UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case Number: 25-cv-24981-LEIBOWITZ

GERSON OCAMPO FERNANDEZ,

Petitioner,

v.

GARRETT RIPA,
in his official capacity,

Respondents.

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PETITIONER'S TRAVERSE

Petitioner respectfully submits this traverse in response to the Respondents' return [ECF No. 13] filed on November 9, 2025. This case turns on whether Petitioner's present detention is governed by 8 U.S.C. §1225(b)(2), a mandatory detention provision, or 8 U.S.C. §1226(a), a discretionary detention provision that affords Petitioner the procedural right to a bond hearing. This traverse addresses that question, *inter alia*.

I. Introduction

Respondents' return misreads both the text and structure of the Immigration and Nationality Act ("INA"). Perhaps more to the point, Respondents' return contains several important omissions. Their return omits reference to—and makes no attempt to distinguish this case from—the body of district court habeas decisions that has developed regarding the statutory misclassification of persons who—like Petitioner—entered the United States without inspection. The tally continues to increase, but more than one hundred district court judges throughout the country have found that persons like Petitioner are entitled to an individualized bond hearing or release and that such

noncitizens are not subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A).[1] Several of these cases are referenced and discussed *infra*. More specifically, Respondents' return also omits any reference to two recent decisions from the Southern District of Florida that address the fundamental point at issue in this case—statutory classification under §1226(a) (a discretionary detention statute) versus §1225(b)(2)(A) (a mandatory detention statute). *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025); *Aguilar Merino v. Ripa*, 25-23845-cv-Martinez (S.D.FLA October 15, 2025). Nor do Respondents attempt to explain an important detail in the government's own release and arrest paperwork [ECF No. 7-1; 7-3], namely, that this self-same paperwork describes Petitioner as subject to 8 U.S.C. 1226(a) [236(a) of the Immigration and Nationality Act], the default discretionary detention statute that Respondents now no longer wish to apply, [ECF No. 13.], but which Petitioner asserts, in agreement with the government's own paperwork, is the relevant detention statute here.

Respondents instead have advanced novel and inapposite jurisdictional arguments. It is an important overarching point that these jurisdictional bars are found in 8 U.S.C. §1252, but have no bearing on Petitioner's claim for habeas relief because 8 U.S.C. §1252 deals with *review of orders of removal.* Respondents do not cite to any district court decisions that have applied these jurisdictional bars to the question of which statutory detention authority applies to a noncitizen in pending removal proceedings—a question that is logically orthogonal to judicial review of Petitioner's removal proceedings. In other words, 8 U.S.C. §1252 is not at all in play and cannot pose any bar to judicial review.

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[1] "More than 100 judges have ruled against Trump's mandatory detention policy." October 31, 2025. Available at: https://www.politico.com/news/2025/10/31/trump-administration-mandatory-detention-deportation-00632086

More specifically, Respondents thoroughly conflate distinct statutory sections, relying on 8 U.S.C. §1252(e)(3), a provision that narrowly governs judicial review of systemic challenges to expedited removal procedures, even though no expedited removal proceedings are at issue here because the Petitioner unquestionably is not—and has not—been placed in expedited removal under 1225(b)(1). There is no order to review. The Government's reliance on §1252(g) and §1252(b)(9) is equally misplaced. Section 1252(g) bars review only of three discrete actions, specifically commencing removal proceedings, adjudicating removal, or executing removal, but Petitioner does not challenge any of those actions. Sections 1252(b)(9) and 1252(a)(5) apply to final orders of removal, yet Petitioner does not have, and has never had, any order of removal. This case concerns only the lawfulness of detention under 8 U.S.C. §1226(a), a statutory scheme governing post-entry custody and discretionary bond, which remains fully reviewable by the courts.

Respondents illogically stretch §1225(b)(2) far beyond its intended inspection context, disregard Congress's explicit distinction between "inspection" under Section 1225 and "arrest and custody" under Section 1226. Properly interpreted, Petitioner's detention falls under Section §1226(a), the statute that governs post-entry arrests within the United States and provides for discretionary bond consideration. The vast majority of federal district courts ruling on this issue have declined to grant deference to the Board of Immigration Appeals' agency decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025) and have independently found that 1226(a) applies. *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025); *Martinez v. Hyde,* 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828

(W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

II. Statutory Framework

A. The Statutory Boundary Between Sections 1225 and 1226

Congress created two distinct detention regimes: Section 1225(b) covers *inspection-stage applicants for admission* – individuals encountered at or near a port of entry. Section 1226(a) governs *post-inspection* and *post-entry arrests* of non-citizens already present in the United States pending removal proceedings. This division appears in both the statutory text and its implementing regulations. Section 1225(a)(3) provides that "all applicants for admission shall be inspected by immigration officers." §1225(b)(2)(A) then requires detention of such applicants who, upon examination, are not clearly admissible. By contrast, §1226(a) authorizes the Attorney General to arrest and detain on a "warrant" (and a warrant was issued here) for "an alien pending a decision on whether the alien is to be removed." (and a decision is pending here). It is this latter provision that expressly allows continued detention, release on bond, or conditional parole.

B. Structure and Legislative Intent

Reading §1225(b)(2) to include every noncitizen not formally "admitted" would render §1226(a) largely useless. Congress could not have intended a single subsection of Section 1225 to swallow virtually the entire framework of discretionary custody Congress preserved in Section 1226. The legislative history of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") confirms that Section 1225 was designed to consolidate inspection procedures *at or near the border or ports-of-entry*, while Section 1226 remained the detention

authority for arrests *inside the country*. *See* Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-108, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579 (codified at 8 U.S.C. § 1225); H.R. Conf. Rep. No. 104-828, at 209-10 (1996) (explaining that § 302 "revises section 235 of the INA to consolidate the inspection and removal process at ports of entry," while § 303 "retains the Attorney General's discretionary authority to detain or release aliens pending removal proceedings under Section 236").

C. Subject-Matter Jurisdiction Over Petitioner's Section 1226(a) Detention

Federal courts are "courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). 28 U.S.C. § 2241 is the primary federal habeas statute, which authorizes federal courts to hear "statutory and constitutional challenges to post-removal-period detention." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). 8 U.S.C. § 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g).

The Supreme Court has interpreted § 1252(g) narrowly, emphasizing that it does not create a general bar to judicial review or sweep in all claims "arising from" deportation proceedings; rather, courts must focus on whether the claim challenges one of the three covered actions themselves. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (explaining that § 1252(g) is a "discretion-protecting provision" intended to prevent the deconstruction or prolongation of removal proceedings and does not bar review of all claims arising from deportation proceedings); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020); *Jennings*, 583 U.S. at 294.

In addition, the Eleventh Circuit has similarly distinguished between claims that directly challenge one of the three discrete actions listed in §1252(g), specifically commencing proceedings, adjudicating cases, or executing removal orders, and claims challenging the legality of detention. *See Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). Specifically, in this district, the Court reaffirmed that principle, holding that § 1252(g) does not clearly bar review of claims seeking only the substantive legality of detention rather than challenging the commencement or execution of removal proceedings. *See Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025) ("In sum, the Court does not believe that § 1252(g) clearly bars review of this case to the extent Petitioner seeks only 'substantive review of the underlying legal bases' of his detention."). Consequently, claims that challenge the underlying legality of detention or the statutory authority governing detention, rather than the Attorney General's discretion to commence or execute removal, are not barred by § 1252(g) and remain fully reviewable, including challenges under § 1226(a) and related habeas provisions.

The Government's reliance on § 1252 does not serve to divest this Court of jurisdiction. It relies on 8 U.S.C. § 1252(e)(3), a provision that narrowly governs systemic challenges to expedited removal procedures, yet no expedited removal proceedings are at issue here: Petitioner is detained under § 1226(a) following post-entry detention, and no one has claimed that any expedited removal procedure under 8 U.S.C. 1225(b)(1) is in play here. Similarly, the Government's reliance on § 1252(g) and § 1252(b)(9) is misplaced. Petitioner's detention in September 2025 is disconnected from the commencement of removal proceedings, because removal proceedings were initiated in 2022, not 2025. [ECF No. 13-3]. Respondents' decision to detain Petitioner occurred in September 2025. [ECF No. 7-1] Petitioner does not challenge the Government's discretion to commence

proceedings, adjudicate cases, or execute removal orders, and the detention decision is unrelated to any of these discrete acts. Instead, Petitioner challenges the underlying legal basis of his *detention* under § 1226(a); i.e., Petitioner does not challenge the initiation or execution of any removal proceedings; he challenges only the lawfulness of his detention while awaiting such proceedings. Likewise, § 1252(b)(9) restricts judicial review of final orders of removal, *yet Petitioner has no final order of removal and has never had one*. Nor is he challenging any aspect of his removal proceedings. He is challenging his detention without a bond hearing. This case concerns the ongoing legality of detention under § 1226(a), which governs post-entry custody, provides for discretionary bond consideration, and is reviewable by the courts.

Applying the Government's reading of § 1252 to these facts would improperly conflate judicial review of final removal orders with challenges to detention. § 1252(g) does not bar review of claims against the substantive legality of detention. *See Grigorian*, 2025 WL 2604573, at *6. ("In sum, the Court does not believe that § 1252(g) clearly bars review of this case to the extent Petitioner seeks only 'substantive review of the underlying legal bases' of his detention."). Accordingly, the Government's scattershot invocation of § 1252 is misplaced because it fails to demonstrate any applicable jurisdictional bar, and this Court retains full subject-matter jurisdiction to hear Petitioner's claims. *See Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025) (rejecting similar jurisdictional arguments to those presented by Respondents.)

D. Section 1225(b)(2) Does Not Apply

The Government's argument that Petitioner is an "applicant for admission" subject to detention under 8 U.S.C. § 1225(b)(2) mischaracterizes both the statutory text and the relevant case law. While § 1225 defines an "applicant for admission" to include aliens present in the United States without admission, the provision does not automatically place every noncitizen into a

category that precludes review of detention under § 1226(a). As the Supreme Court has emphasized, statutory interpretation must begin with the plain language, but context and application are equally critical. *See Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.,* 540 U.S. 526, 534 (2004)).

Petitioner's circumstances fall squarely within the category of noncitizens present without admission, not arriving aliens at a port of entry. During Petitioner's arrest in September 2025, he did not engage with the inspection regime applied to actual applicants for admission at a point of entry. *See* 8 U.S.C. § 1225(a)(1). Courts have repeatedly recognized that § 1225(b)(2) is designed to govern removal procedures for such aliens, but it does not automatically impose a detention framework that displaces judicial review under § 1226(a) for arrests in the interior of the country. *See Lopez-Arevelo*, 2025 WL 2691828, at *6.

Courts considering the precise question at issue here have concluded that § 1226(a), not § 1225(b)(2), governs detention of noncitizens arrested inside the country. *See Barrera-Espinoza v. ICE*, No. 2:24-cv-01987, 2024 WL 8453112 (W.D. Wash. Dec. 12, 2024); *Pizarro Reyes v. Garland*, No. 1:25-cv-20317, 2025 WL 2927148 (S.D. Fla. May 7, 2025); *Rodriguez Vazquez v. Garland*, No. 2:25-cv-00412, 2025 WL 3510183 (W.D. Wash. June 4, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 4369132 (D. Mass. July 7, 2025); *Martinez v. Hyde,* 2025 WL 2084238 (D. Mass. July 24, 2025); *Lepe v. Bondi*, No. 3:25-cv-01602, 2025 WL 4520799 (S.D. Cal. Aug. 5, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Hypolite v. Noem*, No. 1:25-cv-04304, 2025

WL 5893911 (E.D.N.Y. Sept. 29, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025); *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025).

E. The *Alvarez Puga* Decision Confirms that Section 1226(a) Governs Detention Following Interior Arrest

The Government's position has already been rejected in the Southern District of Florida in *Alvarez Puga*, namely, whether a noncitizen arrested inside the United States after entry is detained under Section 1225(b)(2) or Section 1226(a). *Alvarez Puga v. Assistant Field Office Director*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025). The *Alveraz Puga* Court held unequivocally that Section 1226(a) applies. In doing so, it carefully examined the text, structure, and history of both provisions, concluding that Section 1226(a) governs those already present in the United States and that no jurisdictional bars apply to habeas relief. *Id.* at *7-11. The *Alvarez Puga* court explained that reading Section 1225(b)(2) to encompass arrests well within the interior of the United States would make Section 1226(a) superfluous and contradict the INA's structure. Reviewing the statutory text and the newly enacted Laken Riley Act amendments, the court reasoned that Congress designed Section 1226(a) as the default detention framework for noncitizens already present in the United States, reserving § 1225 for "arriving aliens in the inspection process." *Id.* at 8–9 (citing *Pizarro Reyes v. Raycraft*, *Lepe v. Andrews*, and *Barrera v. Tindall*). The court also rejected the Government's reliance on *Matter of Yajure Hurtado*, explaining that federal courts need not—and may not—defer to an agency interpretation of the law simply because a statute is ambiguous. *Id.* at 10 (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)). That holding squarely rejects the interpretation advanced by the

Government here and provides persuasive authority confirming that Section 1226(a) governs detention following an interior arrest.

F. The Phrase "Examining Immigration Officer" in Section 1225(b)(2)(A) Refers to Border and Port-of Entry-Inspection Personnel, Not ICE Agents

Section 1225(b)(2)(A) provides that "*an alien who is an applicant for admission ... shall be detained for a proceeding under section 1229a* [standard removal proceedings] *if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.*" 8 U.S.C. § 1225(b)(2)(A). The statutory text, its placement within Section 1225, and the implementing regulations exclude the extension of "examining immigration officer" to ICE officers conducting arrest and detention in the interior of the U.S.

1. Text and Structure

The phrase "examining immigration officer" appears only in Section 1225(b)(2)—within a portion of the INA that codifies *inspection* procedures. Section 1225(a)(3) commands that "[a]ll applicants for admission shall be inspected by immigration officers." Congress then uses the verb *examine* in Section 1225(b)(1)–(2) to describe the inspection process. Read in context, "examine" refers to the face-to-face assessment of an applicant for admission at a port of entry. Nothing in Section 1225 extends that function to officers who execute interior arrests under § 1357(a). The Supreme Court has repeatedly described Section 1225 as governing "inspection and admission" procedures at the threshold of entry. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (describing Section 1225 as establishing "the process for inspecting and admitting arriving aliens"). By contrast, Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583

U.S. 281, 289 (2018) (emphasis added). The placement of the phrase "examining immigration officer" in § 1225(b)(2) thus confines it to the inspection context.

2. Regulatory Usage

The regulations make clear who actually performs an examination under Section 1225. That role belongs to Customs and Border Protection ("CBP") officers conducting inspection at ports of entry—not to ICE agents carrying out interior arrests. *See* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry."); *id.* § 235.3(b) ("Every applicant for admission shall appear before an immigration officer for inspection.") These provisions appear in Part 235 of the regulations, titled *Inspection of Persons Applying for Admission*, which governs CBP's inspection functions. ICE's authority, by contrast, appears in Part 287, titled *Field Officers; Powers and Duties*, which covers arrests and detentions inside the United States. *See* 8 C.F.R. § 287.5(c)–(d). The existence of separate regulatory chapters for inspection (Part 235) and interior enforcement (Part 287) shows that Congress and DHS treat these as distinct activities, deriving their force from distinct statutory detention authority. Any claim that any "immigration officer" can also be an "examining immigration officer" erases that distinction and rewrites the statute. It also makes little sense to speak of an examining officer making a determination about whether someone is entitled to be admitted, if the officer has no power to authorize admission. The word "examining" limits the phrase to officers performing inspection duties, with the authority to authorize admission and passage through our gates, not to all DHS personnel. As previously noted, Section 1225 requires detention only for persons literally seeking admission – those at or attempting entry across the border. 8 U.S.C. § 1225(b). By contrast, Section 1226 authorizes the Attorney General to detain or release on bond any non-citizen arrested upon a "warrant" and "pending a decision on whether the

alien is to be removed." 8 U.S.C. §1226(a). It provides a discretionary detention scheme and guarantees an individualized custody hearing before an immigration judge. *Jennings*, 583 U.S. at 288-289. Treating these categories as interchangeable collapses Congress's deliberate distinction and converts a narrow border-control measure into a general detention mandate.

3. Legislative Intent and Regulatory Context

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") confirms Congress's intent to maintain separate detention tracks. Representative Lamar Smith, the Act's sponsor, explained during implementation hearings that Section 1226 was intended to apply to "aliens already present in the United States," as opposed to those "arriving at a point of entry." (H.R. Conf. Rep. No. 104-828, at 98 (1996)). *Aguilar* relied on this same legislative record, noting that DHS's recent expansion of Section 1225 finds no support in IIRIRA's history and is inconsistent with Congress's design distinguishing arriving from present noncitizens. No. 25-cv-61932 at *7. As *Aguilar* explained, the regulatory definition of "arriving" uses present-tense language that applies only to individuals actively seeking entry. *see id*. The court reasoned that this phrasing cannot encompass noncitizens who have long resided within the United States. *id* at *6. That reasoning applies with equal force to Petitioner.

4. Judicial Consensus

Aguilar Merino also firmly stands for the proposition that Petitioner is entitled to a new bond hearing or release: "DHS's interpretation of the applicability of § 1225(b)(2), rather than § 1226, to noncitizens who have resided in the county for years and were already in the United States when apprehended, runs afoul of the statutes' legislative history, plain meaning, and interpretation by courts in the First, Second, Fifth, Sixth, Eight, and Ninth Circuits." *Aguilar Merino v. Noem,* No. 25-CV-23845 (S.D. Fla. Oct. 15, 2025). A companion case referenced *supra* also rejected the

Respondents' reliance on *Matter of Yajure Hurtado* and DHS's interpretation of the applicability of § 1225(b)(2), when concluding:

> "Respondents' reliance on the BIA's decision in *Matter of Yajure Hurtado* — rejecting the argument that a noncitizen who entered the United States without inspection and has resided here for years is not 'seeking admission' under section 1225(b)(2)(A) — is also misplaced. The Court need not defer to the BIA's interpretation of law simply because the statute is ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[C]ourts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." (alteration added)). As explained, the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so. Additionally, numerous courts that have examined the interpretation of section 1225 articulated by Respondents — particularly following the BIA's decision in *Matter of Yajure Hurtado* — have rejected their construction and adopted Petitioner's. … For these reasons, the Court finds that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)."

See Alvarez Puga v. Ripa, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025) at *10.

§ 1225 applies cannot logically apply to someone who has resided in the country for years. *Alvarez Puga v. Ripa*, a recent decision from the District of Southern Florida, considered whether a petitioner (Mr. Alvarez Puga) was subject to mandatory detention under §1225(b)(2)(A). *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). The court began its analysis by looking at the plain text of the statute.

As relevant here, §1225(b)(2)(A) states: "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that *an alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). *Alvarez Puga* then explained, "the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is "seeking admission" when he never sought to do so." *Alvarez Puga v. Ripa*, 25-

24535-cv-Altonaga (S.D. Florida October 15, 2025). The court concluded that, because Mr. Alvarez Puga was already residing in the country when he was detained, he was not "seeking admission" at that time, and therefore, "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A)." *Id.*

As the court in *Alvarez Puga* reasoned, "[i]f Respondents' interpretation of section 1225 is correct — that the mandatory detention provision in section 1225(b)(2)(A) applies to all noncitizens present in the United States who have not been admitted — then Congress would have had no reason to enact section 1226(c)(1)(E) [the Laken Riley Act provisions]." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). Those provisions apply mandatory detention to persons present without admission if they commit certain crimes. See 8 U.S.C. 1226(c)(1)(E). Congress' passage of the Laken Riley Act would have been entirely unnecessary if all persons present without admission were already subject to mandatory detention. Respondents' interpretation of §1225 violates a canon of statutory construction: the rule against surplusage. *See Corley v. United States*, 556 U.S. 303, 314 (2009) ("[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]"); *see also United States, ex rel Polansky v. Exec. Health Res., In* . 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S.S 167, 174 (2001)).

While Petitioner was never "admitted" to the United States in that he never lawfully entered it, it does not follow that he was actively seeking admission at the time of his detention. He has already entered the country. Respondents' interpretation of §1225b(2)(A) simply ignores the statute's present-tense active language. *See Matter of M-D-C-V-,* 28 I&N. Dec 18, 23 (B.I.A.

2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process.'") (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-1012 (9th Cir. 2020)). And by treating the terms "applicant for admission" and "seeking admission" as synonymous, Respondents' interpretation violates the principle that Congress is presumed to act intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings. *See Yale New Haven Hosp. v. Becerra,* 56 F.4th 8, 21 (2d Cir. 2022) (describing the "meaningful-variation canon" as "the principle that where a statutory scheme has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea") (citing *Sw, Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022)).

Many new district court decisions have reaffirmed this analysis by *Alvarez Puga*. As the *Alvarez Puga* Court concluded, "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. FLA October 15, 2025).

5. Plain Meaning

Even the ordinary dictionary meaning of *examine*—"to inspect or investigate closely" or "to look at carefully for the purpose of evaluation"—supports this narrower reading. In immigration law, "inspection" and "examination" are terms of art referring to what happens when someone presents themselves at or near the border or at a port-of-entry. *See* 8 C.F.R. § 1.2 (defining "admission" as lawful entry "after inspection and authorization by an immigration officer"). It makes little sense to call an ICE agent issuing or executing an interior arrest warrant an "examining immigration officer." That phrase belongs to CBP inspectors who decide, at entry, whether someone may be admitted. For all these reasons, "examining immigration officer" in Section

1225(b)(2)(A) refers only to officers performing inspection duties at ports of entry. It does not include ICE officers conducting interior arrests.[2] Because Petitioner was arrested inside the United States under an ICE warrant during a check-in, his detention falls under § 1226(a), which allows for a bond hearing and discretionary release.

A District Court in Southern District of Florida sums up the futility of a BIA appeal for Petitioner: "The BIA issued *Matter of Yajure Hurtado* as a published decision, and such decisions 'serve as precedents in all proceedings involving the same issue or issues.' 8 C.F.R. § 1003.1(g)(2); *see also id.* § 1003.1(d)(1). Thus, considering *Matter of Yajure Hurtado*, it appears evident that a noncitizen like Petitioner, who has resided in the United States for years but has not been admitted or paroled, will be subject to mandatory detention without bond under section 1225(b)(2) upon review by the BIA." *See Matter of Yajure Hurtado*, 29 I&N Dec. at 221." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). Therefore, BIA appeal would be entirely futile and habeas relief is Petitioner's only option.

III. Conclusion

For the foregoing reasons, Petitioner respectfully submits that the Government's reliance on 8 U.S.C. §§ 1225(b)(2), 1252(e)(3), 1252(g), 1252(b)(9), and 1226(e) is entirely misplaced. Petitioner's detention is governed by 8 U.S.C. § 1226(a), which provides for discretionary bond consideration, and the statutory and constitutional claims raised here remain fully reviewable. The authorities cited by Respondents do not support their expansive reading of § 1225(b)(2), nor do they bar judicial review of Petitioner's detention. Accordingly, the Court should maintain jurisdiction over the Petition, and grant the relief requested by Petitioner, namely, Petitioner respectfully requests that the government either immediately provide an individualized bond

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[2] https://www.merriam-webster.com/dictionary/examine (using "examine" to denote a form of careful inspection.)

hearing or release him. Petitioner also respectfully requests that this Court should reserve jurisdiction to enforce its Order against any agency claiming legal custody of Petitioner, including the Department of Justice, which oversees the Executive Office of Immigration Review (EOIR) and consequently the immigration courts that perform bond hearings.

Respectfully submitted,

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/s/ Felix A. Montanez
Felix A. Montanez, Esq.
Fl Bar No. 102763
Preferential Option Law Office, LLC
P.O. Box 60208
Savannah, GA 31420
Tel: (912) 604-5801
Felix.montanez@preferentialoption.com

Counsel for the Petitioner