IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Alejandro YORDI TORRES,	)	
	)	Case No. 3:25-cv-2981
Petitioner,	)	
	)	
v.	)	
	)	
Thomas BERGAMI, Warden, Prairieland Detention Center; **Joshua JOHNSON,** Acting Director of Dallas Field Office, U.S. Immigration and Customs Enforcement; **Todd LYONS,** Acting Director of Immigration and Customs Enforcement; **Kristi NOEM,** Secretary of the U.S. Department of Homeland Security; **Pam BONDI,** Attorney General of the United States; in their official capacities,	)	
	)	
Respondents.	)	

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction

The Respondents' arguments lack merit. Their statutory interpretation of 8 U.S.C. § 1225(b)(2) eliminates from the text of the statute the term "seeking admission." Additionally. Petitioner's detention without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process.

II. Statement of the Facts

Petitioner and Respondent generally agree to the relevant facts.

III. Arguments in Reply to the Response of Respondent

A. Petitioner is not properly detained under 8 U.S.C. § 1225(b)(2).

Petitioner's basic contention is as follows: an alien that is present unlawfully in the United States after being released by DHS at the border and allowed to enter is not seeking admission as set forth under 8 U.S.C. § 1225(b)(2)(A); therefore, he cannot be detained under that provision. Along with the arguments put forward in his original petition, Petitioner sets forth the following additional arguments as to why he is not properly detained under § 1225(b)(2) as a matter of statutory construction.

In *Covarrubias v. Vergara*, the district court, using interpretive tools like the presumption of consistent usage and the principle that words are to be given the meaning that proper grammar and usage would assign them, contends that "applicant for admission" and "seeking admission" must have different meanings and that the latter is "a present-tense, or current, ongoing action, and varies materially from the passive state of being an applicant [for admission]." *Covarrubias v. Vergara*, 2025 U.S. Dist. LEXIS 206523, 2025 WL 2950097, at *7-8 (S.D. Tex. Oct. 8, 2025). And like in the *Covarrubias* case, Petitioner in this case was not actively seeking admission, "as that phrase is commonly used and understood," when he was detained while reporting to ICE

under the terms of his order of release on recognizance, after having entered and resided in the United States for years. *Id.* at *8. Petitioner "cannot be described as 'seeking admission' because he was not currently and actively seeking to be admitted to the United States when he was apprehended." *Id.* Since he was allowed to enter the United States, on the contrary, Petitioner has been actively seeking to remain, apply for relief from removal and avoid removal as demonstrated by his application for asylum. "Thus, he does not fit within the categories in Section 1225(b), and must fit within Section 1226(a), the default provision for noncitizens 'already present' in the country and arrested by ICE who do not fit within Section 1225(b)." *Id.* at *8-9 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)).

Furthermore, this interpretation is supported by recent amendments to § 1226 which reinforce that the section applies to Petitioner and that he is therefore eligible for a bond hearing before an immigration judge. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). "When Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400

(2010)). Additionally, "[t]he Supreme Court has explained that its reluctance to treat statutory terms as surplusage 'increases when Congress amends a statute, as we ordinarily presume that when Congress does so, 'it intends its amendment to have real and substantial effect.'" *Covarrubias*, at *9-10 (citing *Bufkin v. Collins*, 604 U.S. 369, 386 (2025) and *Van Buren v. United States*, 593 U.S. 374, 393 (2021)). Based on Respondents' interpretation, "noncitizens to whom the Laken Riley Act would apply would already be subject to mandatory detention under Section 1225, rendering Congress's new amendment redundant." *Id.* at *10. Section 1226 therefore leaves no doubt that it applies to people like Petitioner who face charges of being inadmissible to the United States, including those who are present without admission or parole.

B. Respondent's arguments and reasoning that § 1225 (and not § 1226) should apply to his detention are flawed.

The first flaw, and the main underlying flaw to Respondents' entire statutory interpretation, is their treatment of the terms "applicant for admission" and "seeking admission" in Section 1225(b)(2)(A) as one and the same. But Respondents' recognition that an applicant for admission is defined as an alien "present in the United States who has not been admitted" is important not only because of what it says but what it does not say. 8 U.S.C. § 1225(a)(1). An applicant for admission is not defined as an "alien seeking admission." But, throughout many of their arguments, Respondents seem to treat it as if it is defined that way. Respondents seem to basically argue that an "applicant for admission" and one who is "seeking admission" mean the same thing or that an "applicant for admission" is always "seeking admission." *See* e.g. ECF 11. at 12. ("Foreign nationals present in the United States...who have not been lawfully admitted [i.e. applicant for admission] and who do not agree to immediately depart are seeking admission") Furthermore, Respondents do not contend with the statutory interpretation tools mentioned above

in the *Covarrubias* case which counter this underlying argument of Respondent.

Second, Respondents argue that a "foreign national cannot remain in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully… unless Petitioner obtains a lawful admission in the future, he will be subject to removal in perpetuity." *See* ECF 11. at 11-12. But these assertions are not the case. As one counter example, and relevant to this case, a foreign national can request asylum in order to remain in the United States if they are present in the United States, even if present after an unlawful entry. *See* 8 U.S.C. § 1158(a) ("Any alien who is physically present in the United States…irrespective of such alien's status, may apply for asylum…"). Furthermore, a grant of asylum is not a lawful admission, and even though it is not a lawful admission, a grant of asylum does allow a foreign national to remain in the United States lawfully and to not be subject to removal in perpetuity. *Matter of V-X-*, 26 I. & N. Dec. 146, 149 (BIA 2013); *see also* 8 U.S.C. § 1158(c)(1)(A) ("In the case of an alien granted asylum… the Attorney General shall not remove or return the alien to the alien's country of nationality…").

Third, Respondents' reliance on the voluntary departure statute to show that a foreign national continues to seek admission even in removal proceedings is not based on any text of that statute. The voluntary departure statute makes no mention that an alien no longer seeks admission by agreeing to a voluntary departure; the statute does not follow the language of 1225(b)(2)(A) at all. *See* 8 U.S.C. § 1229c. In fact, the only mention of withdrawing an application for admission in the voluntary departure statute is in the context of an alien who is arriving in the United States, and importantly, not in the context of an alien present in the United States who has not been admitted. *See* 8 U.S.C. § 1229c(a)(4).

Fourth, Respondents' contention that Petitioner is still seeking admission because "he has

not agreed to depart, and he has not yet conceded his removability or allowed his removal proceedings to play out – he wants to be admitted via his removal proceedings" misconstrues the removal process set out in 8 U.S.C. § 1229a. ECF 11. at 12. Under the removal proceedings statute, an immigration judge does indeed decide the issue of "the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). But the immigration judge decides this preliminary issue for the purpose of deciding ultimately "whether an alien is *removable* from the United States." 8 U.S.C. § 1229a(c)(1). If an alien is inadmissible or deportable, then he is removable. But the removal process does not end there. An alien can still apply for "relief or protection from removal." 8 U.S.C. § 1229a(c)(4). So this statute clearly shows, contrary to what Respondents assert, that the removal process does not exist so that an alien can seek admission, but rather to decide the issue of removability and relief from removal. Whether the alien is seeking admission or not is not an issue at all in the removal process. Indeed, one particular subsection of this statute demonstrates this point, especially when comparing it to the language of section 1225(b)(2)(A). Regarding burdens of proof, section 1229a(c)(2)(A) states "the alien has the burden of establishing, if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted." This subsection follows the language of section 1225(b)(2)(A) ("in the case of an alien who is an applicant for admission…an alien seeking admission is not clearly and beyond a doubt entitled to be admitted…") but it is missing the exact term which Respondents argue Petitioner is doing in removal proceedings: seeking admission. This comparison of statutes shows that in removal proceedings, contrary to what Respondents suggest, an alien is not seeking admission.

Fifth, Respondents' reliance on *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) and *Matter of Yajure Hurtado*, 29 I&N 216 (BIA Sep. 5, 2025) is not persuasive. First, the district

court is not bound by agency decisions and "[s]tatutory interpretation is the province of the courts, not agencies." *Covarrubias*, at *6 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)). Second, *Lemus-Losa* was a case concerning adjustment of status under 8 U.S.C. § 1255(i) and the interpretation of 8 U.S.C. § 1182(a)(9)(B)(i)(II), not the statutory construction of section 1225(b)(2)(A). Third, in the context of the aforementioned statutes, the *Lemus-Losa* decision clearly that "many" (but, importantly, not "all") people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be "seeking admission." *Lemus-Losa*, 25 I&N Dec. at 743. But it does not cite any federal case law for this contention. Finally, Respondents' reliance on the holding of *Matter of Yajure* is just another example that their position boils down to holding that all applicants for admission are seeking admission.

Finally, Respondents' contention that the Congressional intent and legislative history supports their interpretation is incorrect. Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during deportation proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994). Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.* IIRIRA maintained the same basic detention authority in the provision codified at 8 U.S.C. § 1226(a). Indeed, when passing IIRIRA, Congress explained that the new § 1226(a) merely "restates the current provisions in [8 U.S.C. § 1252(a)] 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 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

C. Petitioner's mandatory detention violates due process

For this contention, Petitioner argues that the holding and reasoning of the Texas district court case of *Lopez-Arevelo v. Ripa* should be followed for its persuasive reasoning. 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828, at *18-33 (W.D. Tex. Sept. 22, 2025). And the facts of Petitioner's case closely follow the facts of the *Lopez-Arevelo* case. First, Petitioner also is challenging his detention, not his removability, and he was detained after years of presence in the United States after being released on own recognizance, rather than on the threshold of initial entry. *Id.* at *26-28. Second, Petitioner fulfills the *Mathews* test as well for the same reasons as *Lopez-Arevelo*. Petitioner has a cognizable interest in his freedom from detention because he has spent years at liberty in the United States. *Id.* at *29-30. Because Respondents' novel interpretation of 1225(b)(2)(A) strips jurisdiction away from immigration judges to consider requests for bonds from individuals in Petitioner's circumstances, there also is a high risk that Petitioner has been and will continue to be erroneously deprived of his liberty. *Id.* at *30-32. And finally, Respondents also "do not identify a countervailing interest" and "the decision to release [Petitioner] on his own recognizance three years ago, in and of itself, 'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.'" *Id.* at *32-33.

D. Section 1226(e) does not apply to the District Court's determination of whether section 1225 or 1226 applies

In the same manner, Petitioner argues that the holding and reasoning of the Texas district court case of *Lopez-Arevelo v. Ripa* should be followed for its persuasive reasoning regarding the application of 8 U.S.C. § 1226(e). *Id.* at *13-15. As the district court in *Lopez-Arevelo* states: "this section shields only the Attorney General's discretionary detention decisions, [and] it 'does

not preclude 'challenges to the statutory framework that permits the alien's detention without bail.'"" *Id.* at *13-14. In other words, the Court "retain[s] jurisdiction to review [a noncitizen's] detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition." *Id.* at *14.

Petitioner further argues that whether section 1225(b)(2) or 1226 applies to an alien is not a discretionary determination as contemplated in section 1226(e), but it is rather a statutory determination which consists of determining which section applies in the first place. Once it is determined that section 1226 applies to an alien, then any discretionary determination regarding the "detention of any alien or the revocation or denial of bond or parole" under section 1226 cannot be judicially reviewed. Petitioner is asking the Court to make the former determination. Accordingly, section 1226(e) does not preclude Petitioner from challenging his detention under 1225(b)(2).

IV. Conclusion

For the reasons explained above, Petitioner's writ of habeas corpus requires his immediate release from custody or, in the alternative that he be provided a bond hearing under § 1226(a) in which DHS bears the burden of establishing the necessity of Petitioner's continued detention.

DATED this 21st of November 2025.

Respectfully submitted,

/s/ Oscar Jesus Mendoza Esq.

Oscar Jesus Mendoza
Texas State Bar No. 24093631
The Law Office of Oscar Mendoza, PLLC
P.O. Box 600046
Dallas, TX 75360
469-426-1861
omendoza@omendozalaw.com

Attorney for Petitioner

CERTIFICATE OF SERVICE

On November 21, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

DATED: November 21, 2025.

/s/ Oscar Jesus Mendoza Esq.

Attorney for Petitioner