

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

AVIMAEL DIAZ-CRUZ,

Petitioner,

v.

Civil Case No. 25-cv-1117-MLG-JMR

GEORGE DEDOS, in his official capacity as Warden of the Cibola County Correctional Center; MARY DE ANDA-YBARRA, in her official capacity as El Paso Field Office Director for U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director of U.S. Customs and Immigration Enforcement; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

**RESPONSE TO  
PETITION FOR WRIT OF HABEAS CORPUS (Doc. 1)**

**INTRODUCTION**

The Federal Respondents, El Paso Field Office Director for Immigration and Customs Enforcement (“ICE”); Acting Director of ICE; Secretary of the Department of Homeland Security (“DHS”); the Attorney General of the United States (collectively “Respondents”), hereby submit this Response to Petitioner’s Writ of Habeas Corpus (Doc. 1)(“Petition”).<sup>1</sup>

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<sup>1</sup> Undersigned counsel does not represent George Dedos, Warden, Cibola County Processing Center. Cibola County Processing Center is a private facility, and Warden Dedos is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Dedos, as he is detaining the Petitioner at the request of the United States.

Petitioner is a noncitizen of the United States and national of Mexico, who entered the country unlawfully and without inspection, and is currently detained pending removal proceedings. Petitioner alleges that he is not subject to mandatory detention under Title 8 § 1225(b)(2) but should be eligible for bond under § 1226. Respondents request the Court deny the Petition (Doc. 1) as Petitioner is correctly classified under 8 U.S.C. § 1225(b)(2) based on the plain language of that statute and the recent opinion by the Board of Immigration Appeals (“BIA”) in *Matter of Yajure Hurtado*. See 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Petitioner is an “arriving alien” under § 1225(b)(2)(A), and thus not entitled to any additional due process beyond that specifically prescribed by statute. Alternatively, should the Court find Section 1226 applies, the appropriate relief would be bond review, with all standard procedures and burdens of proof, rather than release without an evidentiary hearing before the U.S. Immigration Court.

### **FACTUAL BACKGROUND**

1. Petitioner is a noncitizen of the United States and a citizen of Mexico who first entered the United States on or about April 17, 2009, without admission or parole, and was voluntarily returned to Mexico. Subsequently, Diaz-Cruz illegally entered the United States at or near Tecate, California, on an unknown date without admission or parole. See Ex. 1, Declaration of William Shaw, at ¶ 4.
2. On September 17, 2025, Homeland Security Investigations Agents and ICE Officers encountered Diaz-Cruz in Yakima, Washinton at a traffic stop. An arrest warrant was served on Diaz-Cruz. He was detained and transported to the Yakima ERO ICE office for

processing. At that time, he was issued a Notice to Appear, which was filed with the immigration court in Tacoma, WA. *Id.* at ¶¶ 5-6.

3. On October 14, 2025, with all parties present, the Immigration Judge set the case for individual merit trial on November 5, 2025. *Id.* at ¶ 8.
4. On October 22, 2025, Diaz-Cruz was represented by his attorney at a Bond hearing wherein the Immigration Judge denied bond citing lack of jurisdiction under *Matter of Hurtado*, 29, I&N Dec. 216 (BIA 2025) and in the alternative if the Court had jurisdiction, the Court would grant a bond of \$ 12,000. *Id.* at ¶ 9.
5. On October 27, 2025, Diaz-Cruz’ attorney [Jennifer Lesmez] filed a motion to continue the matter and requested a two-week continuance which was granted by the Immigration Judge on October 29, 2025. As a result, the Immigration Judge had to re-set the case and scheduled a new trial date of December 16, 2025. *Id.* at ¶ 10.
6. On October 30, 2025, due to operational and bed space needs, ICE ERO transferred Diaz-Cruz to the Cibola County Correctional Center in Milan, New Mexico. *Id.* at ¶ 11.
7. On November 24, 2025, all parties appeared before the Immigration Judge at Otero Processing Center in Chaparral, New Mexico, via Webex, for a status conference and confirmation of the trial date of December 16, 2025. *Id.* at ¶ 13.

## **LEGAL BACKGROUND**

### **I. Detention of “Arriving Aliens Under 8 U.S.C. § 1225.**

Generally, when a noncitizen arrives in the United States they are “an applicant for admission,” who must “be inspected by immigration officers” to ensure that they may be admitted

into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as “arriving aliens” and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *see also* 8 U.S.C. § 1225(b)(1)(A)(i). Aliens who enter illegally, but are detained shortly after unlawful entry, cannot be said to have “effected an entry” and remain, similar to an alien detained at a port of entry, “on the threshold” and subject to Section 1225. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

These arriving aliens can be subject to an expeditious process to remove them from the United States. 8 U.S.C. § 1225(b)(1). Under this process, known as expedited removal, arriving aliens who entered illegally, lack valid entry documentation or make material misrepresentations shall be “order[ed]...removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be inadmissible pursuant to Section 1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless “*shall be detained* for a [removal] proceeding” unless the examining immigration officer determines that the noncitizen is “clearly and beyond a doubt entitled to be admitted.” *Id.* (emphasis added).

This designation is significant for due process purposes. *Thuraissigiam*, 591 U.S. at 106–07, 138–40; *See also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the “unique constitutional status of arriving aliens with no ties to the United States”). For example, the Supreme Court considered whether Section 1225(b) imposes a time limit on the length of

detention and whether such noncitizens detained under this authority have a statutory right to a bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 296–303 (2018) (The Supreme Court held that “nothing in the statutory text [of § 1225(b)] imposes any limit on the length of detention” nor “says anything whatsoever about bond hearings.”) Most importantly, the sole means of release for noncitizens detained pursuant to Section 1225(b) is temporary parole *at the discretion of DHS* under 8 U.S.C. § 1182(d)(5). *Id.* at 300. (emphasis added).

For “more than a century” the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (“the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.”); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (“This Court has long held that 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”); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (an alien on the threshold of initial entry stands on a different footing: “Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned”).

*Thuraissigiam* dealt with habeas action involving a noncitizen, like Petitioner, detained under Section 1225(b) who raised Fifth Amendment Due Process challenges. *Thuraissigiam*, 591 U.S. at 106–107. The Supreme Court reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other than those expressly provided by statute. *Id.* at 107 (a noncitizen seeking initial entry “has no entitlement to procedural rights other than those afforded by statute”). Accordingly, Congress may authorize detention, even

for prolonged periods of time, and such detention does not deprive Section 1225(b) aliens “of any statutory or constitutional right.” *Id.* An alien who enters the country illegally is treated as an “applicant for admission” and has only those rights that Congress has provided by statute. *Thuraissigiam*, 591 U.S. at 140. The due process clause requires nothing more. *Id.*

## II. Statutory Framework and History.

Prior to 1996, the Immigration and Nationality Act (“INA”) treated noncitizens differently based on whether they had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Noncitizens who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, noncitizens who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion

proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of a noncitizen into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the “*pivotal factor in determining an alien’s status*” would be “whether or not the alien has been *lawfully* admitted.” See House Rep., at 226 (emphasis added); see also *Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA effected these changes through several provisions codified in Section 1225 and Section 1226. Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. That provision states that a noncitizen “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant for admission.” 8 U.S.C. § 1225(a)(1). Section 1225(b) divides removal proceedings into two tracks—expedited removal and non-expedited “240” proceedings—and mandates that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].”<sup>2</sup> *Jennings*, 583 U.S. at 287. It requires that those aliens be detained pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), 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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”). While § 1225(b)(2) does not allow for release on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

Section 1226, on the other hand, addresses the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example, lawfully enter the country

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<sup>2</sup> Section 1225(b)(1) provides for “expedited removal” proceedings, *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2). That “default rule,” however, does not apply to certain criminal noncitizens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c).

For many years after IIRIRA, DHS treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. On July 8, 2025, DHS revisited its legal position on detention and release authorities and issued interim guidance that brought practices in line with the statute’s plain text. Specifically, DHS concluded that all noncitizens who enter the country without being admitted (or who otherwise arrive in the United States without proper documentation) are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.

On September 5, 2025, the Board of Immigration Appeals (“BIA”) adopted this interpretation through a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be “arriving aliens” and are properly detained under 8 U.S.C. § 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure*

*Hurtado*, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.

### **III. Judicial Review of 8 U.S.C. § 1225 Determinations.**

The Supreme Court has long recognized that the political branches’ broad power over immigration is “at its zenith at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and “it is not within the province of any court, unless expressly authorized by law, to review [that] determination.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court’s “general reaffirmations” of the political branches’ exclusive authority to admit or exclude aliens “have been legion”). Control of the nation’s borders is vested in the political branches because that authority is “vital and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations,” matters “exclusively entrusted to the political branches of government.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Therefore, the Executive Branch has broad constitutional and statutory power over the administration and enforcement of the nation’s immigration laws. *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see e.g.*, 6 U.S.C. § 202(4); 8 U.S.C. § 1103(a)(1), (3). Congress has delegated broad discretion to executive officials under the INA and these grants of statutory authority are particularly sweeping in the context of parole. *Amanullah v. Nelson*, 811

F.2d 1, 6 (1st Cir. 1987). Similarly, the Executive Branch is provided significant deference when it decides to admit or exclude noncitizens, as this power is a sovereign prerogative. *Thuraissigiam*, 591 U.S. at 139 (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). The Constitution gives the political department of the government “plenary authority to decide which aliens to admit.” *Id.* (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). Critically, “a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.” *Id.*; see also *Jennings*, 583 U.S. at 286 (“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.”); *Shaughnessy*, 338 U.S. at 544.

## ARGUMENT

### **I. Section 1225(b)(2) Mandates Detention of Aliens Who Are Present in the United States Without Having Been Lawfully Admitted.**

Under the plain language of Section 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. Section 1225(a) defines “applicant for admission” to encompass a noncitizen who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA refers to lawful entry after inspection by immigration officials, *not* physical entry. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942, at \*3 (E.D. Mo. Nov. 10, 2025) (finding that petitioner—a foreign national who entered the United States without inspection

almost 40 years ago—was an “applicant for admission” under the plain language of Section 1225 and therefore subject to mandatory detention). Thus, a noncitizen who enters the country without permission is, and remains, an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border.<sup>3</sup> As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*, 2025 WL 3131942, at \*4.

Petitioner argues that “Respondents’ new legal interpretation is plainly contrary to the statutory text, statutory framework, Congressional intent, decades of agency practice, and decisions of federal courts across the nation”. Doc. 1 at ¶ 6. It cannot be disputed that Respondents previously operated under a different understanding of Section 1225(b)(2)(A), such that noncitizens present in the interior of the United States who had entered without admission have historically been detained under Section 1226(a). However, past practice does not justify disregard of clear statutory language. *See, e.g., Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 329 (2015). For example, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that were later deemed incompatible with statutory text.

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<sup>3</sup> This reading is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to* someone *for* something)”), *with id.* at 1299 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States.

*See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). A “nontextual” practice, even longstanding ones, cannot upend plain statutory meaning upon review. *Mejia Olalde*, 2025 WL 3131942, at \*5 (rejecting the Government’s prior understanding as “nontextual” and unsupported by any “thorough, reasoned analysis”).

Some district courts have rejected Respondents’ argument based on language in *Jennings* where the Supreme Court described the detention authorities in Section 1225(b) and Section 1226, and in that context summarized Section 1226 as applying to aliens “already in the country”:

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*, 583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens “once inside the United States”). However, Respondents do not view this argument as inconsistent with that language: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of noncitizens who were admitted into the United States (and so are “in the country”) but are now removable. *Jennings* refers to noncitizens who are “in and admitted to the United States.” 8 U.S.C. § 1227(a). The opinion’s reference to noncitizens “present in the country” specifically cites § 1227(a), which covers only *admitted* noncitizens. *See Jennings*, 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority that applies to “aliens already in the country.”

## II. Petitioner is Appropriately Classified under Section 1225.

As Petitioner entered the United States without inspection, Petitioner would be an “applicant for admission” to the United States, i.e., alien present in the United States who has not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress’s broad language here is intentional, an undocumented alien is to be “deemed for purposes of this chapter an applicant for admission.” *Id.* Petitioner is “deemed” an applicant for admission based upon 1) the undocumented status and 2) that Petitioner has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted,” making detention mandatory under Section 1225. *See* 8 U.S.C. § 1225(b)(2)(A); *Hurtado*, 29 I. & N. Dec. at 220. In short, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)’s mandatory detention requirement.

At least four courts have adopted this general interpretation in recent months. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an “applicant for admission” upon the straightforward application of the statute); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding that Section 1225(b) applied despite alien’s presence in the country for over ten years, noting “overlap” between Section 1225 and Section 1226 authorities); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding BIA’s recent decision in *Matter of Yajure Hurtado* supported by the plain language of the statute, and that such an interpretation does not render Section 1226, nor additions thereto by the Laken Riley Act, superfluous); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942, at \*3 (E.D. Mo. Nov. 10, 2025) (finding that a foreign national, who had been in the country for approximately forty

years but never lawfully “admitted” into the United States, was an “applicant for admission” based on the plain meaning of Section 1225). Respondents acknowledge that a number of courts in other Districts have reached different results on this issue. *See, e.g.*, Doc. 1 at ¶ 41. Additionally, Courts within this District as well have reached different results on this issue. *See id.* at ¶¶ 44-46.<sup>4</sup>

As Petitioner is properly classified under Section 1225 per the plain meaning of the statute and the BIA guidance in *Hurtado*, there can be no Fifth Amendment violation as Petitioner would have only those rights that Congress has specifically provided by statute. *Thuraissigiam*, 591 U.S. at 140; *Jennings*, at 296–303; *see also* 8 U.S.C. § 1182(d)(5). The Court should therefore deny the Petition (Doc. 1).

Should the Court agree with Petitioner’s contention that classification under Section 1226, rather than Section 1225, is appropriate, the subsequent relief, if any, would be to return Petitioner to that status: classification under Section 1226 with a bond of \$12,000, the amount that the IJ had previously found to be appropriate for Petitioner. *See* Ex. 1 at ¶ 9.

### **CONCLUSION**

The Court should deny the Petition for Writ of Habeas Corpus (Doc. 1) as Petitioner is appropriately classified under Section 1225 based on the plain meaning of the statute, Petitioner’s due process rights as a Section 1225 “arriving alien” have been met as a matter of law. Should the Court agree with Petitioner that Section 1226 applies, the only appropriate remedy is to order

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<sup>4</sup> While undersigned counsel acknowledges that Petitioner falls within the Bond Denial Class defined in *Rodriguez v. Bostock*, case number 25-cv-05240-TMC from the E.D. of Washington, it is the position of the United States that once an individual is no longer detained at the Northwest ICE Processing Center that they are no longer members of that class.

that the Petitioner be released upon payment of the bond amount of \$12,000 that was determined by the IJ in this matter to be appropriate.

Respectfully submitted,

RYAN ELLISON  
Acting United States Attorney

/s/ Robert James Booth II 12/8/25  
ROBERT JAMES BOOTH II  
Assistant United States Attorney  
201 3rd Street NW, Suite 900  
Albuquerque, New Mexico 87102  
(505) 346-7274; Fax: (505) 346-7205  
[Robert.Booth2@usdoj.gov](mailto:Robert.Booth2@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 8, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Robert James Booth II 12/8/25  
ROBERT JAMES BOOTH II  
Assistant United States Attorney