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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CESAR AUGUSTO LOPEZ LOPEZ, *Petitioner*, v. LUIS SOTO, Warden of Delaney Hall; TODD LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States. *Respondents*.	Docket No. 2:25-CV-16303

MEMORANDUM OF LAW IN RESPONSE TO RESPONDENTS' ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

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INTRODUCTION

Petitioner, Cesar Augusto Lopez Lopez, respectfully submits this reply to Respondents' ("Government") Answer to the Petition for Writ of Habeas Corpus ("Petition"). Petitioner has been unlawfully denied release on bond by the Government and now faces a final Cancellation of Removal hearing in immigration court on October 28, 2025 behind detention walls unless this Court grants habeas relief and orders his release. The Government contends that Petitioner is lawfully detained under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). But that contention is refuted by the plain text of the governing detention statutes, the overall structure of the Immigration and Nationality Act ("INA"), and Congress's intent in enacting the detention statutes. As set forth below, Petitioner is clearly detained under the discretionary detention authority pursuant to 8 U.S.C. 1226(a). He was already afforded a bond hearing and an Immigration Judge ("IJ") found that he satisfied his burden of demonstrating that he is not a danger to the community or risk of flight. Despite this, the Government arbitrarily applied an automatic stay on his release without any individualized review, and now continues to maintain that he is subject to mandatory detention under section 1225(b)(2). The vast majority of courts—including this Court and another one in this district—have already found that 8 U.S.C. 1226(a) governs the detention of noncitizens similarly situated to Petitioner.

This Court should again join the chorus of cases around the country finding that habeas relief is warranted. With respect to the type of relief, the Court should order Petitioner's immediate release from detention. The Government does not maintain that Petitioner is a danger to the community or a risk of flight. Another bond hearing would only serve to unnecessarily extend Petitioner's already unconstitutional detention.

ARGUMENTS

I. THE GOVERNMENT'S INTERPRETATION OF 8 U.S.C. § 1225(b)(2) AND 8 U.S.C. § 1226(a) IS BASELESS

The crux of this matter comes down to whether Petitioner is detained under section 1226(a) or 1225(b)(2). For nearly 30 years, DHS and the BIA considered noncitizens like Petitioner subject to detention under 1226(a), and therefore eligible for bond. But starting on July 8, 2025, DHS radically changed its position regarding the statutory interpretation of these two statutes and now considers all noncitizens—except those who were admitted to the United States—to be ineligible for bond. The BIA adopted that position in its September 5, 2025 decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). This has left millions of noncitizens who were previously eligible for bond now subject to mandatory detention. For the reasons set forth below, this Court should again grant habeas relief.

A. 8 U.S.C. § 1225(b)(2) Does Not Govern Petitioner's Detention

In examining the relevant provisions of sections 1225 and 1226, the Court should consider "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). But crucially, a statute "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)). Here, the context is clear that "detention authority in § 1225 is exercised at or near the port of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the United States." *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *19 (D.N.J. Sep. 26, 2025). Indeed, "[t]he line historically drawn between these two sections, making sense of their text and

the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.' *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 LX 284582, at *18 (D. Mass. July 24, 2025). In other words, the text and context of section 1225(b)(2) indicates that it applies to noncitizens entering, or attempting to enter, or who have recently entered the U.S. It does not include noncitizens "who entered long ago, are not taking affirmative steps that could be characterized as 'seeking admission,' and have been residing in the U.S. for years." *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at *39 (D. Nev. Sep. 17, 2025).

This is true for several reasons. First, "for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 LX 284582, at *6. There was no examination by an immigration officer. The Government concedes that Petitioner entered the United States without inspection. The recent issuance of the NTA is not an examination by an immigration officer, and the Government presents no legal authority in support of its position. *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *24 (D.N.J. Sep. 26, 2025) (noting that this argument "is an awkward fit and unpersuasive" and that the government fails to "provide textual or legal support that the issuance of a NTA eight or so years after petitioner's entry into the United States substitutes for an inspection by an examining immigration officer at or near the border. Nor do they explain how petitioner was 'seeking admission' at the time the NTA was issued -- she was unquestionably present in the interior and had been for years -- so that phrase is rendered superfluous and violates the rule against surplusage.").

Furthermore, the Government makes no distinction between an applicant for admission and "seeking admission." *Martinez*, 2025 LX 284582, at *11 (noting that the Government is "apparently treating it as mere surplusage of the 'applicant' requirement."). The phrase "seeking admission" is undefined but "necessarily implies some sort of present-tense action." *Martinez*, 2025 LX 284582, at *11. Here, there is no present action, and the NTA cannot conceivably be interpreted such. As another district court succinctly stated, "[t]o reiterate, § 1225(b)(2)(A) narrows the above broader definition of 'applicants for admission' and applies in the context of (1) 'inspection' by an 'examining immigration officer' only to (2) 'applicants for admission' as defined above, who are (3) 'seeking admission,' and (4) whom § 1225(b)(1) does not address." *Vazquez*, 2025 LX 460110, at *36. "It is inconsistent with the plain, ordinary meaning of the phrase 'seeking admission' to apply this section to all noncitizens already present and residing in the U.S., regardless of whether they are taking any affirmative acts that constitute 'seeking admission.'" *Id.*

Second, "the titles and headings of § 1225 repeatedly cabin its application to 'Inspections,' which, as petitioner convincingly argues, occur at ports of entry, their functional equivalent, or near the border." *Zumba*, 2025 LX 482036, at *23. While not binding, [titles and headings of a statute] are instructive and provide the Court with the necessary assurance that it is at least applying the right part of the statute in a given circumstance." *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at *15 (E.D. Mich. Aug. 29, 2025). Therefore, "1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country." *Id.* at *18.

B. 8 U.S.C. § 1226(a) Clearly Applies to Petitioner

As this Court recently found in a similar case, "as a matter of plain-text reading, it is § 1226(a) that applies to people situated like Petitioner, not § 1225(b)(2)(A)." Ex. A, October 10, 2025 Order. As set forth in greater detail in Petitioner's Petition (ECF No. 1) and Motion for a Preliminary Injunction (ECF No. 3), section 1226(a) concerns all noncitizens who are not subject to section 1225 and 1231 (which concerns those with final orders of removal). *See Benitez v. Francis,* 2025 LX 337407, *3 (S.D.N.Y. Aug. 8, 2025) (holding that § 1225 did not apply because the "plain text, overall structure, and uniform case law interpreting" the statutory provision compels the conclusion). "Indeed, for nearly 30 years, § 1225 has applied to noncitizens who are either seeking entry to the United States or have a close nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States." *Zumba*, 2025 LX 482036, at *26. Nothing in the Supreme Court's decision in *Jennings* compels a different outcome. *Id.* ("Although the *Jennings* Court characterizes § 1225(b)(2) as the 'catchall' detention provision for noncitizens who are 'seeking admission,' it identifies § 1226(a) as the 'default rule' for the arrest, detention, and release of non-criminal aliens who are already present in the United States.").

The Government argues that Congressional intent supports its position. It does not. The Government brief cites "[o]ne member of Congress'" statements, but this does not amount to Congressional intent. *See* ECF No. 5 at p. 17. The Government also cites *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), but as another court put it: "the congressional intent underlying the IIRIRA and the Court's decision in *Torres* does not bear on noncitizens' detention pending the outcome of removal proceedings—the question at issue here." *Marcelo v. Trump*, No. 3:25-cv-

00094-RGE-WPK, 2025 LX 466469, at *22 (S.D. Iowa Sep. 10, 2025). The court in *Marcelo* correctly recognized that:

> The correct distinction when assessing detention pending removal lies between those located in the United States and those located outside the United States. *Id.* This is because "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *see Romero*, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827, at *12. Federal Respondents' argument as to congressional intent would allow anyone located in the United States to be examined by an immigration officer and detained without bond as if at the border, eschewing due process rights. Congressional intent does not point to this reading of the statute, nor can the Constitution tolerate such a reading.
>
> *Id.*

II. APPLICATION OF THE AUTOMATIC STAY IN THIS CASE UNDER 8 C.F.R. § 1003.19 IS ULTRA VIRES

The Government contends that "DHS's invocation of the stay of release pending appeal in 8 C.F.R. § 1003.19(i)(2) not only is not contrary to law, but also ensures that DHS has an opportunity to vindicate Congress' mandatory detention scheme." ECF No. 5 at p. 26. The Government is wrong for two reasons. First, Petitioner is not subject to mandatory detention under section 1225(b)(2) for the reasons set forth above. Second, the arbitrary application of the automatic stay clearly exceeded the authority conferred by Congress. The Government does not contest that the Department of Homeland Security ("DHS") did not make *any* individualized determination as to whether to invoke the automatic stay provision as articulated in 8 C.F.R. § 1003.6(c)(1). As in *Leal-Hernandez*, "nothing in the record before the court suggests or hints that any review of Petitioner's case in accordance with DHS policy was undertaken prior to invocation of the automatic stay, and nothing in the court's record sets forth any written certification described at § 1003.6(c)(1), or any affidavit to that effect." *Leal-Hernandez v.*

Noem, No. 1:25-cv-02428, 2025 LX 327685, at *8 (D. Md. Aug. 24, 2025). DHS' application of automatic stays without individualized assessment is clearly an unlawful "blanket policy" that Petitioner "shall be treated as a mandatory detainee." *Id.*

Petitioner was afforded a bond hearing and demonstrated to the IJ's satisfaction that he was not a danger to the community or a risk of flight. Yet, as the court in *Mohammed H.* found, "[s]imply by fiat—without introducing any proof and without immediate judicial review—the Government effectively overruled the bond decision and kept Petitioner detained. In doing so, the automatic stay rendered Petitioner's continued detention arbitrary and gave him no chance to contest the Government's case for detention." *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 LX 172297, at *14-15 (D. Minn. June 17, 2025).

III. PETITIONER HAS CLEARLY ESTABLISHED THAT HIS CONTINUED DETENTION VIOLATES THE FIFTH AMENDMENT AND INA

The Government contends that Petitioner's detention does not violate due process because he is lawfully detained under section 1225(b)(2). In the process of doing so, the Government cites to cases that are irrelevant to the Court's determination in this case because Petitioner is instead subject to discretionary detention under section 1226(a) and should have been released on bond. The Government also focuses on the duration of Petitioner's detention, but Petitioner is not challenging the length of his detention under section 1225(b)(2). Instead, Petitioner is challenging the legality of his detention without release on bond. Therefore, the Government's citation to cases concerning the length of detention are irrelevant to the consideration of Petitioner's claims before this Court. The Government cannot contend that Petitioner has no Due Process claims under the Fifth Amendment if he is in fact detained under section 1226(a). Therefore, once this Court determines that the governing authority of detention is section 1226(a), it must necessarily find that Petitioner's continued detention under DHS'

Policy and its arbitrary application of the EOIR-43 automatic stay violates Petitioner's Fifth Amendment rights[1].

IV. THE PROPER REMEDY IS RELEASE OF PETITIONER FROM DETENTION

The Government claims that if section 1226(a) applies to Petitioner, "the appropriate remedy is a bond hearing conducted by an Immigration Judge, not immediate release." ECF No. 5 p. 19 n. 7. However, the Government ignores the fact that Petitioner was already afforded a bond hearing and demonstrated to the IJ's satisfaction that he is not a danger to the community or risk of flight. Ordering another bond hearing would be superfluous and only serve to unnecessarily extend Petitioner's already unconstitutional detention. A habeas court has "the power to order the conditional release of an individual unlawfully detained." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Several courts have granted release from detention as opposed to ordering a bond hearing, including the court in *Zumba* where the Petitioner did not even complete a bond hearing before an IJ before his detention. *See Zumba*, 2025 LX 482036 at *32 (holding that "habeas does not provide meaningful relief with respect to some of the indignities petitioner has endured . . . . But due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to her unlawful detention. The Court finds that release from detention is the appropriate relief . . . ."); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025) ("[g]iven that the government does not assert any other basis for petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release."). The Government has

[1] For a full discussion of Petitioner's due process rights under the Fifth Amendment, respectfully refers the Court to the Petition (ECF No. 1) and memorandum of law in support of the motion for a preliminary injunction (ECF No. 2).

already violated Petitioner's constitutional rights by continuing to detain him despite an IJ's finding that he should be released on bond. The Government does not contend (nor could they) that Petitioner is somehow a danger to the community or a risk of flight. Therefore, release is warranted.

CONCLUSION

For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from detention.

Respectfully submitted on 15 day of October 2025

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