

UNITED STATE DISTRICT COURT  
DISTRICT OF NEW JERSEY

**UBALDO JIMENEZ PINEDA,**

**Petitioner,**

**v.**

**LUIS SOTO**, Director, Delaney Hall;  
**TODD M. LYONS**, Acting/Director,  
U.S. Immigration and Customs Enforcement  
**KRISTI NOEM**, Secretary of the U.S.  
Department of Homeland Security; and  
**PAM BONDI**, Attorney General of the  
United States, in their official capacities

**Respondents.**

Case No. 2:25-cv-16180-JKS

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**PETITIONER’S REPLY BRIEF  
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

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## I. INTRODUCTION

Petitioner, Ubaldo Jimenez-Pineda, a 47-year-old, native and citizen of Mexico, who last entered the United States, at the U.S.-Mexico border, without inspection, in 2002, through the undersigned counsel, hereby submits the following Reply Brief in Support of the Petition for Writ of Habeas Corpus.

### I. ARGUMENT

#### A. U.S. Must Abide By and Live Up to Its Ideals and Treaty Obligations

1. Although the United States was not a party to the original 1951 U.N. Convention Relating to the Status of Refugees following World War II, it is bound by its provisions as a result of acceding to the 1967 Protocol, 19 U.S.T. 6223; 606 U.N.T.S. 267 (Protocol Relating to the Status of Refugees, Jan. 31, 1967). *See Department of Homeland Security et al v Thuraissigiam*, 591 U. S. 103, 109 (2020) (“Some of these claims are valid, and by granting asylum, the United States lives up to its ideals and treaty obligations.”)

2. Article 33 establishes the principle of non-refoulement: “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened...”.

3. In 1968, the U.S. became a party to the 1967 Protocol Relating to the Status of Refugees, 19 U.S.T. 6223; 606 U.N.T.S. 267. The 1967 Protocol incorporates all substantive articles of the 1951 Convention, including non-refoulement.

4. In 1994, the U.S. ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1465 U.N.T.S. 85; Treaty Doc. 100-20; 8 CFR 208.18 (implementing regulations). Article 3: No State Party shall expel, return, or extradite a person to another State where there are substantial grounds for believing that he would be in

danger of being subjected to torture.

5. Based on these U.S. international treaty obligations and domestic statutes, the U.S. is obligated to uphold human rights and refugee protections and ideals, for persons, like Petitioner, who filed for asylum on October 27, 2018, and cancellation of removal proceedings in 2019, in conformity with United States' ideals, statutes and treaty obligations.

6. In 2018, Petitioner filed his Form I-589 Application for Asylum (INA § 208, codified at 8 U.S.C. § 1158, 8 C.F.R. §§ 208.1-208.24 and 8 C.F.R. §§ 1208.1-1208.24), Withholding of Removal (INA § 241(b)(3), codified at 8 U.S.C. § 1231(b)(3), 8 C.F.R. §§ 208.16-208.18 and 8 C.F.R. §§ 1208.16-1208.18 and CAT relief (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Dec. 10, 1984, art. 3, 1465 U.N.T.S. 85. In 2019, Petitioner also filed an application on Form 42B for Cancellation of Removal proceedings, under 8 U.S.C. § 1229b(b)(1), INA § 240A(b)(1)<sup>1</sup>.

7. On September 17, 2025, Petitioner was arrested by ICE (U.S. Immigration and Customs Enforcement) while attending his asylum interview, in Newark, NJ, while attempting to comply with all U.S. immigration laws in connection with his applications for asylum and cancellation of removal relief, under INA §§ 208, 8 U.S.C. § 1158 (asylum), INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) (withholding of removal) and CAT (U.N. Convention Against Torture).

8. In reply to the Respondents' assertions that the U.S. government has the "plenary

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<sup>1</sup> Cancellation of Removal is a form of relief from removal (deportation) where an applicant must establish: (1) physical presence in the United States for a continuous period of not less than 10 years; (2) good moral character during that period; (3) no conviction for certain criminal offenses; and (4) removal would result in extremely unusual hardship to a U.S. citizen or lawful permanent resident spouse, parent or child. For asylum one must meet the definition of "refugee" under INA § 101(a)(42), 8 U.S.C. § 8 U.S.C. § 1101(a)(42) and past persecution or a well-founded fear of future persecution on account of: race, religion, nationality, membership in a particular social group or political opinion.

authority to decide which [noncitizen] to admit]”, the U.S. government must also live up to its ideals and treaty obligations it has acceded to, including the 1967 Protocol, 19 U.S.T. 6223; 606 U.N.T.S. 267 (Protocol Relating to the Status of Refugees, Jan. 31, 1967), which protects noncitizens from being returned to a country in which he fears harm if returned or has experienced past harm or persecution.

9. Based on the foregoing, the government has failed to abide by and live up to those ideals and treaty obligations, when on the very same day, Petitioner was arrested when appearing at his previously scheduled asylum interview, in Newark, NJ, on September 17, 2025.

10. Petitioner was harmed and suffered past persecution in his home country and is presently seeking asylum for himself and his family, who might be harmed should he and his family be returned to Mexico. Petitioner is currently being deprived of his liberty interest, and held in unlawful detention in Delaney Hall detention facility in Newark, NJ, in violation of due process under the Fifth Amendment to the United States Constitution, without the opportunity for an individualized bond hearing, before a neutral adjudicator, such as an immigration judge. *See Yamataya v. Fisher*, 189 U. S. 86 (1903)(aliens present in the U.S. even those who entered unlawfully are entitled to due process protections before being deported); *Wong Wing v. United States*, 163 U.S. 228 (1896)(noncitizens, including those unlawfully present are entitled to due process protections under the Fifth and Sixth Amendments, if they face criminal punishment); and *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)(Due Process Clause applies to all “persons” within the U.S. whether their presence is lawful, unlawful, temporary or permanent).

11. Petitioner is being held without the opportunity to seek a bond hearing pursuant to *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), *Memo of Todd M. Lyons*, Acting Director, ICE, memo dated July 8, 2025, changing long-

standing policy and statutory interpretation of three decades of permitting noncitizens who entered the United States without inspection and who have lived in the United States for many years a bond hearing, under 8 U.S.C. § 1226(a) and instead, abruptly relying on new policy, on § 325(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) mandatory detention without bond.

12. The reversal of three decades of prior DHS/ICE policy is arbitrary and capricious and denial of due process in violation of the Fifth Amendment to the United States Constitution, and the APA (Administrative Procedures Act).

**B. Petitioner Acknowledges He Has Been Continuously “Present” and Remains an “Applicant for Admission” But the Plain Language of 8 U.S.C. § 1226(a), INA § 236(a) that Provides For Discretionary Release From Custody and Bond Hearing, Should Be Read Broadly - Not Narrowly, Under 8 U.S.C. § 1225(b)(2), for Mandatory Detention Without Bond or Custody Redetermination**

13. The application of discretionary detention authority under § 1226(a) and not § 1225(b)(2)(A), mandatory detention properly applies to Petitioner because Congress designed § 1225(b)(2)(A) mandatory detention to narrowly govern inspection and mandatory detention of “arriving” applicants at the threshold of entry (ports-of-entry or recent encounters), while reserving 8 U.S.C. § 1226(a) as the general default detention-and-bond authority for individuals already present in the United States. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

14. When read together with their text, structure, history, long-standing practice by DHS/ICE and the courts, application of the statutes support classifying long-term interior arrests as § 1226(a) detainees, who are bond eligible, absent specific statutory bars.

15. Respondents’ reliance on *Jennings v. Rodriguez*, 583 U.S. 830 (2018) and *Matter of*

*Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at \*1 (E.D. Va. Aug. 5, 2025 (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an “applicant for admission” subject to mandatory detention under § 1225(b)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at \*2 (D. Mass. July 28, 2025) (upholding mandatory detention under § 1225(b)(2) of noncitizen who is “present in the country but has not yet been lawfully granted admission”), are misplaced, and distinguishable.<sup>2</sup>

16. The U.S. Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 830 (2018), discussed the interplay between § 1225(b)(2)(A), relied upon by Respondents and 8 U.S.C. § 1226(a) relied upon by Petitioner.

17. The Court in *Jennings* found that the plain text in § 1225(b)(2), which Respondents rely on for Petitioner’s mandatory detention argument, applies to those entrants mainly “seeking admission” to the United States, during an inspection process, at the border or its functional equivalent; in contrast, the Court found that together with the structure of the larger statutory scheme in the INA, the clear, unambiguous plain text of § 1226(a) indicates that it applies mainly to noncitizen entrants, who are already present in the U.S., and is the default detention rule *See Id.*

18. Thus, Respondents’ argument that § 1225(b)(2) applies to detainees such as the Petitioner, who has already been present in the United States for over 23 years, since 2002, is ineligible for release on bond, is misplaced and misconstrues the statutes and caselaw.

19. Respondents’ argument that Petitioner should be mandatorily detained pursuant to

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<sup>2</sup> *Matter of Q. Li* is distinguishable on its facts because the detainee was arrested at or near the border; on the other hand, Petitioner in the case before the Court was arrested at the ORD airport after inspection trying to leave Chicago domestically to Texas. *Matter of Yajure-Hurtado* is a misapplication of § 1225(b)(2)(A) reversing three decades of statutory interpretation.

INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) plainly ignores the U.S. Supreme Court’s analysis in *Jennings* of the interplay between INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) which mainly applies to noncitizens “seeking admission” to the U.S. and INA § 236(a), 8 U.S.C. § 1226(a), plainly applies to noncitizens, like Petitioner, who has: already been present in the United States for 23 years, has established family ties; was not arrested at the border, or its functional equivalent; but arrested in the interior of the United States, at his asylum interview, in Newark, NJ, on September 17, 2025; and was not “seeking admission” into the U.S.

20. Petitioner cannot be “seeking admission” into the United States during an inspection process at or near the border, as alleged by Respondents, pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), when he last entered the United States in 2002, when he has been living in the United States for 23 years since 2002, is married, has three U.S. citizen children, and was arrested and detained by ICE in the interior of the United States, at a USCIS (U.S. Citizenship & Immigration Service) asylum office, in Newark, NJ, on September 17, 2025.

21. Petitioner is not “seeking admission” into the United States, nor was he detained at the border or its functional equivalent: Petitioner was detained in Newark, NJ, in the interior of the United States, 23 years after his entry into the United States, in 2002.

22. Thus, Petitioner cannot be said to be “seeking admission” into the United States, and clearly is not subject to mandatory detention, pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2).

23. Moreover, DHS itself has acknowledged in the NTA it issued on October 9, 2025, charging Petitioner under INA § 212(a)(6)(A)(i) that “you are an alien *present* in the United States” without being admitted or paroled.

24. Thus, by Respondents’ own acknowledgment and admission, Petitioner is “present”

in the United States and is not “seeking admission” into the United States at the border or its functional equivalent, 23 years after Petitioner’s initial entry into the United States. Petitioner has been present in the United States, for the past 23 years and was arrested in the interior not at a border.

25. Therefore, the mandatory detention authority under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), as Respondents argue, plainly applies to entrants mainly “seeking admission” into the United States, during an inspection process, upon arrival into the United States, and plainly does *not* apply to Petitioner who is “already present” and has been residing in the United States since 2002, until he was arrested and detained in the interior of the United States, in Newark, NJ, on September 17, 2025.

26. Petitioner argues that he is instead eligible for immediate release and/or a discretionary bond hearing, pursuant to 8 U.S.C. § 1226(a), INA § 236(a) because he has already been present in the United States for over 23 years, since he entered into the United States in 2002, was arrested by ICE in the interior of the United States, in Newark, NJ on September 17, 2025 and was *not* arrested at the border or its functional equivalent. *See* Dkt. No. 1.

27. Because Petitioner has already been present in the United States when he was detained and arrested in Newark, NJ, in 2025, under the plain, unambiguous and clear language of the statute, he is subject to the detention authority under 8 U.S.C. § 1226(a), INA § 236(a) and *not* under 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), as Respondents argue and is subject to immediate release and/or a discretionary release from detention and a bond hearing.

28. Moreover, the Court in *Jennings v. Rodriguez* noted that when comparing the interplay between construing § 1225(b)(2) to § 1226(a), that § 1226(a) is considered the general or “default rule” for detention authority in pending removal proceedings, providing for bond

hearings, except where other provisions such as §§ 1226(c) or 1225(b) apply. “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention ‘pending a decision on whether the alien is to be removed from the United States.’ The Attorney General may release ‘an alien on bond,’ ... and may also impose conditions of release. Thus, section 1226(a) generally gives the Attorney General broad discretion regarding the arrest and detention of aliens facing removal.” *Jennings v. Rodriguez*, 583 U.S. 830, 837 (2018).

29. In addition, Courts in this District, in cases similar to Petitioner’s case where the government Respondents argued that a Petitioner – who are noncitizens and have entered the U.S. without inspection many years earlier and were subsequently detained and arrested many years later, were *not* “seeking admission”. See *Mugliza Castillo v. Lyons*, No. 2:25-cv-16219 (D.N.J. Oct. 10, 2025) and *Rivera-Zumba v. Bondi*, No. 2:25-cv-14626 (D.N.J. 09/26/2025).

30. In those cases, those Courts have held that the Petitioners were not “seeking admission” pursuant to 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) because they were already present in the United States for many years and subject instead to 8 U.S.C. § 1226(a), INA § 236(a) and therefore entitled to immediate release and/or a bond hearing.

31. Nor is *Matter of Yajure Hurtado* binding on this Court. Pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which ended the “Chevron deference doctrine” federal courts are required to use their “independent judgment” and no longer have to defer to administrative agencies’ – like the BIA’s (Board of Immigration Appeals), interpretation of ambiguous laws that they enforce.

32. Consequently, Respondents’ reliance on the holding in *Yajure Hurtado* which denied bond eligibility to individuals, who entered without inspection, and are categorically subject to mandatory detention without bond under 8 U.S.C. §1225(b)(2), INA § 235(b), is misplaced.

33. Courts are required to exercise their “independent judgment” and no longer have to defer to agency expertise in interpreting ambiguous statutes in the context of a larger statutory scheme. The Court in *Jennings* discussed the interplay between 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and 8 U.S.C. § 1226(a), INA § 236(a) and found that 8 U.S.C. § 1225(b)(2) mainly applies to noncitizens who arrive at the border, or its functional equivalent and are inspected, whereas 8 U.S.C. § 1226(a), INA § 236(a) applies mainly to noncitizens “already present” in the United States.

34. Moreover, recently passed legislation in the Laken Riley Act Public Law 119-1 enacted by Congress in 2025, amended 8 U.S.C. § 1226(c), INA § 236(c) to expand mandatory detention for certain noncitizens - including those arrested and charged or convicted of theft and related offenses, such as burglary, larceny or shoplifting or assault on a law enforcement officer.

35. Its placement in INA § 236(c), 8 U.S.C. § 1226(c) which governs mandatory detention of certain noncitizens *who are already present in the United States*.

36. It *does not apply* to those noncitizens “seeking admission” into the United States, upon arrival, or inspection at the border or its functional equivalent, which would have been placed in INA § 235(b), 8 U.S.C. § 1225(b).

37. The fact that Congress chose to place the provisions of the Laken Riley Act in that section which applies mainly to aliens already present in the United States, under 8 U.S.C. § 1226(a), INA § 236(a) and not in INA § 235(b), indicates Congress intended to expand mandatory detention to those noncitizens already present in the interior of the United States and not apply them to recent border arrivals.

38. Thus, 8 U.S.C. § 1226(a), INA § 236(a) which allows for discretionary release from

custody and a bond hearing, applies to Petitioner, and not mandatory detention under 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), because he has been already present in the United States for over 23 years.

39. The government's theory also ignores the language in *Jennings v. Rodriguez* that the Attorney General has broad discretion in § 1226(a) to arrest and detain aliens. *See Jennings v. Rodriguez*, 583 U.S. 830, 837 (2018).

40. While *Jennings v. Rodriguez* upheld the statutory bar on periodic bond hearings, it expressly left open the constitutional arguments for due process relief, as in Petitioner's request for relief. *See* Dkt No. 1.

41. The Supreme Court and lower courts have emphasized that "prolonged detention without an individualized bond hearing raises substantial constitutional concerns." *Jennings*, 583 U.S. 851 (2018); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

42. It follows, *a fortiori* that unlawful or arbitrary and capricious detentions without an individualized custody determination raises substantial due process concerns. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)("[f]reedom from imprisonment – from government custody, detention, or other forms of restraint – lies at the heart of liberty the Clause protects.") and *Demore v. Kim*, 538 U.S. 510, 532 (2003)(since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien – could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified."

**C. 8 U.S.C. § 1226(a), INA § 236(a) Is the Correct Application of the Law to Petitioner's Case, Not INA § 235(b)(2), 8 U.S.C. §1225(b)(2) As Respondents Argue and INA § 235(b)(2) Should Not Be Retroactively Applied to a Longstanding Resident Who Should Be Immediately Released or Afforded a Bond Hearing**

43. Petitioner's previous status as an applicant for asylum and long-term resident since 2002, demonstrates substantial ties to the United States and rights to deportation proceedings. *See, U.S. Department of Homeland Security v. Thuraissigiam*. Petitioner is married, has three U.S. citizen children, has paid his taxes, is not a national security risk or danger to the community. Petitioner's only criminal history is a cocaine charge in 2008, which was dismissed after successful completion of a pre-trial intervention program.

44. Application of expedited removal and mandatory detention under INA § 235(b)(1), (b)(2), 8 U.S.C. § 1125(b)(1),(b)(2) to individuals with strong equities and prior application for asylum, withholding of removal and relief under CAT, unjustly deprives them of the protections of discretionary custody under INA § 236(a), 8 U.S.C. § 1226(a) including the opportunity for bond.

45. The BIA's approach in *Matter of Yajure-Hurtado* ignores legislative history and the "admission" distinction contained in INA § 101(a)(13)(A), which does not extend expedited removal authority to *all* noncitizens arrested in the interior of the country years after entry. *Matter of Lemus-Losa*, 25 I&N Dec. 734 (BIA 2012), is inapposite as it involves adjustment of status and how unlawful presence bars affect admissibility. Whereas, *Jennings v. Rodriguez* analyzed the interpretation of detention authority under both 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and 8 U.S.C. § 236(a), 8 U.S.C. § 1226(a) that directly impact whether detained noncitizens such as Petitioner are entitled to periodic bond hearings. Moreover, Respondents' reference to *Vargas-Lopez v. Trump*, Exhibit #4 - Response in Opposition to Petition for Writ of

Habeas Corpus, Dkt. No. 6, and dismissal of Petitioner's Writ of Habeas Corpus was largely due to mistakes in Petitioner's exhibits which were not attached and failure to meet his burden. The court did not undertake a detailed analysis of the interplay of 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and 8 U.S.C. § 1226(a), INA § 236(a), unlike the Court in *Jennings*.

**D. Respondents' Assertion That *Jennings* Is Inapplicable to Petitioner's Case Conflicts With District and Circuit Precedent and U.S. Supreme Court Decision In *Jennings and Loper Bright***

46. Numerous federal district courts have questioned the overexpansive use of INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) to deny bond eligibility for persons not apprehended at the border, or its functional equivalent, especially those with prior lawful status, including in this District. *See Rivera Zumba v. Bondi*, No. 25-cv-14626-KSH, 2025 WL 14626 (D. N.J. Aug. 28, 2025); and the great majority of courts have decided that 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) does not apply to noncitizens who have lived for many years in the U.S. and are subsequently arrested and detained in the interior of the country without an opportunity for bond hearing. *See Survey of Favorable 1226(a) v. 1225(b)(2)(A) Caselaw*, compiled by University of Iowa. Dkt No. 5, Ex 4.

47. Petitioner is not an "arriving alien" in any meaningful sense, and indefinite detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) is not authorized for individuals who, like Petitioner, have established residence and applied for asylum and cancellation of removal.

48. Respondents offer no justification for denial of a constitutionally adequate bond hearing or individualized review of flight risk and dangerousness.

**E. *Jennings* Appropriately Analyzed the Clear and Unambiguous Interplay Between 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) and 8 U.S.C. § 1226(a), INA § 236(a) and Found that Noncitizens Like the Petitioner Who Entered The U.S. Without Inspection and Are “Already Present” In the United States For Many Years and Arrested in the Interior of the U.S., Are Not Applicants “Seeking Admission” Pursuant to 8 U.S.C. § 1225(b)(2) But Instead Are “Already Present” Pursuant to 8 U.S.C. § 1226(a), INA § 236(a) and Entitled to a Discretionary Bond Hearing**

49. Respondents allege that Petitioner should be denied a bond hearing pursuant to the INA §235(b)(2), 8 U.S.C. § 1225(b)(2) because Petitioner is subject to mandatory detention, and not to INA § 236(a), 8 U.S.C. § 1226(a). *See* Response to Writ of Habeas Corpus, Dkt. No. 6.

50. On September 29, 2025, Petitioner had an initial master calendar hearing before Immigration Judge Ramin Rastigar. At Petitioner’s counsel’s request the case was re-set to October 8, 2025 for counsel to prepare and submit Petitioner’s applications for relief at which time a response to the charging document (the NTA) and all applications for relief were due or deemed waived. Dkt No. 4, Exhibit 7.

51. Petitioner’s case was subsequently pretermitted by Immigration Judge Rastegar, but Petitioner filed a motion to reopen/reconsideration which was granted based on based on lack of notice, fair hearing and due process grounds. Dkt No. 6, Ex C. The case has been rescheduled for a master hearing on November 19, 2025. *See* EOIR automated system printout **Exhibit A**.

52. The appropriate detention authority in this case falls under INA § 236(a), 8 U.S.C. § 1236(a) not INA § 235(b)(2), 8 U.S.C. § 1235(b)(2).

53. The Court in *Jennings* correctly analyzed the plain meaning of the statutory text and found that “seeking admission” to the United States applies to noncitizens under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2).

**F. Congress Did Not Intend to Mandate Detention for All Applicants Seeking Admission Under 8 U.S.C. § 1225**

54. Nothing in the plain, clear and unambiguous text of the statutory language in 8 U.S.C. § 1225(b)(2), INA § 235(b)(2) or 8 U.S.C. § 1226(a), INA § 236(a) indicates that Congress intended that mandatory detention is the norm rather than the exception.

55. It has been the common practice of DHS to apply 8 U.S.C. § 1226(a) not 8 U.S.C. § 1225(b)(2) to noncitizens entering the United States for the past several decades. *See* Todd M. Lyons memo dated July 8, 2025 abruptly changing the past common practice of applying 8 U.S.C. § 1226(a), INA § 236(a) to mandatory detention under INA § 235(b), 8 U.S.C. § 1235(b)(2). Dkt No. 4, Ex 5.

56. If mandatory detention under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2) was the norm rather than rule, particularly after the legislative changes in the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (“IRRIRA”), which was legislation enacted to correct injustices in the past, then why has it been the norm and past practice of applying 8 U.S.C. § 1226(a) for releasing those entrants on bond pending their immigration hearings. *See* Todd M. Memo dated July 8, 2025, abruptly changing past practice of applying 8 U.S.C. § 1226(a), INA § 326(a) to 8 U.S.C. § 1225(b)(2), INA § 235(b)(2). Dkt No. 4, Ex 5.

57. In fact, the legislative history of 8 U.S.C. § 1226(a), INA § 326(a) release on bond pending removal hearings has been the historical norm and still was until the Todd M. Lyons, July 8, 2025 memo.

58. The predecessor statute to 8 U.S.C. § 1226(a) before IIRIRA was passed, was governed by 8 U.S.C. § 1252(a)(1)(1994) of all deportation proceedings - “Pending a determination of deportability... any [noncitizen] ...may, upon warrant of the Attorney General, be arrested and taken into custody.”); *Hose v. I.N.S.*, 180 F.3d 992, 994 (9<sup>th</sup> Cir. 1999)(“A

deportation hearing was the ‘usual means of proceeding against a [noncitizen] already physically present in the United States[.]’”.

59. This predecessor statute, like 8 U.S.C. § 1226(a) included discretionary release on bond. *See* § 1252(a)(1)(1994)(“[A]ny such [noncitizen] taken into custody may, in the discretion of the Attorney General... be continued in custody...[or] be released under bond[.]”).

60. Upon passing IIRIRA, Congress declared that the new Section 1226(a) “restates the current provisions in [the predecessor statute] 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; *see also* H.R. Rep. No. 104-828, at 210 (same). Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)’s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports Petitioner’s position that he too, is subject to discretionary detention.

#### **4. Continued TRO is Justified to Prevent Irreparable Harm**

61. Petitioner faces imminent removal, which constitutes irreparable harm before meaningful judicial review can be effected.

62. In the absence of a preliminary injunction and in the context of the futility of obtaining relief on the basis of the Immigration Judge Rastegar’s prior comments he would deny Petitioner a bond hearing based on lack of jurisdiction pursuant to *Matter of Yajure Hurtado*, Petitioner “suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention.” *Cortez v. Sessions*, 318 F.Supp.3d 1134 (N.D. Cal. 2018).

63. This is further exemplified by the Ninth Circuit’s recognition that irreparable harm is present when “at least some individuals who would be detained if not provided a bond hearing will be granted conditional release under [the proposed] injunction.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1134 (9<sup>th</sup> Cir. 2013).

64. The record reflects that Petitioner is very likely to be granted conditional release if afforded a bond hearing. Petitioner is married has three minor children, is gainfully employed, has paid his taxes, has no criminal history, except a cocaine charge which was dismissed after entering a pre-trial intervention program over ten years ago, has been attending his hearings (the Immigration Judge has rescheduled Petitioner’s master calendar hearing to November 19, 2025, in Newark, NJ, at 8:30 a.m.), has strong family ties, is not a national security threat or a threat to the community. Dkt No. 1.

65. The remaining two factors for a preliminary injunction – balance of the equities and public interest – “merge” when the government is the opposing party. *Baird v. Bonta*, 81 F.4<sup>th</sup> 1036, 1040 (9<sup>th</sup> Cir. 2023). When the “impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9<sup>th</sup> Cir 2017).

66. “In addition to evaluating the potential hardships facing Plaintiff, in the absence of the injunction, the court may consider ... the indirect hardship to their friends and family members.” *Id.* Finally, the Ninth Circuit has recognized that “neither equity nor the public’s interest are furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4<sup>th</sup> 821, 832 (9<sup>th</sup> Cir. 2022)(holding that the district court did not abuse its discretion that the

balance of hardships weighed in favor of plaintiffs who credibly alleged that the government was violating the INA).

67. The hardships and the equities overwhelmingly favor maintaining the status quo and enjoining DHS/ICE from removing Petitioner until the constitutional Due Process claims are adjudicated on the merits,

## II. CONCLUSION

The Court should grant the writ of habeas corpus, immediately order Petitioner's release from custody, and continue a temporary restraining order enjoining Respondents from removing Petitioner pending final resolution of these constitutional and statutory claims.

Respectfully submitted,

Dated: 11/14/2025  
New York, NY

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**JIMENEZ-PINEDA, UBALDO**

**CERTIFICATE OF SERVICE**

On October 14, 2025, I, Martin W. Chow, Esq., certify that I served a copy of this Reply to Respondents' Answer to Petitioner For Writ of Habeas Corpus, upon the U.S. Attorney's Office, at the following address: U.S. Attorney's Office, 970 Broad Street, Suite 700, Newark, NJ 07102, by ecf mail.

Dated: 10/14/2025

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