UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

EDGUAR ADRIAN LOPEZ DE LEON, Petitioner, v. Field Office Director of Enforcement and Removal Operations, Laredo, Texas Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Executive Office for Immigration Review; David Cole, Warden of Rio Grande Processing Center Respondents.	Case No. 5:25-CV-165 Hon. Judge: Marina Garcia Marmolejo

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

Petitioner respectfully submits this Reply to Respondents' Response in Opposition to the Petition for Writ of Habeas Corpus. Respondents' arguments fail because Petitioner's detention is properly subject to 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2) as Respondents' claim. As recently reaffirmed by the Southern District of Texas in *Padron Covarrubias v. Vergara*, No. 5:25-CV-112 (S.D. Tex. Oct. 8, 2025), *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025), and in numerous other federal decisions, each holding that Respondent's interpretation is unlawful.[1]

I. Petitioner Is Detained Under § 1226(a) and therefore not subject to § 1225(b):

Respondents rely on the July 8, 2025, DHS/DOJ "Interim Guidance Regarding Detention Authority for Applicants for Admission,"(ICE Memo) which asserts that mandatory detention under 8 U.S.C. § 1225(b)(2) applies to all "applicants for admission," including all noncitizens who have not been admitted, whether or not they arrive at a port of entry.

Respondent's interpretation of the ICE Memo and Board of Immigration Appeals' (BIA's) precedential decision, *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), contravenes the plain language and statutory framework of the Immigration and Nationality Act (INA). As the Supreme Court explained in *Jennings v. Rodriguez*, 8 U.S.C § 1226(a) governs the

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[1] See *Chogllo Chafla v. Scott*, No. 2:25-cv-00437, 2025 WL 2688541, at *1 (D. Me. 2025); *Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Noem*, No. 5:25-CV-01007, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, 786 F. Supp.3d 1149, 2025 WL 1692739, at *5– 6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, 5:25-cv-01873, Dkt # 14 (C.D. Ca. Jul. 28, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV11571, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025)).

detention of those, like Petitioner, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018). In contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" primarily to noncitizens "seeking to enter the country." *Id.* at 287.

Respondents argue that "applicants for admission" are equivalent to those "seeking admission," giving officers discretion to apply either expedited removal under § 1225(b)(2)(A) or removal proceedings under § 1229a. See ECMF No. 16 at pp. 6-7 (citing *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)). But *Q. Li* involved an individual actually seeking admission at the border. While Respondents claim that all "applicants for admission" under § 1225(a)(1) fall within § 1225(b)(2)'s mandatory detention provision, the statute says otherwise. Section 1225(b)(2) applies only to those "seeking admission" at the border. This limiting phrase is not surplusage; it reflects Congress's intent that § 1225(b)(2) governs the inspection and detention process at ports of entry. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); 8 U.S.C. § 1225.

Statutory interpretation rests with the courts, not agencies. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). Respondents' departure from the long-standing application of § 1226(a) to noncitizens already in the United States contradicts decades of consistent practice and would render parts of § 1226 including the recent Laken Riley Act (LRA) amendment superfluous. *See Padron Covarrubias*, slip op. at 6–7; *Buenrostro-Mendez v. Bondi*, No. H-25-3726 (S.D. Tex. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337 (W.D. Tex. Sept. 22, 2025). Section 1225(b)(2)(A) applies only to individuals "seeking admission," a term distinct from "applicant for admission." *Padron Covarrubias*, slip op. at 5–6 (citing Scalia & Garner, *Reading Law* 170 (2012)). Petitioner, who lived in the United States for twenty years before

apprehension, was not "seeking admission" at a port of entry and therefore cannot be detained under § 1225(b)(2).

Respondent's view of § 1226(a) renders meaningless the LRA. Congress amended § 1226(c), specifying that certain persons who entered without admission or parole and who were arrested for, charged with, or convicted of certain crimes are subject to mandatory detention. 139 Stat. 3, 3 (2025). Under the Respondents' view, Congress merely duplicated an existing mandatory detention authority for people already subject to mandatory detention. But statutory amendments are presumed to "have a real and substantial effect. *Ross v. Blake*, 578 U.S. 632, 642 (2016). Under the longstanding reading of the statute, the LRA has a direct effect: it denies bond to noncitizens to whom bond was previously available. Moreover, the Respondent's view ignores that, although limited redundancy may occasionally occur, it is also a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." *United States v. $133,420.00 in U.S. Currency*, 672 F.3d 629, 643 (9th Cir. 2012) (emphasis added) (citation omitted).

Respondent ignores 8 U.S.C. § 1226(a). However, § 1226 provides the "default rule" for the detention of those who, like Petitioner, are "already in the country." *Jennings*, 583 U.S. at 288–89. Section 1226(a) states that, "[e]xcept as provided in subsection (c)," detained noncitizens may be released on bond pending a decision in their removal proceedings. 8 U.S.C. § 1226(a). And subsection (c) specifically exempts from § 1226(a)'s default rule individuals who are "inadmissible under paragraph (6)(A) . . . of section 1182(a)"—i.e., those who entered the U.S. without admission or parole, and who also have been arrested for, charged with, or convicted of certain crimes. Compare *id.* § 1226(c)(1)(E), with *id.* § 1182(a)(6)(A). The statute also identifies certain other classes of inadmissible noncitizens. See *id.* § 1226(c)(1)(A), (D).

These references demonstrate that, by default, § 1226(a) must cover inadmissible persons like Petitioner. This is because "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

Respondent asserts that applying § 1226(a) to those who enter without inspection and have since resided here places them in a better position than those who are arrested at a port of entry. See ECMF No. 16 pp. 16-18. But such "policy preferences are not a source of . . . statutory authority," *ACA Connects v. Bonta*, 24 F.4th 1233, 1243 (9th Cir. 2022), and courts "[can]not alter the text in order to satisfy the policy preferences of the [agency]," *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002). Moreover, Petitioner's position is entirely consistent with Congress's stated intent. In passing IIRIRA, Congress focused on the perceived problem of recent arrivals to the U.S. who do not have documents to remain. See H.R. Rep. No. 104469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). Yet those who are apprehended immediately upon entering are treated as being on the "threshold" of entry and subject to mandatory detention, placing them on the very same footing as other arriving noncitizens. See *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("[A noncitizen] who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'" (citation omitted)); see also *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (individual "detained shortly after unlawful entry" and "just inside the southern border, and not at a point of entry, on the same day they crossed into the United States" subject to § 1225(b)(2)(A) (citation modified)). Furthermore, this aligns with Congress's explanation that the new § 1226(a) in IIRIRA preserved "the authority of the Attorney General to arrest, detain, and

release on bond a [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); see also H.R. Rep. No. 104-828, at 210 (same). Respondent's reliance on *Thuraissigiam* and other caselaw addressing the constitutional right to admission of noncitizens apprehended immediately upon entry is misplaced. By definition, the Petitioner was not apprehended upon arrival in the United States; instead, he has resided in the U.S. for over a decade.

Petitioner was not actively seeking admission, as that phrase is commonly used and understood, when he was detained on his way to work in Oklahoma, and after having resided in the United States for over a decade. Thus, he does not fit within the categories in Section 1225(b), and must fit within Section 1226(a), the default provision for noncitizens "already present" in the country and arrested by ICE who do not fit within Section 1225(b). See *Jennings*, 583 U.S. at 28.

Respondent argues that Petitioner is "seeking admission" because he filed for U nonimmigrant status. See ECMF No. 16 at p. 17. But the INA and regulations distinguish noncitizens "seeking admission" at ports of entry from those already in the U.S. under removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). An I-918 is an affirmative USCIS request for U status, not a request for inspection and admission at a port of entry. The statutory term "seeks admission" confirms that § 1225(b)(2)(A) applies only to those at the border, not to persons already residing in the U.S., and is not synonymous with the broader "applicant for admission" under § 1225(a)(1). A noncitizen's participation in removal proceedings does not convert them into someone "seeking admission." Section 1225(b)(2)(A) governs inspections and determinations at the border and is inapplicable to individuals already in removal proceedings.

Respondent cites to *Chavez v. Noem*, 2025 WL2730228 (S.D. Cal. Sept. 24, 2025) as persuasive authority. However, this decision has already been examined and rejected by other courts. See *Cordero Pelico v. Kaiser,* 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025) at 23-24; *Echevarria v. Bondi* (D. Ariz). Moreover, in *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court repeatedly pointed out the many mistakes in the petition as a basis for denial. These decisions do not grapple with the reasoning in the weight of authority going the other way. They don't address the meaning of the import of "seeking admission" in 1225(b)(2)(A) and don't acknowledge the superfluity issue arising from the listing of the inadmissibility ground in 1226(c). See *Cordero Pelico* at 23-24.

III. Respondents' Interpretation Conflicts with Nearly Every Federal Decision to Address the Issue

As Padron Covarrubias noted, nearly every court to consider the July 2025 DHS/DOJ guidance has rejected it and held that § 1226 governs detention of noncitizens already present in the U.S. See cases cited in *Padron Covarrubias*, slip op. at 4 n.1 (collecting more than fifteen decisions across multiple circuits). Respondents' reliance on the minority view, such as *Chavez v. Noem* or *Vargas Lopez v. Trump*, is unpersuasive and contrary to the weight of authority.

IV. Petitioner Is Entitled to a Bond Hearing or Immediate Release

As the Southern District of Texas held, detention without a bond hearing under § 1225(b)(2) is unlawful for individuals properly detained under § 1226(a). *Padron Covarrubias*, slip op. at 7–8. Petitioner respectfully requests the same remedy: that this Court order

Respondents to provide a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days, or, if no hearing is held, to release Petitioner forthwith.

Respectfully submitted:

s/Caridad Pastor

Dated: October 31, 2025

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CERTIFICATE OF SERVICE

I certify that today I filed the foregoing document with ECMF who will serve all attorneys of record.

Respectfully submitted:

s/Caridad Pastor Dated: October 31, 2025

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