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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GABRIEL H. DELGADO VILLEGAS,)
A)
Petitioner,)
v.)
PAMELA BONDI,)
Attorney General of the)
United States of America,)
KRISTI NOEM,)
Secretary of the Department of)
Homeland Security, (DHS),)
TODD LYONS,)
Acting Director,)
United States Immigration and)
Customs Enforcement (ICE), and,)
THE WARDEN OF THE)
PHILADELPHIA FEDERAL)
DETENTION CENTER)
Respondents.)

Civil Action No. 2:25-cv-6143
PETITIONER’S REPLY IN
SUPPORT OF PETITION
FOR A WRIT OF HABEAS
CORPUS

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HABEAS CORPUS

Petitioner Gabriel H. Delgado Villegas, by and through undersigned counsel, respectfully submits this reply in further support of his petition for a writ of *habeas corpus*.

The Respondents rely on a legally unsound interpretation of 8 U.S.C. § 1225(b)(2) to justify treating individuals in Petitioner’s position as mandatory detainees who are categorically ineligible for bond, even though numerous district courts, including this one, explicitly rejected these interpretation¹.

That position is now untenable—not only under this Court’s reasoning in *Demirel*, but also under the partial summary judgment and class certification decisions in *Maldonado Bautista et al. v. Santacruz et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal., Nov. 25, 2025). In *Maldonado Bautista*, the Court rejected DHS’s attempt to apply § 1225(b)(2)(A) to noncitizens like Mr. Delgado and declared that such individuals are detained under 8 U.S.C. § 1226(a) and entitled to bond consideration.

Because (1) this Court has jurisdiction; (2) Mr. Delgado is unlawfully detained under § 1225(b)(2), (3) his detention falls under § 1226(a); (4) exhaustion is not required; and (5) he is a member of the *Maldonado Bautista* Bond Eligible Class, the Court should grant the writ and order his release from detention under §

¹ As the Respondents conceded, “[t]he factual and legal issues presented in this habeas corpus petition do not differ materially from those considered and decided by this Court in *Demirel v. Fed. Det. Ctr. Philadelphia*, No. 25-cv-5488, 2025 WL 3218243 (E.D. Pa. Nov. 18, 2025). See Response, ECF No. 11, at 1-2 (hereinafter, “Response”)

1225(b)(2), or, in the alternative, order Respondents to provide him with a prompt bond hearing under § 1226(a).

I. LEGAL STANDARDS

As this Court recognized in *Demirel*, No. 25-cv-5488, 2025 WL 3218243 at *3, *habeas* relief can be granted "to any person in custody in violation of the Constitution or laws or treaties of the United States." (citing 8 U.S.C. § 2241(c)(3). "Habeas is a core remedy for unlawful executive detention" that is "regularly invoked on behalf of noncitizens." *Govern v. Geren*, 553 U.S. 674, 693 (2008); *Immigration and Naturalization Service v. St. Cyr*, 533 U.S. 289, 301 (2001).

Respondents incorrectly argue that Petitioner is detained pursuant to § 1225(b)(2), and that various provisions of 8 U.S.C. § 1252 strip this Court of jurisdiction. Those arguments misread § 1252 and attempt to insulate an unlawful detention decision from judicial review. As *Maldonado Bautista* confirms, DHS's new interpretations of § 1225(b)(2)(A) conflicts with the text, structure, and history of the INA.

Respondents' interpretation of § 1225(b)(2)(A) is not entitled to deference. Instead, this Court must "exercise independent judgment" to answer the underlying legal question of which statute governs Petitioner's detention. *See Loper Bright Enters. V. Raimondo*, 603 U.S. 369, 394 (2024).

ARGUMENT

I. THE COURT HAS JURISDICTION OVER THE INSTANT CASE REGARDING THE PETITIONER'S UNLAWFUL DETENTION WITHOUT A CUSTODY REDETERMINATION HEARING.

Respondents contend that 8 U.S.C. § 1252(g), § 1252(b)(9), and § 1252(a)(2)(B)(ii) strip this Court of jurisdiction over Petitioner's *habeas* petition. As explained herein, those provisions do not bar a challenge to the legality of detention or to the denial of access to a bond hearing.

First, Respondents argue that 8 U.S.C. § 1252(g) deprives this Court of jurisdiction in this matter because Petitioner's claims "arise from" the commencement of removal proceedings and "Congress has provided that 'no court shall have jurisdiction to hear any cause or claim' that arises from 'the decision or action' to 'commence' removal proceedings or 'adjudicate those cases.'" *See Response* at 7. But § 1252(g) "applies to only three discrete actions that the Attorney General may take": the decision or action to commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner's claims do not "arise from" the commencement of removal proceedings. Similar to in *Demirel*², Petitioner "seeks a bond hearing; he does not challenge the commencement, adjudication, or execution of removal proceedings", and therefore, Section 1252(g) does not bar jurisdiction.

² 2025 WL 3218243 at *5-6

Next, Respondents argue that 8 U.S.C. § 1252(b)(9) also bars jurisdiction in this matter as only the courts of appeal have the authority to review decisions and actions leading up to or consequent to final orders of deportation,' including 'non-final orders[.]'" See Response at 9 (citing *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 483). While § 1252(b)(9) addresses review of an order of removal and the proceedings leading to such an order, it does not convert all challenges tangentially related to removal into issues that can only be raised in a petition for review. Petitioner challenges the denial of a bond hearing, which is 'independent of' and 'collateral to' the removal process." See *E.O.H.C.v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020); see also 8 C.F.R. § 1003.19(d). Thus, Section 1252(b)(9) does not bar this Court from adjudicating Petitioner's challenge to his ongoing detention and the denial of a custody redetermination hearing.

Finally, Respondents argue that 8 U.S.C. § 1252(a)(2)(B)(ii) bars jurisdiction over Petitioner's claim as a discretionary matter. See Response at 12. But Petitioner does not ask this Court to review a discretionary judgment about whether to grant him bond. He challenges the Respondents' legal position that he is categorically ineligible for bond and therefore cannot access EOIR's custody redetermination procedures. Where a petitioner does not seek review of a discretionary decision but

instead contests the statutory source and lawfulness of his detention, § 1252(a)(2)(B)(ii) does not bar jurisdiction³.

Because each of the Respondents' jurisdictional arguments fails, the Court should follow *Demirel* and hold that it has—and indeed affirmatively retains—jurisdiction over Petitioner's habeas claim.

II. ADMINISTRATIVE EXHAUSTION IS NOT REQUIRED WHEN THE UNDERLYING LEGAL ISSUE INVOLVES STATUTORY CONSTRUCTION AND/OR ADMINISTRATIVE EXHAUSTION WOULD BE FUTILE.

Respondents also argue that Petitioner failed to exhaust administrative remedies by not first requesting bond in immigration court.

However, exhaustion is not required when a petition raises purely legal questions regarding the statutory authority for detention and the availability of a bond hearing⁴. Petitioners “need not exhaust administrative remedies where the issue presented involves only statutory construction.” *Vasquez v. Strada*, 684 F.3d 431, 433-34 (3d Cir. 2012) (internal citation omitted). Similar to *Demirel*, Petitioner's claim turns on a question of statutory interpretation of sections § 1226(a) and § 1225(b)(2) of the Immigration and Naturalization Act.⁵ It does not depend on any factual findings reserved for the agency.

³ *Id.* at *6

⁴ *Id.* at *6-7

⁵ *Id.*

Additionally, “[e]xhaustion is ‘likewise not required when it would be futile.’” *Demirel, supra*, at 7. (citing *del Cid*, 2025 WL 2985150, at *13)⁶. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025) the Board of Immigration Appeals (BIA) held that “under a plain language reading” of the relevant portions of the Immigration and Naturalization Act, 8 U.S.C. §§ 1225, 1226, “Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] . . . who are present in the United States without admission.” Considering *Yajure Hurtado*, the BIA has “predetermined the statutory issue,” and the Petitioner has “no reasonable prospect of obtaining relief” through the administrative process⁷. Requiring Petitioner to seek a bond hearing from an Immigration Judge who, under current BIA precedent, lacks jurisdiction to consider it would be futile.

Accordingly, administrative exhaustion is not necessary in this matter.

III. PETITIONER’S DETENTION IS GOVERNED BY 8 U.S.C. § 1226(a), NOT § 1225(b)(2).

Mr. Delgado is subject to unlawful detention. The statutory text, structure, history, and long-standing practice all demonstrate that interior arrests like Mr. Delgado's are governed by § 1226(a), not § 1225(b)(2). This conclusion is reinforced by the decisions of dozens of district courts across the country and the partial

⁶ See also *Stokes v. Warden of FCI-Allenwood*, No. 1:24-CV-1048, 2024 WL 4567287 at *2 (M.D. Pa. Oct. 24, 2024) (citing *Rose v. Lundy*, 455 U.S. 509, 516 n.7 (1982)).

⁷ *Demirel*, 2025 WL 3218243 at *7 (citing *Corona Diaz v. Olson*, No. 25-12141, 2025 WL 3022170 at *3)

summary judgment decision in *Maldonado Bautista et al.*, *supra*, which rejected DHS’s new reading of § 1225(b)(2)(A).

Two provisions of the Immigration and Naturalization Act govern the detention of noncitizens during removal proceedings. Section 1225(b) applies to certain “applicants for admission”—generally those at the border or a port of entry—and mandates detention in limited categories. Individuals detained pursuant to § 1225(b) are subject to mandatory detention and receive no bond hearing before an Immigration Judge. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under humanitarian parole at the agency’s discretion. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5).

By contrast, § 1226(a) applies to noncitizens “already in the country” who are entitled to consideration for release on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If Immigration and Customs Enforcement (ICE) denies release, these individuals can seek a custody redetermination hearing—commonly known as a bond hearing—before an Immigration Judge. *See* 8 C.F.R. § 1236.1(d). At that hearing, the noncitizens must present evidence to show that they are (1) not a flight risk, and (2) not a danger to the community. *See generally, Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

A. A Plain Reading of the Statute Shows the Petitioner is Eligible for a Bond Hearing.

A plain reading of the language of § 1226(a) demonstrates that it governs Petitioner's detention and affords him a right to seek bond.

The text of 8 U.S.C. § 1226(a) covers noncitizens who, like Mr. Delgado, "are detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). This includes both people who entered without inspection, were never formally admitted to the country, and thus are charged as "inadmissible", as well as people who were originally admitted to the country and are charged as "deportable" under the INA.

The Congress carved out distinct categories of noncitizens ineligible for bond hearings under the statute. One of them is of individuals who are ineligible for bond due to criminal issues—regardless of their status as noncitizens present without admission or inspection. *See* 8 U.S.C. § 1226(c)(1)(E). When Congress creates "specific exceptions" to a statute's applicability, it "proves" that, absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

The text and structure of Section 1225(b) further demonstrate Congress's intention to distinguish between noncitizens like the Petitioner, whose detention fails under § 1226(a) because they are "already in the country" and detained "pending the outcome of removal proceedings," and other categories of aliens. Section 1225(b)(2)'s detention scheme applies "at the Nation's borders and ports of

entry, where the Respondents must determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287, 289. In contrast to § 1226(a), the whole purpose of § 1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. *See id.* at 297.

The text of paragraph (b)(2) underscores this point. The paragraph specifies that it applies only to “applicants for admission” who are “seeking admission.” 8 U.S.C. § 1225(a)(1), (b)(2), (b)(2)(A). By stating that (b)(2) applies only to those “seeking admission,” Congress confirmed that it did not intend to sweep into this section individuals like the Petitioner, who have already entered and are now residing in the United States, and who did not take affirmative steps to obtain admission when they arrived. *See generally* 8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209.

Until recently, Respondents took the same position, explaining that “[t]o ‘seek admission’ . . . entails affirmative actions to gain authorized entry.” *Crane v. Johnson*, No. 14-10049 (5th Cir. Sept. 29, 2014), Dkt 78-1; *accord* Tr. Of Oral Argument at 44:23-45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954).

“This active construction of the phrase ‘seeking admission’” accords with the plain language in § 1225(b)(2)(A) by requiring that a person be an “applicant for admission” and “also [be] doing something” following their arrival to obtain

authorized entry. *Diaz Martinez*, 2025 WL 2084238, at *6-7.⁸ As the Court in *Lopez Benitez* recently analogized, “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as already present there.” 2025 WL 2371588, at *7.

The Supreme Court in *Jennings* further supports the interpretation that § 1225(b) governs the detention authority “at the Nation’s borders and ports of entry,” while § 1226 governs detention of noncitizens already living in the United States. See *Jennings*, 583 U.S. at 287–89; see also 8 U.S.C. § 1225(a)(3), (b)(1), (d). Mr. Delgado falls squarely into the latter category.

B. Various Canons of Statutory Construction Also Prove That the Petitioner Is Eligible for a Bond Hearing.

For decades, DHS and EOIR interpreted § 1226(a) as governing detention and bond eligibility for noncitizens apprehended in the interior, including those present without admission or parole. If 8 U.S.C. § 1225(b) were to apply to all noncitizens who entered the United States without admission or parole, as the Respondents argue, it would render significant portions of 8 U.S.C. § 1226 meaningless and contravene basic canons of statutory construction. Under the anti-superfluosity canon, “[a] statute should be construed so that effect is given to all its provisions, so

⁸ See also *Lopez Benitez*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7.

that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009). This principle applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times. *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

Recently, the Congress enacted the Laken Riley Act, which imposes mandatory detention for noncitizens who are present in the United States without being admitted or paroled and who are implicated in one of the enumerated crimes. The Laken Riley Act would be superfluous if all noncitizens who had not been admitted were already subject to mandatory detention under 8 U.S.C. § 1225(b).

C. The Legislative and Statutory History Supports the Conclusion that the Petitioner Is Eligible for a Bond Hearing.

Finally, the legislative and statutory history supports the ongoing interpretation of 8 U.S.C. § 1226, which allows bond hearings for noncitizens who have not been admitted. Prior to IIRAIRA, people like the Petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a) (1994) (authorizing the Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons within the United States⁹). In passing IIRAIRA, Congress explicitly

⁹ Before IIRAIRA, individuals already present in the country were placed in "deportation proceedings," while individuals seeking admission into the country were placed in "exclusion proceedings." *See Landon v. Plasencia*, 459 U.S. 21, 25 (1982) ("The immigration laws create two types of proceedings in which [noncitizens] can be denied the hospitality of the United States: deportation hearings and exclusion hearings. The deportation hearing is the usual means of proceeding against a [noncitizen] already physically in the United States, and the exclusion hearing is the usual means of proceeding against a [noncitizen] outside the United States seeking admission.")

explained that it was *not* upending the detention *status quo*, and that it intended for the new Section 1226(a) to continue to govern the detention of those apprehended inside the United States. Specifically, the Congress stated that the new provisions at § 1226(a) merely “restate[d] the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond a [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229; see also H.R. Rep. No. 104-828 at 210. As the Western District of Washington recognized, “[b]ecause noncitizens like [the Petitioner] were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRAIRA, this background supports [the Petitioner's] position that he, too, is subject to discretionary detention.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1260.

The Respondents' new interpretation violates EOIR's long-standing regulations, considering people like the Petitioner as detained under § 1226(a) and eligible for bond. Such a long-standing and consistent interpretation “is powerful evidence that interpreting the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); see also *Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on

(internal citations omitted). Following IIRAIRA, both proceedings are subsumed into the title “removal proceedings.”

“over 60 years” of the Respondents' interpretation and practice to reject its new proposed interpretation of the law at issue); *Util. Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) (“When an agency claims to discover in a long-extant statute an unheralded power . . . [the courts] typically greet its announcement with a measure of skepticism.”).

IV. PETITIONER WAS NOT “SEEKING ADMISSION” AT THE TIME OF HIS ARREST AND THUS IS NOT SUBJECT TO MANDATORY DETENTION.

Section 1225(b) provides that: “in the case of a[noncitizen] who is an applicant for admission, if the examining immigration officer determines that a[noncitizen] **seeking admission** is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a [removal] proceeding.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Detention is thus mandatory for applicants for admission who are seeking admission. *See Jennings*, 583 U.S. at 300. By comparison, individuals detained pursuant to section 1226(a) may appeal an “initial custody determination” to an IJ. 8 C.F.R. § 1236.1(d)(1). *See also Jennings*, 583 U.S. at 288-89.

Like the Petitioner in *Demirel*, 2025 WL 3218243 at *8, Petitioner “was already in the United States—not actively ‘seeking admission’—when he was taken into custody by ICE. In fact, at the time of the arrest, Petitioner had been in the United States for over twenty-five years.

As this Court rightfully decided in *Demirel*, “[i]f, as the Respondents argue, § 1225(b) applies to all ‘applicants for admission, then there was no need for Congress to limit the statute’s application to ‘[noncitizens] seeking admission.’” *See id.* at *8. “[E]very clause and word of a statute should have meaning,” yet the Respondents ask this Court to overlook the plain wording of 8 U.S.C. § 1225(b). *See, United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023).

Considering the plain language of the statute, Petitioner is not an applicant for admission *seeking admission* into the United States and thus his detention occurs pursuant to 8 U.S.C. § 1226(a).

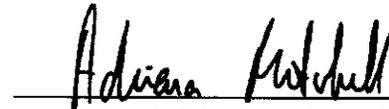
CONCLUSION

In sum, the Court has jurisdiction over Petitioner’s claim, and administrative exhaustion is not required in this matter. Furthermore, the plain text of 8 U.S.C. § 1226 and § 1225, the statute’s structure and various canons of statutory interpretation, and the legislative and statutory history of § 1226(a) to individuals such as the Petitioner all demonstrate that he is entitled to consideration for release on bond.

For the foregoing reasons, the Petitioner respectfully requests that the Court grant his petition for a writ of habeas corpus. Specifically, he requests the Court to order that the Petitioner must be released from custody or receive a bond hearing

under 8 U.S.C. § 1226(a) no later than fourteen days from the date of the Court's order.

Respectfully submitted this 2nd day of November, 2025.

A handwritten signature in black ink that reads "Adriana Mitchell". The signature is written in a cursive style and is positioned above a horizontal line.

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