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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Aldo Sanchez Chavez, Petitioner, v. Unknown Party, et al.; Respondents.	Case No. 25-CV-04116-SMB-ESW **PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

The government's opposition (Doc. 9) to Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) and Motion for a Preliminary Injunction (Docs. 3, 7) only confirms why the petition and motion should be granted.

The government has forfeited any argument regarding Petitioner's claim that he is entitled to a bond hearing under regulations that have existed since 1997. The government instead claims that Petitioner is subject to mandatory detention because he is an "applicant for admission" under 8 U.S.C. § 1225(a)(1). However, this position ignores that applicants for admission are subject to mandatory detention only if they are also "seeking admission" under § 1225(b)(2)(A)—Petitioner is not. As over 100 federal judges

have already found, § 1225(b)(2)(A) only applies to noncitizens who are detained while seeking to enter the country. Holding otherwise would render superfluous not only the phrase "seeking admission," but also several provisions in 8 U.S.C. § 1226(c).

ARGUMENT

I. The Government Has Forfeited Any Opposition to Petitioner's Claim That He Is Entitled to Bond Under Federal Regulations.

Petitioner argues that Respondents are violating both the Immigration and Nationality Act (INA) and federal regulations by continuing to detain him even though an immigration judge has already determined that a grant of bond would be appropriate were it not for *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).[1] Doc. 1, Exh. F; Doc. 7 at 2. That is, the government argues that Petitioner is subject to mandatory detention, but it does not dispute that he is entitled to bond under regulations that the Attorney General (AG) herself promulgated nearly three decades ago. The government thus forfeits any opposition to Petitioner's claim that under the regulations, the immigration judge's grant of bond in the alternative must be effectuated.

8 C.F.R. § 1236.1(d)(1) gives immigration judges (IJs) the general authority to grant bond to noncitizens in removal proceedings, with exceptions for those subject to final orders of removal and those referenced in 8 C.F.R. § 1003.19, including "arriving

[1] Respondents note on multiple occasions that Petitioner did not appeal the immigration judge's denial of bond for lack of jurisdiction. Doc. 9 at 2; Doc. 9, Exh. A at ¶ 9. However, Respondents do not challenge Petitioner's argument that in light of *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, administrative exhaustion in the form of such an appeal is not required. *See* Doc. 1 at 9-10.

aliens" in removal proceedings. Doc. 1 at 8, 17-18; Doc. 7 at 6-7; 8 C.F.R. § 1003.19(h)(2). Then-AG Janet Reno considered alternative regulatory proposals and decided, following passage of the Illegal Immigration Reform and Immigration Responsibility Act of 1996,[2] that individuals "who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." *See* Doc. 8 at 6-7 (citing 62 Fed. Reg. 10312, 10323 (March 6, 1997)); *cf.* 62 Fed. Reg. 444, 483 (Jan. 3, 1997) (initial proposed rule foreclosing bond to "[i]nadmissible aliens in removal proceedings").

Agencies must "use the same procedures when they amend or repeal a rule as they used to issue [it] in the first instance." *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 101 (2015) (citation omitted). They "may not slip by the notice and comment rule-making requirements . . . by merely adopting a *de facto* amendment to its regulation through adjudication." *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003). Thus, by advancing a novel interpretation of the INA in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, the agency cannot escape the regulations promulgated by the AG. *See Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012) (citation omitted).

II. Petitioner Has Shown a Likelihood of Success on the Merits Because the Government's "Plain Language" Argument Is Wrong.

A. The Government Ignores the Requirement That a Noncitizen Must Be "Seeking Admission" in Order to Be Subject to Mandatory Detention Under the Relevant Provisions.

Respondents claim that Petitioner is subject to mandatory detention under the

[2] *See* Pub. L. No. 104-208, 110 Stat. 3009 (1996) (IIRIRA).

"plain language" of section 1225. Doc. 9 at 2. The government reasons that every noncitizen who is present without admission is subject to mandatory detention because, under 1225(a)(1), every such person must be deemed to be an "applicant for admission." Doc. 9 at 2-4; *id.* at 5-6.[3] However, classification as an "applicant for admission" is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission."[4] Respondents do not meaningfully contest Petitioner's argument that he is not "seeking admission," and numerous courts have adopted Petitioner's reasoning. *See, e.g., Lepe v. Andrews*, 2025 WL 2716910 at *10 (E.D. Cal. Sept. 23, 2025) (citation omitted)) (concluding that "the phrase 'seeking admission' means that one must be actively 'seeking' 'lawful entry'"); *Chafla v. Scott*, No. 25-437, 2025 WL 2688541 at *19 (D. Maine Sept. 21, 2025) ("[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definitions of 'admitted' and 'admission.").

The government also cites a report from the House Judiciary Committee for the

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[3] The government's assertion raises an obvious question: "if Congress's intention was so clear, why did it take thirty years to notice?" *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827 at *29 (D. Mass. Aug. 19, 2025). The assertion is also undermined by its concession in at least one other case that noncitizens in Petitioner's position would have been eligible for bond prior to July 8—the date on which ICE "revisited" its legal position. *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 at *11 (D.N.J. Sept. 26, 2025).

[4] In its order denying Petitioner's motion for a temporary restraining order, the Court characterizes this petition as being based on a challenge to Petitioner's "classification as an arriving alien under 8 U.S.C. § 1225(b)(2)(A)." Doc. 6 at 2. As explained here and in the initial petition and TRO/PI motion, Petitioner challenges whether he is properly classified under that provision as an applicant for admission who is seeking admission. Doc. 1 at 12, 13, 16.

proposition that Congress intended to replace "'certain aspects of the current 'entry doctrine'" concerning entrants without inspection. Doc. 9 at 4 (citing H.R. Rep. 104-469, pt. 1, at 225-29). But simply because Congress wished to replace certain aspects of the entry doctrine does not mean it intended to replace *all* aspects of the doctrine. Further, the actual Conference Report twice stated that 1225 would only apply to "aliens arriving" and that the newly enacted "[1226(a)] restates the current provisions . . . regarding the authority of the Attorney General to arrest, detain, and release on bond an alien *who is not lawfully in the United States*." H.R. Conf. Rep. No. 104-828 at 208, 209, 210 (1996).

B. The Overwhelming Majority of the Caselaw Favors Petitioner's Position.

Notably, whereas Petitioner cited over 100 district court decisions that have rejected the government's position or deemed Petitioner's position likely to succeed, the government cites only five that it believes have accepted its position.[5] But three of these

[5] Numerous additional decisions have issued in favor of Petitioner's argument since he filed his petition, including decisions by multiple district judges who had not previously addressed this issue. *See, e.g.*, *Dominguez-Vega v. Thompson*, No. 25-1439 (W.D. Tex. Nov. 19, 2025) (Rodriguez, J.) (granting habeas petition upon conclusion that petitioner was not "seeking admission," and rejecting Respondents' "plain language" argument and reading of *Jennings*); *Gonzalez v. Olson*, No. 25-13439, 2025 U.S. Dist. LEXIS 227990 (N.D. Ill. Nov. 19, 2025) (Harjani, J.) (same); *Pastor v. Raycraft*, No. 25-1301, 2025 U.S. Dist. LEXIS 227892 (W.D. Mich. Nov. 19, 2025) (Jarbou, J.) (same); *Martinez v. Lynch*, No. 25-1353, 2025 U.S. Dist. LEXIS 227890 (Beckering, J.) (same); *Lobera v. Noem*, No. 25-13593, 2025 U.S. Dist. LEXIS 227578 (N.D. Ill. Nov. 19, 2025) (Tharp, J.); *Ndiaye v. Jamison*, No. 25-6007, 2025 U.S. Dist. LEXIS 227253 (E.D. Pa. Nov. 19, 2025) (Sanchez, J.); *Torres v. Bondi*, No. 25-2457, 2025 U.S. Dist. LEXIS 226975 (S.D. Cal. Nov. 18, 2025) (Bashant, J.) (same); *Aparicio Sanchez v. Noem*, No. 25-3068, 2025 U.S. Dist. LEXIS 226977 (S.D. Cal. Nov. 18, 2025) (Sammartino, J.) (same); *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 U.S. Dist. LEXIS 226877 (E.D. Pa. Nov. 18, 2025) (Diamond, J.) (same); *Lopez v. Olson*, No. 25-654, 2025 U.S. Dist. LEXIS 226574 (W.D. Ky. Nov. 18, 2025) (Hale, C.J.) (same);

decisions are inapposite, and the remaining two are manifestly unpersuasive.

First, Respondents claim that *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025), stands for the proposition that a noncitizen is properly detained under § 1225(b)(2) if he is present in the United States without being admitted, because he is "thus an applicant for admission under § 1225(a)." Doc. 9 at 7. But the Court in *Pipa-Aquise* found no such thing. Instead, the Court concluded that Mr. Pipa-Aquise's custody status was governed by § 1225(b)(2) because he was detained at arrival, afforded a credible fear interview, and placed in removal proceedings. Indeed, the Court specifically reasoned, citing *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018), that "[s]ection 1226 generally governs the process of arresting and detaining aliens '*already* present in the United States' pending their removal." *Id.* If more clarity were needed, Judge Nachmanoff, who decided *Pipa-Aquise*, later issued *Teyim v. Perry*, No. 25-1615,

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Guerrero v. Noem, No. 25-5881, 2025 U.S. Dist. LEXIS 226952 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.) (same); *Villegas ex rel. Andujar v. Francis*, 25-9199, 2025 U.S. Dist. LEXIS 228053 (S.D.N.Y. Nov. 18, 2025) (Rochon, J.) (same); *Garcia v. Sam Olson Field Off. Dir. Of Enf.*, No. 25-13621, 2025 U.S. Dist. LEXIS 225438 (N.D. Ill. Nov. 17, 2025) (Kendall, J.) (same); *Guaita-Quinapanta v. Bondi*, No. 25-795, 2025 U.S. Dist. LEXIS 233351 (W.D. WI Nov. 12, 2025) (Conley, J.) (same); *Guartazaca Sumba v. Crowley*, No. 25-13034, 2025 U.S. Dist. LEXIS 220641 (N.D. Ill. Nov. 9, 2025) (Chang, J.) (same); *Morales-Martinez v. Raycraft*, No. 25-13303, 2025 U.S. Dist. LEXIS 220596 (E.D. Mich. Nov. 7, 2025) (Behm, J.) (same); *Diaz Garcia v. Noem*, No. 25-1712, 2025 U.S. Dist. LEXIS 219436 (E.D. Va. Nov. 6, 2025) (Giles, J.) (same); *Arizmendi v. Noem*, No. 25-13041, 2025 U.S. Dist. LEXIS 218000 (N.D. Ill. Nov. 5, 2025) (Pallmyer, J.) (same); *see also Mairena-Munguia v. Arnott*, No. 25-3318, 2025 U.S. Dist. LEXIS 227477 (Nov. 19, 2025) (Harpool, J.) (same, and further concluding that contrary position advanced by Respondents was not substantially justified, for purposes of awarding fees under Equal Access to Justice Act); *see also Vasquez v. Noem*, No. 25-3087, 2025 U.S. Dist. LEXIS 228034 (C.D. Cal. Nov. 19, 2025) (Slaughter, J.) (granting temporary restraining order and enjoining further detention without a bond hearing upon a finding that Petitioner's arguments were likely to succeed on the merits).

2025 WL 2950184 (E.D. Va. Oct. 15, 2025), concluding that § 1226, not § 1225(b), controls detention authority for individuals like Petitioner, who entered the United States without inspection but were not paroled following a credible fear interview.

The government further cites *Chavez v. Noem*, No. 25-2325, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025), Doc. 9 at 7, but the Court in that case addressed only whether the petitioner was an "applicant for admission," not whether he was seeking admission.[6] Similarly, *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025), Doc. 9 at 8, did not address whether individuals who enter without inspection are "seeking admission." Instead, the central question in *Pena* was whether the approval of an I-130 petition precluded detention under section 1225(b)(2)(A). *See id.*

Thus, the government has identified only two decisions that substantively support its position, and the reasoning of those two decisions does not withstand scrutiny. First, in *Vargas Lopez v. Trump*, No. 25-562, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court stated that 1225(b)(2)(A) and 1226 overlap, that some noncitizens fall under both sections, and that DHS can choose in such cases whether to subject the noncitizen to mandatory detention under 1225(b)(2) or discretionary detention under 1226(a). *Id.* But the government has repeatedly conceded that 1225(b)(2)(A) and 1226 are "mutually exclusive." *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 at *11-12 (E.D.N.Y.

[6] Subsequent cases distinguished *Chavez* on exactly that basis. *See, e.g., Aquino v. Larose*, No. 25-2094, 2025 WL 3158676 (S.D. Cal. Nov. 12, 2025); *Lopez v. Warden, Otay Mesa Det. Ctr.*, No. 25-2527, 2025 U.S. Dist. LEXIS 211493 (S.D. Cal. Oct. 27, 2025).

Sept. 29, 2025); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 at *10 (S.D.N.Y. Aug. 8, 2025).

Next, in *Mejia-Olalde v. Noem*, No. 25-168, 2025 U.S. Dist. LEXIS 221830 (E.D. Mo. Nov. 10, 2025), the Court dismissed the weight of authority in favor of Petitioner's position merely by concluding that other courts' decisions "get the law very wrong." *Mejia-Olalde* cites *Trump v. CASA*, 606 U.S. 831, 840 (2025), to support its rejection of these decisions, but the Supreme Court in *CASA* did not assert that the legality of universal injunctions was contested in all or even most of the prior injunctions to which it referred. By contrast, in each of the many cases cited by Petitioner, the Courts specifically considered and rejected Respondents' arguments, or at a minimum deemed Petitioner's arguments likely to succeed.

Most relevantly, Respondents acknowledge but do not distinguish or meaningfully dispute the reasoning of *Echevarria v. Bondi*, No. 25-3252, 2025 WL 2821282 at *29 (D. Ariz. Oct. 3, 2025), in which the Court concluded that individuals who enter the United States without inspection are eligible for bond under the logic of *Jennings*. In *Jennings*, the Court explained that 1225 applies "at the Nation's borders and ports of entry," while 1226 applies to those "inside the United States."[7] 583 U.S. at 287-88. The government's belief that 1225(b)(2)(A) applies to noncitizens who have already entered the United

[7] During oral argument in *Jennings*, the Solicitor General confirmed that noncitizens who previously entered the country without inspection and had been living in the United States are subject to detention under § 1226, not § 1225. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), Transcript of Oral Argument (No. 15-1204), p.8.

States thus conflicts with *Jennings* itself, and with *Clark v. Martinez*, 543 U.S. 371, 373 (2005), which similarly described 1225(b)(2)(A) as applying to "alien[s] *arriving* in the United States."

C. The Government Has Forfeited Opposition to One of Petitioner's Principal Statutory Arguments.

Finally, Respondents do not dispute or meaningfully address Petitioner's argument that the reasoning of *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, renders multiple provisions of section 1226(c) superfluous. Indeed, Respondents' opposition makes no mention of the Laken Riley Act, through which Congress recently amended many of these mandatory detention provisions. In forfeiting any challenge to this argument, Respondents disregard a fundamental maxim of statutory construction—that "'Congress does not 'hide elephants in mouseholes' by 'alter[ing] the fundamental details of a regulatory scheme in vague terms or ancillary provisions.'" *Sackett v. EPA*, 598 U.S. 651, 677 (2023) (quoting *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001)). If Congress intended IIRIRA to require the detention of the 3 million individuals who were then present in the United States without admission,[8] it stands to reason that lawmakers would have done so directly, particularly given that Congress enacted other provisions that expressly set forth categories of noncitizens subject to mandatory detention. *See, e.g.*, §§ 1225(b)(1)(B)(ii), 1225(b)(1)(B)(iii)(IV), 1226(c).

[8] Department of Homeland Security, Office of Homeland Security Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1996*, https://ohss.dhs.gov/sites/default/files/202312/Unauthorized%2520Immigrant%2520Population%2520Estimates%2520in%2520the%2520US%25201996.pdf.

III. Petitioner Is Entitled to a Pre-Detention Hearing if the Government Seeks to Detain Him Again Following Release.

The only interests that may permissibly be served by immigration detention are facilitation of removal, prevention of flight, and protection of the community from danger. The immigration judge has already determined that Petitioner is not a danger to the community and set a bond to address risk of flight. Doc. 1, Exh. F; *see Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006) (bond requires a determination that a noncitizen is neither a danger to the community nor a flight risk). DHS waived appeal as to bond. *Id.* Nor can Petitioner be removed until and unless a final order of removal is entered. Because there is no ongoing, permissible justification for detention, the government should be enjoined from re-detaining Petitioner if he is released, unless it can show that circumstances have changed. *See Pablo Sequen et al v. Albarran et al.*, No. 25-6487, 2025 LX 203758, *34-*36 & n.5 (N.D. Cal. Oct. 15, 2025) (ordering release following unlawful detention under *Yajure-Hurtado*, and enjoining re-detention without a hearing at which DHS bore the burden to demonstrate danger or flight risk).

IV. Petitioner Would Suffer Irreparable Harm Absent a Preliminary Injunction.

Petitioner would suffer irreparable harm if his unlawful detention were to continue. First and most fundamentally, an immigration judge has already determined that Petitioner's release on bond from immigration custody would be appropriate, were it not for the Board's interpretation of the INA in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216. As explained above, *Yajure-Hurtado* is erroneous, and Petitioner's continued

detention violates his constitutional rights each day that it continues.

Furthermore, Petitioner, who has been in the U.S. since the age of eight, is engaged to a U.S. citizen and is the beneficiary of a pending visa petition. Doc. 1, Exh. A, C, D. He has numerous immediate and extended family members who are U.S. citizens. Doc. 1, Exh. A, B. His separation from his family and community constitutes an irreparable harm, particularly as he is on the verge of receiving a decision on his visa petition.[9]

V. The Balance of Equities Tips in Petitioner's Favor and a PI Is In the Public Interest.

Respondents' only arguments on the question of equities and the public interest are an assertion that Petitioner is unlikely to succeed on the merits of the claim, and a general appeal to "the government's enforcement of its laws." Doc. 9 at 11. Petitioner has demonstrated above that he is likely to succeed on the merits. And his continued detention is not necessary "to effectuate removal," Doc. 9 at 11. In fact, the government's argument to that effect is precluded by the bond determination of its own adjudicating officer. Accordingly, the balance of equities and the public interest favor a grant of a PI.

CONCLUSION

The Court should grant the petition and the motion for a preliminary injunction.

Dated: November 21, 2025

Respectfully submitted,

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[9] Respondents' irreparable harm argument does not account for or even mention the immigration judge's alternative grant of bond, Petitioner's family ties, or Petitioner's status as the beneficiary of a long-pending U visa petition. *See* Doc. 9 at 10.