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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

Jose Enrique ARCE-CERVERA,

Petitioner-Plaintiff,

v.

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security;

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Jason KNIGHT, Salt Lake City Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; and

John MATTOS, Warden, Nevada Southern Detention Center.

Respondents-Defendants.

Case No.: 2:25-cv-01895-RFB-NJK

Agency No. A [redacted]

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

Petitioner, through undersigned counsel, respectfully submits this Reply to the Federal Respondents' Response to the Petition for Writ of Habeas Corpus.

For the reasons set forth below, Respondents' position is contrary to the statutory text, legislative history, decades of agency practice, constitutional due-process principles, and this Court's own binding analysis in its October 28, 2025, TRO Order.

Petitioner therefore respectfully requests that the Court grant habeas relief.

I. INTRODUCTION

Respondents' Response rests entirely on a categorical—and incorrect—interpretation of 8 U.S.C. § 1225(b)(2) that has been overwhelmingly rejected by this Court and courts nationwide. This Court has previously found DHS's *Hurtado*-based interpretation "contrary to the plain meaning of the statutory text, legislative history, and longstanding agency practice," raising "serious constitutional concerns" under the Due Process Clause. *Maldonado-Vazquez*, 2025 WL 2676082, at *12–23.

Respondents' brief offers nothing new. Instead, it recycles the same arguments already rejected repeatedly in this District and across the country—arguments that have failed under every canon of statutory interpretation. Most critically, Respondents do not meaningfully address the controlling fact here: the Notice to Appear served on Petitioner expressly classifies him as an alien "present in the United States" and not as an arriving alien, placing him squarely under § 1226(a) and not § 1225(b)(2).

II. ARGUMENT

a. Petitioner Was Not Lawfully Detained Under 8 U.S.C. § 1225

Respondents argue that Petitioner was lawfully detained under 8 U.S.C. § 1225(b)(2)(A) because he entered without inspection and is therefore an "applicant for admission." This

argument fails because it disregards the statutory structure, the plain meaning of the relevant provisions, decades of agency practice, and this Court's binding analysis in its October 28, 2025, TRO. The text of § 1225(b)(2)(A) provides for mandatory detention only for "aliens seeking admission" who present themselves for inspection or are treated as arriving aliens under the expedited removal system. Nothing in the statute extends this provision to a person apprehended inside the United States after having resided here for seventeen years, attending school here, working here, forming family ties here, and more importantly receiving an NTA that charges him as an alien "present in the United States," not as an arriving alien.

The Notice to Appear issued in this case confirms that Petitioner falls under § 1226(a), not § 1225. The NTA specifically charges him under § 1182(a)(6)(A)(i), lists his date and place of entry as "unknown," and describes him as having been "present in the United States without admission or parole." It does not classify him as an arriving alien, nor does it invoke any provision of expedited removal. Under the statutory framework, an NTA alleging removability under § 1182(a)(6)(A)(i) for presence in the United States without admission places the individual squarely in § 240 full removal proceedings and therefore within the detention scheme of § 1226(a). This is the precise conclusion this Court reached in the TRO Order, where it found that Petitioner is not subject to § 1225(b)(2) because he is not "seeking admission," but is instead an interior resident in full removal proceedings. This Court found that the government's reliance on § 1225 contradicts the plain statutory text and creates absurd results, including the mandatory detention of millions of long-term residents.

The government's statutory argument also conflicts with long-established agency practice. As this Court found in *Maldonado-Vazquez*, and reaffirmed in its TRO, DHS and INS consistently and uniformly applied § 1226(a) to interior arrests for nearly three decades after

IIRIRA's enactment in 1996. Only in 2025, after the BIA's decision in *Matter of Yajure Hurtado*, did DHS abruptly attempt to reclassify all noncitizens charged under § 1182(a)(6)(A)(i) as mandatory detainees under § 1225(b)(2). This sudden policy shift lacks any foundation in the statutory text and contradicts every reasonable canon of interpretation. The government cannot retroactively apply an unsupported and unprecedented interpretation to Petitioner, especially in light of this Court's binding determination that § 1226(a) governs his detention.

b. The Government's Reliance on *Vargas Lopez v. Trump* Is Misplaced and Does Not Support Detention Under § 1225

The government's reliance on *Vargas Lopez v. Trump*, 2025 U.S. Dist. LEXIS 192557, to support mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is misplaced for several reasons that render the decision neither persuasive nor applicable here.

First, Lopez turned almost entirely on the petitioner's failure to provide a coherent or complete evidentiary record. *Lopez* emphasized the absence of essential documentary evidence, including the alleged § 1226(a) arrest warrant, which the court described as a "failure of proof" fatal to the claim. The court specifically noted that "no warrant of any kind" for the petitioner's arrest under § 1226(a) was in the record, and that this "failure of proof" was fatal to the claim that he had been detained under § 1226(a) at all. Lopez, at 2–4, 16–17. The court expressly denied relief on this procedural ground, concluding that the petitioner "fails to meet his burden" before even reaching the statutory question. Id., at 9, 15–17. Because *Lopez* rested on evidentiary defects unique to that case, rather than on any substantive legal determination about the scope of § 1225(b), it provides no guidance where, as here, the petitioner presents a complete record, a properly issued NTA, consistent facts, and full documentation of DHS's initial reliance on § 1226(a).

Second, the court framed its statutory discussion as reasoning offered only after finding the petition failed for lack of proof; the statutory analysis was not necessary to the outcome and therefore carries limited persuasive value. The opinion states that the petition "fails regardless" of the arguments about § 1225 and § 1226, making its subsequent statutory analysis dicta rather than a binding or persuasive rule. *Id.*, at 15. The court proceeded to accept DHS's "overlap" theory—that a person may simultaneously fall under both § 1225(b)(2) and § 1226(a)—but did so only after finding that the petitioner had not shown he met the threshold requirement for § 1226(a) detention: arrest on a warrant issued by the Attorney General. That procedural deficiency is absent here, and the reasoning in *Lopez* offers no basis to reclassify an interior arrest years after entry as a § 1225(b)(2) detention.

Third, *Lopez* incorporates DHS's reading of *Jennings*, but its reading distorts the Supreme Court's narrow holding. *Jennings* addressed only whether courts could impose bond hearings into § 1225(b); it did not expand § 1225(b)(2) to govern long-term interior residents charged under § 1182(a)(6)(A)(i). The *Lopez* court acknowledges that § 1225(b) applies "primarily" to arriving aliens, quoting *Jennings*, but nevertheless stretches the statute beyond its text by treating long-term residents encountered in the interior as "seeking admission"—a position rejected by numerous district courts across the country in 2025. Lopez, at 19.

Fourth, the decision leans on the BIA's *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), which asserts that all noncitizens present without admission are subject to § 1225(b)(2), yet the *Lopez* court expressly acknowledges that Hurtado is not binding in a habeas action. Lopez, at 21. Federal courts nationwide—including in the cases cited in the petition—have rejected Hurtado's interpretation as contrary to the statutory structure, legislative history, and fundamental distinctions between "arriving aliens" under § 1225 and interior residents under § 1226(a). By

contrast, in this case the NTA itself charges Petitioner as an interior resident under § 1182(a)(6)(A)(i), lists his date and place of entry as "unknown," and initiates full removal proceedings under § 1229a, placing him squarely within § 1226(a)'s detention framework.

Fifth, the factual posture of Lopez is completely unlike this case. The court there expressly noted that DHS orally asked the IJ to treat the petitioner as a § 1225(b)(2) detainee at the bond hearing, and the court accepted the government's assertion only because neither party identified any authority prohibiting DHS from changing its statutory basis mid-proceeding. Id., at 23 n.4.

Nothing in *Lopez* suggests that DHS may retroactively reclassify a long-term interior resident as an arriving alien where the agency previously proceeded under § 1226(a), and federal courts addressing this issue have rejected DHS's attempt to do so. Moreover, unlike in *Lopez,* the judge in this case has already concluded—based on the statutory text, the NTA, and DHS's own actions—that Petitioner is not "seeking admission" and that § 1225(b)(2) does not apply.

Finally, the outcome in Lopez was expressly tied to the petitioner's failure to supply essential documents, including the alleged § 1226(a) warrant, and the court stated that this evidentiary failure "prevent[ed]" the petitioner from establishing eligibility for release under § 1226(a). Id., at 2–4, 16–17. The court therefore denied habeas relief on procedural grounds before turning to its alternative statutory discussion. Because this case involves a complete record, consistent facts, and DHS's clear treatment of Petitioner as an interior resident, the reasoning in *Lopez* is neither applicable nor persuasive. It stands in sharp contrast to the overwhelming weight of recent federal district court authority concluding that § 1226(a)—not § 1225(b)(2)—governs the detention of long-term residents apprehended in the interior and placed in full removal proceedings.

Accordingly, Lopez provides no basis to deviate from the plain statutory text or from this

Court's prior determination that Petitioner is detained under § 1226(a).

c. The Government's Reliance on *Chavez v. Noem* Is Similarly Unavailing

Although Respondents point to *Chavez v. Noem*, 2025 U.S. Dist. LEXIS 192940, as further support for their position that Petitioner is subject to mandatory detention under § 1225(b)(2), that decision—like *Lopez*—is not persuasive or applicable to the facts and procedural posture here. The ruling in *Chavez* turned on an entirely different record, different procedural posture, and a legal theory that conflicts with both the statutory framework and the weight of authority applied by this Court. In *Chavez*, the petitioners sought a temporary restraining order, and the court denied relief on the ground that they failed to demonstrate either a likelihood of success on the merits or even the presence of "serious questions" regarding the application of § 1225(b)(2). Chavez, at 11–12. Importantly, because Chavez was decided at the TRO stage, the court did not engage in a full merits-level statutory analysis, nor was it presented with a comprehensive record demonstrating years of residence, deep ties to the United States, and an NTA that unequivocally charges the individual as an interior resident under § 1182(a)(6)(A)(i), rather than as an arriving alien. The analysis in *Chavez* rested almost exclusively on the literal text of § 1225(a)(1), stating that "[a]n alien present in the United States who has not been admitted…shall be deemed…an applicant for admission," and thus subject to § 1225(b)(2), without examining the statute's structure, context, or the purpose of that definitional clause. Id., at 11–12. The court expressly adopted the literal reading urged by DHS without engaging with the numerous statutory provisions—such as § 1229a's full removal-proceedings framework—that Congress designed for interior arrests, nor with Ninth Circuit precedent interpreting how § 1225(a)(1) operates within the broader statutory scheme. Moreover, *Chavez* relied heavily on the Ninth Circuit's discussion in *Torres v. Barr* about IIRIRA's "statutory fix" concerning immigrants at the border, but as the

court itself quoted, that fix was aimed at eliminating the pre-IIRIRA anomaly in which individuals seeking lawful entry faced harsher treatment than those who crossed unlawfully. Id., at 12 (*quoting Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). Nothing in *Chavez* addresses the temporal limits that *Torres* places on the term "applicant for admission," nor does it recognize that "seeking admission" is an active, present-tense concept in § 1225(b)(2), not one that applies to individuals who have lived in the United States for years and are apprehended in the interior.

In contrast to the present case, the petitioners in *Chavez* did not present a record showing decades-long residence, education, employment, and community ties, nor did the court analyze whether the government's theory would lead to the logically untenable result of subjecting millions of long-term residents to mandatory detention simply because they originally entered unlawfully—an outcome that courts across the country have rejected as contrary to the overall structure of the INA. Finally, *Chavez* reflects only the court's TRO-stage finding that the petitioners had not met their burden on an incomplete record; it does not conduct the searching statutory analysis required when a court confronts the full merits, nor does it bind this Court in any way. Indeed, the judge in this case has already examined the statutory context, the text of the NTA, and DHS's own classification of Petitioner, and has determined that § 1225(b)(2) does not govern his detention. Therefore, *Chavez* offers no basis to disturb that conclusion or to extend § 1225(b)(2) to interior residents like Petitioner for whom Congress provided the § 1226(a) bond-eligible framework.

d. The Legislative History Does Not Support the Government's Interpretation

Respondents next contend that legislative history supports an expansive reading of § 1225(b)(2) that would subject Petitioner to mandatory detention. This characterization of the

legislative history is incorrect. The legislative history of IIRIRA reflects Congress's intention to streamline removal procedures and eliminate the formal distinction between "exclusion" and "deportation," not to redefine millions of people living for years in the United States as "applicants for admission."

When Congress enacted IIRIRA in 1996, it replaced "entry" doctrine with the concept of "admission" in order to better align statutory terminology with modern immigration procedures. The legislative materials emphasize that Congress sought to eliminate technical loopholes and clarify that individuals who entered without inspection should be placed in § 240 removal proceedings, not that they should be retroactively treated as arriving aliens for purposes of detention or bond eligibility.

Nothing in the legislative history suggests Congress intended § 1225(b)(2) to apply to individuals who have lived inside the United States for long periods and who are charged through NTAs, not expedited removal documents. Indeed, both congressional committee reports and contemporaneous agency guidance confirm that § 1226(a) governs individuals placed in § 240 proceedings after interior arrests. This historical practice, reaffirmed repeatedly over nearly thirty years, aligns with the statutory text and with the structure Congress enacted.

Thus, contrary to Respondents' assertion, legislative history refutes—not supports—the government's recently adopted interpretation. This Court's prior analysis in *Maldonado-Vazquez* correctly interprets that history, and nothing in Respondents' argument justifies a different conclusion here.

e. *Loper Bright* Undermines, Rather Than Supports, Respondents' Position

The government further contends that under *Loper Bright Enters v. Raimondo*, 603 U.S. 369 (2024), this Court must disregard DHS's decades-long practice of applying 8 U.S.C. § 1226(a) to

interior arrests and focus exclusively on the statutory text, arguing that agency practice is irrelevant after Loper Bright. That argument fundamentally misconstrues both the reasoning and the holding of *Loper Bright*. The Supreme Court did not hold that courts must ignore historical agency practice; rather, it held that courts may not defer to an agency's interpretation in place of independent judicial judgment. As the Court explained, the Administrative Procedure Act requires courts to "decide all relevant questions of law" and "interpret constitutional and statutory provisions" themselves, without yielding interpretive authority to the Executive Branch simply because a statute is ambiguous. *Loper Bright*, at 3–5 (HN2–HN4). But the Court simultaneously reaffirmed the longstanding principle that contemporaneous and consistent agency interpretations are an interpretive aid that courts may properly consider. Indeed, the Court emphasized that courts "may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes," especially when those interpretations are consistent over time. *Id.*, at 5–6 (HN5) ("Such interpretations constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance."). In other words, while agency practice no longer receives binding *Chevron* deference, it still holds interpretive weight—precisely the type of persuasive value that courts have always recognized under *Skidmore* and that *Loper Bright* expressly reaffirmed.

Moreover, the agency practice at issue here is not the sort of opportunistic, litigation-driven interpretation that *Loper Bright* rejects. Rather, it is the exact type of "contemporaneous" and "consistent over time" practice that the Supreme Court described as particularly useful to courts attempting to discern statutory meaning. For nearly thirty years—from IIRIRA's enactment in 1996 until the abrupt and unprecedented pivot following *Matter of Hurtado* in 2025—INS and DHS uniformly treated individuals charged under § 1182(a)(6)(A)(i) and apprehended in the

interior as detainees under § 1226(a). This was not an interpretive gap-filling exercise or a policy preference; it was the way the Executive Branch operationalized the statutory structure for three decades across tens of thousands of cases. Under *Loper Bright*, such a practice is not binding on the Court, but it is precisely the kind of longstanding administrative interpretation that possesses "power to persuade" because of its consistency, durability, and practical enforcement context. Id., at 8 (*citing Skidmore*). The government cannot selectively invoke *Loper Bright* to disregard past practice while simultaneously asking courts to give controlling weight to DHS's brand-new, post-*Hurtado* reclassification effort—a position *Loper Bright* explicitly rejects by warning against agency interpretations that are "inconsistent over time," which are entitled to no deference or persuasive weight. Id., at 9.

Additionally, *Loper Bright* reinforces that courts, not agencies, must determine the "best reading" of a statute—meaning a reading rooted in the statutory text, structure, context, and interpretive canons, not in an agency's current policy preferences. Id., at 10–11 (HN9–HN10). Applying this framework, the statutory text here—distinguishing between "arriving aliens" subject to § 1225(b)(2) and interior residents placed in full § 240 proceedings under § 1229a—unambiguously places Petitioner under § 1226(a). The NTA itself charges him as "present in the United States" with "unknown" date and place of entry, invoking § 1182(a)(6)(A)(i) and placing him into full removal proceedings. Nothing in the statute authorizes DHS to reclassify an interior resident as an "alien seeking admission" for detention purposes, and nothing in *Loper Bright* gives agencies license to redefine statutory terms contrary to congressional design. To the contrary, the decision makes clear that "agencies have no special competence in resolving statutory ambiguities," particularly when the ambiguity concerns the scope of the agency's own power. Id., at 10–11. Thus, the question before this Court is one of pure statutory interpretation,

and the best reading of the INA confirms that Petitioner falls under § 1226(a).

In short, *Loper Bright* strengthens, rather than weakens, Petitioner's argument. It eliminates any basis for DHS to rely on *Chevron*-type deference to justify its new interpretation of § 1225(b)(2) and instead requires this Court to independently interpret the statute using all relevant tools—including the persuasive authority of three decades of consistent agency practice pointing unmistakably to § 1226(a). The statute's text and structure, rather than DHS's abrupt post-Hurtado policy shift, control the analysis. Under *Loper Bright*, the only permissible outcome is the one the Court has already reached: Petitioner is detained under § 1226(a), not § 1225(b)(2).

f. Petitioner's Detention Violated Due Process and Cannot Be Justified as "Temporary"

Respondents next assert that Petitioner's detention was "temporary" and therefore does not violate due process. This assertion is contradicted by both the factual record and binding constitutional principles. The undisputed record shows that Petitioner was detained from June 27, 2025 until after the TRO was issued in late October 2025—four full months—without any individualized hearing and without a determination by an Immigration Judge regarding danger or flight risk.

The Immigration Judge refused jurisdiction under *Hurtado* and explicitly declined to consider evidence demonstrating Petitioner's long-standing ties, community support, employment history, and lack of danger. During this time, Petitioner's mental health deteriorated so severely that the Immigration Court was unable to proceed with his individual merits hearing. These facts were central to this Court's findings in the TRO Order, where the Court concluded that further detention would result in irreparable harm and that Petitioner's liberty interest outweighed DHS's asserted administrative burdens.

The Supreme Court has long made clear that civil immigration detention is permissible only to ensure appearance and protect the community, and only where it remains reasonably related to those purposes. In *Zadvydas v. Davis* and *Demore v. Kim*, the Court held that prolonged detention without meaningful procedural safeguards violates the Due Process Clause. Here, Petitioner's detention was prolonged, lacked procedural safeguards, and caused documented cognitive and emotional decline. Respondents' assertion that such detention was "temporary" is inaccurate and does not cure the constitutional violation.

g. This Court Retains Jurisdiction Despite Respondents' Reliance on 8 U.S.C. § 1252

Respondents argue that 8 U.S.C. § 1252 strips the Court of jurisdiction. This position has been rejected repeatedly, including by the Supreme Court and by this Court. Section 1252(b)(9) does not bar habeas review of detention claims. In *Jennings v. Rodriguez*, the Supreme Court held explicitly that § 1252(b)(9) and § 1252(a)(2) do not eliminate district-court jurisdiction over challenges to the statutory basis for detention or constitutional claims related to custody. The Ninth Circuit has consistently affirmed that habeas jurisdiction exists to review detention under § 1226 or § 1225 and that district courts may issue injunctive and declaratory relief in that context.

Petitioner is not challenging his removal order, nor is he seeking review of any discretionary decision entrusted to the immigration courts. Rather, he challenges the statutory and constitutional authority for his detention. Such claims fall squarely within habeas jurisdiction under 28 U.S.C. § 2241. This Court correctly asserted jurisdiction in the TRO Order, and Respondents identify no legal authority that undermines that conclusion.

h. Respondents' Argument Regarding Attorney's Fees Is Premature and Unsupported

Finally, Respondents argue that Petitioner is not entitled to attorney's fees. This argument is premature. Under the Equal Access to Justice Act, a party who prevails against the government is eligible for attorney's fees unless the government's position was substantially justified. Here, Petitioner obtained a TRO, a preliminary injunction, and subsequently a bond hearing only because this Court found that he was likely to succeed on the merits of his statutory and constitutional claims. The Court found Respondents' interpretation unlawful and issued extraordinary relief over Respondents' objections.

Petitioner's release was obtained solely through this litigation and the Court's intervention. Therefore, Petitioner is a prevailing party for EAJA purposes. Moreover, given the Court's findings that the government's legal interpretation contradicts the statute, legislative history, and decades of practice, Respondents cannot meet their burden to demonstrate substantial justification. Any request to deny fees at this stage is therefore premature and unsupported.

III. CONCLUSION

For all the reasons set forth above, Respondents' effort to reclassify Petitioner as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2) is contrary to the statutory text, incompatible with the structure of the INA, unsupported by the record, and inconsistent with controlling principles clarified in *Loper Bright*. The Notice to Appear, the nature of the arrest, and the governing removal framework all place Petitioner squarely within § 1226(a), where Congress provided for individualized bond determinations. Respondents' reliance on *Lopez*, *Chavez*, and *Hurtado* cannot override the statute Congress enacted or this Court's prior determination that Petitioner is not "seeking admission."

Because § 1226(a) governs Petitioner's detention as a matter of law, this Court should grant the Petition.

Executed this 21st day of November 2025.

/s/ Karen S. Monrreal
Karen S. Monrreal, Esq.