UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case Number: 25-cv-25086-JEM

WILLIAM ARMANDO RIVERA MARTINEZ,

Petitioner,

v.

GARRETT RIPA, et. al.
in his official capacity,

Respondents.

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PETITIONER'S TRAVERSE

Petitioner respectfully submits this traverse in response to the Respondents' return [ECF No. 11] filed on November 14, 2025. This case turns on whether Petitioner's present detention is governed by 8 U.S.C. §1225(b)(2), a mandatory detention provision, or 8 U.S.C. §1226(a), a discretionary detention provision that affords Petitioner the procedural right to a bond hearing. This traverse addresses that question, *inter alia*.

I. Introduction

Respondents' return misreads both the text and structure of the Immigration and Nationality Act ("INA"). Respondents' return also contains several telling omissions. Their return omits reference to the body of recent case law that has developed regarding the statutory misclassification of persons who, like Petitioner, entered the United States without inspection. The tally continues to increase, but more than one hundred district court judges throughout the country have found that persons like Petitioner are entitled to an individualized bond hearing or release and that such noncitizens are not subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A).[1] Several of these

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

cases are referenced and discussed *infra*. Respondents' return also declines to discuss two recent decisions from the Southern District of Florida that address the fundamental point at issue in this case—statutory classification under §1226(a) (a discretionary detention statute) versus §1225(b)(2)(A) (a mandatory detention statute). *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Fla. October 15, 2025); *Aguilar Merino v. Ripa*, 25-23845-cv-Martinez (S.D. Fla. October 15, 2025).

First, Respondents contend that this Court lacks subject-matter jurisdiction because Petitioner did not exhaust available administrative remedies. Exhaustion is not required where the administrative process offers no genuine chance for adequate relief or would be futile. *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Fla. October 15, 2025); *see also Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982). As the Court noted, the BIA's published decision in *Matter of Yajure Hurtado,* which is binding in all similar cases, makes clear that a noncitizen in Petitioner's position would inevitably be subjected to mandatory detention without bond under 8 U.S.C. § 1225(b)(2) according to the agency's internal rule. *Id.* Because the BIA cannot provide the relief sought, requiring exhaustion would be futile. *Id.* Other district courts have likewise excused exhaustion in light of the fact that any BIA appeal would run headlong into *Matter of Yajure Hurtado*. *See, e.g.*, *Inlago Tocagon v. Moniz*, No. 25-cv-12453, 2025 WL 2778023, at *2 (D. Mass. Sept. 29, 2025); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *9–10 (D. Nev. Sept. 17, 2025).

Second, and more to the point, Respondents illogically stretch §1225(b)(2) far beyond its intended inspection context, disregard Congress's explicit distinction between "inspection" under Section 1225 and "arrest and custody" under Section 1226. Properly interpreted, Petitioner's detention falls under Section §1226(a), the statute that governs post-entry arrests within the United

States and provides for discretionary bond consideration. The vast majority of federal district courts ruling on this issue have declined to follow the Board of Immigration Appeals' agency decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025) and have independently found that 1226(a) applies. *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025); *Martinez v. Hyde,* 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

A. Procedural Introduction and History

Petitioner, a citizen of Honduras, entered the United States on or around April 17, 2019, as an unaccompanied alien child ("UAC") when he was sixteen (16) years old. He has never departed from the United States since his date of entry. Upon information, knowledge, and belief, Petitioner has not been convicted of any crime since his entry to the United States. On October 8, 2025, Florida Highway Patrol stopped Petitioner's vehicle in Palm Beach County, Florida, and issued a citation for driving with an expired license. Immigration and Customs Enforcement (ICE) then detained Petitioner and placed him into federal custody.

On January 28, 2024, Petitioner married his wife, a U.S. citizen, who subsequently filed a Form I-130, Petition for Alien Relative with the Petitioner as the beneficiary before USCIS, which was approved on July 8, 2025. On February 1, 2024, the Petitioner attended his master calendar hearing at the Miami Immigration Court and on May 16, 2024, the Immigration Judge

(IJ) terminated proceedings because the Petitioner is the beneficiary of a pending prima facie eligible immediate relative via the spousal petition before USCIS filed by his U.S. citizen wife.

On October 24, 2025, Petitioner attended his bond hearing and the IJ denied bond stating that he is not entitled to an individualized hearing. The IJ denied by applying an erroneous agency decision. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BJ.A. 2025), Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who-like Petitioner-are charged as inadmissible for having entered the United States without inspection.

II. Statutory Framework

A. Exhaustion of Remedies is Futile

Administrative exhaustion should be deemed waived due to the irreparable injury Petitioner suffers every day he remains detained and separated from his family. He has a U.S. Citizen wife and extended family, from whom he has been separated for over one month. *See Hamdi v. Rumsfeld*, 542 507, 529 (2004) ("[T]he interest in being free from physical detention by one's own government" is "the most elemental of liberty interests."); *see also Ferrara v. United States*, 370 F. Supp. 2d 351, 360 (D. Mass. 2005) ("Obviously, the loss of liberty is a . . . severe form of irreparable injury."). The Ninth Circuit has recognized that irreparable injury is an independent basis for waiving additional exhaustion of administrative remedies. *See Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). What is more, courts have repeatedly waived the exhaustion requirement in similar cases involving the prospect of prolonged confinement. *Lopez Benitez v. Francis*, F. Supp. 3d, 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588 (S.D.N.Y.

Aug. 13, 2025) (waiving exhaustion for habeas petitioner erroneously categorized as subject to 1225(b)(2)(6)); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 U.S. Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);) (same); *dos Santos v. Lyons*, 2025 U.S. Dist. LEXIS 157488, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same).

Before the Court is a constitutional due process claim that cannot be redressed by the Board of Immigration Appeals. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) ("the inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion."). Requiring Petitioner to exhaust administrative remedies should not be allowed "it appears evident that a noncitizen like Petitioner, who has resided in the United States for years but has not been admitted or paroled, will be subject to mandatory detention without bond under section 1225(b)(2) upon review by the BIA." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025) at *5. Therefore, administrative exhaustion is likewise futile because the outcome of any BIA appeal is pre-ordained.

Here, Respondents have not denied that on July 8, 2025, DOJ and DHS jointly sought to reinterpret the INA such that mandatory detention would drastically increase.[2] Respondents are arguing in unison that Petitioner is not entitled to an individualized bond hearing. It would be entirely unavailing to pursue administrative review from the BIA, which is a sub-agency of the DOJ, when the BIA has already issued a decision favoring the expansive application of

[2] https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

1225(b)(2)(A) mandatory detention.[3] Further, exhaustion of an additional administrative remedy — appeal to the BIA — is not required here because there is no statutory language mandating it. *Duong v. INS*, 118 F. Supp. 2d 1059 (S.D. Cal. 2000).

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

B. The Statutory Boundary Between Sections 1225 and 1226

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

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[3] 59-1 ex A decision.pdf

C. Structure and Legislative Intent

Reading §1225(b)(2) to include every noncitizen not formally "admitted" would render §1226(a) largely useless. Congress could not have intended a single subsection of Section 1225 to swallow virtually the entire framework of discretionary custody Congress preserved in Section 1226. The legislative history of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") confirms that Section 1225 was designed to consolidate inspection procedures *at or near the border or ports-of-entry*, while Section 1226 remained the detention authority for arrests *inside the country*. *See* Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-108, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579 (codified at 8 U.S.C. § 1225); H.R. Conf. Rep. No. 104-828, at 209-10 (1996) (explaining that § 302 "revises section 235 of the INA to consolidate the inspection and removal process at ports of entry," while § 303 "retains the Attorney General's discretionary authority to detain or release aliens pending removal proceedings under Section 236").

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

The Government's argument that Petitioner is an "applicant for admission" subject to detention under 8 U.S.C. § 1225(b)(2) mischaracterizes both the statutory text and the relevant case law. While § 1225 defines an "applicant for admission" to include aliens present in the United States without admission, the provision does not automatically place every noncitizen into a category that precludes review of detention under § 1226(a). As the Supreme Court has emphasized, statutory interpretation must begin with the plain language, but context and application are equally critical. *See Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.,* 540 U.S. 526, 534 (2004)).

Petitioner's circumstances fall squarely within the category of noncitizens present without admission, not arriving aliens at a port of entry. During Petitioner's arrest on October 8, 2025, he

did not engage with the inspection regime applied to actual applicants for admission at a point of entry. *See* 8 U.S.C. § 1225(a)(1). Courts have repeatedly recognized that § 1225(b)(2) is designed to govern removal procedures for such aliens, but it does not automatically impose a detention framework that displaces judicial review under § 1226(a) for arrests in the interior of the country. *See Lopez-Arevelo*, 2025 WL 2691828, at *6.

Courts considering the precise question at issue here have concluded that § 1226(a), not § 1225(b)(2), governs detention of noncitizens arrested inside the country. *See Barrera-Espinoza v. ICE*, No. 2:24-cv-01987, 2024 WL 8453112 (W.D. Wash. Dec. 12, 2024); *Pizarro Reyes v. Garland*, No. 1:25-cv-20317, 2025 WL 2927148 (S.D. Fla. May 7, 2025); *Rodriguez Vazquez v. Garland*, No. 2:25-cv-00412, 2025 WL 3510183 (W.D. Wash. June 4, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 4369132 (D. Mass. July 7, 2025); *Martinez v. Hyde,* 2025 WL 2084238 (D. Mass. July 24, 2025); *Lepe v. Bondi*, No. 3:25-cv-01602, 2025 WL 4520799 (S.D. Cal. Aug. 5, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Hypolite v. Noem*, No. 1:25-cv-04304, 2025 WL 5893911 (E.D.N.Y. Sept. 29, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025); *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025).

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

The Government's position has already been rejected in the Southern District of Florida in *Alvarez Puga*, namely, whether a noncitizen arrested inside the United States after entry is detained

under Section 1225(b)(2) or Section 1226(a). *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). The *Alveraz Puga* Court held unequivocally that Section 1226(a) applies. In doing so, it carefully examined the text, structure, and history of both provisions, concluding that Section 1226(a) governs those already present in the United States and that no jurisdictional bars apply to habeas relief. *Id.* at *7-11. The *Alvarez Puga* court explained that reading Section 1225(b)(2) to encompass arrests well within the interior of the United States would make Section 1226(a) superfluous and contradict the INA's structure.

Reviewing the statutory text and the newly enacted Laken Riley Act amendments, the court reasoned that Congress designed Section 1226(a) as the default detention framework for noncitizens already present in the United States, reserving § 1225 for "arriving aliens in the inspection process." *Id.* at 8–9 (citing *Pizarro Reyes v. Raycraft*, *Lepe v. Andrews*, and *Barrera v. Tindall*). The court also rejected the Government's reliance on *Matter of Yajure Hurtado*, explaining that federal courts need not — and should not — defer to an agency interpretation of the law simply because a statute is ambiguous. *Id.* at *10 (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)). That holding squarely rejects the interpretation advanced by the Government here and provides persuasive authority confirming that Section 1226(a) governs detention following an interior arrest.

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

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

1225, and the implementing regulations exclude the extension of "examining immigration officer" to ICE officers conducting arrest and detention in the interior of the U.S.

1. Text and Structure

The phrase "examining immigration officer" appears only in Section 1225(b)(2)—within a portion of the INA that codifies *inspection* procedures. Section 1225(a)(3) commands that "[a]ll applicants for admission shall be inspected by immigration officers." Congress then uses the verb *examine* in Section 1225(b)(1)–(2) to describe the inspection process. Read in context, "examine" refers to the face-to-face assessment of an applicant for admission at a port of entry. Nothing in Section 1225 extends that function to officers who execute interior arrests under § 1357(a). The Supreme Court has repeatedly described Section 1225 as governing "inspection and admission" procedures at the threshold of entry. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (describing Section 1225 as establishing "the process for inspecting and admitting arriving aliens"). By contrast, Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). The placement of the phrase "examining immigration officer" in § 1225(b)(2) thus confines it to the inspection context.

2. Regulatory Usage

The regulations make clear who actually performs an examination under Section 1225. That role belongs to Customs and Border Protection ("CBP") officers conducting inspection at ports of entry—not to ICE agents carrying out interior arrests. *See* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry."); *id.* § 235.3(b) ("Every applicant for admission shall appear before an immigration officer for inspection."). These provisions appear in Part 235 of the regulations, titled *Inspection of Persons Applying for Admission*, which governs CBP's inspection functions. ICE's

authority, by contrast, appears in Part 287, titled *Field Officers; Powers and Duties*, which covers arrests and detentions inside the United States. *See* 8 C.F.R. § 287.5(c)–(d).

The existence of separate regulatory chapters for inspection (Part 235) and interior enforcement (Part 287) shows that Congress and DHS treat these as distinct activities, deriving their force from distinct statutory detention authority. Any claim that any "immigration officer" can also be an "examining immigration officer" erases that distinction and rewrites the statute. It also makes little sense to speak of an examining officer making a determination about whether someone is entitled to be admitted, if the officer has no power to authorize admission. The word "examining" limits the phrase to officers performing inspection duties, with the authority to authorize admission and passage through our gates, not to all DHS personnel.

As previously noted, Section 1225 requires detention only for persons literally seeking admission – those at or attempting entry across the border. 8 U.S.C. § 1225(b). By contrast, Section 1226 authorizes the Attorney General to detain or release on bond any non-citizen arrested upon a "warrant" and "pending a decision on whether the alien is to be removed." 8 U.S.C. §1226(a). It provides a discretionary detention scheme and guarantees an individualized custody hearing before an immigration judge. *Jennings*, 583 U.S. at 288-289. Treating these categories as interchangeable collapses Congress's deliberate distinction and converts a narrow border-control measure into a general detention mandate.

3. Legislative Intent and Regulatory Context

Respondents argue that IIRIRA transformed § 1225(b) into a universal detention mandate for all noncitizens who entered without inspection, regardless of where or when they were apprehended. But their narrative ignores the most important point: Congress deliberately preserved

two distinct detention frameworks: § 1225 for inspection at the border and § 1226 for post-entry arrests inside the United States. Nothing in IIRIRA collapses those two statutory schemes into one.

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

First, Respondents' heavy reliance on the broad definition of "applicant for admission" introduced by IIRIRA is misplaced. Congress defined "applicants for admission" broadly for charging purposes, not detention purposes. A noncitizen's classification as an "applicant for admission" does not automatically place them in § 1225(b)(2) detention — otherwise § 1226(a) would have no meaningful operation at all. Statutory construction forbids interpretations that render entire sections superfluous.

Second, Respondents' argument that Petitioner is "seeking admission" because he has filed for relief conflates seeking immigration benefits with seeking admission at the border. The present-participle argument does not work here: § 1225(b)(2) applies when an examining immigration officer, during *inspection*, determines the person is not clearly admissible. Section 1225(b) applies

only to individuals inspected at a port of entry, where an examining immigration officer contemporaneously determines that the alien is not clearly entitled to admission. Petitioner, however, was arrested inside the United States, long after entry. DHS cannot retroactively convert an interior arrest into a border inspection simply because a noncitizen seeks relief in removal proceedings.

4. Plain Meaning

Even the ordinary dictionary meaning of *examine* — "to inspect or investigate closely" or "to look at carefully for the purpose of evaluation" — supports this narrower reading. In immigration law, "inspection" and "examination" are terms of art referring to what happens when someone presents themselves at or near the border or at a port-of-entry. *See* 8 C.F.R. § 1.2 (defining "admission" as lawful entry "after inspection and authorization by an immigration officer"). It makes little sense to call an ICE agent issuing or executing an interior arrest warrant an "examining immigration officer." That phrase belongs to CBP inspectors who decide, at entry, whether someone may be admitted. For all these reasons, "examining immigration officer" in Section 1225(b)(2)(A) refers only to officers performing inspection duties at ports of entry. It does not include ICE officers conducting interior arrests.[4] Because Petitioner was arrested inside the United States under an ICE warrant during a traffic stop, his detention falls under § 1226(a), which allows for a bond hearing and discretionary release.

G. A New Bond Hearing or Immediate Release is Appropriate

Petitioner is entitled to a new bond hearing or release: "DHS's interpretation of the applicability of § 1225(b)(2), rather than § 1226, to noncitizens who have resided in the county

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

for years and were already in the United States when apprehended, runs afoul of the statutes' legislative history, plain meaning, and interpretation by courts in the First, Second, Fifth, Sixth, Eight, and Ninth Circuits." *Aguilar Merino v. Ripa*, 25-23845-cv-Martinez (S.D. Fla. October 15, 2025). A companion case referenced *supra* also rejected the Respondents' reliance on *Matter of Yajure Hurtado* and DHS's interpretation of the applicability of § 1225(b)(2), when concluding:

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

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

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

As relevant here, §1225(b)(2)(A) states: "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that *an alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding

under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). *Alvarez Puga* then explained, "the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is "seeking admission" when he never sought to do so." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). The court concluded that, because Mr. Alvarez Puga was already residing in the country when he was detained, he was not "seeking admission" at that time, and therefore, "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A)." *Id.*

Here, Petitioner was not "seeking admission" at that time of his detention and is therefore not subject to §1225(b). Adopting the reasoning and conclusions set forth in *Alvarez Puga*, the Court should likewise conclude that Petitioner is not subject to mandatory detention under § 1225.

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

534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S.S 167, 174 (2001)).

While Petitioner was never "admitted" to the United States in that he never lawfully entered it, it does not follow that he was actively seeking admission at the time of his detention. He had already entered the country. Respondents' interpretation of §1225b(2)(A) simply ignores the statute's present-tense active language. *See Matter of M-D-C-V-*, 28 I&N. Dec 18, 23 (B.I.A. 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process.'") (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-1012 (9th Cir. 2020)). And by treating the terms "applicant for admission" and "seeking admission" as synonymous, Respondents' interpretation violates the principle that Congress is presumed to act intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings. *See Yale New Haven Hosp. v. Becerra,* 56 F.4th 8, 21 (2d Cir. 2022) (describing the "meaningful-variation canon" as "the principle that where a statutory scheme has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea") (citing *Sw, Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022)).

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

III. Conclusion

For the foregoing reasons, Petitioner respectfully submits that Petitioner's detention is governed by 8 U.S.C. § 1226(a), which provides for discretionary bond consideration, and the

statutory and constitutional claims raised here remain fully reviewable by this Court. The authorities cited by Respondents do not support their expansive reading of § 1225(b)(2), nor do they bar judicial review of Petitioner's detention. Accordingly, the Court should reject the Government's arguments, maintain jurisdiction over the Petition, and grant the relief requested by Petitioner, namely, Petitioner respectfully requests that the government either immediately provide an individualized bond hearing or release him.

Respectfully submitted,

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