IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Bernardino Benitez-Cornejo, Petitioner, v. John E. Cantu, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement; Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, U.S. Attorney General; Fred Figueroa, Warden of Eloy Detention Center; Todd Lyons, Acting Director, Immigration and Customs Enforcement and Removal Operations. Respondents.	Case No. **PETITION FOR HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Since at least the passage of the Immigration and Nationality Act of 1952 (INA), noncitizens who entered the country illegally could generally be released on bond while their removal proceedings were pending. Yet earlier this year, U.S. Immigration and Customs Enforcement (ICE) "revisited" its position and determined that all noncitizens who are present without admission are subject to mandatory detention while in removal proceedings. Moreover, earlier this month, the Board of Immigration Appeals (BIA) adopted ICE's position in a published decision—*Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—that likewise held that all noncitizens who entered the country without admission are categorically ineligible for bond regardless of how long they have lived in the United States.

2. Dozens of federal judges have already found the government's novel interpretation incompatible with the INA. *See infra* nn. 3 & 4. The provision the government relies on states that noncitizens who are "seeking admission" are subject to mandatory detention while in removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined "admission" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, by its plain terms, the provision only applies to noncitizens who present themselves at a port of entry. In addition to disregarding the plain text of § 1225(b)(2)(A), the government's contrary interpretation renders superfluous other provisions of the INA that require the mandatory detention of noncitizens who have engaged in criminal activity—including a provision enacted just this year as part of the Laken Riley Act (LRA).

3. The government's argument also flouts the Justice Department's own regulations. Since 1997, the Justice Department has precluded immigration judges from granting bond to so-called "arriving aliens"—*i.e.*, those who seek admission at a port of entry—but not to those who crossed the border surreptitiously. This distinction was the result of a deliberate choice made by the Attorney General following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. And under bedrock principles of administrative law, agencies cannot "overrule" by adjudication regulations that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980).

4. Because the government is detaining Petitioner in violation of the INA and the Justice Department's own regulations, the Court should itself conduct a bond hearing or order an immigration judge to conduct a bond hearing within 15 days.

JURISDICTION AND VENUE

5. This action arises under the Fifth Amendment to the U.S. Constitution, 8 U.S.C. § 1225(b)(2)(A), and 8 C.F.R. 1003.19(h). This Court has jurisdiction under 28 U.S.C. § 2241; art. I, § 9, cl. 2 of the U.S. Constitution; 28 U.S.C. § 2201; 28 U.S.C. § 1331; and 5 U.S.C. § 702, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties. This Court may grant relief under 28 U.S.C. § 2241 and 28 U.S.C. § 1651.

6. Venue is proper before this Court because a substantial part of the facts giving rise to the claim occurred in the District of Arizona. 28 U.S.C. § 1391(e). Petitioner is detained in Eloy, Arizona, and his request for bond was denied by an Immigration Judge there.

PARTIES

7. Petitioner Bernardino Benitez-Cornejo is in removal proceedings. He has been detained by Respondents in Arizona since June 30, 2025. He is presently detained at the Eloy Detention Center in Eloy, Arizona.

8. Respondent Fred Figueroa is the Warden of the Eloy Detention Center in Eloy, Arizona. He is sued in his official capacity.

9. Respondent John E. Cantu is the Field Office Director of the Phoenix Field Office of Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement, and the federal agent charged with overseeing all ICE detention centers in Arizona. Petitioner is detained under Mr. Cantu's authority. He is sued in his official capacity.

10. Respondent Todd Lyons is the Acting Director of ICE. He is sued in his official capacity.

11. Respondent Kristi Noem is the Secretary of Homeland Security (DHS), which encompasses ICE. She is sued in her official capacity.

12. Respondent Pamela Jo Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which encompasses the Executive Office for Immigration Review including the Immigration Court which adjudicated Petitioner's underlying immigration proceedings. She and her designees are authorized by statute to release noncitizens on bond pursuant to 8 U.S.C. § 1226(a). She is sued in her official capacity.

LEGAL FRAMEWORK

A. Discretionary Versus Mandatory Detention in Removal Proceedings

13. Noncitizens detained by DHS while in removal proceedings generally can request a bond—or "custody redetermination"—hearing before an immigration judge. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). If the noncitizen does not present a danger to others, a threat to the national security, or a flight risk, the immigration judge may order that individual released on conditional parole or upon the posting of a monetary bond of no less than $1,500. 8 U.S.C. § 1226(a)(2)(A)-(B); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

14. Certain categories of noncitizens are subject to mandatory detention while in removal proceedings. Under a provision in IIRIRA, if "an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. 1229a]." 8 U.S.C. § 1225(b)(2)(A). In the same bill, Congress defined "admission" and "admitted" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). In other words, the terms "admission" and "admitted" "refer to inspection and authorization by an immigration officer at the port of entry." *Hing Sum v. Holder*, 602 F.3d 1092, 1101 (9th Cir. 2010). Thus, as the Supreme Court has explained, 8 U.S.C. § 1225(b)(2)A) only applies to noncitizens who are "seeking admission into

the country," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)—*i.e.*, those who are "arriving in the United States." *Clark v. Martinez*, 543 U.S. 371 (2005).

15. Consistent with the text of 8 U.S.C. § 1225(b)(2)(A), federal regulations preclude immigration judges from granting bond to "arriving aliens," 8 C.F.R. § 1003.19(h)(1)(B)(ii), a phrase defined in relevant part as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q). The decision to preclude immigration judges from granting bond to arriving aliens, as distinct from all noncitizens who entered without admission, was the product of notice and comment rulemaking in early 1997 following the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (IIRIRA). As the regulations were initially proposed, all "[i]nadmissible aliens in removal proceedings" would have been ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted the proposed provision and replaced it with one that would apply only to "[a]rriving aliens."[1] *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361 (March 6, 1997). As the Attorney General explained, "[t]he effect of this change [was] that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not." *Id.* at 10323. In other words, "aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." *Id.*

[1] This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred to 8 C.F.R. § 1003.19(h)(2)(i)(B).

16. The IIRIRA also made subject to mandatory detention those noncitizens who have been convicted of certain crimes or engaged in terrorist activity. For example, the IIRIRA made noncitizens who are inadmissible by reason of having committed certain criminal offenses subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(A), and those inadmissible for having engaged in terrorist activity subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(D). More recently, under the LRA, Congress mandated detention for noncitizens who entered without admission and were subsequently charged with, arrested for, convicted of, or admitted to certain offenses. 8 U.S.C. § 1226(c)(1)(E). These provisions under 8 U.S.C. § 1226(c) would be superfluous if all noncitizens who were present without admission were already subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

B. The Government's Novel and Widely Rejected Theory That All Noncitizens Who Entered Without Admission Are Subject to Mandatory Detention

17. On Friday, July 4, 2025, President Trump signed the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72. Among other things, the bill appropriated $45 billion to ICE to detain noncitizens through fiscal year 2029. § 90003, 139 Stat. 358.

18. On Tuesday, July 8, 2025, Acting ICE Director Todd Lyons issued a memorandum stating that DHS and the Department of Justice had "revisited" the government's legal position regarding the statutory basis for detaining noncitizens who were present in the country without being admitted.[2] According to Lyons, the government now believed that noncitizens present without admission are subject to mandatory detention under 8 U.S.C. § 1225(b), rather than discretionary detention under 8 U.S.C. § 1226(a), because, under 8 U.S.C. § 1225(a)(1), they are

[2] ICE never released the memo publicly, but it can be viewed on the website of the American Immigration Lawyers Association at https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. .

deemed "applicant[s] for admission." The memo further stated that this change in legal interpretation might "warrant re-detention of a previously released alien in a given case."

19. On September 5, 2025, the BIA issued a precedential decision adopting ICE's novel argument that all noncitizens who are present without admission are subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA acknowledged that 8 U.S.C. § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," but, like ICE, concluded that the provision applied to all noncitizens who are present without admission as they are also "applicant[s] for admission" under 8 U.S.C. § 1225(a)(1). 29 I&N Dec. at 218. The BIA acknowledged that its interpretation rendered superfluous multiple provisions of 8 U.S.C. § 1226(c), including one recently enacted in the Laken Riley Act, but it stated that "redundancies are common in statutory drafting." 29 I&N Dec. at 221-22 (quoting *Barton v. Barr*, 590 U.S. 222 (2020)).

20. To date, dozens of federal district judges have either outright rejected the government's novel interpretation,[3] or found that noncitizens challenging the government's

[3] *Belsai D.S. v. Bondi*, No. 25-3682 (D. Mn. Oct. 1, 2025) (Menendez, J.) (granting habeas petition); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tx. Oct. 1, 2025) (Cardone, J.) (granting habeas petition); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tx. Sept 26, 2025) (Hittner, J.) (granting habeas petition); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. Sept. 24, 2025) (Johnson, J.) (granting habeas petition); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.) (granting habeas petition); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.) (granting habeas petition); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.) (granting habeas petition); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.) (granting habeas petition); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.) (granting habeas petition); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.) (granting habeas petition); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.) (granting habeas petition); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.) (granting habeas petition); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.) (granting habeas petition); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5,

interpretation were substantially likely to prevail on the merits.[4] These judges have not been unsparing in their criticism of the government's newfound position. One called it a "nonstarter." *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at *10 (D. Mass. Sept. 5, 2025). Another called it "willfully blind." *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at *25 (D. Md. Aug. 24, 2025). Another called it "a policy argument, projected onto Congress." *Romero v. Hyde*,

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2025) (Talwani, J.) (granting habeas petition); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.) (granting habeas petition); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.) (granting habeas petition); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.) (granting habeas petition); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.) (granting habeas petition); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.) (granting habeas petition); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.) (granting habeas petition); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.) (granting habeas petition); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.) (granting habeas petition); *Diaz Martinez v. Hyde*, No. 25-11613, __ F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.) (granting habeas petition); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.) (granting habeas petition).

[4] *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Ca Sept. 23, 2025) (Sherriff, J.) (granting preliminary injunction); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.) (granting preliminary injunction); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.) (granting preliminary injunction); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.) (granting temporary restraining order); *Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.) (granting preliminary injunction); *Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw. J.) (granting temporary restraining order); *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.) (granting preliminary injunction); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.) (granting temporary restraining order and preliminary injunction); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.) (granting temporary restraining order); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.) (granting preliminary injunction); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.) (granting temporary restraining order); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.) (granting temporary restraining order); *Maldonado Bautista v. Santacruz*, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025) (granting temporary restraining order); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.) (granting preliminary injunction).

No. 25-11631, __ F. Supp. 3d __, 2025 WL 2403827 at *28 (D. Mass. Aug. 19, 2025). And another noted that the government "could not identify any federal court that has adopted their novel reading of § 1225(b)(2)(A)." *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 at *20 (E.D. Mich Sept. 9, 2025).

21. It is not difficult to understand why federal district courts have rejected the government's novel interpretation. By its terms, 8 U.S.C. § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," and Congress defined "admission" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Accordingly, "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (citing 8 U.S.C. 1101(a)(13)(A)). As importantly, if "the [BIA was] correct that § 1225(b)'s mandatory detention provisions apply to all persons who have not been admitted into the United States, that would render superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E)." *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 268225 at *22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). The BIA's interpretation would also "render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Aceros v. Kaiser*, 2025 WL 2637503 at *28 (N.D. Cal. Sept. 12, 2025).

22. The plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. Section 1226(a) permits the release of noncitizens who are detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens—

including certain categories of noncitizens who are inadmissible under 8 U.S.C. § 1182(a)—and subjects them instead to mandatory detention. *See, e.g.,* § 1226(c)(1)(A), (C). If § 1226(a) could never apply to inadmissible noncitizens, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, § 1226(c) would only have needed to address people who are deportable for certain offenses under 8 U.S.C. § 1227(a).

23. Recent amendments to § 1226 dramatically reinforce that this section covers people like Petitioner, whom DHS alleges to be present without admission. Specifically, the LRA added language to § 1226 that directly references those who are inadmissible under § 1182(a)(6) because they are present without admission or under § 1182(a)(7) because of the lack of valid documentation. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c) and carving them out of § 1226(a) if they have been arrested, charged with, or convicted of certain crimes, Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). *See Rodriguez Vazquez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025) (explaining these amendments explicitly provide that § 1226(a) covers people like Petitioner because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde,* 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400

(2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

24. Unlike 8 U.S.C. § 1226, 8 U.S.C. § 1225(b) requires the detention of certain individuals who are arriving at U.S. ports of entry or who recently entered the United States. As relevant here, 8 U.S.C. § 1225(b)(2)(A) applies only to individuals who are "seeking admission" to the United States.[5] *See Vasquez-Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS' contention that an individual who entered the United States without inspection "is automatically understood to be 'seeking admission' within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or parole"); *Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits of argument that "[t]o ignore the 'seeking admission' language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render the language purposeless and violate a key rule of statutory construction"); *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are presently "coming or attempting to come into the United States").

25. 8 U.S.C. § 1225 further defines its scope by reference to "inspections"—a term not defined in the INA, but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); §§ 1225(b)(1)–(2) (referring to "inspections" in their titles); § 1225(b)(2)(A), (b)(4) (referring to "examining immigration officers'); § 1225(d)(1)

[5] 8 U.S.C. § 1225(b)(1) concerns "expedited removal of inadmissible arriving [noncitizens]," including those who present themselves for inspection upon "arriving" and other individuals designated by the Attorney General who have been present in the United States for less than two years, and who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). Subsection (b)(1) does not require Petitioner's detention because he did not present himself for inspection, and he has been in the United States for well over two years.

(authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"); *see also Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Many statutory provisions, various regulations, and agency precedent also discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

26. The statutory and regulatory text's use of the present and present progressive tenses further excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. *See* 8 U.S.C. § 1225(b)(2)(C) (addressing the "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e. those who are "*arriving* on land") (emphasis added). As the Supreme Court recognized, this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible," and § 1225 is concerned "primarily [with those] seeking entry." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

27. The Board in *Matter of Yajure Hurtado* ignored the "seeking admission" requirement and instead focused solely on whether an individual who enters the United States without inspection is an "applicant for admission," as § 1225(b)(2)(A) also requires. But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words 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) (internal quotation marks omitted).

In context, the differential phrasing of "applicant for admission" and "seeking admission" in the same statutory subsection is significant, because "applicant for admission" is a term of art that has been analyzed as such by both the Supreme Court and the Ninth Circuit Court of Appeals. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020); *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018); *see also Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States."). By contrast, an individual who has not presented at a port of entry and has not filed any affirmative application for immigration benefits is not "seeking" anything under the plain meaning of the word. *See* Merriam Webster's Dictionary (2025) (defining "seek" as, inter alia, "to go in search of" or "to try to acquire or gain").

28. Petitioner prevails regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission." This is because classification as an "applicant for admission" is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Petitioner.

29. Moreover, the Justice Department's own regulations only preclude immigration judges from granting bond to "[a]rriving aliens," 8 C.F.R. § 1003.19(h)(1)(B)(ii), as distinct from noncitizens who previously entered the country and are merely present without admission. When the Justice Department created these regulations following notice and comment, it specifically stated that "'aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'" *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. April 24, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)). And, "an administrative agency may not slip by the notice and comment rule-making requirements needed to amend a rule by merely adopting a *de facto*

amendment to its regulation through adjudication." *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003) (Silberman, J.) (citing cases). *See also Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980) (rejecting BIA decision that imposed additional requirement that the INS declined to impose during notice and comment rulemaking).

C. The Legislative History Further Supports the Application of § 1226(a) to Petitioner

30. The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports the conclusion that § 1226(a) applies to Petitioner. In passing IIRIRA, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important because prior to IIRIRA, people like Petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest and release noncitizens physically present in the United States pending a determination of deportability). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in [INA] section 242(a)(1) 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 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

31. The agency's interpretation of IIRIRA soon after its enactment is consistent with this history. As noted in a recent decision from this judicial district, "a 1997 interim rule issued 'to implement the provisions of [IIRIRA],' which had passed six months earlier . . . explained that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'" *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

32. The most recent amendment to the INA's detention provisions – the LRA – further underscores Congress's understanding – now as in the 1990s – that individuals who enter the United States without inspection are not automatically subject to detention under 8 U.S.C. § 1225. As previously explained, the LRA amendments clearly prohibit bond under 8 U.S.C. § 1226 for individuals who entered the United States without inspection *and* were subsequently charged with, arrested for, or convicted of certain listed offenses. To hold that *all* individuals who entered without inspection are prohibited from obtaining bond under 8 U.S.C. § 1226 would therefore run afoul of the canon against superfluities. Under this "most basic [of] interpretive canons, . . . '[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (similar).

33. The BIA acknowledged that reading 8 U.S.C. § 1225(b)(2)(A) to apply to individuals who entered without inspection would create a redundancy in the statute by subjecting such individuals to mandatory detention under two separate provisions. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 222. The BIA dismissed such redundancy as permissible and posited that the

LRA did not purport to "overrule" 8 U.S.C. § 1225(b)(2)(A). *Id.* at 219, 222. But once again, in reaching this conclusion, the BIA did not address the requirement of 8 U.S.C. § 1225(b)(2)(A) that an individual must be "seeking admission" to be subject to § 1225(b)(2)(A). To give substance to the phrase "seeking admission" would both ensure fidelity to the plain language of the statute and eliminate concerns about redundancies between § 1226(c) and § 1225(b)(2)(A): individuals who entered without inspection and have been present in the United States for more than two years would not be subject to detention, *unless* they were subject to one of the mandatory detention provisions of the LRA.

D. The Board's Decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, Is Not Entitled to Deference Because It Contravenes the Statutory Language and Legislative History, and It Deviates from Longstanding Agency Practice

34. In *Loper Bright Enterprises v. Ramiundo*, 603 U.S. 369 (2024), the Supreme Court overruled *Chevron v. NRDC*, 467 U.S. 837 (1984), and held that the APA requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority. Where a statute is ambiguous, courts may now apply the framework set forth in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), rather than the deferential *Chevron* framework. *See Loper Bright*, 603 U.S. at 394. Under *Skidmore*, the question is whether the agency's reasoning–although not binding–has the "power to persuade" based on "the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements." 323 U.S. at 140. In other words, *Skidmore* deference is discretionary, and courts retain the authority to adopt or reject the agency's view based on its merits.

35. The BIA's decision in *Matter of Yajure Hurtado* does not satisfy the requirements for deference under *Loper Bright* or *Skidmore*. First, the BIA's decision lacks the "thoroughness" and "validity" required for deference. 323 U.S. at 140. The BIA analyzed the history of the

statutory phrase "applicants for admission" in some detail, despite Mr. Yajure's concession on this issue, but it did not meaningfully analyze the plain language, statutory context, or legislative history of the distinct phrase "seeking admission," which is also required for 8 U.S.C. § 1225(b)(2)(A) to apply. "Applicant for admission" – not "seeking admission" – is the statutory phrase construed by the Supreme Court as expansive in *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018), and *DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020).

36. Nor is the BIA entitled to deference in its superficial treatment of the conflict between its unprecedented reading of 8 U.S.C. § 1225(b)(2)(A) and the recent amendments in the LRA. The Board did not meaningfully contend with the redundancy it identified between its expansive interpretation of 8 U.S.C. § 1225(b)(2)(A) and the clear statutory language applying the LRA amendments to individuals who entered the United States without inspection.

37. As the Board itself acknowledged, its decision in *Matter of Yajure Hurtado* was fundamentally inconsistent with its own earlier pronouncements, such as *Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025), and with decades of agency practice in untold numbers of cases. *See* 29 I. & N. Dec. at 225-26 & n.6. The Board's initial protestation that the issue was not raised in these prior cases, 29 I. & N. Dec. at 225 n.6, stands in sharp contrast to its own contention that the agency may never exceed the "authority that is delegated to the Immigration Judge by the INA and the Attorney General through regulation." *Id.* at 217. Surely, if the putatively jurisdiction-stripping statutory language were so crystal clear as to be unambiguous, then the BIA would have detected and addressed such a fundamental jurisdictional roadblock, rather than simply adjudicating countless cases outside the scope of its authority over the course of nearly 30 years. In sum, the Board's decision in *Matter of Yajure Hurtado* lacks merit, represents a stark deviation from the agency's own prior practice, and is not worthy of deference under *Loper Bright*.

38. DHS's long practice of considering people like the Petitioner as detained under §1226(a) further counsels against deference. As happened here, DHS issued a Form I-286, Notice of Custody Determination, stating that Petitioner had been detained under § 1226(a). For decades, and across administrations, DHS has thereby acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within the United States long after their entry. *See also* 62 Fed. Reg. at 10323.3 (explaining that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination"). Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

39. In sum, § 1226 governs this case. The mandatory detention provision of § 1225 applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who previously entered without admission.

STATEMENT OF FACTS

40. Petitioner is a 64-year-old who has been placed in removal proceedings. He last entered the country without inspection around the year 2000.[6] Petitioner has three U.S. citizen stepchildren and six U.S. citizen grandchildren.

[6] Petitioner previously attempted to enter the United States on March 19, 2000; March 23, 2000; July 19, 2000; and July 24, 2000. During these attempted entries he encountered border patrol and was granted voluntary departure on those same dates. Exh. A, Form I-213.

41. On June 30, 2025, Petitioner went to a Home Depot to purchase materials for his job. He then went to order food from a Mexican and Guatemalan street vendor. He was standing approximately ten feet from the vendor when he was approached and seized by DHS officers (though the officers did not initially identify themselves as immigration officers). DHS officers pushed him against their van, zip-tied his hands, and told him not to flee. Only after he was restrained did DHS officers ask whether Petitioner had legal status, to which he replied he did not. DHS officers then searched Petitioner and confiscated his wallet without his consent.

42. Petitioner believes his detention was based solely on his Hispanic appearance. Petitioner has remained in DHS custody since his initial detention.

43. On July 3, 2025, DHS issued a notice of custody determination concluding that Petitioner was subject to detention under 8 U.S.C. § 1226. Exh. B, Custody Determination Form. There is no reference whatsoever to § 1225 in that document.

44. On that same form, Petitioner requested a review of the custody determination by the immigration judge. *Id.*

45. On July 17, 2025, the immigration judge denied the request for a custody redetermination. Exh. C, Immigration Judge Bond Redetermination Decision. The immigration judge concluded that she lacked jurisdiction to consider Petitioner's bond request based on the BIA's decision in *Matter of Q.Li*, 29 I&N Dec. 66 (BIA 2025). Specifically, she found that, based on that decision, Petitioner was considered an applicant for admission who had arrived in the United States under 8 U.S.C. § 1225 and was thus subject to mandatory detention. In the alternative, the immigration judge found that, if she did have jurisdiction, she would have granted Petitioner a $5000 bond. Though noting Petitioner's multiple attempted entries into the country, she found that the equities weighed in Petitioner's favor as he had three U.S. citizen stepchildren

and six U.S. citizen grandchildren. She also observed that Petitioner told the court he intended to apply for asylum and related relief and wanted to seek a "path to future lawful status."

46. On July 18, 2025, Petitioner filed a notice of appeal of the immigration judge's decision with the BIA.

47. On July 22, 2025, DHS issued Petitioner a Notice to Appear before an immigration judge. The Notice charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as being present in the country without being admitted or paroled and under 8 U.S.C. § 1182(a)(7)(A)(i), as not having a valid U.S. status document.

48. On August 4, 2025, Petitioner moved the immigration court to suppress the evidence against him. Specifically, Petitioner argued that suppression was warranted under 8 C.F.R. 287.8(b)(2) because the detention was not based on reasonable suspicion and because it was an egregious violation of the Fourth Amendment. DHS opposed that motion on August 11, 2025.

CLAIMS

FIRST CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act

49. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

50. By its terms, 8 U.S.C. § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission." The term "admission" is defined to require a "lawful entry" following "inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Accordingly, 8 U.S.C. 1225(b)(2)(A) does not apply to noncitizens like Petitioner who evade inspection and are apprehended outside a port of entry. Such noncitizens are instead detained under 8 U.S.C. § 1226

while in removal proceedings and are thus eligible for release on bond under 8 U.S.C. § 1226(a) unless they are subject to mandatory detention under 8 U.S.C. § 1226(c).

51. The application of 8 U.S.C. § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention without a bond hearing in violation of the INA.

SECOND CLAIM FOR RELIEF

Violation of Federal Regulations

52. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

53. Under 8 C.F.R. § 1236.1(d)(1), immigration judges may grant bond to any noncitizen in removal proceeding under section 240 of the Act who is not subject to a final order or to any of the exceptions in 8 C.F.R. § 1003.19. None of the exceptions in 8 C.F.R. § 1003.19 preclude immigration judges from granting bond to noncitizens simply for being present without admission. As relevant here, the regulations only preclude immigration judges from granting bond to noncitizens who qualify as "arriving aliens," 8 C.F.R. § 1003.19(h)(1)(B)(ii), *i.e.*, those who presented themselves for inspection at a port of entry. When these regulations were initially promulgated, the Justice Department explained that "inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge." 62 Fed. Reg. 10312, 10323 (March 6, 1997). The Justice Department thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

54. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado* that all noncitizens who are present without admission are ineligible to receive a bond from immigration judges. Application of this decision to Petitioner unlawfully mandates his continued detention without a bond hearing in violation of 8 C.F.R. §§ 1236.1 and 1003.19.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1.) Assume jurisdiction over this matter;

2.) Set this matter for expedited consideration;

3.) Declare that no statute or regulation prohibits an immigration judge from holding a custody redetermination hearing for Petitioner, and that Petitioner is properly detained, if at all, under 8 U.S.C. 1226(a);

4.) Issue a Writ of Habeas Corpus and conduct a bond hearing within 15 days, or order Petitioner's release within 15 days unless Respondents provide him with a bond hearing before an immigration judge;

5.) Award Petitioner his costs of suit and reasonable attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504, 28 U.S.C. 2412; and

6.) Grant such further relief as the Court deems just and proper.

Dated: October 3, 2025

Respectfully submitted,

s/Jesse Evans-Schroeder
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