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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Cesar Gomez Roman)	
)	Case No. 3:25-cv-00524-LS
)	
Petitioner,)	PETITIONER'S
)	TRANSVERSE/REPLY
)	TO RESPONDENT'S RETURN
v.)	AND OPPOSITION TO
)	PETITION FOR WRIT OF
Mary de Anda Ybarra, et al.)	
Respondents.)	

I. INTRODUCTION

Petitioner, by and through the above-named counsel of record, submits this Reply to Respondents' Return and Opposition to his Petition for Writ of Habeas Corpus. Respondents incorrectly assert that this court lacks jurisdiction. Respondents also incorrectly assert that Petitioner's detention is mandated by statute. By contrast, Petitioner is requesting that this court require Respondents to properly apply the Congressionally designed and enacted detention scheme that Respondents have recently chosen to discard via invalid and unconstitutional reinterpretation and decision making. Respondents' new interpretation is invalid because it is unconstitutional, and as such was explicitly rejected by Congress in 1996. Respondent's interpretation of the statute was also explicitly rejected by the agency during the public rulemaking process in 1997. Petitioner is asking this court *to require Respondents to properly apply the law as established by statute and regulation, in accordance with the requirements of the Due Process Clause of the U.S. Constitution*. It is Petitioner's position that Respondents' recent reinterpretation of the nearly thirty-year-old statutory detention scheme and their application of that reinterpretation to preclude his eligibility for a bond hearing violates his constitutional right to procedural and substantive due process; it violates the expressed intent of Congress, as documented in the statutory scheme and Congressional record, the regulations, Supreme Court and agency precedent.

On November 3, 2025, Petitioner filed an application to reinstate his DACA with USCIS. See Appendix A, Receipt Notice. Inasmuch as Petitioner's misdemeanor conviction has been vacated in the interests of justice, Petitioner remains eligible to reapply for DACA, which he has done. Petitioner has resided in the U.S. for over 25 years. He is married to a U.S. Citizen

and his wife and four children are all U.S. Citizens. He has made good-faith efforts to regularize his presence, and he has extensive ties and connections to the U.S.

II. ARGUMENT

A. This Court Has Jurisdiction to Review Petitioner's Constitutional and Statutory Interpretation Claims

The first section of Respondents' Return and Opposition asserts that this court does not have jurisdiction to consider Petitioner's Petition because "Congress has stripped the federal courts of jurisdiction over challenges to the commencement of removal proceedings, including the consequent detention pending removal proceedings." Respondents' Return at 1. Thereafter Respondents cite three specific provisions of 8 U.S.C. 1252 as statutory authority for this claim. Those statutes are 8 U.S.C. 1252(a)(5), 1252 (b)(9), and 1252(g). None of these statutory provisions controls or in any way restricts the jurisdiction of this court to decide Petitioner's Petition for a Writ of Habeas Corpus.

1. 8 U.S.C. § 1226(e)

8 U.S.C. § 1226(e) states:

(e) Judicial review: The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

Petitioner is not challenging any judgment, discretionary or otherwise, regarding the application of this section. Petitioner *is* explicitly challenging the Respondents' unconstitutional *refusal to grant him the benefit of a bond hearing, as § 1226(a) authorizes*. Petitioner is not seeking to set aside any action or decision by the attorney general regarding his detention, or regarding the revocation or denial of bond or parole, because Respondents have explicitly removed all authority from the nation's Immigration Judges to even consider any bond application that he—

or thousands of other non-criminal, non-arriving aliens—might attempt to file. As Judge Cardone of this court wrote in response to this same claim in *Lopez-Arrevelo v. Ripa*, 3:25-cv-00337-KC p. 10 (W.D. Texas September 21, 2025).

Because this section shields only the Attorney General’s discretionary detention decisions, it “does not preclude ‘challenges to the statutory framework that permits the alien’s detention without bail.’” Jennings, 583 U.S. at 295 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003)); see also *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). 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.” *Oyelude v. Chertoff*, 125 F. App’x 543, 546 (5th Cir. 2005); accord *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) (citing *Baez v. Bureau of Imm. & Customs Enf’t*, 150 F. App’x 311, 312 (5th Cir. 2005)).

Petitioner is not seeking review of any action under 8 U.S.C. § 1226(e). He is seeking review of Respondents’ blanket unconstitutional declaration that the provisions of 8 U.S.C. § 1226(a) do not apply to him, and the equally blanket assertion (directly contrary to the agency’s governing, published regulations) that no Immigration Judge has jurisdiction to consider any bond application he might make. 8 U.S.C. § 1226(e) does not bar this court’s jurisdiction to consider these legal and constitutional questions.

2. 8 U.S.C. § 1225(b)(4)

The text of the statute is precise and self-limiting:

(4) Challenge of a decision: The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

As with *all* of 8 U.S.C. § 1225(b), the context is explicitly *the examination of arriving aliens*, aliens *seeking admission* into the U.S. As defined by Congress at 8 U.S.C. § 1101(13)(A), “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into

the United States after inspection and authorization by an immigration officer.” In this case, Petitioner has *never made any application for admission; Petitioner has never sought admission; Petitioner has never been inspected for admission to the United States.* As was discussed in Petitioner’s Petition for Writ of Habeas Corpus, and as Petitioner will lay out in greater detail below, Congress carefully and explicitly drafted 8 U.S.C. § 1225(b)—including 1225(b)(4)—to apply exclusively to one half of the general “applicant for admission” or “inadmissible alien” class defined in 8 U.S.C. § 1225(a). That is, 8 U.S.C. § 1225(b) was intentionally drafted not to apply to the entire class of aliens defined as applicants for admission, but rather, to apply explicitly to that group defined as “arriving in the U.S.” This group was explicitly defined in the regulations at 8 C.F.R. § 1.2:

Arriving alien means 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. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.

Inasmuch as Petitioner is not seeking admission¹, and the question raised by Petitioner in his habeas petition is whether Respondents have properly classified him as an arriving alien and therefore subject to *any* of the provisions of 8 U.S.C. 1225(b), Respondents’ argument that this section precludes this court’s jurisdiction is circular, at best. At worst, again, this text presumes

¹ The Board of Immigration Appeals has previously held that seeking relief from removal does not constitute an application for admission. *See, e.g., Matter of Y-N-P-*, 26 I&N Dec. 10 (BIA 2012) (“being an ‘applicant for admission’ under section 235(a)(1) is distinguishable from ‘applying . . . for admission to the United States’ within the meaning of section 212(h)” citing *Poveda v. U.S. Attorney General* No. 11-14512 (11th Cir. August 27, 2012)).

an examination of an alien seeking admission. Mr. Gomez Roman has never been examined or inspected, has never sought admission, and as defined by the agency itself, is not presently seeking admission.

3. 8 U.S.C. § 1252(b)(9)

Often referred to as the “zipper clause,” 8 U.S.C. § 1252(b)(9) states:

(9) Consolidation of questions for judicial review: Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or non-statutory), to review such an order or such questions of law or fact.

As noted above, Petitioner is not asking this court to review any question of law or fact or constitutional or statutory provision that has arisen from removal proceedings against him; at this point those proceedings have barely begun. Judge Sabaw of the Central District of California recently disagreed with this same argument, (that 8 U.S.C. § 1252(b)(9) barred review of a habeas petition challenging an immigrant’s detention), citing to U.S. Supreme Court precedent:

Nielsen v. Preap, 586 U.S. 392 (2019), provides enough clarity to resolve the present issue. In *Preap*, detainees were denied bond hearings and subjected to mandatory detention pursuant to 8 U.S.C. § 1226(c). *Id.* at 399. The Supreme Court held that § 1252(b)(9) did not bar jurisdiction: “[a]s in *Jennings*, respondents here ‘are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal [*as opposed to the decision to deny them bond hearings*]; and they are not even challenging any part of the process by which their removability will be determined.’” *Id.* at 402 (emphasis added). Thus, *Preap* makes clear that decisions to deny bond hearings fall outside the purview of § 1252(b)(9)’s jurisdictional bar.

Order, *Vasquez-Garcia v. Noem*, 3:25-cv-02180-DMS-MMP, (SD Cal. September 3, 2025). As further authority for her decision, Judge Sabaw also cited *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 810 (9th Cir. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir.

2016)). These authorities are completely consistent with the U.S. Supreme Court's further analysis (in addition to *Nielsen v. Preap*) of the applicability of 8 U.S.C. § 1252(b)(9). For example, in *DHS v. Regents of Univ. of Cal.*, 591 U.S. ___, 140 S. Ct. 1891 (2020) the Court clarified "a claim only 'aris[es] from' a removal proceeding when the parties are challenging ... removal proceedings." *Id.* at 1907.

Similarly, the Supreme Court held in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) that not every action taken that leads to or is related to an alien's removal should fall within the "zipper clause" of §1252(b)(9). *Jennings* at 840. The Court in *Jennings* held that the dividing line was whether or not the legal questions raised were specifically legal questions raised and addressed in removal proceedings. *Id.* at 841. According to the Court, discerning the dividing line requires answers to the following questions: Are the plaintiffs asking for a review of an order of removal? Are they challenging the decision to seek removal? Are they challenging any part of the process by which their removability will be determined? *Id.* If not, then the legal questions based on such actions can receive judicial review independent of §1252(b)(9). *Id.* Finally, in *Nasrallah v. Barr*, 140 S.Ct. 1683, 1691 (2020), the Supreme Court stated "For purposes of this statute, final orders of removal encompass *only the rulings made by the immigration judge or Board of Immigration Appeals that affect the validity of the final order of removal.*" *Nasrallah*, at 1691 (emphasis added). Based on these authorities, the zipper clause of 8 U.S.C. 1252(b)(9) does not preempt or bar jurisdiction in this matter, because Petitioner is not asking this court to review any ruling that would affect the validity of a final order of removal (that in this case does not presently exist).

B. CONGRESSES' DETENTION SCHEME: 8 U.S.C. § 1225 or 8 U.S.C. § 1226?

The crux of the issue presented by Petitioner is the question of whether he was detained by the government pursuant to 8 U.S.C. § 1226(a), and is therefore statutorily and regulatorily eligible for a bond hearing before an IJ, or whether, as an “applicant for admission” or “inadmissible alien” his detention is pursuant to 8 U.S.C. § 1225 and therefore mandatory, with no statutory or regulatory right to a bond hearing. Respondents’ statutory and legal claims begin with their bald assertion that because Petitioner is “an applicant for admission” he is therefore, inevitably, inescapably, and permanently subject to mandatory detention pursuant to 8 U.S.C. § 1225. According to Respondents, Congress in 1996 clearly intended the detention provisions of 8 U.S.C. § 1225 to apply to all “applicants for admission.” But Respondents’ recent reinterpretation of that statutory language in the context of 8 U.S.C. § 1225 (b)(2) misuses the statutory term “applicants for admission” by conflating the two subgroups identified in 8 U.S.C. § 1225 (a), and treating them as identical. By contrast, when Congress passed IIRIRA in 1996, despite deliberately classifying these two subgroups together for purposes of formal removal proceedings, Congress explicitly recognized that—when it comes to detention, the two subgroups are not identical and therefore cannot, constitutionally, be subject to the same detention regime. Congress, in 1996 purposefully, explicitly, *and for critically important constitutional reasons*, chose to treat detention of the members of these two subgroups very differently.

As numerous federal courts have found in the last few months, Respondents’ reinterpretation contradicts and ignores the Congressional history, the regulatory history, the regulations themselves, and the intervening precedent. *See, e.g., Martinez v. Hyde*, 1:25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Herrero-Encarnacion v. Moniz*, 25-12237-

LTS (D. Mass. Sept. 5, 2025); *Hernandez-Nieves v. Kaiser*, 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo-Hinestroza v. Kaiser*, 3:25-cv-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Salcedo Aceros v. Kaiser*, 25-cv-06924-EMC, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Pablo-Sequen v. Kaiser*, 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025), subsequent decision 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Lopez-Arevalo v. Ripa*, EP-25-cv-337, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Acosta-Roa v. Albarran*, 3:25-cv-07802-RS, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Valencia-Zapata v. Kaiser*, 25-cv-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Santiago-Helbrum v. Williams*, 4:25-cv-00349-SHL-SBJ, (S.D. Iowa Sept. 30, 2025); *Quispe-Ardiles v. Noem*, 1:25-cv-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Cordero Pelico, et. al. v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Sanchez-Ballesteros v. Noem, et.al.*, 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Ochoa-Ochoa v. Noem*, 25-cv-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *J.S.H.M. v. Wofford*, 1:25-cv-01309-JLT-SKO, 2025 WL 2938808 (E.D. Cal. Oct. 16, 2025); *Sabi Polo v. Chestnut*, 1:25-cv-01342-JLT-HBK, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025).²

As they did here, across the U.S. Respondents are routinely citing *Chavez v. Noem*, 3:25-cv-02325, 2025 WL 2730228 (S.C. Cal. Sept. 24, 2025) as one of the minority decisions where the federal court, for one reason or another, denied the Petition for Writ of Habeas Corpus. The reasoning in that decision is analyzed and rejected in *Cordero Pelico, et. al. v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025), and Petitioner would refer the court to that analysis.

² Petitioner has attached as complete a list as possible of the favorable court decisions reviewing this issue as Appendix B. A list of the unfavorable court decisions is attached as Appendix C.

The government asserts that because Petitioner, as an individual present in the U.S. without lawful admission, is deemed by 8 U.S.C. § 1225(a) to be an “applicant for admission,” he is inescapably and permanently subject to mandatory detention pursuant to the terms of 8 U.S.C. § 1225, including 8 U.S.C. § 1225(b)(2)(A). The government’s analysis fails to recognize the explicit distinctions between Immigration and Nationality Act’s (INA) precise classifications and sub classifications. More specifically, the government’s analysis erases a deliberate, congressionally created, subdivision in the larger class of noncitizens classified by law as “applicants for admission.” The government then asserts, having erased the subdivision, that the statutory provisions Congress explicitly applied only to a *subdivision* of the larger class are now applicable to the entire class.

1. The Statutory Text and the Record of Congressional Intent

In 8 U.S.C. § 1225(a), revised and enacted as section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (IIRIRA), Congress defines a large class, that of “applicants for admission,” in opposition to aliens who have been lawfully admitted. Congress created and defined that class specifically in order to collapse the prior legal distinctions between exclusion and deportation proceedings. Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, 225, Part I (March 1996). (“This subsection is intended to replace certain aspects of the current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien’s status will be whether or not the alien has been lawfully admitted.”) *Id.* In other words, in IIRIRA, Congress deliberately created and defined the class of “applicants for admission” and explicitly added provisions to 8 U.S.C. § 1182 so as to collapse what it saw as procedural advantages gained by

aliens subject to deportation as opposed to exclusion, and to explicitly combine into one single “removal” proceeding all efforts to remove noncitizens unlawfully present in the U.S., regardless of how and when they arrived. In other words, Congress intended with the enactment of IIRIRA to divide all non-citizens into two large classes: admitted aliens and inadmissible aliens. The class of admitted aliens can be further subdivided into admitted aliens who remain in lawful status, and those admitted aliens who are subject to the grounds of removal found at 8 U.S.C. § 1227, while the class of inadmissible aliens is also known as “applicants for admission” and was also deliberately subdivided by Congress in IIRIRA.

As the statutory language makes clear, while Congress intended to collapse the prior legal distinctions between those who have made an entry, and those who have not, and to combine both exclusion and deportation into one single removal procedure, Congress in 1996 also recognized the constitutional constraints of due process. Consistent with that awareness, IIRIRA draws very careful lines. The class of inadmissible aliens, also known as “applicants for admission” is defined in opposition to the class of “admitted but removable” aliens. IIRIRA added 8 U.S.C. § 1182(a)(6)(A)(i) explicitly to ensure that all noncitizens who had not been lawfully admitted or paroled would be charged with a ground of inadmissibility:

This subsection will conform the grounds of inadmissibility under section 212(a) with the new doctrine of “admission” established in section 301(a) of the bill. Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B). Under the new “admission” doctrine, such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission. (Deportation grounds will be reserved for aliens who have been admitted to the United States.)

Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, 226, Part I (March 1996). But because Congress also explicitly understood the constitutional constraints of due process, the definition of “applicants for admission” also includes two separate and clearly

identifiable subclasses: A) aliens “present without admission” and B) aliens “who arrive in the United States.” 8 U.S.C. § 1225(a). Note that these two groups are parallel, although not identical, to the two groups that under prior law fell within each of the two separate procedures—deportation and exclusion. As part of the enabling regulations, the government precisely defined the second subclass, also known as “arriving aliens.” 8 C.F.R. § 1.2.

Congress had solid constitutional reasons for distinguishing between the subclass of “arriving alien” applicants for admission at the nation’s borders, and those merely deemed ‘applicants for admission’ as a legal fiction for purposes of removal proceedings. Principal among those reasons is the recognition that foreign nationals are persons included within the protections of the U.S. Constitution, and that the constitutional requirements of due process are at their strongest when the government is depriving a human person of her liberty:

But this Court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution.

One of these principles is that no person shall be deprived of his liberty without opportunity at some time to be heard before such officers in respect of the matters upon which that liberty depends -- not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore it is not competent for the Secretary of the Treasury or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.

Yamataya v. Fisher (Japanese Immigrant Case), 189 U.S. 86, 100-101 (1903). [As referenced in *Reno v. Flores*, 507 U.S. 292, 306 (1993)]. As Judge Winmill of the Federal District of Idaho wrote:

Since the United States began restricting immigration into this country in the late 19th century, it has distinguished between those noncitizens seeking entry into the country and those already residing within it. Noncitizens “stopped at the boundary line” who have “gained no foothold in the United States,” do not enjoy the same constitutional protections afforded to persons inside the United States. But once a noncitizen enters the United States, “the legal circumstance changes,” for the constitutional right to due process applies to all “persons” within our nation’s borders, “whether their presence here is lawful, unlawful, temporary, or permanent.” This distinction between noncitizens who have entered and reside in the United States and those who have not yet entered “runs throughout immigration law.”

Duran-Serrato v. Anderson 4:25-cv-00603-BLW (D. Idaho, November 19, 2025) *Memorandum Decision and Order* p. 1.

As Judge Winmill noted, this constitutional distinction has formed part of U.S. Immigration law for over 100 years. Congress drafted and passed IRRIRA with full awareness of that constitutional distinction. Based on that awareness, Congress deliberately chose to define the class of all aliens who have not been lawfully admitted to the U.S. as “applicants for admission.” But Congress just as deliberately recognized and enshrined in the statute the two subclasses composing “applicants for admission:” arriving aliens--actual aliens seeking admission—and individuals present in the United States who have not been admitted, who have never sought admission, but who Congress nevertheless deems “applicants for admission” as a legal fiction. The distinction between these two subclasses is squarely based in the long history of Supreme Court precedent recognizing that A) the requirements of constitutional due process are lowest for those arriving at the nations’ borders, and B) aliens arrested and detained within the United States, regardless of how they entered, and especially when they have been present for extended periods, cannot be taken into custody and held arbitrarily. e.g., *Yamataya*; *Reno v. Flores*. See also, the extended discussion of these intertwined issues in *Make the Road New York, et. al. v.*

Noem 1:25-cv-190 (D.D.C.) Memorandum Opinion August 29, 2025, pp. 23-25; and *Coalition for Humane Immigrant Rights v. Noem*, 1:25-cv-872 (D.D.C.) Memorandum Opinion August 1, 2025.

Because of these constitutional due process requirements, while combining both “arriving aliens” and “aliens present without admission” into one single class of “applicants for admission” in 8 U.S.C. 1225(a), Congress nevertheless carefully distinguishes and focusses on actual “arriving alien” applicants for admission throughout 8 U.S.C. 1225(b). The provisions of (b)(1)(A) are explicitly applied to any “alien who is arriving” in the U.S.³ For the same constitutional reasons, Congress deliberately drafted the syntactically convoluted text of 8 U.S.C. § 1225(b)(2)(A) to maintain this distinction between the two sub-classes of “applicants for admission.” There is no other explanation for the addition of the “seeking admission” qualifier. The BIA’s reading of the text in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), supported and argued to be controlling by the Respondents, renders that ‘seeking admission’ superfluous. The BIA and Respondents seek to interpret the text to expand the most restricted form of constitutional due process—that provided to non-citizen aliens seeking admission at the U.S. borders—and extend it throughout the entire territory of the United States. As the Supreme Court wrote in *Landon v. Plascencia*, 459 U.S. 21, 33 (1982) “an alien seeking initial admission to the United States requests a privilege, and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Plascencia* at 33. In order to reduce the constitutional rights of noncitizens within the U.S., the BIA and the Respondents would read the “seeking admission” qualifier completely out of the text. They

³ Petitioner recognizes that the statute also authorizes the potential inclusion of the special class described in clause (iii). Petitioner would point the Court to the thorough analysis of clause (iii) in *Coalition for Humane Immigrant Rights v. Noem*, 1:25-cv-872 (D.D.C.) Memorandum Opinion August 1, 2025.

would read 8 U.S.C. § 1225(b)(2)(A) to say: “in 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.” In essence, this reading would convert every immigration agent throughout the United States into an examining officer. But Congress included that “seeking admission” phrase to reemphasize that the examination procedures laid out in 8 U.S.C. § 1225 are applicable *at the nation’s borders*. Threaded through the Report of the House Judiciary Committee’s explication of the text of INA § 235/8 U.S.C. § 1225, are the qualifiers: “arriving alien” “aliens seeking admission” “an alien applying for admission” “aliens arriving”. Regarding the (b)(2) provisions at issue here, Congress explicitly applies them to “inspection of other *arriving aliens*.” *House Judiciary Report, supra.* at 229.

2. The Implementing Regulations

The regulations published in 1997 by the Respondent departments, agencies and their predecessors, *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), also directly contradict Respondents’ current interpretation, and instead squarely support the intended distinction between the two sub-classes of “applicants for admission.” To begin, the caption of 8 C.F.R. § 236 explicitly includes within the scope of its detention provisions *both* inadmissible and deportable aliens. If, as Respondents argue, all “applicants for admission” are always and only covered by the detention provisions of 8 C.F.R. § 235, then which inadmissible aliens is 8 C.F.R. § 236 referencing? As noted above, the primary Congressional purpose for creating the “applicant for admission” class was to separate the “inadmissible” noncitizens, who had never been lawfully paroled or admitted from the “deportable” aliens who had been

admitted, but were now removable. Inadmissible aliens and “applicants for admission” are two different terms for the same group of people.

But the caption is not the only challenge to Respondents’ new interpretation of the statutory language. That is the case because Respondents’ predecessor agencies initially proposed regulations which *would have done precisely what Respondents now assert Congress intended*. That is, the proposed regulations published in January 1997 included explicit language stating, with regard to the 8 U.S.C. 1226, “An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to: (i) inadmissible aliens in removal proceedings.” 62 F.R. 444, 483 (January 3, 1997) [236.1(c)(5)(i)]. Had that regulation remained as proposed, the BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) would not be novel: instead, it would have been the law for the past nearly thirty years. But in 1997 when the government published the final regulations that proposed language was explicitly and deliberately removed, with the following explanation:

The supplementary information stated the Department’s intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.

62 F.R. 10312, 10323 (March 6, 1997). *Compare* 62 F.R. 10312, 10361 [236.1(c)(5)(i)] with 62 F.R. 444, 483 [236.1(c)(5)(i)]. In other words, the BIA’s assertion in *Yajure Hurtado* that the Immigration Judges do not have authority to adjudicate bonds *for any inadmissible alien*, (otherwise defined in 8 U.S.C. § 1225(a) as an “applicant for admission”) was considered and explicitly rejected when the implementing regulations were published in 1997.

The Ninth Circuit has held that an executive branch agency such as the BIA cannot ‘overrule’ by adjudication regulations that were promulgated after notice and comment. *Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980). [“Thus, by adjudication, the Board attempted to add a requirement to the 1973 regulation which had been expressly discarded during its rule-making proceedings.”] And yet that is precisely the action that Respondents are here asking this Court to support, as they ask this Court to sustain the BIA’s decision in *Yajure Hurtado* that Immigration Judges do not have authority to grant bond to any member of the entire class of “inadmissible aliens” otherwise known as “applicants for admission.”

3. Governing DHS Policy Prior to 2025

The government’s argument boils down to the claim that—read and interpreted as they chose to read and interpret the statutory language in 2025—*because Petitioner has never been admitted, he could only ever, as a matter of law, be detained pursuant to 8 U.S.C. 1225*. But as the above statutory and regulatory history documents, the Respondents’ interpretation of the statutory text finds little to no support in the legislative history, and is directly opposed to the clear choice of the March 1997 implementing regulations. For the last nearly thirty years, the government policy has been that DHS has the right to choose how it wishes to detain and process individuals who are encountered in the U.S. near the U.S. border, *and that the provisions of 8 U.S.C. 1226(a) applied to all individuals present without admission who are encountered for the first time within the interior of the United States*. This is supported by the judge’s finding in *Cordero Pelico v. Kaiser*, 3:25-cv-07286-EMC (N.D. Cal. Oct. 3, 2025):

[T]he government has conceded in other contexts that “DHS’s long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.” Dkt. No. 17 (citing Solicitor General, Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)). And in its briefing before this Court, the

Government acknowledges that “until recently,” it considered § 1226(a) to be an available detention authority for noncitizens who might also be subject to § 1225.

Cordero Pelico, at 6. *See also, Martinez v. Hyde*, 1:25-cv-11613-BEM, at 9, fnt 9.

Petitioner Gomez Roman was not encountered at the U.S. Border. Petitioner has been residing in the United States without incident since 1997—for close to three decades. The government has issued no arrest warrant, and that failure calls into question the legal basis for Petitioner’s arrest and detention. Petitioner had Deferred Action for Childhood Arrivals. He has applied for his DACA to be reinstated because he is and remains eligible for DACA.

Respondents do not assert that Petitioner was arrested or detained during or shortly after crossing the border without authorization, nor do Respondents assert that Petitioner has at any point in time applied for admission into the United States. Respondents merely assert that Congress in 1996 intended the entire class of “applicants for admission” without regard to subclass, to be subject to mandatory detention.

The U.S. Supreme Court’s analysis of 8 U.S.C. 1225 and 1226 in *Jennings v. Rodriguez*, 583 U.S. 281, (2018) recognizes the distinctions at issue, stating:

In sum, U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c).

Jennings at 289. Note the clear recognition that while “aliens seeking admission” (or arriving aliens, as defined in the regulations) are subject to detention under §§1225(b)(1) and (b)(2), “aliens already in the country may be detained . . . under §§1226(a) and (c).” The Supreme Court further wrote “As noted, §1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.”

Id. at 303. In other words, the Supreme Court in *Jennings* recognized that 8 U.S.C. §1225(b) applied only to the subclass of “applicants for admission” who were actually “seeking admission” at the border. The other subclass of “applicants for admission,” “an alien present . . . who has not been admitted” or “certain aliens already in the country” or “aliens already in the country” may be detained under §1226(a). *Jennings* does not support a legal conclusion that individuals who are not seeking admission, who are already present in the country, who have never sought admission, are subject to detention pursuant to 8 U.S.C. § 1225.

The governments’ novel arguments amount to an implicit assertion that for nearly thirty years, the regulations stating that inadmissible aliens detained within the United States were subject to detention pursuant to 8 U.S.C. § 1226(a) were unlawful, *ultra vires*. But merely because Congress has suddenly granted the U.S. government enormous sums of money to fund detention does not magically erase all the government’s prior regulatory choices. The governments’ implicit argument that its policies and procedures over the past 29 years have been invalid and illegal, and the Respondents’ argument that the statutory language can only be read as they now propose to read it, are unsupported by the Congressional record or the statutory text, and at its core the agency’s new interpretation is nothing more than an invalid and unconstitutional attempt by an executive branch agency to impose via adjudication a statutory interpretation rejected in the Congressional Record and thereafter proposed and then explicitly rejected as part of the implementing regulations.

III. CONCLUSION

Habeas courts have broad authority to order release when detention violates federal law or the Constitution. Immediate release is appropriate where:

- (1) the agency acts contrary to its own regulations,

(2) detention is unlawful as a matter of statute, or

(3) detention violates due process.

See, e.g., Accardi v. Shaughnessy, 347 U.S. 260 (1954) (agencies must follow their own regulations) and *Nat'l Auto. Dealers Ass'n v. Fed. Trade Comm'n*, 127 F.4th 549, 553 (5th Cir. 2025) (It is a given of administrative law that agencies must follow their own regulations). Respondents' detention of Petitioner without bond violates the governing statute, the 1997 regulations, and the Constitution. Habeas relief is therefore not only available—it is required.

IV. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court grant the Petition for Writ of Habeas Corpus and:

1. Order Respondents to immediately release Petitioner from ICE custody in light of:
 - his newly filed DACA reinstatement application (Appendix A);
 - the statutory and regulatory boundaries of § 1225 and § 1226;
 - Respondents' unlawful reinterpretation of detention authority; and
 - the fact that Petitioner's detention concretely and directly violates both his substantive and his procedural rights under the Due Process Clause of the Fifth Amendment.
2. In the alternative, grant the Petitioner the right to an immediate bond hearing before an immigration judge.
3. Enjoin Respondents from transferring Petitioner outside the Western District of Texas prior to his release.
4. Declare that any re-detention of Petitioner without a material change in circumstances and without an individualized finding of danger or flight risk violates the Fifth Amendment.
5. Grant any other and further relief this Court deems just and proper.

RESPECTFULLY SUBMITTED this 4th day of December, 2025.

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Appendix:

- A. DACA Receipt Notice from November 3, 2025.
- B. List of Cases finding Government's Policy Violates the law or the U.S. Constitution
- C. List of Cases not finding that the Government's policy violates the law or the U.S. Constitution.

CERTIFICATE OF SERVICE

I certify that I have served the forgoing document via the Court's CM/ECF electronic system to the following:

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