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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Jorge BAUTISTA-AVALOS, Petitioner, v. Michael Bernacke, Field Office Director, ERO Salt Lake City, et al., Defendants.	Case No. 2:25-cv-01987-RFB-BNW **PETITIONER'S REPLY IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS (ECF NO. 1)**

I. INTRODUCTION

This habeas continues to present a narrow question: what detention authority governs a long-settled resident arrested in the interior and placed in § 1229a proceedings[1], and whether the Government can persist in a § 1225(b)(2) theory after an Immigration Judge ("IJ") found Petitioner neither dangerous nor a flight risk and this Court enjoined reliance on § 1225(b)(2).

Since the petition was filed, two developments reinforce, rather than moot, the need for final relief:

1) On October 27, 2025, this Court granted a preliminary injunction, ordered Petitioner's release by October 28, 2025, at 12:00 p.m., subject to the IJ's $3,500 bond and ATD conditions, and enjoined DHS from denying release on the ground that § 1225(b)(2) mandates detention. Petitioner is now out of custody pursuant to that order. ECF No. 9 (Order Granting PI).

2) Petitioner was released from custody on the evening of October 28, 2025. He remained in full compliance with all bond requirements, and on or about October 31, 2025, the bond was duly posted through Action Immigration Bonds and Insurance Services, Inc., thereby avoiding any technical delays.

3) Petitioner filed a bond appeal to the BIA; the Las Vegas Immigration Court forwarded the Record of Proceedings on October 30, 2025, and the BIA issued a briefing schedule setting November 25, 2025, for Petitioner's brief (must be received by that date) and December 16, 2025, for DHS. No extension has been requested to date, and the notice warns that any request must be received by the original due date and is disfavored.

[1] Record to reflect Petitioner last entered the United States in July of 2007, eighteen (18) years prior to the issuance of the NTA.

Separately, EOIR vacated November 3, 2025, merits setting in Las Vegas and unilaterally calendared a Master Hearing in Portland, Oregon, for December 17, 2025 (8:30 a.m.; 1220 SW 3rd Ave., Suite 500, Courtroom 2)—without any motion for change of venue and without a venue order. The hearing notice is dated/mailed November 10, 2025. Venue nonetheless remains proper in Las Vegas, where the NTA was filed and jurisdiction vested, and any change requires a motion and good-cause order. See 8 C.F.R. §§ 1003.14, 1003.20(a).

Petitioner will promptly move in EOIR to return venue to Las Vegas to preserve the proper administrative forum and avoid prejudice while this Court retains habeas jurisdiction over the custodian and ensures compliance with its injunction. Nothing about address updates or hearing logistics changes the merits: § 1226(a) governs this posture; the Government's contrary § 1225(b)(2) theory still fails as a matter of text, structure, and longstanding practice.

II. THE GOVERNMENT'S STATUTORY THEORY FAILS

A. Text and structure: § 1225's inspection/arrival scheme does not swallow § 1226(a)'s default custody in § 1229a proceedings

The INA separates (1) inspection/arrival, governed by § 1225, from (2) custody during adjudication, governed by § 1226(a). § 1226(a) is the default detention authority for a person "pending a decision on whether the alien is to be removed" in § 1229a proceedings. § 1225(b) addresses pre-hearing custody incident to inspection of "applicants for admission." The Government's response collapses this architecture by treating all persons "present without admission" as § 1225(b)(2) detainees throughout § 1229a, even where the noncitizen was arrested in the interior and placed into regular removal proceedings. That is not what the statute says or how it operates.

Two phrases the Government treats as interchangeable must be given separate work:

- "Applicant for admission" (a status/presence concept tied to inspection/arrival, see § 1225(a)(1)), and
- "Seeking admission" (a present-tense action that can occur outside the U.S., as when a person applies for a visa abroad).

§ 1225(b) does not create a free-floating detention regime; it operates only within the inspection/examination framework of § 1225—i.e., for arriving noncitizens or those apprehended in connection with inspection at or near the border. By contrast, § 1226(a) governs adjudicatory custody for people already in § 1229a removal proceedings after an interior arrest. See, *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 741 (BIA 2012) (one may "seek admission" from abroad, e.g., by applying for a visa at a consulate, underscoring the inspection/entry context), see also, *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at __ (D. Mass. Aug. 19, 2025) (agreeing that "seeking admission" is not synonymous with "applicant for admission". Reading them as synonyms would produce absurd results, e.g., mandatory detention for visa applicants overseas, and would erase § 1226(a) for people already placed into § 1229a proceedings after interior arrest. The Government's Exhibit A adopts precisely that overbroad reading when it asserts that § 1225(b)(2) is a "catch-all" that governs all applicants for admission, including those DHS itself places directly in § 1229a. That is atextual, stretching beyond the statute's plain meaning and purpose.

B. Statutory context, regulations, and longstanding practice confirm § 1226(a) governs interior arrests in § 1229a

Since IIRIRA, EOIR's bond regulations and day-to-day practice have recognized § 1226(a) as the baseline detention authority during § 1229a proceedings, with IJ bond jurisdiction except where Congress created a specific bar (e.g., § 1226(c)). The Government's response offers no

statutory text making § 1225(b)(2) displace § 1226(a) simply because DHS charges inadmissibility grounds in an NTA after an interior apprehension. Their theory uses labeling (inadmissibility charges) to control detention authority, rather than the statute's posture distinction (inspection/arrival vs. adjudicatory custody). The INA's structure doesn't permit that.

C. The Government's authorities do not decide which statute applies in this posture

Exhibit A string-cites *Jennings v. Rodriguez*, 583 U.S. 281 (2018), *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) for propositions about mandatory detention under § 1225(b) and about the non-overlap of §§ 1225 and 1226. But none of those authorities answers the antecedent question, which statute applies to a person arrested in the interior, placed in § 1229a, and found by an IJ not dangerous and not a flight risk. The Government's brief omits that threshold inquiry by invoking § 1225(b)(2) as a universal catch-all, which is exactly the interpretive error courts around the country have rejected.

D. No *Chevron* deference; the BIA's late-breaking *Yajure Hurtado* merits little Skidmore weight

The Government leans on *Matter of Yajure Hurtado* (Sept. 2025) to assert that IJs lack bond authority whenever a person is "present without admission." After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts must use independent judgment; *Chevron* deference is unavailable. And *Hurtado* conflicts with the statute's structure and decades of agency practice recognizing § 1226(a) as the baseline in § 1229a cases. Exhibit A's reliance on *Hurtado*, therefore, cannot carry the day in habeas.

E. Major Questions (reinforcing).

Even if the Court were to credit agency views, the Major Questions Doctrine independently forecloses DHS's position, which requires clear congressional authorization before an agency may

assert authority of vast "economic and political significance" or fundamentally reorder a statutory scheme. See *W. Virginia v. Env't Prot. Agency,* 597 U.S. 697, 142 S. Ct. 2587, 213 L. Ed. 2d 896 (2022*), Biden v. Nebraska,* 600 U.S. 477, 143 S. Ct. 2355, 216 L. Ed. 2d 1063 (2023), *FDA v. Brown & Williamson*, 529 U.S. 120 (2000). The July 2025 pivot to treat all "present-without-admission" interior arrestees as § 1225(b)(2) detainees—eliminating long-standing § 1226(a) bond process in § 1229a—would be precisely such a reordering. No clear statement authorizes that move, and after *Loper Bright,* supra. *Chevron* deference is unavailable. The Government's theory, therefore, cannot carry.

F. Constitutional Avoidance

See *Clark v. Martinez*, 543 U.S. 371, 380–81 (2005)[2]; *N.L.R.B. v. Cath. Bishop of Chicago,* 440 U.S. 490, 99 S. Ct. 1313, 59 L. Ed. 2d 533 (1979). Reading § 1226(a) to govern custody for interior arrestees in § 1229a (as here) avoids the grave due-process concerns that would arise if § 1225(b)(2) were extended to categorically foreclose bond hearings—even after an IJ has found no danger and no flight risk. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 690–702 (2001) (construing detention statute to avoid serious due-process issues); *Demore v. Kim*, 538 U.S. 510, 529–31 (2003) (upholding brief § 1226(c) detention on narrow terms). And avoidance here does not "add" a bond procedure to § 1225, which *Jennings* forbids, but simply chooses the correct governing statute (§ 1226(a)) for this posture. *Jennings v. Rodriguez*, 583 U.S. 281, 296–302 (2018) (canon cannot rewrite text; interpretation comes first).

Applied to those now being denied bond hearings:

[2] *Clark* remains good law; *Johnson v. Arteaga-Martinez,* 596 U.S. 574 (2022), limited judicial insertion of bond procedures into § 1231(a)(6) but did not overrule *Clark* or its avoidance analysis.

- Posture: Individuals arrested in the interior, charged into § 1229a proceedings, and held in civil immigration custody. That is the paradigm § 1226(a) scenario ("pending a decision on whether the alien is to be removed").
- Denial: The Government's theory re-labels them "applicants for admission" to invoke § 1225(b)(2) and categorically deny IJ bond jurisdiction.
- Threshold principle. Congress made § 1226(a) the default detention authority for individuals arrested in the interior and placed in § 1229a proceedings. By re-labeling those individuals "applicants for admission" and collapsing interior custody into § 1225(b)(2), DOJ, and, in turn, the BIA, strip them of the individualized custody process Congress preserved, depriving them of due process. The statute's text and structure foreclose that move: § 1226(a) governs here.
- Avoidance resolves the tie: If any ambiguity remains after ordinary tools, the Court should select the interpretation that avoids those constitutional concerns, i.e., recognize § 1226(a) as the governing detention authority for these interior-§ 1229a cases, with access to an individualized bond hearing.[3]

G. Sister-court consensus since mid-2025 rejects DHS's new § 1225(b)(2) theory for interior arrests

Since DHS advanced this theory in mid-2025, district courts across multiple circuits have held that § 1226(a) governs detention for interior arrestees in § 1229a, not § 1225(b)(2), and have ordered bond process or release. The Government's response and Exhibit A do not engage with that expanding body of authority and instead recycle the same catch-all reading of § 1225(b)(2)

[3] To clarify, this is not a new claim; it is a standard interpretive canon deployed in reply to the Respondents' deference-based reading. It reinforces, rather than expands, the requested relief.

that those courts rejected. See *Ceja Gonzalez v. Bondi*, No. 25-cv-02054 (C.D. Cal. Aug. 13, 2025); *Mayo Anicasio v. Kramer*, No. 25-cv-03158 (D. Neb. Aug. 14, 2025); *Aguilar-Maldonado v. Olson*, No. 25-cv-03142 (D. Minn. Aug. 15, 2025); *Aguiriano Romero v. Hyde*, No. 25-cv-11631 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 25-cv-02428 (D. Md. Aug. 24, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180 (S.D. Cal. Sept. 3, 2025).

H. Applied here

The Government's filing concedes: Petitioner was arrested in the interior, placed in § 1229a with an NTA, and the IJ found he is not dangerous and not a flight risk, and would have set $3,500 bond but for *Yajure Hurtado*. Those are § 1226(a) factors and findings, not inspection-stage determinations. On this record, § 1226(a) governs; the Government's contrary § 1225(b)(2) theory fails as a matter of text, structure, and practice.

III. CONFIRMING CANONS: *JENNINGS* AND CONSTITUTIONAL AVOIDANCE SUPPORT § 1226(a)

A. *Jennings* limits statutory rewriting, not the constitutional floor. *Jennings v. Rodriguez*, supra. at 296–302, cautions that courts may not add bond procedures to a statute as a matter of statutory construction. But *Jennings* expressly reserved due-process challenges and does not foreclose constitutional requirements for individualized hearings when detention becomes prolonged or is otherwise unjustified on the record.

B. Constitutional avoidance resolves any residual ambiguity. Where two plausible readings exist, courts adopt the one that avoids serious constitutional doubts. *Clark v. Martinez*, supra. at 380–81 (2005); *NLRB v. Catholic Bishop*, supra. at 501. Reading § 1226(a) to govern interior § 1229a cases (as here) avoids the grave due-process problem of categorically foreclosing bond even after IJ findings of no danger/no flight risk. This is not "adding" a bond right to § 1225; it is choosing the correct governing statute for this posture. *Jennings*, supra. at 296–302.

Because the INA's text/structure and these canons confirm that § 1226(a) governs here, the Court should declare the Government's § 1225(b)(2) theory inapplicable in this posture and convert the Preliminary Injunction to final relief, as set out in the Conclusion.

IV. CONCLUSION

The Government's new § 1225(b)(2) theory does not apply to an individual arrested in the interior and placed in § 1229a proceedings. The INA's text and structure confirm that § 1226(a) governs detention in this posture, and nothing in the Government's response changes that. The Immigration Judge already issued an alternative bond determination and set $3,500; Petitioner posted that bond and was released under this Court's Preliminary Injunction.

Because Petitioner was arrested in the interior and placed in § 1229a proceedings, § 1226(a) controls, not § 1225(b)(2). Accordingly, the Court should:

(1) declare that § 1226(a) governs Petitioner's detention authority in these proceedings and that the Government's contrary § 1225(b)(2) theory does not stand here; (2) convert the Preliminary Injunction to final relief; (3) enjoin Respondents from invoking § 1225(b)(2) to foreclose IJ bond jurisdiction in this case; and (4) affirm that Petitioner shall remain at liberty on the posted $3,500 bond (and existing ATD conditions) unless and until a lawful, on-the-record § 1226(a) custody redetermination occurs with the Government bearing the burden consistent with this Court's standards.

Respectfully submitted this 11th day of November, 2025.

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