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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Jorge Abrego-Zarate,
Petitioner,
v.
Kristi Noem, Secretary of the United States Department of Homeland Security, in her official capacity; **U.S. Department of Homeland Security**; **Todd Lyons**, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; **U.S. Immigration and Customs Enforcement**; **John Cantu**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office, in his official capacity; **Luis Rosa, Jr.**, Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **Sirce Owen**, Acting Director of EOIR, in her official capacity,
Respondents.

Case No. 2:25-cv-03564-KML

Agency No. [redacted]

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

Petitioner rejects Respondents' claim that Congress intended the mandatory detention of every noncitizen until the end of their removal proceedings. The statutes cannot be read in isolation; they must be harmonized with § 1226's bond authority and § 1182(d)(5)'s parole provisions, each of which show that Congress intended for noncitizens to be allowed release in appropriate cases. And, as the Supreme Court made clear in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), and in *Demore v. Kim*, 538 U.S. 510, 517 (2003), civil immigration detention is constitutionally limited in scope and purpose.

The government's reading would convert a targeted detention scheme into blanket, indefinite incarceration—something Congress never enacted, and the Constitution does not permit. Moreover, the Ninth Circuit has clearly and consistently held that 8 U.S.C. § 1226(a) is the "default" detention statute for aliens in removal proceedings. *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

Respondents are clearly promoting the Department of Homeland Security's (DHS) newly adopted and erroneous position[1] that all noncitizens who enter without inspection are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under § 1225(b)(2), without regard for the length of time they have lived in the United States.[2] Here, Mr. Abrego-Zarate has been living in the United States for at least 21 years - since his last re-entry in 2004 after a documented voluntary departure in May 2004.[3] He is not an ""applicant for admission" just arriving at the border but a long-term resident, properly detained under § 1226(a) which authorizes bond hearings.

The length of time that a petitioner has been living in the United States is a constitutionally relevant consideration, because "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678,

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[1] ***See,*** ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025), filed with the Petition for Writ of Habeas Corpus as Exhibit 4.

[2] Respondents also ignore 8 U.S.C. § 1225(b)(1)(A)(iii)(II), which limits inspection of applicants for admission to those who have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been ***physically present in the United States continuously for the 2-year period immediately prior*** to the date of the determination of inadmissibility under this subparagraph." (emphasis added)

[3] ***See,*** Declaration of Kenneth E. Livingston filed in support of Response at page 3 [docket no. 10-1].

693 (2001). It is therefore reasonable to read these statutes "against [that] backdrop." *See Hewitt v. United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).

I. PETITIONER IS NOT AN ARRIVING ALIEN.

A. Caselaw Holds That An Alien Present In The U.S. For 22 Years Is Not An "Arriving Alien".

Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C.§ 1226(a) is the "default" provision for aliens already present in the United States. In *Jennings v. Rodriguez,* 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there was a statutory right to periodic bond hearings. It held that "U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also held that "§ 1226 applies to aliens ***already present*** in the United States. Section 1226(a) creates a ***default rule*** for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings,* 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis,* 533 U.S. 678 (2001), the Supreme Court stated that "[w]hile removal proceedings are in progress, ***most aliens may be released on bond or paroled.*** 8 U. S. C. §§ 1226(a) (1994 ed., Supp. V)." *Id.* at 683 (emphasis added).

The Ninth Circuit has held that § 1226(a) is the "default" detention statute for aliens in removal proceedings "[8 U.S.C. §1226(a) ("Subsection A")] is the default detention statute for noncitizens in removal proceedings and applies to noncitizens "[e]xcept as provided in [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v. Garland,* 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland,* 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott,* 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark,* 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS,* 535 F.3d 942 (9th Cir. 2008).

In their Response, Respondents acknowledge the existence of *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).[4] However at least five additional cases in this District Court have recently found against the government's position:

(1) Order granting habeas in *Garcia-Rosales v. Noem, et al.,* No. 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)("while Respondents point to two district court opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts have reached the same conclusion as *Echevarria* and held individuals like Petitioner are not subject to mandatory detention under 1225(b)(2)(A)");[5]

(2) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.,* No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)("individuals like Petitioner are not "arriving aliens" subject to mandatory detention but, rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)"). [6]

(3) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et. al.,* Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)("petitioner, who had been present in the United States for years, was not an applicant for admission under 1225(b)(2)(A) or subject to mandatory detention");[7]

(4) 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.,* No. CV-25-02989-PHX-SPL (D Arizona 10/07/2025)("Respondents maintain he is subject to mandatory detention under 1225(b)(2). Again, Respondents are mistaken.");[8]

(5) August 11, 2025 Magistrate's Report and Recommendation in *Rocha Rosado v. Figueroa,* No. CV-25-02157-PHX-DLR 2025 WL 2349133 at *10 (D. Ariz. Aug. 13, 2025)(Magistrate's Report and Recommendation Adopted at 2025 WL 2349133)([t]he text of § 1226, the canons of statutory interpretation, this section's legislative history, and longstanding agency practice indicate that Rosado is subject to § 1226(a)'s 'default' rule for discretionary detention rather than § 1225's mandatory detention requirement, and that the IJ erred by finding they did not have

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[4] ***See,*** 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.,* CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed with the Motion for a Temporary Restraining Order as Exhibit 14.

[5] ***See,*** 10/22/2025 Order entered in *Garcia-Rosales v. Noem, et al.,* No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025), filed herewith as Exhibit 15.

[6] ***See,*** 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.,* No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025); filed herewith as Exhibit 16.

[7] ***See,*** 10/9/2025 Order entered in *Hector Lopez-Melo v. Bondi, et. al.,* Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.) filed with the Motion for Temporary Restraining Order as Exhibit 13.

[8] ***See,*** 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.,* No. CV-25-02989-PHX-SPL (D Arizona 0/07/2025), filed herewith as Exhibit 17.

jurisdiction to consider Rosado's detention.") *report and recommendation adopted sub nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).[9]

Respondents also cite to two other district's court cases, *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), which they believe support their arguments. However, in *Vargas Lopez*, the Court held that Vargas Lopez failed to meet his burden to show that he falls under § 1226(a), so "his Petition fails ***regardless of the parties' arguments about the scope of § 1225(b) and § 1226(a).***" *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis added).

In *Chavez v. Noem*, the court denied a temporary restraining order on the grounds that the petitioners had "not demonstrated serious questions about the application of Section 1225 to aliens present in the United States." *Chavez v. Noem*, 2025 WL 2730228 at *4. However, the court spent less than 2 pages analyzing the statutory language and caselaw before concluding that "Petitioners have not shown either a likelihood of success or serious questions going to the merits [therefore] we do not address the remaining *Winter* factors." *Chavez v. Noem*, 2025 WL 2730228 at *5.

Thus, neither *Vargas Lopez* nor *Chavez v. Noem* is particularly instructive. Of course, neither case is binding precedent on this Court.

B. Statutory Interpretation Supports Petitioner's Interpretation.

"Statutory construction ... is a holistic endeavor." *United Savings Ass'n v. Timbers of Inwood Forest Associates,* 484 U.S. 365, 371 (1988). Thus, "every clause and word of a statute' should have meaning." *U. S., ex rel. Polansky v. Exec. Health Res., Inc.,* 599 U.S. 419, 432 (2023). A plain reading of § 1225 harmonizes it with § 1226.

[9] *See,* 8/13/2025 Magistrate's Report and Recommendation in *Rocha Rosado v. Figueroa,* No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025), filed herewith as Exhibit 18.

As the Honorable Brian E. Murphy stated in *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025)[10] "for section 1225(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." Here, there is no evidence that these three elements were met.

Rather, as shown on the Petitioner's Notice to Appear, DHS itself identified him as an "alien ***present in the United States*** who has not been admitted or paroled" – despite "arriving alien" being an alternative option.[11] Thus, DHS itself determined he was not detained under § 1225.

Thus, Petitioner was detained under the "default" provision of § 1226. The plain text of § 1226(a) demonstrates that it applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." It goes on to explicitly confirm that this authority includes not just persons who are deportable, but also noncitizens who are inadmissible.[12]

§ 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted," § 1225(a)(1). § 1226(a) covers those who are not now seeking admission but instead are already residing in the United States—including those who are charged with inadmissibility—while § 1225(b)(2) covers only those "seeking admission," i.e., those who are apprehended upon arrival in the United States (and who are not subject to the procedures of § 1225(b)(1)). A contrary interpretation would ignore § 1226(a)'s plain text and

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[10] *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025) was filed as Exhibit 5 with the Petition for Habeas Corpus.

[11] Petitioner's Notice to Appear was filed as Exhibit 7 with the Petition for Habeas Corpus.

[12] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as lawful permanent residents and certain visa holders, while grounds of inadmissibility (found in § 1182) apply to those who have not been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

structure and render meaningless § 1226's language that specifically addresses individuals who have entered without inspection.

"A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant...." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004). *Accord, Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting word "law" broadly could render word "regulation" superfluous in preemption clause applicable to a state "law or regulation"). *See also Bailey v. United States*, 516 U.S. 137, 146 (1995) ("We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning.").

A related principle applies to statutory amendments: there is a "general presumption" that, "when Congress alters the words of a statute, it must intend to change the statute's meaning." *Stone v. INS*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.").

Nor do Respondents address the recent amendments to § 1226 under the Laken Riley Act. The "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

II. Petitioner Has Met His Burden To Obtain A Preliminary Injunction.

Petitioner is likely to succeed on his claims that he is wrongfully detained. He has been residing in the United States for 22 years and has submitted an USCIS Form I-589 Application for Asylum. [13] is married and has a son who was born in Tuscson, Arizona.[14] He is not an ""applicant for admission" just arriving at the border but a long-term resident, properly detained under § 1226(a) which authorizes bond hearings.

[13] *See,* Petitioner's Bond Hearing Exhibits, filed with the Petition for Writ of Habeas Corpus as Exhibit 2.

[14] *Id.*

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The government, by contrast, faces minimal hardship: the administrative costs associated with three bond hearings. Indeed, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145."

CONCLUSION

Because the Immigration Judge incorrectly interpreted the relevant statutes to deny Petitioner a bond, finding he was an "applicant for admission" under § 1225(a) subject to mandatory detention under § 1225(b),[15] habeas relief is appropriate from this Court. Mr. Abrego-Zarate respectfully requests the Court grant his petition and order him immediately released.

DATED this 3rd Day of November, 2025.

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[15] *See,* Order Denying Bond, filed with the Habeas Petition as Exhibit 1.

LIST OF NEW EXHIBITS	
Exhibit 15	**10/22/2025 Order entered in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025)**
Exhibit 16	**10-17-25 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)**
Exhibit 17	**10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL (D Arizona 0/07/2025)**
Exhibit 18	**8/13/2025 Magistrate's Report and Recommendation in *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)(Magistrate's Report and Recommendation Adopted at 2025 WL 2349133)**