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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*
OCT 22 2025

JUDGE LEON SCHYDLOWER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Rigoberto Izquierdo Perez

Petitioner,

v.

Mary de Anda Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Todd M Lyons, Acting Director of U.S. Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Acquisition Logistics LLC, Warden of DOW Detention Facility at Fort Bliss (a.k.a. ERO El Paso Camp East Montana).

Respondents.

Case No.

EP 25CV0482

**PETITION FOR WRIT OF
HABEAS CORPUS**

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1 INTRODUCTION

2 1. Petitioner Rigoberto Izquierdo Lopez is in the physical custody of Respondents at
3 the ERO DOW Detention Facility at Fort Bliss (a.k.a. ERO El Paso Camp East Montana). He
4 now faces unlawful detention because the Department of Homeland Security (DHS) and the
5 Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to
6 mandatory detention.

7 2. Petitioner is charged with, inter alia, having entered the United States without
8 admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

9 3. Petitioner is also charged with, inter alia, being an immigrant who, at the time of
10 application for admission, is not in possession of a valid unexpired immigrant visa, reentry
11 permit, border crossing card, or other valid entry document required by the Act, and a valid
12 unexpired passport, or other suitable travel document, or document of identity and nationality as
13 required under the regulations issued by the Attorney General. *See* 8 U.S.C. §
14 1182(a)(7)(A)(i)(I).

15 4. On September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a
16 precedent decision, binding on all immigration judges, holding that an immigration judge has no
17 authority to consider bond requests for any person who entered the United States without
18 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board
19 determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and
20 therefore ineligible to be released on bond.

21 5. Petitioner's detention on this basis violates the plain language of the Immigration
22 and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
23 previously entered and are now residing in the United States. Instead, such individuals are
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1 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
2 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
3 having entered the United States without inspection.

4 6. Respondents' new legal interpretation is plainly contrary to the statutory
5 framework and contrary to decades of agency practice applying § 1226(a) to people like
6 Petitioner.

7 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be
8 released.

9 8. In the alternative, the Petitioner seeks that this Court orders a bond hearing with
10 an Immigration Judge under INA §236, 8 U.S.C. §1226.

11 JURISDICTION

12 9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
13 DOW Detention Facility at Fort Bliss (a.k.a. ERO El Paso Camp East Montana) in El Paso, TX.

14 10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
15 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States
16 Constitution (the Suspension Clause).

17 11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
18 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

19 VENUE

20 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
21 500 (1973), venue lies in the United States District Court for the Western District of Texas, the
22 judicial district in which Petitioner currently is detained.

1 13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
2 Respondents are employees, officers, and agencies of the United States, and because a
3 substantial part of the events or omissions giving rise to the claims occurred in the Western
4 District of Texas.

5 **REQUIREMENTS OF 28 U.S.C. § 2243**

6 14. The Court must grant the petition for writ of habeas corpus or order Respondents
7 to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an
8 order to show cause is issued, Respondents must file a return “within three days unless for good
9 cause additional time, not exceeding twenty days, is allowed.” *Id.*

10 15. Habeas corpus is “perhaps the most important writ known to the constitutional
11 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
12 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
13 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
14 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
15 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

16 **PARTIES**

17 16. Petitioner Rigoberto Izquierdo Perez is a citizen of Mexico who has been in
18 immigration detention since September 2025. After arresting Petitioner in Chicago, IL, ICE did
19 not set bond. At this time, Petitioner is unable to obtain review of his custody by an IJ, pursuant
20 to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The
21 decision prevents immigration judges from considering bond to individuals who entered the
22 United States without inspection at any time.

1 17. Respondent Mary de Anda Ybarra is the Director of the El Paso Field Office of
2 ICE's Enforcement and Removal Operations division. As such, Mary de Anda Ybarra is
3 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is
4 named in her official capacity.

5 18. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of
6 U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically
7 responsible for managing all aspects of the immigration enforcement process, including
8 immigration detention. ICE is responsible for apprehension, incarceration, and removal of
9 noncitizens from the United States and as such Acting Director Lyons is a legal custodian of
10 Petitioner.

11 19. Respondent Kristi Noem is the Secretary of the Department of Homeland
12 Security. She is responsible for the implementation and enforcement of the Immigration and
13 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
14 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

15 20. Respondent Department of Homeland Security (DHS) is the federal agency
16 responsible for implementing and enforcing the INA, including the detention and removal of
17 noncitizens.

18 21. Respondent Pamela Bondi is the Attorney General of the United States. She is
19 responsible for the Department of Justice, of which the Executive Office for Immigration Review
20 and the immigration court system it operates is a component agency. She is sued in her official
21 capacity.

1 22. Respondent Executive Office for Immigration Review (EOIR) is the federal
2 agency responsible for implementing and enforcing the INA in removal proceedings, including
3 for custody redeterminations in bond hearings.

4 23. Respondent Acquisition Logistics LLC was contracted by U.S. government as
5 Warden and operator of the DOW Detention Facility at Fort Bliss (a.k.a. ERO El Paso Camp
6 East Montana), where Petitioner is detained. It has immediate physical custody of Petitioner. It is
7 sued in its official capacity as the jailer and legal custodian of the Petitioner.

8
9 **LEGAL FRAMEWORK**

10 24. The INA prescribes three basic forms of detention for the vast majority of
11 noncitizens in removal proceedings.

12 25. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal
13 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally
14 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),
15 while noncitizens who have been arrested, charged with, or convicted of certain crimes are
16 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

17 26. Second, the INA provides for mandatory detention of noncitizens subject to
18 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
19 referred to under § 1225(b)(2).

20 27. Last, the INA also provides for detention of noncitizens who have been ordered
21 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

22 28. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).
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1 29. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
2 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No.
3 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section
4 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1,
5 139 Stat. 3 (2025).

6 30. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining
7 that, in general, people who entered the country without inspection were not considered detained
8 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited
9 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
10 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

11 31. Thus, in the decades that followed, most people who entered without inspection
12 and were placed in standard removal proceedings received bond hearings, unless their criminal
13 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
14 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
15 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
16 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
17 “restates” the detention authority previously found at § 1252(a)).

18 32. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
19 rejected well-established understanding of the statutory framework and reversed decades of
20 practice. *See* Ex. 1.

21 33. The new policy, entitled “Interim Guidance Regarding Detention Authority for
22 Applicants for Admission,” claims that all persons who entered the United States without
23 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). *See*
24

1 Ex.1. The policy applies regardless of when a person is apprehended and affects those who have
2 resided in the United States for months, years, and even decades.

3 34. Petitioner came to be in immigration proceedings based on a DHS filing that clearly
4 identified her as subject to detention “pursuant to the authority contained in section 236”;
5 (section 236 of the INA is codified at 8 U.S.C. § 1226.) Ex. 5, Notice of Custody
6 Redetermination. For decades, § 1225 has applied only to noncitizens “seeking admission into
7 the country”—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which
8 applies to noncitizens “already in the country.” *Id.* at 289. Petitioner has been in the United
9 States for over 13 years.

10 35. On September 5, 2025, the BIA adopted the same position in a published
11 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the
12 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are
13 ineligible for IJ bond hearings.

14 36. Since Respondents adopted their new policies, dozens of federal courts have
15 rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected
16 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

17 37. Even before ICE or the BIA introduced these nationwide policies, IJs in the
18 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
19 entered the United States without inspection and who have since resided here. There, the U.S.
20 District Court in the Western District of Washington found that such a reading of the INA is
21 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
22 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
23 1239 (W.D. Wash. 2025).

1 38. Subsequently, court after court has adopted the same reading of the INA's
2 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,
3 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
4 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);
5 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
6 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
7 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
8 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,
9 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
10 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-
11 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
12 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
13 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-
14 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-
15 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
16 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
17 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
18 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
19 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
20 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
21 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
22 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
23 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §

1 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
2 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
3 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

4 39. Courts have uniformly rejected DHS's and EOIR's new interpretation because it
5 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
6 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

7 40. Section 1226(a) applies by default to all persons "pending a decision on whether
8 the [noncitizen] is to be removed from the United States." These removal hearings are held under
9 § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

10 41. The text of § 1226 also explicitly applies to people charged as being inadmissible,
11 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
12 (E)'s reference to such people makes clear that, by default, such people are afforded a bond
13 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress
14 creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions,
15 the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
16 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025
17 WL 1869299, at *7.

18 42. Section 1226 therefore leaves no doubt that it applies to people who face charges
19 of being inadmissible to the United States, including those who are present without admission or
20 parole.

21 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
22 recently entered the United States. The statute's entire framework is premised on inspections at
23 the border of people who are "seeking admission" to the United States. 8 U.S.C.
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1 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
2 applies “at the Nation’s borders and ports of entry, where the Government must determine
3 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583
4 U.S. 281, 287 (2018).

5 44. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not
6 apply to people like Petitioner, who have already entered and were residing in the United States
7 at the time they were apprehended.

8 **FACTS**

9 45. Petitioner has resided in the United States since 2019 and lives in Chicago, IL.

10 46. On September 2025, Petitioner was arrested after a traffic stop in Chicago, IL.
11 Petitioner is now detained at the DOW Detention Facility at Fort Bliss (a.k.a. ERO El Paso
12 Camp East Montana).

13 47. DHS placed Petitioner in removal proceedings before the El Paso Immigration
14 Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being
15 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States
16 without inspection.

17 48. Petitioner lives and supports his long-term partner. This detention is a substantial
18 deprivation and burden that puts Petitioner and his family at risk without Petitioner’s parental
19 and financial support. Petitioner is neither a flight risk nor a danger to the community.

20 49. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider
21 Petitioner’s bond request. Which, in turn, makes the Petitioner ineligible for bond, even though
22 he was granted bond months before the BIA decided *Matter of Yajure Hurtado*. Up to that point,
23 the Petitioner was detained due to ICE filing a Notice of ICE Intent to Appeal Custody
24

1 Redetermination (“EOIR-43”) and Notice of Appeal from a Decision of an Immigration Judge
2 (“EOIR-26”).

3 50. As a result, Petitioner remains in detention. Without relief from this court, he
4 faces the prospect of months, or even years, in immigration custody, separated from his family
5 and community.

6 **CLAIMS FOR RELIEF**

7 **COUNT I**
8 **Violation of the INA**

9 51. Petitioner incorporates by reference the allegations of fact set forth in the
10 preceding paragraphs.

11 52. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
12 noncitizens residing in the United States who are subject to the grounds of inadmissibility. As
13 relevant here, it does not apply to those who previously entered the country and have been
14 residing in the United States prior to being apprehended and placed in removal proceedings by
15 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to
16 § 1225(b)(1), § 1226(c), or § 1231.

17 53. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
18 detention and violates the INA.

19 **COUNT II**
20 **Violation of the Bond Regulations**

21 54. Petitioner incorporates by reference the allegations of fact set forth in preceding
22 paragraphs.

23 55. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-
24 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.

1 Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the
2 agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present
3 without having been admitted or paroled (formerly referred to as [noncitizens] who entered
4 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
5 (emphasis added). The agencies thus made clear that individuals who had entered without
6 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. §
7 1226 and its implementing regulations.

8 56. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and
9 practice of applying § 1225(b)(2) to individual like Petitioner.

10 57. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued
11 detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

12
13 **COUNT III**
14 **Violation of Due Process**

15 58. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
16 the preceding paragraphs as if fully set forth herein.

17 59. The government may not deprive a person of life, liberty, or property without due process
18 of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
19 detention, or other forms of physical restraint—lies at the heart of the liberty that the
20 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21 60. Petitioner has a fundamental interest in liberty and being free from official restraint.

22 61. The government’s detention of Petitioner without a bond redetermination hearing to
23 determine whether he is a flight risk or danger to others violates his right to due process.
24

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner prays that this Court grant the following relief:

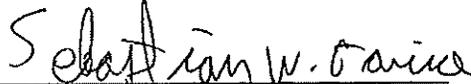
- 3 a. Assume jurisdiction over this matter;
- 4 b. Order that Petitioner shall not be transferred outside the Western District of Texas
- 5 while this habeas petition is pending;
- 6 c. Issue an Order to Show Cause ordering Respondents to show cause why this
- 7 Petition should not be granted within three days;
- 8 d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner; or,
- 9 in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. §
- 10 1226(a) within seven days;
- 11 e. Declare that Petitioner's detention is unlawful;
- 12 f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
- 13 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
- 14 law; and
- 15 g. Grant any other and further relief that this Court deems just and proper.

16

17 DATED this 16 of , October 2025.

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21 Sebastian Wright Garcia, Esq.
Attorney for Petitioner

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United States District Court
Western District of Texas
El Paso Division

Rigoberto Izquierdo Perez,
Petitioner,

v.

Mary De Anda-Ybarra, et. al.,
Respondents.

No. 3:25-CV-00482-LS

**RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

Federal¹ Respondents provide the following timely response to Petitioner's habeas petition.

Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief he seeks, including attorney's fees under the Equal Access to Justice Act ("EAJA")², and this Court should deny this habeas petition without the need for an evidentiary hearing.

Petitioner's claims in district court fail for four distinct reasons: (1) 8 U.S.C. § 1226(e) bars the district court from vacating any administrative order under the INA related to the granting or revocation of a bond; (2) 8 U.S.C. § 1225(b)(4) mandates that any challenge to the "admission of any alien" must be first raised in removal proceedings before an immigration judge; (3) under § 1252(b)(9), review of any statutory or constitutional challenge to the scope of detention authority under § 1225(b) must be channeled to the circuit court following the entry of a final order of removal; and (4) Petitioner has not shown that § 1225(b), which the Supreme Court already found facially constitutional in *Jennings* and again in *Thuraissigiam*, is unconstitutional as applied to him, as his detention is neither prolonged nor indefinite.

¹ The Department of Justice represents only federal employees in this action.

² *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

I. Introduction

ICE has lawful authority to detain Petitioner on a mandatory basis as an applicant for admission (also known as “seeking admission”) pending his “full” removal proceedings before an immigration judge under 8 U.S.C. § 1229a. Detention under this provision is governed not only by the plain language of the statute, but also by Supreme Court precedent. The Court also lacks jurisdiction under 8 U.S.C. § 1252(g) to review Petitioner’s challenge to the Department of Homeland Security’s (“DHS”) initial decision to detain him. While Petitioner may still challenge the interpretation or the constitutionality of the statute under which his removal proceedings were brought, he must first make that challenge before the immigration judge and channel review of any adverse (final) decision to the federal circuit court of appeals. 8 U.S.C. § 1252(b)(9).

While as-applied constitutional challenges may be brought in district court under certain circumstances, Petitioner has not raised any colorable claim that mandatory detention under § 1225(b) is unconstitutional as applied to him. His detention is neither indefinite, nor prolonged, as it will end upon the completion of his removal proceedings. Finally, the only remedy available through habeas is release from custody, but even if released, it would not provide him any lawful status in the United States or produce him no net gain. In fact, it will likely delay the adjudication of any applications for relief from removal and further prolong his unlawful status in the United States. For these reasons and those that follow, this Court should deny this habeas petition.

II. Relevant Facts and Procedural History

Petitioner is a native and citizen of Mexico. ECF No. 1 ¶ 16, 45. On September 18, 2025, ICE detained Petitioner. See Exh. A (I-213 dated September 21, 2025). Petitioner has resided in the United States since 2019. ECF No. 1 ¶ 45. On October 7, 2025, ICE issued an NTA alleging inadmissibility under INA § § 212(a)(6)(A)(i). Exh. B (Notice to Appear dated October 7, 2025).

Petitioner is scheduled for a hearing before the immigration judge on December 11, 2025.³

III. Argument

The only relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020). Petitioner, however, has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release. Ordering release in this circumstance produces no net gain to Petitioner, while mandating continued detention until at least the conclusion of removal proceedings furthers the government’s interests in enforcing the immigration laws.

A. Mandatory Detention and the “Catchall” Provision

There is no disagreement that Petitioner is in “full” removal proceedings under 8 U.S.C. § 1229a. In “full” removal proceedings, there are two groups of aliens: (1) those charged with never having been admitted to the United States (*i.e.*, inadmissible under § 1182); and (2) those who were once admitted but no longer have permission to remain (*i.e.*, removable under § 1227). 8 U.S.C. § 1229a(e)(2). As outlined in more detail below, Congress intended for the inadmissible aliens in this context to be detained on a mandatory basis under § 1225(b), while the deportable/removable aliens are to be detained under § 1226(a), which allows them to seek bond. This interpretation is consistent with the allocation of the burden of proof during removal proceedings. If the NTA charges the alien under § 1182 as inadmissible, the burden lies on the alien to prove admissibility or prior lawful admission. 8 U.S.C. § 1229a(c)(2). On the other hand, the burden is on the government to establish deportability for aliens charged under § 1227. *Id.* § 1229a(c)(3).

Inadmissible aliens are further categorized as follows: (1) arriving alien; (2) present

³ See [Automated Case Information](#) (last accessed Nov. 18, 2025).

without admission and subject to either expedited or full removal proceedings; and (3) present without admission and subject only to full removal proceedings. *See* 8 U.S.C. § 1225(b). The third category listed here is referred to as the “catchall” provision. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); 8 U.S.C. § 1225(b)(2)(A). Petitioner here is appropriately described under the catchall provision.

B. Start with the Statutory Text: § 1225(a)(1) Unambiguously Defines an Applicant for Admission as an Alien Present in the United States Without Having Been Admitted.

The statutory language is unambiguous: “An alien present in the United States who has not been admitted ... shall be deemed ... an applicant for admission.” 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 109; *Jennings*, 583 U.S. 288; *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025). Even though DHS encountered Petitioner within the interior of the United States, he is nonetheless an applicant for admission who DHS has determined through the issuance of an NTA is an alien *seeking admission* who is not clearly and beyond a doubt entitled to be admitted to the United States. *See* 8 U.S.C. §§ 1225(b)(2)(A); 1229a (emphasis added). In other words, the INA mandates that such aliens “shall be detained for a proceeding under section 1229a [“full” removal proceedings]...” 8 U.S.C. § 1225(b)(2)(A).

Given the plain language of § 1225(a)(1), Petitioner cannot plausibly argue that he is not an applicant for admission. Nor can Petitioner plausibly challenge a DHS’s officer’s determination that he is “seeking admission” simply because he is not currently at the border requesting to come into the United States. Indeed, Petitioner deprived the United States of that opportunity at the border, choosing instead to evade the law altogether and sneak into the United States to live undetected and unlawfully for six years. Such evasion, however, does not bestow him with the benefit of additional process beyond what the statute already affords him: “full” removal

proceedings. That he must pursue that ample process while detained is consistent with the plain language of the statute and facially constitutional. The Fifth Circuit explored certain nuances associated with the terms “admitted” and “admission” while analyzing a different INA provision that is not at issue here (8 U.S.C. § 1182(h)). *See Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008).

In *Martinez*, the Court reviewed § 1182(h)(2),⁴ which statutorily bars certain aliens from eligibility for a discretionary inadmissibility waiver if, for example, the alien was “admitted to the United States as an alien lawfully admitted for permanent residence” and convicted of an aggravated felony since that “admission.” *Id.* The relevant question in *Martinez* was whether Congress intended to also statutorily bar those aliens who had adjusted their status to lawful permanent resident (“LPR”) within the interior of the United States, as opposed to only those who were initially admitted at the port of entry as LPRs. *Id.* at 541–42. *Martinez* argued that because he had adjusted his status to LPR while in the interior, as opposed to having been admitted as an LPR at the border, he was not statutorily barred from applying for the waiver under § 1182(h)(2), because he was never “admitted” after inspection by an immigration officer. *Id.* at 542. The government, however, argued that because of the agency’s interpretation of the word “admission” in the INA’s aggravated felony removal provision, the Court should find that aliens who adjusted their status to LPR are also barred from seeking discretionary waivers under § 1182(h)(2), reasoning that adjusting status “accomplished admission” for purposes of the aggravated felony provision. *Id.* (citing 8 U.S.C. § 1227(a)(2)(A)(iii); *In re Rosas-Ramirez*, 22 I&N Dec. 616 (BIA

⁴ The relevant portion of the statute reads as follows:

“No waiver shall be granted under this subsection in the case of an alien who has previously been **admitted to the United States as an alien lawfully admitted for permanent residence** if either **since the date of such admission** the alien has been convicted of an aggravated felony...” (emphasis added).

1999)). The Fifth Circuit, as a result, was left with the task of deciding which interpretation to use to determine whether an LPR who adjusted status within the United States had been “admitted,” for purposes of § 1182(h), statutorily barring him from seeking a discretionary waiver. *Id.* at 543. Upon reviewing the plain language of the statute as a whole and in the proper context, the Fifth Circuit rejected the government’s interpretation that the word “admission” in that clause applied to an alien who was never inspected or admitted at the border, finding the INA to be unambiguous as to the definition of “admitted” and “admission”:

For determining ambiguity... if this statutory text stood alone, we would define “admitted” by its ordinary, contemporary, and common meaning. ... Congress has relieved us from this task, however, by providing the following definition: “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of that alien into the United States *after inspection and authorization* by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Under this statutory definition, “admission” is the lawful entry of an alien after inspection, something quite different ... from post-entry adjustment....

Id. at 544. The Court further noted that unlike the stand-alone terms “admitted” or “admission,” as used in 1182(h), the phrase “lawfully admitted for permanent residence” is an entirely separate term of art defined in § 1101(a)(20), which *does* encompass both admission to the United States as an LPR and post-entry adjustment of status. *Id.* at 546. Section 1182(h), however, expressly incorporates that term of art, as defined by § 1101(a)(20), separate and apart from its use of the stand-alone word “admitted,” as defined by § 1101(a)(13). This interpretation, the Court reasoned, denies a waiver to only those aliens who have been “admitted” [§ 1101(a)(13)] to the United States after inspection as “an alien lawfully admitted for permanent residence” [§ 1101(a)(20)]. In other words, the Fifth Circuit found that an alien who was never inspected at the border had never been “admitted” (as defined under § 1101(a)(13)) or granted “admission;” he had only legalized his status within the United States through adjustment of status [§ 1101(a)(20)]. Martinez, as an alien who had eventually adjusted status but who had never been inspected or admitted at the border,

was therefore not statutorily barred from applying for the § 1182(h) waiver. Although he was “lawfully admitted for permanent residence,” he was never “admitted” after inspection, meaning that he necessarily did not meet the definition of an alien convicted of an aggravated felony “after admission” under § 1182(h).

Like the Fifth Circuit in *Martinez*, this Court should navigate these nuanced issues by examining the unambiguous language of the controlling INA provisions in this case, which clearly define these various terms in proper context. The same phrase the Court analyzed in § 1182(h) appears in the text of § 1225(a)(1): “alien present in the United States who has not **been admitted** ... shall be deemed for purposes of this chapter **an applicant for admission.**” (emphasis added). The detention statute pertaining to Petitioner plainly refers to “**an applicant for admission**” ... who *DHS determines* is “an alien **seeking admission**” who “is not clearly and beyond a doubt **entitled to be admitted....**” 8 U.S.C. § 1225(b)(2)(A). If Petitioner, who has never been “admitted” after inspection by an immigration officer, is not “seeking admission,” then the logical assumption is that he must be seeking his immediate release *via removal from the United States*. Removal, however, is clearly not what Petitioner requests in this habeas petition. He requests release from custody so that he can seek to remain in the United States; in other words, he is “seeking admission.”

Under the plain language of this statute, Petitioner (1) has not been “admitted” to the United States after inspection by an immigration officer [§§ 1182(a)(6), 1101(a)(13)]; (2) is an “applicant for admission” [§ 1225(a)(1)];⁵ and (3) is subject to detention during “full” removal

⁵ Nothing in § 1101(a)(4) contradicts this definition. Section 1101(a)(4) simply differentiates between an alien seeking admission to the United States at entry (with DHS) versus an alien by applying for a visa (with the State Department) with which to eventually seek admission at entry into the United States.

proceedings as an alien who DHS has determined to be seeking “admission” and who is not clearly and beyond a doubt entitled to be “admitted” [§ 1225(b)(2)(A)]. Indeed, to the extent Petitioner challenges an officer’s finding under § 1225(b)(2)(A) that he is “seeking admission,” that challenge must be raised in removal proceedings and reviewed only by the circuit court of appeals. 8 U.S.C. §§ 1225(b)(4); 1252(b)(9).

C. Congress Intended to Mandate Detention of All Applicants for Admission, Not Just Those Who Presented for Inspection at a Designated Port of Entry.

Congress, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), corrected an inequity in the prior law by substituting the term “admission” for “entry.” *See Chavez*, 2025 WL 2730228, at *4 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *United States v. Gambino-Ruiz*, 91 F.4th 918, 990 (9th Cir. 2024)). Under the prior version of the INA, aliens who lawfully presented themselves for inspection were not entitled to seek bond, whereas aliens who “entered” the country after successfully evading inspection were entitled to seek bond. *Id.* DHS’s current interpretation of the mandatory nature of detention for aliens subjected to the “catchall” provision of § 1225 furthers that Congressional intent. *Id.* Petitioner’s interpretation, however, would repeal the statutory fix that Congress made in IIRIRA. *Id.*

1. Section 1226(a) Is Not Superfluous, Nor Does It Entitle Release or Mandate a Bond Hearing.

That does not leave § 1226(a) meaningless. Section 1226(a) applies to aliens within the interior of the United States who were once lawfully admitted but are now subject to removal from the United States under 8 U.S.C. § 1227(a). *See Jennings*, 583 U.S. at 287–88. As described, *supra*, aliens can be charged in removal proceedings as removable under § 1227(a) in certain circumstances, such as, for example, overstaying a visa or committing specific criminal offenses after having been lawfully admitted. Section 1226(a) allows DHS to arrest and detain an alien

during removal proceedings and release them on bond, but it does not mandate that all aliens found within the interior of the United States be processed in this manner. 8 U.S.C. § 1226(a).

Notably, Petitioner does not claim he is removable under § 1227(a); indeed, his NTA shows he is charged as “inadmissible” under § 1182(a). As such, it is his burden—not the Government’s—to prove he is admissible to the United States. He does not and cannot make such a showing. By statutory definition, therefore, he is an applicant for admission who is seeking admission to the United States.

2. The Laken Riley Act Is Not Superfluous.

Nor does this interpretation render the Laken Riley Act superfluous simply because it appears redundant. Indeed, “redundancies are common in statutory drafting ... redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute...” *Barton v. Barr*, 590 U.S. 222, 229 (2020). Even Justice Scalia acknowledged in *Reading Law* that “Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012), 176–77 (emphasis added). Moreover, as the BIA explains, the statutes at issue in this case were:

... implemented at different times and intended to address different issues. The INA is a complex set of legal provisions created at different times and modified over a series of years. Where these provisions impact one another, they cannot be read in a vacuum.

Matter of Yajure Hurtado, 29 I&N Dec. 216, *227 (BIA 2025). This explanation tracks the Fifth Circuit’s approach and reasoning in *Martinez*, 519 F. 3d at 541–42.

D. Petitioner Does Not Overcome Jurisdictional Hurdles.

1. Initial Decision to Commence Removal Proceedings

Where an alien challenges ICE's decision to detain him and seek a removal order against him, or if an alien challenges any part of the process by which his removability will be determined, the court lacks jurisdiction to review that challenge. 8 U.S.C. § 1252(g); *see also Jennings*, 583 U.S. at 294–95. In *Jennings*, the Court did not find that the claims were barred, because unlike Petitioner here, the aliens in that case were challenging their continued and allegedly prolonged detention during removal proceedings. *Id.* Here, however, Petitioner is challenging the decision to detain him in the first place, which arises directly from the decision to commence and/or adjudicate removal proceedings against him. *See id.* This is exactly the type of challenge *Jennings* referenced as unreviewable. *Id.*

2. Review of Any Decision Regarding the Admission of an Alien, Including Questions of Law and Fact, or Interpretation and Application of Constitutional and Statutory Provisions, Must Be Raised Before an Immigration Judge in Removal Proceedings, Reviewable Only by the Circuit Court After a Final Order of Removal.

As briefly argued above, even if the alien claims he is not appropriately categorized as an applicant for admission subject to § 1225(b), such a challenge must be raised before an immigration judge in removal proceedings. 8 U.S.C. § 1225(b)(4). In other words, if an alien contests that he is an applicant for admission subject to removal under § 1225(b), any claim challenging his continued detention under § 1225(b) is inextricably intertwined with the removal proceedings themselves, meaning that judicial review is available only through the court of appeals following a final administrative order of removal. *See* 8 U.S.C. § 1225(b)(4).⁶ This is consistent with the channeling provision at 8 U.S.C. § 1252(b)(9), which mandates that judicial review of all

⁶ While bond proceedings under § 1226(a) are separate and apart from removal proceedings under § 1229a, challenges to decisions under § 1225(b), including the mandatory detention provision found within that statute, are to be raised in the same § 1229a proceedings. *See* 8 U.S.C. § 1225(b)(4).

questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action or proceeding brought to remove an alien from the United States must be reviewed by the court of appeals upon review of a final order of removal. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL2617973 (D. Minn. Sept. 9, 2025).

E. On Its Face, and As Applied to Petitioner, § 1225(b)(2)(A) Comports with Due Process.

Section 1225 does not provide for a bond hearing, regardless of whether the applicant for admission is placed into full removal proceedings. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, 591 U.S. at 140 (finding that applicants for admission are entitled only to the protections set forth by statute and that “the Due Process Clause provides nothing more”). An “expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause.” *Olim v. Wakinekona*, 461 U.S. 238, 250 n.12 (1983).

That the alien in *Thuraissigiam* failed to request his own release in his prayer for relief does not make the holding any less binding here. *But see Lopez-Arevalo v. Ripa*, No. 25–CV–337–KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025). The alien in *Thuraissigiam* undisputedly brought his claim in habeas, and the Court noted that even if he had requested release, his claim would have failed. *Thuraissigiam*, 591 U.S. at 118–19. Regardless of whether the alien in *Thuraissigiam* was on “the threshold of entry” as an applicant for admission detained under § 1225(b)(1), as opposed to an applicant for admission found within the interior and detained under § 1225(b)(2), the reasoning of *Thuraissigiam* extends to all applicants for admission. Petitioner is not entitled to more process than what Congress provided him by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a). *Id.*; *see also Jennings*, 583 U.S. at 297–303.

Mandatory detention of an applicant for admission during “full” removal proceedings does not violate due process, because the constitutional protections are built into those proceedings,

regardless of whether the alien is detained. 8 U.S.C. § 1229a. The alien is served with a charging document (an NTA) outlining the factual allegations and the charge(s) of removability against him. *Id.* § 1229a(a)(2). He has an opportunity to be heard by an immigration judge and represented by counsel of his choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). He can seek reasonable continuances to prepare any applications for relief from removal, or he can waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Should he receive any adverse decision, he has the right to seek judicial review of the complete record and that decision not only administratively, but also in the circuit court of appeals. *Id.* § 1229a(b)(4)(C), (c)(5).

While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioner here raises no such claim where he has been detained for only a brief period pending his removal proceedings. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. The “catchall” provision at § 1225(b)(2)(A) requires two things: (1) a DHS determination that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted; and (2) detention during “full” removal proceedings. 8 U.S.C. § 1225(b)(2)(A). The NTA in this case provides both. Petitioner is scheduled for a hearing in removal proceedings before an immigration judge on the detained docket due to his presence without admission. *See Automated Case Information* (last accessed November 18, 2025). As applied here to Petitioner, § 1225(b)(2)(A) does not violate due process. *See Thuraissigiam*, 591 U.S. at 140.

F. Ex Post Facto Clause Does Not Apply.

Even if Petitioner relied on the prior interpretation of the INA, there is no indication that

the new interpretation punishes as a crime Petitioner's prior "innocent" actions. The Supreme Court's decisions in *INS v. St. Cyr*, 533 U.S. 289, 325 (2001) and *Vartelas v. Holder*, 566 U.S. 257, 66 (2012) are both distinguishable, as the alien in those cases had relied on prior versions of the law when considering criminal charges. The Fifth Circuit's decision in *Monteon-Camargo v. Barr* is distinguishable for the same reasons – a new agency interpretation retroactively affected the immigration consequences of prior criminal conduct. 918 F.3d 423 (5th Cir. 2019).

Petitioner's entry in this case was unlawful at the time he entered the United States and remains unlawful today for the same reasons. The current interpretation of the controlling detention statute is not punitive, nor does it deprive him of any defense to removal charges that were available to him under the prior interpretation. The only thing that has changed is the agency's interpretation as to whether Petitioner can seek release on bond while he is in removal proceedings. The statute itself, however, has not changed since Petitioner's entry.

The federal Constitution prohibits both Congress and the States from enacting any "ex post facto law." U.S. Const. art. I, § 9, cl. 3; U.S. Const. art. I, § 10, cl. 1. "Retroactive application of a law violates the Ex Post Facto Clause only if it: (1) 'punish[es] as a crime an act previously committed, which was innocent when done;' (2) 'make[s] more burdensome the punishment for a crime, after its commission;' or (3) 'deprive[s] one charged with crime of any defense available according to law at the time when the act was committed.'" *Jackson v. Vannoy*, 981 F.3d 408, 417 (5th Cir. 2020) (quoting *Collins v. Youngblood*, 497 U.S. 37, 52 (1990)). "A statute can violate the Ex Post Facto Clause . . . only if the statute is punitive." *Does 1-7 v. Abbott*, 945 F.3d 307, 313 (5th Cir. 2019) (per curiam) (citation omitted).

The Supreme Court and the Fifth Circuit have long recognized that removal proceedings are nonpunitive. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984); *Gonzalez Reyes v. Holder*,

313 F. App'x 690, 695 (5th Cir. 2009). With IIRIRA in 1996, Congress intended to enact a civil, nonpunitive regulatory scheme to fix a statutory inequity between those aliens who present themselves for inspection and those who do not. IIRIRA, among other things, substituted the term “admission” for “entry,” and replaced deportation and exclusion proceeding with removal proceedings. *See, e.g., Tula Rubio v. Lynch*, 787 F.3d 288, 292 n.2, n.8 (5th Cir. 2015) (collecting cases). In other words, in amending the INA, Congress acted in part to remedy the “unintended and undesirable consequence” of having created a statutory scheme that rewarded aliens who entered without inspection with greater procedural and substantive rights (including bond eligibility) while aliens who had “actually presented themselves to authorities for inspection were restrained by ‘more summary exclusion proceedings’” and subjected to mandatory detention. *Martinez v. Att’y Gen.*, 693 F.3d 408, 414 (3d Cir. 2012) (*quoting Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). Therefore, application of the IIRIRA to Petitioner does not violate the Ex Post Facto Clause.

This administration’s interpretation of mandatory detention of applicants for admission only advances Congressional intent to equalize the playing field between those who follow the law and those who do not. Nothing prevents the agency from implementing policy decisions and interpretations that differ from those of prior administrations. The plain language of the statute in this case is clear, regardless of whether the agency interpreted it differently in the past than it interprets it today. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024); *Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (no amount of policy talk can overcome a plain statutory command). DHS does not dispute that this interpretation differs from the interpretation that the agency has taken previously, nor does it dispute that the agency’s own regulations necessarily support the prior interpretation. The statute itself, however, has not changed. Based

upon the foregoing, DHS's current interpretation of the mandatory nature of detention under § 1225(b) is nonpunitive.

IV. Conclusion

The deny the Petition in its entirety. Petitioner (1) has not been "admitted" to the United States after inspection by an immigration officer [§§ 1182(a)(6), 1101(a)(13)]; (2) is an "applicant for admission" [§ 1225(a)(1)]; and (3) is subject to detention during "full" removal proceedings as an alien who DHS has determined to be seeking admission and who is not clearly and beyond a doubt entitled to be admitted [§ 1225(b)(2)(A)]. DHS has statutory authority to detain Petitioner on a mandatory basis during his removal proceedings.

Respectfully submitted,

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