UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

ERNESTO GERARDO ZEPEDA RAMIREZ, A# [redacted] Petitioner, vs. ADAM SMITH, *in his official capacity as Jailer of Christian County Jail*; and SAM OLSON, *Field Office Director for ICE Chicago Field Office*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*; and PAMELA BONDI, *U.S. Attorney General*. Respondents.	)	CASE NO.: 5:25-cv-00186-BJB-LLK

PETITIONER'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Comes now Petitioner, Ernesto Gerardo Zepeda-Ramirez, by and through undersigned counsel, and respectfully submits this Response to Respondents' Motion to Dismiss, challenging the lawfulness of his ongoing detention by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Christian County Detention Center, Kentucky, following his arrest on October 13, 2025, in Mount Prospect, Illinois. This petition challenges solely the legality of Petitioner's detention—not the merits of his removal proceedings—and seeks immediate judicial intervention to remedy ongoing constitutional and statutory violations.

I. INTRODUCTION

This action arises from a Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief challenging Petitioner's unlawful

detention by Respondents and the denial of an individualized bond hearing. Petitioner, a citizen of Mexico who has resided in the United States since approximately 2008 and has strong family and community ties in Illinois, was arrested in the interior of the country and subsequently subjected to mandatory detention under 8 U.S.C. § 1225(b)(2) as an "applicant for admission," a classification he vigorously disputes.

Respondents move to dismiss (ECF 8), primarily asserting a lack of subject matter jurisdiction under 8 U.S.C. §§ 1252(b)(9) and (g), contending that Petitioner's claims challenge decisions related to the commencement of removal proceedings and thus barred from review until a final order of removal is entered. Respondents further argue that the challenge to detention is not collateral but is part of the removal process. These arguments, however, ignore the overwhelming weight of recent authority – including-as of today-more than 212 U.S. district court decisions from around the country, both published and unpublished decisions, with the trend accelerating (ECF Dkt. 1-3 includes 150 such cases), and multiple cases from the Western District of Kentucky holding that habeas review of detention is collateral to removal and not barred by these provisions.

Petitioner's detention is unlawful because he is not an "applicant for admission" subject to mandatory detention under § 1225(b), but rather an interior arrestee whose detention should be governed by the discretionary provisions of 8 U.S.C. § 1226(a), entitling him to a bond hearing. The government's reclassification of interior arrestees as "applicants for admission" and the subsequent denial of bond hearings, as reflected in the July 2025 ICE memo and the later BIA's *Matter of Yajure Hurtado* (29 I. & N. Dec. 216 (BIA 2025)) are arbitrary, capricious, and in excess of statutory authority. Such prolonged detention without an individualized bond hearing also violates Petitioner's

Fifth Amendment due process rights (*Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001)). This Court and others have recognized and granted habeas relief in similar cases challenging such detention practices.

See *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3, *5 (W.D. KY. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025). See also 150+ cases in ECF 1-3. Therefore, the Motion to Dismiss should be denied.

II. FACTUAL BACKGROUND

Ernesto Gerardo Zepeda-Ramirez is a 47-year-old citizen of Mexico who has continuously resided in the United States since approximately 2008. He lives in Lansing, Illinois, where he is the sole provider for his wife—who suffers from a serious heart condition and is medically dependent on his support—and their three children, ages 21, 16, and 6. Zepeda operates a longstanding construction business that supports not only his household but also his employees, and he is widely regarded as a person of good moral character. He is an active member of his local church and maintains strong, longstanding ties to the community. Zepeda has no criminal record.

Despite his long-term presence and strong community ties, Petitioner was arrested by ICE on October 13, 2025 in Illinois. Petitioner's life was abruptly disrupted when he was arrested by ICE officers. His arrest was unlawful as will be explained. He was transferred to Broadview detention center from Monday until Thursday. During all the time he spent in Broadview, he did not have access to basic personal hygiene products, such as toilet paper. He was held in a detention cell with around 150 people, given only

one meal a day. He was subsequently transferred and is currently detained at the Christian County Detention Center in Kentucky. Thereafter, ICE initiated removal proceedings against him by filing a Notice to Appear (we believe over 48 hours later).

Crucially, Mr. Zepeda has been classified as an "applicant for admission" and subjected to mandatory detention under 8 U.S.C. § 1225(b)(2). This classification stems from a July 2025 ICE policy shift, which reclassified noncitizens who entered without inspection as "applicants for admission." This policy was issued by stealth, without public disclosure or notice-and-comment procedures. The Board of Immigration Appeals (BIA) further expanded this mandatory detention framework in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), denying bond hearings under § 236(a) or § 1236(a) to individuals like Mr. Zepeda. As a result, he has been denied an individualized bond hearing, despite his significant ties to the community.

In response to his unlawful detention, Mr. Zepeda filed a Verified Petition for Writ of Habeas Corpus on October 31, 2025. He asserts that he is not an "arriving alien" or "applicant for admission" under § 1225(b) and that his detention should be governed by 8 U.S.C. § 1226(a), which would make him eligible for a bond hearing or straight release given his arrest was unlawful. He also alleges violations of his Fifth Amendment due process rights, agency regulations, and the Administrative Procedure Act (APA). A Master Hearing before Immigration Ryan Thompson is scheduled for November 17, 2025. The federal respondents filed a Motion to Dismiss on November 7, 2025 with their return to show cause (Petitioner's response to the Return will be provided separately).

III. ARGUMENTS

Petitioner asserts that the Court possesses subject matter jurisdiction over his

petition for a writ of habeas corpus and that his detention is unlawful. The government's arguments for dismissal are predicated on a misinterpretation of jurisdictional statutes, an erroneous application of immigration detention provisions, and a disregard for fundamental due process protections and administrative law principles. As detailed below, Petitioner's claims fall squarely within this Court's habeas jurisdiction, his classification as an "applicant for admission" subject to mandatory detention is contrary to law, and his prolonged detention without an individualized bond hearing violates the Fifth Amendment.

A. The Court Retains Jurisdiction Over Petitioner's Habeas Claims Under 28 U.S.C. § 2241

The government contends that this Court lacks subject matter jurisdiction over Mr. Zepeda's petition, citing 8 U.S.C. §§ 1252(b)(9) and (g) as bars to review. This argument has been consistently rejected by over 150 district court decisions, including those in the Western District of Kentucky. It fundamentally misconstrues the scope of these provisions and the enduring power of federal courts to grant writs of habeas corpus. The writ of habeas corpus, enshrined in the U.S. Constitution and codified at 28 U.S.C. § 2241, provides a critical mechanism for federal courts to review the legality of executive detention which is a separate and distinct matter than someone's detention. Someone can be in removal proceedings and be detained or not detained. They are two separate issues. Specifically, § 2241(c)(3) empowers district courts to grant the writ to persons "in custody in violation of the Constitution or laws or treaties of the United States." This authority extends to challenges to immigration detention, including those seeking release, a bond hearing, or to contest conditions of **custody**.

B. This Court Retains Habeas Jurisdiction Despite 8 U.S.C. § 1252(g)

The Government asserts that this Court lacks jurisdiction under 8 U.S.C. § 1252(g), arguing that Petitioner's detention **arises from** the commencement of removal proceedings. This argument is misplaced as it relies on an overly broad interpretation of § 1252(g) that has been consistently rejected by the Supreme Court and numerous circuit courts and even including this Court.

The Supreme Court, in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), clarified that § 1252(g) applies only to "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" Petitioner's habeas claims do not challenge the decisions to commence removal proceedings, adjudicate his case, or execute a removal order. Petitioner is separately seeking relief from removal before the immigration court. Instead, we challenge the legality and constitutionality of his **prolonged detention** without a bond hearing (or despite a bond hearing that ordered his release), a matter distinct from the enumerated actions in § 1252(g).

8 U.S.C. § 1252(g) strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful discretion** to **commence** removal proceedings, **adjudicate** those cases, and **execute** orders of removal.

> Section 1252(g) states that:
> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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** against any alien under this chapter.

The statute's opening phrase—"Except as provided in this section"—is critical. It means that the jurisdictional bar is not absolute; rather, it is subject to the exceptions and

carve-outs that are expressly set forth elsewhere in § 1252. The enumeration of 28 U.S.C. § 2241 (the general habeas statute), as well as other habeas and mandamus provisions, is intended to clarify that, except as otherwise provided in § 1252, these statutes do not independently confer jurisdiction over claims that fall within the specific actions listed: the Attorney General's decisions to **commence** proceedings, **adjudicate** cases, or **execute** removal orders.

Section 1252(g) imposes only a narrow jurisdictional bar, restricting judicial review to three specific actions by the Attorney General: the decision to commence removal proceedings, adjudicate cases, or execute removal orders. The Supreme Court has repeatedly emphasized that this provision does not extend to collateral challenges, such as those contesting the legality or constitutionality of a noncitizen's detention. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482–83 (1999), the Court made clear that § 1252(g) "is not a 'zipper' clause" that sweeps in all claims tangentially related to removal proceedings. Rather, it "applies only to three discrete actions" and leaves undisturbed the courts' authority to review other claims, including those challenging detention.

This interpretation was reaffirmed in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018), where the Court held that § 1252(g) "refers only to the three specific actions themselves, not to any claim that can technically be said to 'arise from' those actions." Thus, collateral challenges to detention—such as habeas petitions contesting the lawfulness of custody—remain fully within the jurisdiction of the federal courts. Detention is a distinct issue, separate from the initiation or adjudication of removal proceedings, and nothing in § 1252(g) precludes judicial review of claims that fall outside

the narrow scope of the three enumerated actions. In sum, both Supreme Court precedent and the statutory text confirm that § 1252(g) does not bar this Court from considering the legality of Petitioner's detention. The government's attempt to expand the reach of § 1252(g) beyond its clear limits is contrary to controlling authority and should be rejected.

In *Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at 8–9 (6th Cir. Aug. 13, 2025), the Sixth Circuit addressed the scope of the jurisdictional bar imposed by 8 U.S.C. § 1252(g) in the context of habeas petitions challenging immigration detention. The court held that the government's argument for a broad reading of § 1252(g) was unlikely to succeed, emphasizing that the **statute's jurisdictional bar is narrow** and applies only to three discrete actions: the decision or action to commence proceedings, adjudicate cases, or execute removal orders against an alien. The Sixth Circuit reiterated that, under longstanding principles of statutory interpretation, Congress must speak clearly and specifically when it wishes to deprive federal courts of jurisdiction. The court cited Supreme Court precedent requiring a "clear and convincing" statement of congressional intent to restrict judicial review, especially in the context of habeas claims challenging detention. The panel found that § 1252(g) does not clearly state a jurisdictional bar on review of detention claims, and thus does not preclude district court jurisdiction over habeas petitions that challenge the legality or constitutionality of immigration detention, as such claims are independent of, or collateral to, the removal process.[1]

Crucially, challenges to the legality of detention, such as Petitioner's, are

[1] See also *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3, *5 (W.D. KY. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025), all finding jurisdiction to review the legality of detention under 28 U.S.C. § 2241 and distinguishing between challenges to removal and challenges to detention.

generally considered "**collateral**" to removal proceedings and thus not barred by § 1252(g). Sister courts have also consistently held that habeas petitions challenging the legality or constitutionality of immigration detention—such as Petitioner's—are collateral to removal proceedings and thus not barred.

As the First Circuit explained in *Kong* claims challenging the legality of detention are collateral to ICE's prosecutorial decision to execute removal and do not fall within the three discrete exercises of prosecutorial discretion covered by § 1252(g). The *Kong* court clarified that § 1252(g) is "directed against attempts to impose judicial constraints upon **prosecutorial discretion**" *Kong v. United States*, 62 F.4th 608, 612 (1st Cir. 2023). The court further noted that "construing § 1252(g) to bar all detention-related claims would raise serious constitutional concerns under the Suspension Clause". *Id.* See also *Mahdawi v. Trump*, 136 F.4th 443, 450 (2nd Cir. 2025) (the government "dramatically overstates the reach of § 1252(g)" when it argues that the statute strips district courts of jurisdiction over habeas petitions challenging immigration detention and the bar should be narrowly construed; habeas petitions challenging unlawful detention—such as those raising constitutional claims or contesting the statutory basis for detention—are "independent of, and collateral to, the removal process" and therefore fall outside § 1252(g)'s narrow jurisdictional bar). *Ozturk v. Hyde* 136 F.4th 382, 397 (2nd Cir. 2025) (§ 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," and does not reach claims that are independent of, or collateral to, the removal process).

The Government's reliance on cases such as *Alvarez v. ICE,* 818 F.3d 1194, 1203 (11th Cir. 2016)[2] and *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013)[3] (who are well-known to undersigned counsel who practices in Atlanta, Georgia within the 11th Circuit) is misplaced because those cases involved direct challenges to the underlying removal proceedings or decisions, not to the legality of detention itself. Ironically, all the authorities the government brings (such as *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at 11 (4th Cir. July 1, 2025)) and others actually support Petitioner's claims.[4]

§ 1252 contains multiple exceptions and savings clauses that preserve habeas review for certain types of claims, particularly those raising constitutional questions or challenging the legality of detention, as opposed to the merits of removal or the discretionary decisions to commence, adjudicate, or execute removal orders.

Section 1252(f)(1) specifically authorizes individualized injunctive relief "with respect to the application of such provisions to an individual alien against **whom**

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[2] § 1252(g) bars jurisdiction over claims arising from the decision to commence removal proceedings or detain an alien pending removal, but does not bar jurisdiction over claims that challenge the legality of continued detention after the statutory removal period, where removal is not reasonably foreseeable and the claim is not directly tied to the execution of a removal order.

[3] *Gupta* alleged that ICE agents violated his Fourth and Fifth Amendment rights by wrongfully procuring an arrest warrant, arresting and detaining him, and searching and seizing his property. Bivens and other claims alleging wrongful arrest, detention, and search and seizure are barred, but habeas claim regarding the legality and constitutionality of the detention are not barred.

[4] The jurisdictional bar of § 1252(g) is inapposite in this context in *Tsering v. USCIS*, 403 F. App'x 339 (10th Cir. 2010) as he challenged USCIS's decision to deny his adjustment of status application. Still, the court emphasized that § 1252(g) is not a general bar to judicial review of all immigration-related claims, but only those arising directly from the three enumerated actions. Similarly, *Sissoko v. Rocha*, 509 F.3d 947 (9th Cir. 2007) clarified that § 1252(g) does not bar jurisdiction over claims that are independent of, or collateral to, those actions—such as constitutional or statutory challenges to the legality of detention that do not seek to prevent removal or directly attack the removal process. *Limpin v. United States*, 828 F. App'x 429 (9th Cir. 2020) is inapposite and still the court reaffirmed that claims independent of those three discrete actions—such as collateral challenges to the legality of detention—may still be reviewable, consistent with the Supreme Court's narrow construction of § 1252(g) in *AADC* and the Ninth Circuit's own precedent in *Sissoko*. *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594 (9th Cir. 2002) is inapposite and support Petitioner's case as her claim was that the INS should have started proceedings earlier—so she could benefit from pre-IIRIRA rules—and the court determined it was barred by § 1252(g). However, the court emphasized that § 1252(g) is to be construed narrowly and does not bar all claims related to removal proceedings. For example, constitutional challenges to deportation procedures or general collateral challenges to agency practices and policies are not barred by § 1252(g).

proceedings under such part have been initiated." While courts are generally barred from enjoining or restraining the operation of the detention and removal provisions of the INA on a class-wide or programmatic basis, they retain jurisdiction to grant **injunctive relief as applied to individual cases**. The Supreme Court has confirmed that this carve-out allows district courts to issue individualized relief, including release from detention, for specific noncitizens. It's clear that Congress intended to restrict broad, systemic challenges but to preserve habeas review and individualized injunctive relief for core constitutional and statutory claims—particularly those challenging the legality or duration of detention. Thus, the relief sought in this case is not barred, but is specifically contemplated and permitted by the statutory framework.

Moreover, the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and subsequent case law confirm that, while Congress sought to streamline and limit judicial review of removal orders, it did not intend to eliminate habeas review for claims that fall outside the three discrete actions listed in § 1252(g). Courts across the country have recognized that habeas review remains available for challenges to the legality of detention, due process violations, and other constitutional claims that do not directly arise from the commencement, adjudication, or execution of removal orders.

§ 1252(g) does not bar habeas review of constitutional challenges to the procedures used to determine detention, or the duration of detention itself. Petitioner's claims are not merely about the fact of Petitioner's detention during removal proceedings, but about the **unlawful nature** of that detention. The government's classification of Petitioner who has resided in the U.S. for nearly two decades as an "applicant for

admission" and its erroneous reliance on *Matter of Yajure Hurtado* to justify mandatory detention under § 1225(b) raises serious due process concerns that are squarely within this Court's habeas jurisdiction. To hold otherwise would effectively insulate all immigration detention decisions from judicial review, a result inconsistent with the fundamental role of habeas corpus in safeguarding individual liberty.

In summary, the explicit enumeration of the habeas statute (28 U.S.C. § 2241) in § 1252(g) does not categorically bar habeas review. Instead, it clarifies that, except as otherwise provided in § 1252, courts lack jurisdiction over claims arising from the three discrete actions listed. However, § 1252 itself contains multiple exceptions and savings clauses that preserve habeas review for challenges to the legality of detention and constitutional claims. The Supreme Court and lower courts have consistently interpreted these provisions narrowly, ensuring that habeas relief remains available for claims like those presented here, which challenge the lawfulness of ongoing detention rather than the merits of removal or the *discretionary* decisions of the Attorney General.

C. This Court Retains Habeas Jurisdiction Despite 8 U.S.C. § 1252(b)(9)

Similarly, the government's reliance on 8 U.S.C. § 1252(b)(9) is misplaced. While this provision channels judicial review of "all questions of law and fact arising from any action or proceeding brought to remove an alien" into a single proceeding before the court of appeals **after a final order of removal has been entered**. First, an immigration judge has to order a noncitizen removed, then the noncitizen can appeal to the BIA, and after the BIA affirms removal, then the noncitizen can apply to the U.S. court of appeals. This process would take years to go through.

§ 1252(b)(9) clearly does not encompass challenges to the **legality of detention itself which is separate and distinct from the removal process or questions or law**

pertaining to removal. Petitioner is challenging the statute under which he is currently mandatorily detained, which is the incorrect statute that the government is applying (§ 1225(b)(2) "applicant for admission" does not apply to him). The Supreme Court in *Jennings v. Rodriguez* specifically held that detention challenges are not "questions of law or fact **arising from**" removal proceedings and thus are not barred or channeled by § 1252(b)(9) or § 1252(g). District courts retain habeas jurisdiction over such claims.

§ 1252(b)(9) does not eliminate habeas jurisdiction over challenges to detention that are "independent of challenges to removal orders" *Ozturk v. Hyde*, 136 F.4th 382, 399 (2nd Cir. 2025). The legislative history of the REAL ID Act of 2005, which amended § 1252(b)(9), explicitly states that "nothing in the amendment would preclude habeas review over challenges to detention that are independent of challenges to removal orders" *Kong v. United States*, 62 F.4th 608, 614 (1st Cir. 2023).[5]

Petitioner's claims regarding the lawfulness of his detention and his right to a bond hearing are distinct from the merits of his removability. They can be resolved "without affecting pending removal proceedings" (*Ozturk*, 399). Therefore, § 1252(b)(9) does not strip this Court of jurisdiction.

Furthermore, a broad reading of these jurisdiction-stripping provisions would raise serious constitutional concerns under the Suspension Clause of the U.S.

[5] The government's reliance on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), and *Morrissey v. Brewer*, 408 U.S. 471 (1972), is misplaced. In *Thuraissigiam*, the petitioner was apprehended just 25 yards from the U.S. border, in the act of entering the country, and was subject to expedited removal procedures specifically designed for recent entrants at or near the border. The Supreme Court's analysis in *Thuraissigiam* was expressly limited to individuals apprehended at the threshold of entry, not to long-term residents arrested in the interior after years of residence. In contrast, Petitioner has lived in the United States for over two decades and was apprehended in the interior, far removed from the border context that animated the Court's reasoning in *Thuraissigiam*. Similarly, *Morrissey v. Brewer* addressed the procedural requirements for parole revocation in the criminal context and does not control the due process analysis for civil immigration detention of long-term residents. The facts and legal posture of both cases are fundamentally distinct from those presented here, and neither supports the government's position regarding the scope of due process protections owed to Petitioner.

Constitution, which protects the writ of habeas corpus (U.S. Const. art. I, § 9, cl. 2). Courts are obligated to construe statutes to avoid constitutional questions where possible. *Ozturk*, at 394; *Kong v. United States*, 62 F.4th 608, 614 (1st Cir. 2023). Denying all judicial review of the legality of detention would undoubtedly implicate the Suspension Clause. District courts, including those in the Western District of Kentucky, retain jurisdiction under § 2241 to hear constitutional and statutory challenges to detention, especially where, as here, no final order of removal exists. Petitioner is "in custody" for purposes of § 2241, and his petition alleges that this custody is "in violation of the Constitution or laws or treaties of the United States." Thus, this Court has clear jurisdiction to review Petitioner's claims.

The Supreme Court has repeatedly emphasized that habeas corpus review is a constitutional floor that cannot be abrogated by statute. In *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008), the Court held that the writ of habeas corpus is a fundamental safeguard against unlawful executive detention, and that Congress may not eliminate meaningful judicial review of the legality of detention. This principle applies with full force in the immigration context, where the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, guarantees access to habeas relief for noncitizens challenging the lawfulness of their detention. Thus, even if the government's jurisdictional arguments under 8 U.S.C. § 1252 were accepted, they could not constitutionally foreclose habeas review of Petitioner's core liberty interest in freedom from unlawful detention.

D. Petitioner is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225(b) as an "Applicant for Admission"

The government asserts that Mr. Zepeda is lawfully detained under 8 U.S.C. § 1225(b)(2) as an "applicant for admission" who entered without inspection (EWI). This

argument hinges on a recent, unlawful policy shift by ICE and the BIA that reclassifies long-term interior residents as "applicants for admission" subject to mandatory detention. This reclassification is contrary to the INA's plain language and legislative intent.

The INA establishes a clear distinction between "applicants for admission" and noncitizens already present in the United States. 8 U.S.C. § 1225(b) governs the inspection and detention of "applicants for admission" and "arriving aliens" at ports of entry. In contrast, 8 U.S.C. § 1226(a) provides for discretionary detention and bond eligibility for noncitizens already present in the U.S. pending a decision on their removability. Petitioner is not an "applicant for admission" in any meaningful sense. He has resided in the United States for over two decades, establishing deep roots, including a partner and two U.S. citizen children. He was apprehended by ICE in Bensenville, Illinois, an interior location, not at a port of entry. His situation is precisely what § 1226(a) was designed to address, allowing for individualized bond determinations.

The government's position relies on a July 2025 ICE policy shift, which unilaterally reclassified noncitizens who entered without inspection as "applicant for admission," and the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which denied bond hearings under § 236(a) (or § 1236(a) with the immigration court) to such individuals. This policy change was implemented by stealth, without public disclosure or notice-and-comment rulemaking, rendering it arbitrary, capricious, and contrary to the APA. Such a significant departure from decades of established practice, without reasoned explanation or proper procedure, is unlawful.

Moreover, the government's interpretation of § 1225(b) to cover all EWIs, regardless of their long-term presence in the interior, would render § 1226(a) largely

superfluous for a vast category of noncitizens. This violates fundamental canons of statutory construction, which dictate that statutes should be interpreted to give effect to every clause and word, avoiding interpretations that render parts of the statute meaningless. It is contrary to the plain language of the INA, contrary to the heading in section § 1225 that speaks about "Inspection" of alien coming into the country, etc. See generally Complaint, ECF 1.

E. The Court Exercises Independent Judgment in Statutory Interpretation Post-Loper Bright

The *Chevron* deference is inapplicable to the agency's interpretation of 8 U.S.C. §§ 1225 and 1226 in this case. The Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, expressly overruled the "*Chevron deference*"[6], holding that **courts are not required to defer to agency interpretations of ambiguous statutes**. 603 U.S. 369 (2024). Instead, federal courts must exercise their **independent judgment** to determine the best reading of the statute, giving due respect to the views of the executive but not yielding interpretive authority. Therefore, this Court is now mandated to interpret the plain language of 8 U.S.C. §§ 1225 and 1226 independently, without any presumption of deference to the agency's regulatory interpretation as erroneously interpreted in *Yajure Hurtado*. As mentioned above, there are many district court authorities from around the country that rejected the agency's interpretation and position in this matter.

The BIA in *Matter of Akhmedov,* 29 I. & N. Dec. 166 (BIA 2025) clarified that noncitizens arrested in the interior and placed in removal proceedings under § 1229a are detained under § 1226(a) and eligible for bond. Respondents do not address *Akhmedov* or explain why it should not control here. For decades, BIA has granted bonds to

[6] *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), overruled.

noncitizens who entered without inspection, like Petitioner. The prior BIA decisions and longstanding EOIR guidance—consistently granted bond to such individuals, confirming that the government's new position is a radical departure from established law and practice. See, for example, *Matter of Guerra,* 24 I&N Dec. 37 (BIA 2006).

Consequently, this federal Court is fully empowered and required to independently interpret the statute and determine the meaning of 8 U.S.C. §§ 1225 and 1226 based on its plain language and legislative intent, unconstrained by the agency's view and must interpret the statute *de novo* and apply the plain language of the INA.

The term "arriving alien" is defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport" (8 C.F.R. § 1.2). The use of the present participle "arriving" and the phrase "coming or attempting to come" make clear that the statutory and regulatory focus is on the alien's status **at the time of entry or attempted entry**—not on individuals who have already entered and established residence in the United States.

This present progressive construction—"arriving," "coming," "attempting"—denotes an ongoing action or process. In ordinary English usage and in statutory interpretation, such language refers to someone who is in the act of seeking admission, i.e., at the threshold of entry, not someone who completed that act years ago. The regulatory definition further reinforces this by specifying that "applicant for admission"

status attaches to those at a port-of-entry or interdicted at sea and brought to the United States, not to those apprehended in the interior long after entry.

The statutory framework of 8 U.S.C. § 1225(b) and related provisions supports this interpretation. Section 1225(b) governs the inspection and detention of "applicants for admission," and its procedures are triggered at the time of arrival or attempted entry. The statute repeatedly uses the present tense—"arriving," "seeking admission"—to describe the class of individuals subject to its provisions. This is consistent with the longstanding principle that the "entry fiction" applies only at the border or port of entry, and that once an individual has entered the United States and established presence, they are no longer "arriving" or "seeking admission" in the present sense.

The recent attempt to reclassify long-term residents as "applicants for admission" ignores the plain, present-progressive meaning of the term and the statutory context in which it appears. In sum, "applicant for admission" is a present-progressive term that applies to those who are in the process of seeking admission at the border or port of entry, not to individuals who entered the United States years ago and have since established residence in the interior. To interpret it otherwise would distort both the ordinary meaning of the language and the statutory structure Congress enacted.

F. § 1225 (b) Could Not Possibly Apply to Petitioner

Federal courts have recognized that long-term residents apprehended in the interior are typically subject to § 1226(a) discretionary detention, not § 1225(b) mandatory detention. Petitioner was apprehended in Illinois, nearly 20 years after he entered the country and nowhere near the border or an inspection point, so § 1225(b) could not possibly apply to him. For example, in *Rodriguez v. Bostock*, 779 F.Supp.3d

1239 (W.D. Wash. 2025), the court found that a noncitizen resident apprehended in the interior was likely unlawfully detained under § 1225(b) and should instead be governed by § 1226(a) (*Id.*, 1255). The court emphasized that "both Section 1226's plain text and recent amendments make clear that he is subject to its provisions, not Section 1225(b)" Petitioner's circumstances are analogous. He is a long-term resident, not an "applicant for admission" at a port of entry, and his detention should therefore be governed by the discretionary provisions of § 1226(a), which allow for a bond hearing.

> "[T]he overwhelming consensus among district courts is that § 1226(a) governs the detention of noncitizens apprehended in the interior, including those who entered without inspection years ago and have established significant ties to the United States. Section 1225(b)(2) is limited to those actively seeking admission at the border or port of entry. To hold otherwise would render § 1226(a) meaningless and contradict Congress's deliberate statutory scheme."

Singh v. Lewis, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3, *5 (W.D. KY. Sept. 22, 2025). The court recognized that § 1226(a) is the default statutory authority for detaining noncitizens who are already present in the United States pending removal proceedings, as opposed to § 1225(b), which governs the detention of "arriving aliens" or those **seeking admission at the border**.

> "Whereas § 1225 governs removal proceedings for 'arriving aliens,' § 1226(a) serves as a catchall. The inclusion of a 'catchall' provision in § 1226, particularly following the more specific provision in § 1225, is likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories contained within § 1225. ... If § 1225 stood alone, perhaps Respondents' construction would be feasible, but it does not. When reviewing § 1225 alongside § 1226, Petitioner's construction gives § 1226(a) meaning. Respondents' construction of § 1225(b)(2) would make § 1226(a) essentially irrelevant, as nearly every noncitizen in the United States would be subject to mandatory detention."

Barrera v. Tindall, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025). The court rejected the government's argument that all noncitizens

present without admission are subject to mandatory detention under § 1225(b)(2), emphasizing that such an interpretation would render § 1226(a) superfluous and contradict the statutory structure and legislative history.

See also *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025). The court cited the statutory text, structure, and legislative amendments (including the Laken Riley Act) to support its conclusion that Congress intended § 1226(a) to provide for discretionary detention and individualized bond hearings for noncitizens apprehended in the interior, unless they fall within the specific mandatory detention categories of § 1226(c) (certain criminal convictions).[7]

The statutory and interpretation in *Rojas v. Olson*, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) completely disregards the entire statutory language of § 1225 and § 1226 as well as other statutory provisions. 8 U.S.C. § 1101(a)(13)(A) defines the term "admission" as "the lawful entry of the alien into the United States after inspection and

[7] The structure and legislative history of 8 U.S.C. § 1226(c), as amended by the Laken Riley Act (LRA) in 2025, directly refute Respondents' claim that all noncitizens who entered without inspection (EWIs) are subject to mandatory detention under § 1225(b). The original § 1226(c) was designed to apply primarily to lawful permanent residents (LPRs) and other admitted noncitizens, mandating detention only for those with certain criminal convictions or security concerns. Even under the government's broad reading of § 1225(b), § 1226(c) would still have independent effect for LPRs and admitted noncitizens, since they are not "applicants for admission" and thus not swept into § 1225(b) mandatory detention.
However, the LRA specifically amended § 1226(c) to expand mandatory detention to a new category: **inadmissible noncitizens**, including those charged under § 1182(a)(6) and (a)(7). If, as Respondents contend, every EWI is always an "applicant for admission" subject to § 1225(b) mandatory detention, then the LRA's new provisions targeting inadmissible noncitizens would be entirely redundant—there would be no one left for these amendments to reach, as all such individuals would already be mandatorily detained under § 1225(b). This result is not only illogical but also contrary to basic principles of statutory construction, which require that amendments be given effect and not rendered superfluous.
The careful drafting and expansion of § 1226(c) by Congress, including the LRA amendments, only make sense if there is a significant population of noncitizens in removal proceedings—such as many EWIs apprehended in the interior—who are not otherwise subject to mandatory detention and are instead detained under § 1226(a). The fact that Congress saw fit to amend § 1226(c) to specifically address inadmissible noncitizens confirms that it did not intend § 1225(b) to sweep so broadly as to make these new provisions meaningless. The government's interpretation would collapse the careful statutory distinction between border and interior cases, and between admitted and inadmissible noncitizens, in a manner Congress plainly did not intend. The LRA's targeted expansion of mandatory detention for certain inadmissible noncitizens is only coherent if § 1225(b) does not already cover all EWIs, further affirming that the government's reading is untenable as a matter of statutory structure and legislative intent.

authorization by an immigration officer." Petitioner is not seeking lawful entry at an inspection point. He will be seeking to apply for relief from removal called "Cancellation of removal for non-permanent residents." 8 U.S.C. § 1229b(b). An applicant for cancellation of removal cannot be considered as "seeking an admission" or "seeking lawful entry" because the legal framework and purpose of cancellation of removal are distinct from those of admission or entry into the United States. Cancellation of removal is a form of relief from removal available to certain noncitizens who are already present in the United States and are facing removal proceedings. It is not a mechanism for entering the country or adjusting one's status to that of a lawful entrant.

Rojas directly contravenes other 7th circuit court cases, including two cases argued and won by undersigned counsel, *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025) and *Jose Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025). It also contradicts *Ramirez Valverde v. Olson*, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025) which was issued by the same court.

In *Vargas Lopez v. Trump*, --- F.Supp 3d ---- 2025 WL 2780351 (D. Neb. Sep. 30, 2025), the Court dismissed petitioner's claim mainly because of inconsistencies in the petition ("The Court's consideration of this Petition has been hampered by the mistakes made in it … The Court concludes that the mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits, prevent Vargas Lopez from meeting his burden to show he is entitled to habeas relief" and he could therefore not meet his burden of proof. The court later goes on to rely on Yajure Hurtado instead of independently analyzing the statute and erroneously concluded that "Vargas Lopez May

Be Detained under 1225(b)(2) Even If He is Also Subject to 1226(a)", Id., at 8, which is a legal and factual impossibility, therefore that decision is clearly erroneous).

Pena v. Hyde, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) was likewise erroneously concluded. *Pena* is distinguishable, however, as *Pena* did not appear to raise § 1226 and instead relied on an approved I-130 petition to support his adjustment of status. Other courts, including the same court from the District of Massachusetts distinguished *Pena*, noting the court was focused on other issues and did not analyze the precise question of which statute applied to his detention.[8] More importantly, most recently in October 2025, **the same judge** who decided *Pena* (Gorton) issued *Lema Zamora v. Noem,* No. 1:25-12750-NMG, 2025 WL 2958879 (D. Mass Oct. 17, 2025), which addresses this issue directly and concludes that 1226(a) not 1225(b) controls.

Similarly, *Chavez v. Noem*, No. 3:25-cv-02325, --- F. Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), was an erroneous decision. This cursory analysis of the statutory text has already been examined and rejected by dozens of courts around the country. See, e.g., *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Echevarria v. Bondi,* No. CV-25-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025). The *Chavez* decision does not grapple with the

[8] *See*, e.g., *Romero v. Hyde*, No. 1:25-CV-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025), *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *6 (D. Mass. Oct. 3, 2025), *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *7 (D. Mass. Sept. 9, 2025), *Martinez v. Hyde*, No. 1: 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025), *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025). *See* also additional authorities from the same court supporting Petitioner's position that 1226(a) controls his detention: *Diaz Diaz v. Mattivelo*, 2025 WL 2457610 (D. Mass. Aug. 27, 2025), *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025), *Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025), *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025), *Romero-Nolasco v. McDonald*, 2025 WL 2778036 (D. Mass. Sep 29, 2025), *Da Silva v. Bondi*, 2025 WL 2969163 (Oct. 21, 2025, D. Mass), *Inlago Tocagon v. Moniz*, 2025 WL 2778023 (D. Mass. Sept. 29, 2025), *Rocha v. Hyde*, 2025 WL 2807692 (D. Mass. Oct. 2, 2025), *Elias Escobar v. Hyde*, 2025 WL 2823324 (D. Mass. Oct. 3, 2025). There are many more.

reasoning in the weight of authority of dozens of court cases going the other way, does not address the meaning or importance of "seeking admission" in § 1225(b)(2)(A) and does not acknowledge the superfluity issue arising from the listing of inadmissibility grounds in 1226(c). *See Cordero Pelico*. Other decisions from the same court (SDCA) rejected that analysis and found that 1226(a), not 1225(b) applied. *See Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025), *Martinez Lopez v. Noem*, No. 3:25-cv-02734 (S.D. Cal. Oct. 23, 2025) (Minute Entry).

Notwithstanding those 4 erroneously decided cases, more cases from the Western District of Kentucky clearly determined that for individuals apprehended inside the country long after they entered are not "applicants for admission" or "applicants for admission" and therefore their detention is not governed by § 1225(b)(2)(A).

In addition to the 151 cases brought by Petitioner in ECF 1-3 (current number as of today stands on 212 favorable habeas grants agreeing with Petitioner's interpretation and rejecting the government's), there are additional authorities from within the 6th circuit as well as this court: ***Gomez Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025), *Contreras Orellana v. Noem*, 2025 WL 3006763 (W.D. Ky. Oct. 27, 2025), *Martinez-Elvir v. Olson*, 2025 WL 3006772 (W.D. Ky. Oct. 27, 2025), *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky. Nov. 4, 2025)**, *Godinez-Lopez v. Ladwig*, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025), *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025), *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025), *Contreras-Cervantes, et al., v. Raycraft*, 2025 WL 952796 (E.D. Mich. Oct. 17, 2025), *Pacheco Mayen v. Raycraft*, 2025 WL 2978529 (E.D. Mich. Oct. 17, 2025), *Diaz Sandoval v. Raycraft*, 2025 WL 2977517 (E.D. Mich.

Oct. 17, 2025), *Casio-Mejia*, 2025 WL 2976737 (E.D. Mich. Oct. 21, 2025), *Santos Franco v. Raycraft*, 2025 WL 2977118 (E.D. Mich. Oct. 21, 2025), *Contreras-Lomeli v. Raycraft*, 2025 WL 2976739 (E.D. Mich. Oct. 21), *Gimenez Gonzalez v. Raycroft*, 2025 WL 3006185, at *1 (E.D. Mich. Oct. 27, 2025), *Sanchez Alvarez v. Noem*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025), *Carmona v. Noem*, 2025 WL 2992222 (W.D. Mich. Oct. 24, 2025), *Puerto-Hernandez v. Lynch*, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025), *Cervantes Rodriguez v. Noem*, 2025 WL 3022212 (W.D. Mich. Oct. 29, 2025), *Marin Garcia v. Noem*, 2025 WL 3017200 (W.D. Mich. Oct. 29, 2025), *Morales Chavez v. Director*, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025) (report and recommendation).

G. Respondents Also Misinterpret Jennings

Respondents' quoting *Jennings* in misleading ways. *Jennings* addressed the statutory scheme for detention of "applicants for admission" at or near the border, not the situation of long-term residents apprehended in the interior. The Supreme Court's discussion of § 1225(b)(1) and (b)(2) was explicitly in the context of noncitizens "seeking admission" or "seeking to enter the country" at the border or port of entry, or those who are subject to expedited removal due to fraud or lack of documentation (*Id.*, 297). The Court did not hold, nor even suggest, that § 1225(b)(2) applies to individuals who have been living in the United States for years and are apprehended far from the border. To the contrary, the Jennings court held that:

> "The Government is also authorized to detain **certain aliens already in the country**." Section 1226(a)'s default rule permits the Attorney General to issue warrants for the arrest and detention of these aliens pending the outcome of their removal proceedings. The Attorney General "may release" these aliens on bond, "[e]xcept as provided in subsection (c) of this section."

(*Id.*, at 281, see also 287-289). The statutory text, implementing regulations, and decades of agency and judicial practice have consistently distinguished between "applicants for admission" at the border (governed by § 1225) and noncitizens apprehended in the interior (governed by § 1226(a)). The government's reading would collapse this distinction, rendering § 1226(a) largely superfluous for a vast class of noncitizens. If all people who entered without inspection were always subject to mandatory detention under § 1225(b)(2), there would be no need for the discretionary bond framework of § 1226(a), nor for the carefully enumerated mandatory detention categories of § 1226(c). Congress's decision to provide for individualized bond hearings under § 1226(a) for noncitizens in removal proceedings—including those who entered without inspection—demonstrates a deliberate legislative choice to limit mandatory detention to specific, narrowly defined circumstances. Moreover, the Supreme Court in *Jennings* did not address, let alone endorse, the government's current position. The Court's statement that § 1225(b)(2) "applies to all applicants for admission not covered by § 1225(b)(1)" must be read in the context of the statutory definition of "applicant for admission" and the longstanding regulatory and judicial interpretation that limits § 1225(b) to those apprehended at or near the border, not to long-term residents encountered in the interior. The government's attempt to extend *Jennings* to cover all noncitizens who entered without inspection, regardless of their circumstances, is unsupported by the text or reasoning of the decision.

THEREFORE, the court should DENY Respondents' motion to dismiss in its entirety and GRANT Petitioner a Writ of Habeas in this case.

This 10th day of November, 2025.

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CERTIFICATE OF SERVICE

I certify that on November 10, 2025, I electronically filed the foregoing **PETITIONER'S RESPONSE TO MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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