Congress stated precisely the opposite. The House Report accompanying IIRIRA explained that new § 1226(a) "restates the current

provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same). This legislative history demonstrates continuity, not expansion. As the court in *Rodriguez Vazquez* recognized, "because noncitizens like [Plaintiff] were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports [Plaintiff's] position that [they] too [are] subject to discretionary detention." *Rodriguez Vazquez*, 2025 WL 1193850, at *15.

D. Respondents' policies violate longstanding EOIR regulations.

Respondents' current policies also conflict with EOIR's longstanding regulations, which have consistently treated individuals like Plaintiff as detained under § 1226(a) and eligible for bond. From the time IIRIRA was enacted to the present day, EOIR's regulations have recognized that such individuals fall within § 1226(a)'s discretionary detention framework. When EOIR issued its post-IIRIRA regulations implementing the new custody provisions, it expressly explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312 at 10323 (May 19, 1998).

The agency further clarified that "inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not." *Id.*; *see also supra* pp. 4–5 (discussing EOIR's long practice of affording bond hearings to individuals in Plaintiff's position).

These regulations have remained substantively unchanged for decades. The provision defining immigration judges' bond jurisdiction, 8 C.F.R. § 1003.19(h)(2), does not categorically exclude all inadmissible noncitizens. Rather, it limits jurisdiction only with respect to certain groups, such as individuals subject to § 1226(c)'s mandatory detention or those classified as arriving noncitizens. That framework is identical to the version EOIR adopted when first promulgating the rule. *Compare* Procedures for the Detention and Release of Criminal Aliens, 63 Fed. Reg. 27441, 27448 (May 19, 1998), *with* 8 C.F.R. § 1003.19(h)(2). The consistency of EOIR's interpretation and its unaltered practice over nearly three decades lend it significant persuasive weight. *See Rodriguez Vazquez*, 2025 WL 1193850, at *15.

Such enduring and uniform administrative 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). Courts have long relied on such historical consistency in rejecting sudden reversals of

agency position. *See Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (declining to accept a newly advanced agency interpretation after "over 60 years" of contrary practice); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (noting that courts treat with skepticism an agency's claim to have "discovered in a long-extant statute an unheralded power"). EOIR's settled understanding of § 1226(a) stands as a compelling reflection of the statute's correct application to Plaintiff's case.

IV. CONCLUSION

For the aforementioned reasons, Petitioner's detention is unlawful, and the Court should order Respondents to release Iylmaz.

Dated: October 15, 2025

<u>/s/ Eli Goldmann</u>
Eli Goldmann
Attorney for Petitioner