UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOVANY CARBAJAL URQUIZA	§	
	§	
Petitioner,	§	Cause No. 4:25-cv-05294
	§	
v.	§	
	§	
KRISTI NOEM, et al.,	§	
	§	
Respondents	§	

PETITIONER'S RESPONSE IN OPPOSITION TO GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

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The Petitioner files the foregoing Response to the Government's Motion for Summary Judgment (Dkt. 11) that was filed on December 23, 2025.

I. NATURE OF PROCEEDINGS

Petitioner, Jovany Carbajal Urquiza, through counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2241, challenging the legality of his continued detention by Immigration and Customs Enforcement ("ICE"). Petitioner is in the physical custody of Respondents at the Joe Corley Processing Center in Conroe, Texas. He faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded that Petitioner is subject to mandatory detention. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Consistent with a new DHS policy issued on July 8, 2025, all

Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to wit., those who entered the United States without admission or inspection. Under this policy the Petitioner is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are therefore ineligible to be released on bond.

Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. 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), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as being inadmissible for having entered the United States without inspection. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a).

II. STANDARD OF REVIEW

A. Rule 56

Under Rule 56, summary judgment may be granted if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When assessing whether a dispute to any material fact exists, the court should consider all of the evidence in the record and draw all reasonable inferences in favor of the nonmoving party. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007).

III. FACTS

Petitioner entered the United States without inspection from Mexico around 2012. In October of 2025, the Petitioner was taken into immigration custody and issued a Notice to Appear "NTA." He was charged with removability under 212(a)(6)(A)(i) of the Immigration and Nationality Act, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General and 212(a)(7)(A)(i)(I) as an immigrant who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the act... (Dkt. 1-1 NTA). Petition was not charged as an arriving alien. *Id.*

Per *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) an IJ is unable to consider a bond for the Petitioner. Any bond application at this point would be deemed futile as IJ's are bound by *Yarjure Hurtado*. The Petitioner currently remains in detention with her removal proceedings continuing in custody. Without relief from this Court the Petitioner will remain in custody for months or even years while her case is processed.

IV. ARGUMENT

The government relies heavily on a decision in *Cabanas v. Bondi*, 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) finding that the Petitioner in that case is subject to mandatory detention. The Respondents in this case filed a motion for summary judgment asserting the above the cited authority and requesting the court deny relief in this case based on the same reasoning.

Petitioner maintains that Judge Eskridge erred in his reasoning in *Cabanas* based on the following.

A. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225

Respectfully, the Court in *Cabanas* erred in applying the following terms: arriving alien, applicant for admission, and seeking admission, and concluding that someone who entered without inspection is subject to mandatory detention.

First, the Court agreed with Judge Hendrix from the Northern District of Texas that an applicant for admission and seeking admission have "no material

disjunction..." *Id.* at 8.

Petitioner emphasizes the basic canon of statutory construction that "differences in language ... convey differences in meaning." *Ysleta Del Sur Pueblo v. Texas,* 596 U.S. 685, 698 (2022) (quoting *Henson v. Santander Consumer USA Inc.,* 582 U.S. 79, 86 (2017)); *see also Padron Covarrubias v. Vergara,* No. 5:25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025) ("[w]hen two different phrases are used in a statute, a variation in terms suggests a variation in meaning" (citing A. Scalia & B. Gamer, Reading Law: The Interpretation of Legal Texts 170 (2012))).

Well-established principles of statutory construction require courts to give meaning to each phrase in a statute rather than construing it in a way that renders parts of it superfluous. *See, e.g., TRW Inc. v. Andrews,* 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant"); *United States, ex rel. Polansky v. Exec. Health Res., Inc.,* 599 U.S. 419, 432 (2023) ("every clause and word of a statute should have meaning"). The Respondents' interpretation of § 1225(b) would make certain portions, i.e., "seeking admission", superfluous.

One court has recently explained:

> If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all "applicant[s] for admission," there would be no need to include the phrase "seeking admission" in the statute. That is, rather than stating that mandatory detention is required for any "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," § 1225(b)(2)(A) (emphasis added), the statute would instead provide for mandatory detention for any "applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted."

Lopez Benitez v. Francis, No. 25-CIV-5937(DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) (emphasis and strike-through in original). If the Court does not give meaning to the "seeking admission" phrase it would render that portion of the statute superfluous and would be contrary to the well-established legal principles in interpreting statutes.

Second, the Court in *Cabanas* concluded that "there isn't a separate concept applicable to an "arriving alien" as distinct from an "applicant for admission."' *Cabanas* at 9. Respectfully, that is simply not correct.

The definition of an arriving alien is limited to those individuals who are seeking entry to the United States at a port of entry or interdicted in international waters. 8 C.F.R. § 1.2. Additionally, the regulations provide that arriving aliens are not entitled to bond hearings, which coincides with the longstanding practice that 1225 applies only to those individuals apprehended at the border. *See* 8 C.F.R. § 1003.19(h)(1)(i)(B). This is relevant because as the Court in *Cabanas* noted that

if Congress had intended 1225(b) to apply only to arriving aliens it could have done so. *Cabanas* at 9. The Court goes on to explain that multiple titles of subsections in 1225 specifically reference "arriving aliens" but that in 1225(b)(2)(A) it does not. However, the court omits referencing the main title of 1225.

The title of § 1225 states that this section applies to the "expedited removal of inadmissible ***arriving aliens***." In contrast, the title of §1226 states that it applies to the "apprehension" of noncitizens like those who are already present in the country. These titles contradict the Respondents' current argument that § 1225 applies to noncitizens who have been present in the country for years and instead support the government's longstanding interpretation that § 1225 applies to noncitizens intercepted at the border while § 1226 applies to noncitizens apprehended away from the border years after they entered. Courts may consider the titles of statutes when interpreting their provisions. *See, e.g., Fla. Dep 't of Revenue v. Piccadilly Cafeterias, Inc.,* 554 U.S. 33, 47 (2008) ("[S]tatutory titles and section headings are tools available for the resolution of a doubt about the meaning of a statute." (quoting *Porter v. Nussle,* 534 U.S. 516, 528 (2002))); *see also United States v. Moore,* 71 F.4th 392, 397 (5th Cir. 2023). In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court also made the distinction between (1) an alien *seeking entry* into the U.S. where 1225(b) applies, and (2) "aliens already in" in the U.S. where 1226 applies. *Id.* at 297 and 303.

Based on the foregoing, Petitioner maintains that he is not subject to mandatory detention and is entitled to a bond hearing under 1226.

V. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Court deny Government's Motion to Dismiss and in the Alternative Motion for Summary Judgment and Grant the Petitioner's Habeas Petition finding that the Petitioner is not subject to mandatory detention under 8 U.S.C. 1225(b)(2) and is entitled to release or in the alternative given a bond hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 12, 2026, the foregoing document was filed with the Court through the Court CM/ECF system on all parties and counsel registered with the Court CM/ECF.

Dated this 12th day of January 2026.

/s/ Naimeh Salem
Naimeh Salem, Esq.