DETAINED AT IAH POLK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

CRISTIAN ANDRES PENUELA CARLOS, **A 245 044 286** **Petitioner,** **v.** **PAMELA BONDI, et. al.** **Respondents.**	**Civil Action No.** **9:25-cv-249-MJT-ZJH**

PETITIONER'S REPLY
TO FEDERAL RESPONSE TO
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner hereby submits his Reply brief to the Respondent's Federal Response in this matter. Cristian again reiterates the urgent need for habeas relief in this matter. His medical issues related to his back surgery are life threatening, and his unlawful detention without proper care is exacerbating the risk he could

suffer another aneurysm. The Executive's Response fails to mention the dozens of recent District Court cases finding that the legal position it makes has indeed been found to be unconstitutional. This Court should issue a Writ of Habeas and order Petitioner's immediate release.

The Response makes several arguments, each of which are defective. First, the Response argues that this Court lacks jurisdiction to review this matter; again, an argument dozens of District Courts have rejected, and the Fifth Circuit itself. Second, the Response reiterates the Executive's new argument that any alien present without entry with a visa is ineligible for bond. That position has been roundly rejected by dozens of District Courts around the country. Third, the Response wrongly misconstrues Cristian's medically life threatening illness as a "conditions of confinement case." Fourth, the Response argues Cristian failed to exhaust his remedies before the BIA, while also arguing such a claim is fruitless due to the new precedent the Response itself repeats–his failure to complete his bond appeal is more than excused in this scenario. Finally, the Response claims Cristian has received all the due process he is owed for bond, while also arguing he is not entitled to a bond hearing. Such a position is illogical.

The arguments presented in the Response have been rejected all across the country recently by District Courts. This Court should do the same and grant Petitioner habeas relief.

LEGAL ARGUMENT

I. THIS COURT HAS JURISDICTION OVER THIS HABEAS CORPUS PETITION AND ORDER TO SHOW CAUSE.

This Court has jurisdiction over the instant habeas petition and order to show cause. The Writ of Habeas Corpus has a pre-eminent role in our constitutional system and "is the fundamental instrument for safeguarding individual freedom against arbitrary or lawless state action." *Harris v. Nelson*, 294 U.S. 286, 290 (1969); U.S. Const. Art. I §9 cl2. In *INS v. St. Cyr.*, 533 U.S. 289 (2001), the United States Supreme Court reaffirmed that aliens detained by the former INS can petition for writs of habeas corpus under 28 U.S.C. §2241. The Court held that "[a]t its historic core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been the strongest." Id. at 301. Similarly, in the Supreme Court case of *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court held that it had jurisdiction to review detention pursuant to INA Section 241, 8 U.S.C Section 1231(a)(6).

Habeas review is unquestionably available to Petitioner. The Response itself acknowledges as such in precedent it cites. The Fifth Circuit held[1] "we do not hold that Congress repealed habeas jurisdiction when it passed IIRIRA…" *Lee v.*

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[1] The Response cites to this sentence to argue against Petitioner's constitutional right for habeas review due to exhaustion, but fails to add in the initial half of the holding. ECF 7 at 9.

Gonzalez, 410 F.3d 778, 786 (5th Cir. 2005). IIRIRA refers to the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Habeas review for noncitizens in immigration custody is available.

Specifically, this Court has jurisdiction because Petitioner has met two requirements. First, a habeas petition has been filed. And second, the Petitioner is physically in this district. Upon information belief, Petitioner is still at the IAH Detention Center in Polk County, Texas, within the confines of this federal district.

II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION.

A. Introduction.

Petitioner was detained by ICE under INA § 236, 8 U.S.C. § 1226, and is presumptively eligible for bond under its provisions. ICE issued a Notice of Custody Determination, I-286, stating Cristian was being detained "pursuant to the authority contained in section 236…" ECF 7-3. The ICE Warrant of Arrest, I-200, also confirms he was detained under INA § 236. ECF 7-2. This is important, because at no point was he placed in expedited removal proceedings under INA § 235(b), 8 U.S.C. § 1225(b).

B. The INA Statutory Framework Was Established in 1996.

The Immigration and Nationality Act ("INA", 8 U.S.C. § 1101 et. seq.) prescribes three basic forms of detention for noncitizens in removal proceedings.

Despite recent attempts by the current Executive to greatly expand detention of noncitizens, the INA, Congress and the federal courts have recognized the rights of noncitizens to seek bonds after entry without inspection ("EWI").

Three basic statutory schemes are established by the INA. First, INA § 236 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* INA § 236; 8 U.S.C. § 1229a. Individuals in INA § 236(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* INA § 236(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under INA § 235(b)(1) and for other *recent arrivals* seeking admission referred to under INA § 235(b)(2). Finally, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

The detention provisions at INA § 236(a) and § 235(b)(2) were enacted as part of IRIRA in 1996. Section 236(c) was most recently amended in early 2025 by the LRA, Pub. L. No.119-1, 139 Stat. 3 (2025).

C. Since 1997, Noncitizens Who EWI'd Had the Right to Seek Bond.

Following the enactment of the IIRIRA, the Executive Office of Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under INA § 235 and that they were instead detained under INA § 236(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection— unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior the enactment of the IIRIRA, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

D. In 2025, the Current Executive Tries to Redefine Bond Eligibility.

On 07/08/2025, DHS issued a memo to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice ("DOJ"), has revisited its legal position on detention and release authorities. DHS has determined that

section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." The memo further stated DHS' new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
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> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

See https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last accessed August 4, 2025) (*emphasis original*).

As a result, according to DHS *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id.*

E. The Board Follows DHS to Reinterpret Established Law.

In 09/2025, the Board issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision uses incorrect legal reasoning to tow the line with DHS and find "aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Yajure Hurtado* at 220. The decision utilizes much of the same flawed reasoning as the DHS Memorandum, while citing incorrectly to precedent and statutory authorities. *Id.*

F. The Courts Widely Criticize the Executive's Flawed Reasoning.

Federal District Courts are routinely finding the Executive's new arguments regarding expanded detention rather lacking. "Indeed, for nearly 30 years, § 1225 has applied to noncitizens who are either seeking entry to the United States or have a close nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States." *Rivera Zumba v. Bondi*, 2025 D. NJ 2:25-cv-14626. Courts all across the country have rejected this "novel interpretation of the immigration detention statutes." *Martinez v. Hyde*, F. Supp. 3d --, 2025 WL 2084238 at 4-5; *see also Maldonado Vazquez v. Feeley*, 2025 D. Nev. WL 2676082; *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) ("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years). More than a dozen other Federal District Courts have reached the same conclusion.[2]

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[2] *See, e.g.*, *Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Gomes*, 2025 WL 1869299; *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*,

G. IJs Possess Jurisdiction to Release Noncitizens Who EWI'd.

i. A Plain Reading of INA § 236(a) Mandates Bond Eligibility.

The plain text of INA § 236 demonstrates that it, not INA § 235(b), applies to this noncitizen's detention. INA § 236(a) "provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal." *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citation omitted). As the Supreme Court has remarked, INA § 236(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting INA § 236(a)). Section 236(c) carves out a statutory category of noncitizens for whom detention is mandatory, consisting of individuals who have committed certain "enumerated . . . criminal offenses [or] terrorist activities." INA § 236(c). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. *See* INA § 236(c)(1)(A), (D), (E). This is in stark contrast with mandatory detention provision under INA §

No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R&R adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25- 02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Diaz Diaz v. Mattivelo*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025).

235(b)(2), which "supplement[s] § [236's] detention scheme." *Diaz,* 53 F.4th at 1197. Section 235(b) "applies primarily to [noncitizens] seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297; *see* INA § 235(b) (entitled "Inspection of applicants for admission").

Thus, the plain text of INA § 236(a) applies to noncitizens here in the United States who entered without inspection. The fact that INA § 236(a) is the default rule for arrest and detention and that section (c) carves out exceptions further demonstrates that the discretionary bond procedures apply to noncitizens who are present without being admitted or paroled and have not been implicated in any crimes set forth in subsection (c). The Supreme Court has held that when Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

ii. The LRA, Passed in 2025, Also Supports this Finding.

The recent enactment of LRA further supports this finding. The Act added language to INA § 236(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under INA § 212(a)(6)(A) (the inadmissibility ground for entry

without inspection) or INA § (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of new certain crimes (not previously covered by INA § 236(c)) are now subject to § 1226(c)'s mandatory detention provisions. *See* INA § 236(c)(1)(E). By including such individuals under INA § 236(c), Congress reaffirmed that § 236(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 212(a)(6)(A) or 212(a)(7). *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir. 2001) ("[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.").

iii. The Proposed Statutory Reading Renders It Meaningless.

If INA § 236(a) did not apply to noncitizens who entered without inspection—like DHS contends—vast portions of the INA § 236 would be rendered meaningless. This is because DHS contends that noncitizens are really "applicants for admission" and therefore subject to mandatory detention under INA § 235(b)(2). Courts have made it clear that statutes must be interpreted as a whole, "giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (quoting *Rodriguez v. Sony Computer Ent. Am., LLC*, 801 F.3d 1045, 1051 (9th Cir. 2015)).

It is noteworthy that "[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) (internal quotation marks omitted). Here, DHS' sudden reversal—particularly after Congress just recently amended INA § 236 to include the LRA provisions—further undermines the Department's argument that the detention authority for noncitizens lies under INA § 235(b) instead of INA § 236(a).

H. The Position of DHS and the Board Is Clearly Incorrect.

i. INA § 235(b)(2) Does Not Apply to Noncitizens Who EWI'd and Later Arrested Inside the United States.

As noted above, the Executive's new position contends that all noncitizens who EWI'd are subject to mandatory detention under INA § 235(b)(A) because they are an "applicant for admission." But INA § 235(b)(A) concerns a completely different category of noncitizens. In *Jennings*, the Supreme Court discussed INA § 235 as part of a process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." 583 U.S. at 287. As for INA § 236, *Jennings* described it as governing "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including noncitizens "who were inadmissible at the time of entry." *Id.* at 288.

The Court then summarized the distinction as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ [235](b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country pending the outcome of removal proceedings* under §§ [236](a) and (c)." *Id.* at 289 (emphasis added); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a noncitizen "who *tries to enter* the country illegally is treated as an applicant for admission . . . and a [noncitizen] who is detained *shortly after unlawful entry* cannot be said to have effected an entry") (emphasis added) (cleaned up). The Board in *Yajure Hurtado* cites to both *Jennings* and *Thuraissigiam*, but fails to acknowledge or deal with the entire statutory framework as the Supreme Court did.

ii. The Executive Conflates Applicant for Admission and EWI.

The Executive's newfound position misconstrues the phrase "applicant for admission" to suggest that every person, other than those who have been admitted, are subject to mandatory detention. INA § 235(a)(1) defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the United States." INA § 235(a)(1). According to DHS, INA 235(b)(1) generally applies to arriving aliens and INA § 235(b)(2) serves as a broader catchall provision for all applicants for admission not covered by INA §

235(b)(1). In other words, DHS argues that every noncitizen who entered without parole or inspection is an "applicant for admission" pursuant to § 235(a)(1) and is therefore subject to mandatory detention. However, INA § 235(b)(2)(A) states in full that:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an *alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.*
> *Id.* (emphasis added).

Thus, for section 235(b)(2)(A) to apply, several conditions must be met—in particular, an "examining immigration officer" must determine that the individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." DHS' position conveniently overlooks these conditions and treats "applicants for admission" the same as those "seeking admission." The phrase "seeking admission" is undefined in the statute but necessarily implies some sort of present-tense action. *See Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process.'" (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020))). Indeed, only those who take affirmative acts, like submitting an "application for admission," are those that can be said to be "seeking admission" within § 235(b)(2)(A).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals who have already entered and are now residing in the United States. *See Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding that an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States.") Accordingly, INA § 235(b)(2)'s reference to "applicants for admission" must be read "in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act's "broader structure… to determine [the statute's] meaning").

iii. Statutory Analysis Shows the Executive's Position Is Nonsensical.

The Board's recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) reinforces this position. The Board held that a noncitizen who was apprehended "approximately 5.4 miles away from a designated port of entry and 100 yards north of the border" was detained under INA § 235(b) and not INA § 236(a). *Id.* at 67. In other words, the noncitizen was apprehended upon arrival. The Board then explained that such persons are properly treated as "arriv[ing] in the United States," given that they are "detained shortly after unlawful entry," and "'[are] apprehended' just inside 'the southern border, and not at a point of entry, on

the same day [they] crossed into the United States.'" *Id.* at 68 (quoting *Matter of M-D-C-V-*, 28 I. &. N. Dec. 18, 23 (BIA 2020)). Notably, the Board's decision supports the argument that INA § 236(a) "applies to [noncitizens] already present in the United States," while INA § 235(b) "applies primarily to [noncitizens] seeking entry into the United States and authorizes DHS to detain a[] [noncitizen] without a warrant at the border." *Id.* at 70 (internal quotation marks omitted).

The broader statutory structure of immigration detention authority also demonstrates the inapplicability of INA § 235(b) to this case. *See King*, 576 U.S. at 492 (explaining that an act's "broader structure" can be a useful tool "to determine [a statute's] meaning."); *see also Biden v. Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of INA provision). This is particularly true where "a provision . . . may seem ambiguous in isolation." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). In such situations, the statute's meaning "is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *Id.*

The broader text of INA § 235 reinforces this understanding of the two sections' structure and application. INA § 235 concerns "expedited removal of inadmissible *arriving* [noncitizens]." INA § 235 (emphasis added). Paragraph (b)(1) encompasses only the "inspection" of certain "arriving" noncitizens and

other recent entrants the Attorney General designates, and only those who are "inadmissible" for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but whom (b)(1) does not address. *Id.* § 235(b)(2), (b)(2)(A).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals who already entered without inspection and are now residing in the United States. Otherwise, the language "seeking admission" in INA § 235(b)(2) serve no purpose, as the statute specifies that it is addressing a person who is both an "applicant for admission" and who is determined to be "seeking admission." *Id.*

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e., "the case of [a noncitizen] . . . who is arriving on land." INA § 235(b)(2)(C). This language further underscores Congress's temporal requirements in INA § 235 and focus on those who are arriving into the United States. Similarly, the title of § 235 refers to the "inspection" of "inadmissible arriving" noncitizens. *See, e.g., Dubin v. United*

States, 599 U.S. 110, 120–21 (2023) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," INA § 235(b)(2)(A), (b)(4), and sets out procedures for "inspection[s]" of people "arriving in the United States," id. § 235(a)(3), (b)(1), (b)(2), (d).

iv. Case Law Does Not Support the Executive's Position.

The long held understanding by Congress, DHS, EOIR, and other immigration authorities is that INA § 235(b)(2) applies narrowly to those who were "detained shortly after unlawful entry," and "'[are] apprehended' just inside 'the southern border, and not at a point of entry, on the same day [they] crossed into the United States.'" *Q. Li* at 68. The Board itself acknowledged as much in *Q. Li,* finding "an applicant for admission who is arrested and detained without a warrant *while arriving* in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." *Id.* at 69 (emphasis added); *see also Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019) (noting that ". . . section 235 (under which detention is mandatory) and section 236(a) (under which

detention is permissive) can be reconciled only if they apply to different classes of aliens.") (quoting *Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015) (concluding that "permissive and mandatory [provisions] are in harmony, as they apply to different situations").

v. The Board's Precedents Now Conflict with Each Other.

The Executive's attempts to change the long held precedent that a noncitizen who entered without inspection is subject to mandatory detention and not eligible for bond is not supported by precedent–even precedent from the Board. Earlier this very year, the Board held that INA § 236 "'*applies to aliens already present in the United States*' and 'authorizes detention only '[o]n a warrant issued' by the Attorney General leading to the alien's arrest.'" *Q. Li.* at 70 (emphasis added) (quoting *Jennings*, 583 U.S. at 302–303). The Supreme Court's decision in *Jennings* also demonstrates that INA § 235 is a process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible," whereas INA § 236 governs "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including noncitizens "who were inadmissible at the time of entry." 583 U.S. at 287, 288. The same Board now twists itself to hold that INA § 236 only applies to noncitizens who were admitted.

Yajure Hurtado. Federal courts all across the country have rejected this position, as it conflicts with almost thirty years of established law. *See section II.G.i, supra*.

I. Petitioner Is Not Subject to Mandatory Detention.

Given the above, it is clear Petitioner is not subject to mandatory detention under INA § 235(b)(2). He was clearly detained by ICE under INA § 236. ECF 7-2, 7-3. The Executive's reasoning contained in the Response has been rejected over and over and over in the Federal Courts. This Court should do the same, and find Petitioner is not an applicant for admission and is eligible for a bond hearing in immigration court.

III. PETITIONER'S MEDICAL CLAIMS ARE VIABLE IN A HABEAS PETITION UNDER ESTABLISHED LAW.

Next, Respondents allege Petitioner's life threatening medical neglect claims cannot be brought in habeas proceedings. That is simply not true. Habeas relief is available to Cristian because granting injunctive relief would entitle him to immediate release.

Normally, a habeas petition seeks release from custody, whereas a civil rights action under 42 U.S.C. § 1983 addresses unconstitutional conditions of confinement. *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997). The Fifth Circuit has described the line between these two types of claims as "a blurry one." *Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017) (quoting *Cook v. Tex. Dep't of Crim. Justice Transitional Planning Dep't*, 37 F.3d 166, 168 (5th Cir. 1994).

The Supreme Court has not explicitly precluded habeas claims for medical or conditions of confinement claims. *Boumediene v. Bush*, 553 U.S. 723, 792 (2008); *see also Poree*, 866 F.3d at 243. Nor has the Fifth Circuit explicitly limited habeas petitions to only "fact or duration" challenges, and described its precedent as "less clear." *Poree*, 866 F.3d at 243-44; *see id.* at 244 n.28 (citing Fifth Circuit cases that conflict on whether habeas and § 1983 claims are mutually exclusive).

The Fifth Circuit has held that conditions of confinement claims that seek habeas relief are appropriate if a ruling in the petitioner's favor would "automatically entitle [the petitioner] to accelerated release." *Carson*, 112 F.3d at 821 (finding that, where petitioner's reassignment from administrative segregation would not automatically entitle him to immediate release on parole, but "merely enhance eligibility for accelerated release," habeas was an inappropriate vehicle to challenge conditions of confinement); *see also Barrera v. Wolf*, 455 F. Supp. 3d 330 (S.D. Tex. 2020).

Here, because a grant of habeas relief would entitle Cristian to be released from custody, habeas relief is available to him.

IV. CRISTIAN DID NOT FAIL TO EXHAUST HIS ADMINISTRATIVE REMEDIES.

Respondent wrongly claims Petitioner has failed to exhaust his administrative remedies. Petitioner filed a bond request before EOIR, which was

denied for lack of jurisdiction. ECF 7-4. That order was timely appealed to the BIA, and remains pending. ECF 7-5.

First, as Respondent acknowledges, exhaustion can be forgiven by the Court. Regardless, it is clear Cristian has done everything possible administratively to fight for a bond hearing. He filed for bond, and filed an appeal with the administrative agency's appellate board, the BIA.

The BIA is the agency who recently implemented–along with ICE–the new interpretation of long established law that prevents Cristian from obtaining a bond hearing. *See Matter of Q Li, Matter of Yajure Hurtado*. "Exceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Fuller v. Rich*, 11 F.3d 61 (5th Cir. 1994), *citing Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir.1985). Here, Petitioner reasonably assumes the BIA will deny his bond appeal, as the BIA has issued precedential rulings twice this year that prevent him from obtaining a bond in immigration court. Such appeal is "patently futile." *Fuller*.

V. PETITIONER IS ENTITLED TO RELIEF BECAUSE HIS DETENTION IS UNLAWFUL AND HE FACES THE REAL POSSIBILITY OF DEATH IN DETENTION.

The Response claims Cristian has received all the due process he is owed for bond, while also arguing he is not entitled to a bond hearing. Such a position is tenuous in any logical sense, to be kind. The Petitioner will suffer irreparable harm should the habeas relief not be granted. Cristian has been detained in ICE custody for approximately five months. He has received little to no medical care.

His surgical sutures from his 05/01/2025 spinal surgery are embedded in his back. Photos of the infected scars are included at ECF 3- 2W. They were scheduled to be taken out by his physician at a post operative appointment; ICE never sent him to a doctor to have that done. ECF 3-2K. The sutures have scabbed over. ECF 3-2K, 3-2W. Petitioner has suffered debilitating headaches and other symptoms that could lead to another aneurysm. ECF 3-2K.

According to Dr. Norma Bowe, a consulting physician for Petitioner, post spinal surgery, "[I]n most cases, patients receive pain management, infection assessment, physical therapy, and intensive followup." *Id.* at 51. "Due to his [detention by ICE] he missed critical follow-up with his surgeon and has been subjected to an increased risk of serious infection. Infections in the spine can lead to multi-organ failure, sepsis, and death." *Id.*

Dr. Bowe further notes "because of his prolonged detention and complete lack of health care, Mr. Penuela has developed an infection in his surgical site… Upon review of his medical records, I have grave concerns about an aneurysm at

the base of his spine." *Id.* The doctor notes rather grimly yet simply that an "[U]ntreated aneurysm can result in death." *Id.*

Against this background, the Response argues that all is well, and ignores the very real possibility Petitioner could die in custody. Petitioner is entitled not to die in custody when he could receive more than adequate care should he be released.

His detention is unlawful and unconstitutional. Regardless of his medical situation, ICE, EOIR, the BIA, and DHS are all violating his constitutional rights to a bond hearing while rewriting statutory interpretations that have existed for almost thirty years. Cristian's next hearing in immigration is 11/13/2025. Should his claims for protection relief be denied, his direct appeal would stretch well into next year. There is no foreseeable chance of removal in the near future. He deserves a bond hearing.

CONCLUSION

For the foregoing reasons, this Court should grant the instant writ and immediately order Petitioner released from ICE custody.

Respectfully Submitted,
/s/ Jason Scott Camilo, Esq. Dated: 10/08/2025

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CERTIFICATE OF SERVICE

I hereby certify that on 10/09/2025, a true and correct copy of the foregoing document was filed electronically with the Court's CM/ECF system and has been sent to counsel of record via the CM/ECF filing system.

/s/ Jason Scott Camilo, Esq. Dated: 10/08/2025

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