UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

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Jonathan Escobar Olivares Petitioner, VS. **George Sterling**, Deputy Managing Director, Atlanta Field Office, Immigration and Customs Enforcement And Removal Operations (ICE/ERO) **Jason Streeval**, Warden, Stewart Detention Center; **Todd M. Lyons,** Acting Director of U.S. Immigration and Customs Enforcement; **Kristi Noem,** Secretary of the U.S. Department of Homeland Security; and **Pamela Bondi,** Attorney General of the United States, in their official capacities, Respondents.	)	Case No. 4:25-cv-00299-CDL-AGH

PETITIONER'S BRIEF IN SUPPORT OF PETITION

I. INTRODUCTION

Petitioner files this "Petitioner's Brief" to address that Response and argue why the Court should grant the Writ of Habeas Corpus. In the year 2007, at the age of 2 years old, Petitioner entered the United States. In February 2021, Petitioner applied for DACA.[1] On July 16, 2021, a Fifth Circuit Court in Texas entered an order that prohibited DHS[2] from adjudicating applications for

[1] Deferred Action for Childhood Arrivals
[2] The Department of Homeland Security

DACA. As of today, Petitioner is not covered by the protections of DACA. On or about August 5, 2025, police officers with the Forsyth County Sheriff's Office in Cumming, Georgia, arrested Petitioner for a probation violation. ECF 5-2 (Declaration of Deportation Officer David Bush). Then, ICE[3] took custody of Petitioner, who is presently kept at Stewart Detention Center in Lumpkin, Georgia. *Id.* On September 25, 2025, Petitioner filed a petition seeking a writ of habeas corpus ("Petition"). On September 26, 2025, the Court ordered Respondent to file a response to the Petition within twenty-one (21) days. ECF No. 3. On October 16, 2025, Respondent filed a response ("Response"). ECF No. 5. This Petitioner's Brief timely-replies to that Response.

II. ARGUMENT

Respondents are detaining the Petitioner. ECF No. 1, 2, 5. The central disagreement between the parties is what source of law is governing that detention. Petitioner claims the detention is pursuant to 8 U.S.C. § 1226(a)[4], and as such that Petitioner may apply for a bond subject to a discretionary framework. ECF No. 1. Respondents assert to the contrary that the detention is pursuant to 8 U.S.C. § 1225(b), and as such that Petitioner is not eligible for a bond because that statute imposes a scheme of 'mandatory detention' from which a noncitizen may not request, or receive, a bond out of immigration detention by an Immigration Judge. ECF No. 5.

A. Voluminous case law suggests Respondent's interpretation, asserting that 8 U.S.C. §1225(b) governs Petitioner's detention, is incorrect.

[3] Immigration and Customs Enforcement

[4] Note 8 U.S.C. § 1226(a) "Apprehension and detention of aliens [...]" is distinct from 8 U.S.C. § 1226a "Mandatory detention of suspected terrorists [...]." The latter is inapplicable here.

Dozens of federal district courts in other circuits have considered the issue of whether 8 U.S.C. § 1226(a) governed, or rather 8 U.S.C. § 1225(b). The decisions of federal district courts, while not binding, can be persuasive. For twenty-eight such cases, see:

- **First Circuit:**
  - *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Noting disagreement with BIA analysis in *Yajure-Hurtado*);
  - *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025) (Ruling the Petitioner was entitled to a bail hearing);
  - *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Ordering a bond hearing and ruling that detaining an individual solely on the basis of his prior arrest violates due process);
  - *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Ordering that Petitioner receive a bond hearing governed by section 1226 rather than 1225(b));
  - *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025) (Court found detention unlawful and ordered his release, denying the Government's motion for reconsideration);
  - *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Ordering ICE to release the Petitioner within 48 hours);
  - *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) ("The government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c)…");
- **Second Circuit**:
  - *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (Granting the Petition, where ICE agents "violently detained" Petitioner as he left a scheduled immigration court appearance in Manhattan "in violation of the Due Process Clause and the Fourth Amendment.");
  - *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Granting petition for the writ of habeas corpus);
- **Fourth Circuit**:
  - *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Respondents arrested Petitioner while he was on his way to work, took him into custody, Petitioner was then granted a bond by an immigration judge who concluded § 1226(a) governed, Respondents refused to accept payment of the bond, the government invoked a regulatory stay pursuant to 8 C.F.R. § 1003.19(i)(2) to continue detaining the Petitioner as his favorable bond decision was on appeal before the BIA, the Court grants the petition for the writ);
- **Fifth Circuit**:
  - *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Court finds (1) habeas jurisdiction encompasses a challenge to the statutory authority by which Respondent contends her detention without bond unlawful, (2) Court did not find persuasive Respondents argument that Petitioner failed to exhaust administrative remedies "because this Court is the proper form in which Petitioner can bring her constitutional claims." (3) Court grants Temporary Restraining Order concluding

Petitioner is likely to succeed on the merits in showing mandatory detention under § 1225 "was erroneous" and that "she is entitled to a bond hearing under section 1226(a).");

- **Sixth Circuit**:
  - *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in Yajure Hurtado);
  - *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (Granting writ, finding detention without a bond hearing is unlawful, a violation of Petitioner's due process rights, and ordering his immediate release – or alternatively – a bond hearing within seven (7) days);
- **Eighth Circuit**:
  - *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025) (Ordering release on bond);
  - *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) (Court finds "the government is unlawfully detaining Petition in violation of his Due Process rights by invoking a unilateral automatic stay of the bond duly appointed by" an immigration judge, and "orders Respondents to immediately release Petitioner.");
  - *Palma Perez v Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025) (Same as *Cortes Fernandez*, *supra*);
  - *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Court concludes § 1226's discretionary detention scheme applies);
  - *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025) (Judge ruled the Petitioner was being held unlawfully and ordered her released on bond);
  - *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Granting Preliminary Injunction favoring Petitioner);
  - *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (Judgment favoring Petitioner);
- **Ninth Circuit**:
  - *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing Yajure Hurtado);
  - *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025) (Granting TRO ordering Respondents to immediately release Petitioners from custody, enjoining re-detention without a pre-detention hearing before a neutral decisionmaker, and, inter alia, enjoining Respondents from transferring Petitioners out of custody without the Court's prior approval);

B. 8 U.S.C. § 1252(e)(3) does not strip jurisdiction because Petitioner's do not challenge the "implementation" of 8 U.S.C. § 1225(b)(1) under that Section.

Respondent argues 8 U.S.C. § 1252(e)(3) applies here and operates to strip the court of jurisdiction over Petitioners' Petition. ECF No. 5. This is erroneous principally because Petitioner is not challenging the "implementation" of 8 U.S.C. § 1225(b), under a plain interpretation of that term, but rather Petitioner challenges whether 8 U.S.C. § 1225(b) applies to Petitioner's case in the first place.

The application of a statute necessarily raises an issue of statutory interpretation. At issue is whether 8 U.S.C. § 1225(b) applies, or whether 8 U.S.C. § 1226(a) (or perhaps whether some other provision applies, which neither party suggests). To resolve an issue of statutory interpretation, the Court may resort to various canons of statutory construction. Under the "plain text canon", the Court "must begin [] with the language of the statute itself." *U.S. v. Ron Pair Enterprises*. 489 U.S. 235 (1989) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985)); *United States v. Stevens*, 997 F.3d 1307, 1314 (11th Cir. 2021); *Fischer v. United States*, 603 U.S. ___ (2024); *Garland v. Cargill*, 602 U.S. 406 (2024). The "noscitur a sociis canon"[5] "teaches that a words is 'given more precise content by the neighboring words with which it is associated." *Fischer*, at 2183 (citing *United States v. Williams*, 553 U.S. 285, 294 (2008)). And the "canon against surplusage" provides "When a statutory construction 'render[s] an entire subparagraph meaningless' [...] the canon against surplusage applies with special force." *Pulsifer v. United* States, 601 U.S. ___ (2024) (Citing *National Assn. of Mfrs. V. Department of Defense*, 583 U.S. 109, 128) (2018); *Chicago v. Fulton*, 592 U.S. 154, 159 (2021)); see also Antonin Scalia & Bryan A. Gardner, *Reading Law: The Interpretation of Legal Texts* (2012). When interpreting federal law, the Eleventh Circuit's goal is "to give ... statute[s] a 'fair

[5] [Latin for "it is known by its associates"]

reading.'"[6] In interpreting written law, [the court's] duty is to 'determine the ordinary public meaning' of the provision at issue." *Heyman v. Cooper*, 31 F.4th 1315, 1319 (11th Cir. 2022) (Quoting *Bostock v. Clayton County*, 590 U.S. ___ at 654).s

Starting with the plain text, 8 U.S.C. § 1252(e)(3) appears under a heading that reads "Challenges on the Validity of the System" and provides "Judicial review of determinations under section 1225(b) of this title and its *implementation* is available in an action instituted in the [D.C. District Court], but shall be limited to determinations of [describing limitations]." (Emphasis added). At issue therefore is the plain text meaning of the word "implementation" within 8 U.S.C. § 1252(e)(3).

Courts may resort to the dictionary definition of a word to help understand its plain text meaning. *Muscarello v. United States*, 524 U.S. 125, 128 (1998) (Considering whether the phrase "carries a firearm" extends to transporting a firearm in a car by examining dictionary definitions.) Merriam-Webster Dictionary defines "implementation" as "an act or instance of implementing something: the process of making something active or effective" as in "*implementation* of a new policy/law[.]"[7]. Dictionary.com defines the term as "The act of implementing, or putting into effect[.]"[8] The American Heritage dictionary defines the term as "To put into practical effect; carry out" as in "*implement the new procedures.*"[9] The dictionary,

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[6] Stephen J. Greenway Jr., *Starting with the Text: Textualist Interpretation at the Eleventh Circuit*, Mercer Law Review, Vol 75. (Citing *Georgia Ass'n of Latino Elected Officials, Inc. v. Gwinnett Cnty. Bd. Of Registration & Elections*, 36 F.4th 1100, 1120 (11th Cir. 2022) (quoting Scalia & Garner, *supra*, note 4 at 3.)

[7] *Implementation*, Merriam-Webster.com, 2025. (available at https://www.merriam-webster.com/dictionary/implementation)

[8] *Implementation*, Dictionary.com, 2025. (available at https://www.dictionary.com/browse/implementation)

[9] *Implementation*, The American Heritage Dictionary, 2025. (available at https://ahdictionary.com/word/search.html?q=implementation)

therefore, helps demonstrate the "ordinary public meaning" and plain text meaning of the term at issue. *Heyman*, *supra,* ("ordinary public meaning" language, citing *Bostock*, *supra*).

Next, 8 U.S.C. § 1252(e)(3) exists besides other statutory phrases that inform the meaning at issue. *Fischer, supra* (Noscitur a sociis canon). That Section falls under the heading "Challenges on the Validity of the System." § 1252(e)(3)(A)(i) and (ii) make reference to phrases regarding the constitutionality of "such section, or any regulation used to implement such section" or to the legality of "written policy directive[s]" or "guidelines" or "written procedures." Section 1252(e)(3)(B) provides a timeline within which covered actions must be filed as "no later than 60 days after the date the challenged section [...] is first implemented." 8 U.S.C. § 1252(e)(3)(B).

Congress does not hide elephants in mouseholes. *Whitman v. American Trucking Ass'n*, 531 U.S. 457 (2001). If Congress intended to disallow judicial review of any action involving Section 1225(b), it could have clearly said so, just as Congress could have specified whether it sought to suspend the writ of habeas corpus and disallow habeas review for the class of all "applicants for admission." Congress has done neither here. Rather, the statute specifies that "challenges" to the "implementation" "of the system", or to "determinations under section 1225(b)" are to be brought in the D.C. District Court.

Those *determinations* could mean, for example, a determination of whether or not a noncitizen has a credible fear of persecution [§ 1225(b)(1)(A)(i)] or can be or is subject to an expedited order of removal. This is supported by the fact that 8 U.S.C. § 1252(e)(3) bears the heading "Judicial Review of Orders Under Section 1225(b)(1)", and that, seemingly, the only 'orders' to which this heading could refer to within 8 U.S.C. § 1225(b)(1) are to expedited orders

of removal which, again, cannot apply here based on the fact that Petitioner has more than two years of continuous physical presence. ECF No. 5.

The plain text therefore dispels with Respondent's argument and shows 8 U.S.C. § 1252(e)(3) does not strip away this Court's habeas jurisdiction. The "ordinary public meaning", and the plain text meaning, of "implementation" is revealed by the dictionary definition, and by the noscitur a sociis canon. Petitioner, by this action, does not challenge a "determination under 8 U.S.C. § 1225(b)" or its "implementation" because it is not a challenge against the *implementation* of the statute to argue whether it applies in a particular case. *See also* Heckler v. Chaney, 470 U.S. 821, 832 (1985) (Supreme Court demonstrates its understanding of how the term "implementing" applies in the context of, for example, of the regulations or procedures an agency prescribes pursuant to a statute); *see also* Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024) (Supreme Court demonstrates what the word "interpretation" means by noting in dicta that "Courts may … seek aid from the interpretations of those responsible for *implementing* particular statutes." This shows "interpretation" is a process applicable to agency creation of regulation under a statute.)

C. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)

In addition to Petitioner's arguments in the Petition, Petitioner is not subject to mandatory detention under Section 1225(b)(2) for the additional reasons described in this section.

First, Respondent's position relies on BIA case law that has no binding power in the federal court system as "Chevron is overruled." ECF No. 5 (*citing* Yajure-Hurtado and Q Li, *supra*); Loper Bright Enterprises v. Raimondo, 603 U.S. ___ (2024) (Overruling the Chevron

doctrine). 8 U.S.C. § 1225(b)(2) is an ambiguous statutory provision; so, agency interpretations of it are not entitled to deference. Id.; *Ambiguity*, Black's Law Dictionary, 6th Ed. 1990.[10]

Second, plain text interpretation shows 8 U.S.C. § 1225(b) does not govern Petitioner's detention, but rather, that 8 U.S.C. § 1226(a) governs.

Starting with the text, 8 U.S.C. § 1225(a)(1) begins by describing that "[a]n [noncitizen] present … who has not been admitted or who arrives … shall be deemed for purposes of this chapter as an applicant for admission." Next, "[a]ll [noncitizens…] who are applicants for admission … shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3).

Respondents core argument relies on an interpretation of Section 1225(b)(2), which reads "Subject to subparagraphs (B) [exceptions) and (C) [not relevant], in the case of [a noncitizen] 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." 8 U.S.C. § 1225(b)(2)(A). Respondent's interpretation is incorrect because it grossly misstates the scope to which 1225(b) applies and would render 8 U.S.C. § 1226(a) superfluous, violating the canon against surplusage. Fischer, supra. Not to mention it would subject a class of several million noncitizens defined as "applicants for admission" to mandatory detention without the opportunity for bond in apparent defiance of the mandates of the due process clause, and the very meaning of the phrase "due

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[10] Defining "Ambiguity" as "[…] Doubleness of meaning" … "Ambiguity exists if reasonable persons can find different meanings in a statute, document, etc. [citing Laskaris v. City of Wisconsin Dells, Inc., App., 389 N.W. 2d 67, 70]; "when application of pertinent rules of interpretation to an instrument as a whole fails to make certain which one of two or more meanings is conveyed by the words employed by the parties, Wood v. Hatcher, 199 Kan. 238, 428 P.2d799, 803.")

process." *Reno v. Flores*, supra (The due process clause extends its protections to immigration proceedings too).

Furthermore, Petitioner is not subject to an expedited order of removal nor can he be. An applicant for admission may only be subject to expedited removal if they (1) are inadmissible for lack of a valid entry document; (2) have not been physically present in the United States continuously for two years before the determination of inadmissibility; and (3) are among those designated for expedited removal. 8 CFR 235(b)(1)(ii); 8 CFR 1.2 (Defining "arriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry […]"). Petitioner has been in the United States since the year 2007 and, as someone with more than two years of continuous physical presence, cannot be subject to expedited removal proceedings. 8 CFR 235(b)(1). Nor, per Respondent's own records, is Petitioner subject to an outstanding order of removal. ECF No. 5-2, page 1 ("Final Order of Removal: **No**" [sic]).

Section 1225(b) "authorizes the Government to detain certain aliens *seeking admission into* the country", while Section 1226 "authorizes the Government to detain certain aliens *already in* the country pending the outcome of removal proceedings." *Jennings v. Rodriguez, supra* at 289 (emphasis added).

III. CONCLUSION

Misapplication of mandatory detention under 8 U.S.C. § 1225(b) to Petitioner deprives Petitioner of his due process rights and distorts the statute to the point of its *ultra vires* application. Congress narrowly prescribed that provision to apply solely in the context of expedited removal proceedings to which Petitioner cannot lawfully be subject to. Even if the statute did apply to Petitioner, it violates due process for the agency to turn on a dime and extend

the reach of mandatory detention to encompass a class of millions of noncitizens on the whim of a new administration. Furthermore, Respondent's jurisdiction argument with 8 U.S.C. § 1252(e) fails based on the plain text, and common sense, understanding of what the term "implementation" means. The BIA case law Respondent's argument relies on is effectively rendered sheer dicta in light of Loper Bright and the end of Chevron deference.

Respectfully submitted this 30th day of October, 2025,

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