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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Xavier Francisco CARRILLO FERNANDEZ, Petitioner, v. Jason KNIGHT, *et al.* Defendants.	**Petitioner's Traverse to Federal Respondents' Response to Petition for Writ of Habeas Corpus (ECF No. 10)** Case No. 2:25-cv-02221-RFB-BNW Judge: Richard F. Boulware, II

Petitioner Xavier Francisco Carrillo Fernandez ("Petitioner") hereby submits this Traverse to the Federal Respondents' (also "Respondents") Response to Petition for Writ of Habeas Corpus (ECF No. 10). Petitioner is amenable to receiving a ruling on the papers and is willing to waive a hearing.

I. Introduction

Petitioner is an alien detained by Immigration & Customs Enforcement ("ICE") at the Nevada Southern Detention Center. He faces unlawful detention because the Federal Respondents have concluded, based on novel arguments, that he is subject to mandatory

detention under 8 U.S.C. § 1225(b)(2). This new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying 8 U.S.C. § 1226(a) to people like Petitioner.

Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). As has been made clear by multiple decisions made by this court and most other Federal District Courts around the country, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Plaintiff who were previously detained at the border, released on their own recognizance, and then were re-detained by ICE. Instead, such individuals are subject to § 1226(a), which allows for release on conditional parole or bond.

Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be allowed to pay the bond previously granted to him by the Immigration Judge ("IJ") and be released immediately while the appeal of his asylum application is pending before the Board of Immigration Appeals ("BIA").

II. Factual and Procedural Background

Petitioner is a 40-year-old native and citizen of Venezuela who has resided in the U.S. since 2023. He is the main breadwinner for his wife and stepdaughter who reside in Midvale, Utah as well as for his only daughter residing in Venezuela. He was detained by ICE on July 31, 2025, while on his way to work. Petitioner then sought and was granted a bond redetermination hearing by the IJ - Executive Office for Immigration Review ("EOIR").

The Department of Homeland Security argued Petitioner is an "applicant for admission" who is "seeking admission" and subject to mandatory detention under 8 USC § 1225(b)(2)(A). On

August 14, 2025, the IJ agreed with Mr. Carillo that he was not subject to mandatory detention and granted a bond of $2,500.

DHS reserved appeal and then filed EOIR-43 invoking an automatic stay to his release on bond for the duration of the appeal with the BIA. While the appeal was pending, the BIA adopted DHS' new expansive definition of "applicant for admission" under 8 USC § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA September 5, 2025). Petitioner filed his Petition for Writ of Habeas Corpus with this court on November 11, 2023. Then, on November 13, 2025, the BIA sustained DHS' appeal and vacated the IJ's decision granting Petitioner's release on bond "for the reasons set forth in *Matter of Yajure Hurtado*…" ECF No. 10, Exh. A at 5.

III. Argument

A. Petitioner's Due Process Arguments are Moot.

Petitioner concedes that any arguments related to the Federal Respondents' use of EOIR-43 allowing for an automatic stay of the IJ's bond decision are moot after the BIA's decision from November 13.

B. This Court Has Jurisdiction Over Petitioner's Habeas Corpus Petition.

Respondents assert that subsections (g), (b)(9), and (a)(5) preclude this Court's review. This Court has habeas jurisdiction to review Petitioner's challenge to the lawfulness of his detention, because the relevant jurisdiction stripping provisions of the INA, 8 U.S.C. § 1252, do not apply.

In evaluating the jurisdiction stripping provisions of the INA, this Court should guide itself "by the general rule to resolve any ambiguities in a jurisdiction-stripping statue in favor of the narrower interpretation and by the strong presumption in favor of judicial review." *Arce v. United States*, 899 F. F.3d 796, 801 (9th Cir. 2018) (per curiam) (internal quotations and citations omitted).

1. Section 1252(g)

As to federal court proceedings, 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). However, as interpreted by the Supreme Court, this Section applies "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.- Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). Thus, § 1252(g) does not apply to "all claims arising from deportation proceedings." *Id.* Instead, "[t]he Supreme Court has given a 'narrow reading' to § 1252(g)." *Ibarra-Perez v. United States*, _ F.4th _, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025).

As the Ninth Circuit recently affirmed, federal courts have "jurisdiction to decide a 'purely legal question' that 'does not challenge the Attorney' General's discretionary authority' . . . even if the answer to that legal question . . . forms the backdrop against which the Attorney General later will exercise discretionary authority." *Id.* (quoting *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004)).

Because Petitioner does not challenge ICE's decision to "commence" removal proceedings against him, nor the continued "adjudication" by the Attorney General of their removability in immigration court, but rather their detention without the opportunity for release on bond pending the resolution of those proceedings, § 1252(g) does not apply to this case. *Id.* at *6-7. Respondents' broad reading of § 1252(g) as insulating the lawfulness of Petitioner's detention from judicial review, based on the assertion that their detention "arises from the decision to commence removal proceedings against [him]," *see* ECF No. 10, Exh. B at 22, "would lead to a result that is not contemplated in the statute and that has been disavowed by the Supreme Court." *Ibarra-Perez*, 2025 WL 2461663, at *7.

Moreover, in cases where a noncitizen challenges the Attorney General's arguably discretionary decision on a purely legal basis as a "violation [of] the Constitution" or "INA," courts have jurisdiction to review such decisions as "premised on a lack of legal authority." *Id.* at *8. In any case, because Petitioner challenges the lawfulness of his detention during the pendency of removal proceedings[1], he does not challenge one of the "three discrete events along the road to deportation" that § 1252(g) applies to. *Reno*, 525 U.S. at 482. Section 1252(g) thus does not deprive this Court of jurisdiction.

2. Section 1252(b)(9)

[1] Although a final hearing on the merits of his asylum application took place on October 1, 2025, Petitioner has appealed against the IJ's decision denying his asylum application to the BIA. The BIA has not yet issued any briefing deadlines or scheduling orders for Plaintiff's asylum appeal. While the case appeal is pending, the IJ's removal decision is not yet final. 8 CFR 1241.1(a) ("An order of removal made by the immigration judge at the conclusion of proceedings under [8 U.S.C. § 1229a] shall become final [u]pon dismissal of an appeal by the Board of Immigration Appeals").

Similarly, Respondents' argument that the Court lacks jurisdiction to hear Petitioner's challenge to the lawfulness of his detention without the opportunity for release on bond under § 1252(b)(9) has been expressly rejected by the Supreme Court. *See Jennings v. Rodriguez*, 583 U.S. 281, 291-92 (2018). Section 1252(b)(9) limits judicial review of any legal challenges "arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter [including §§ 1225 and 1226]" to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9).

In *Jennings*, the Supreme Court specifically rejected the government's broad reading of "arising from" under § 1252(b)(9)—which Respondents reassert here—as "extreme," because by only allowing challenges to detention authority through an appeal of a final order of removal (i.e. after the period of detention under § 1225(b)(2) or §§ 1226(a) and (c) has ended)," that reading would "make claims of prolonged detention effectively unreviewable." *Id.* at 293 ("By the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place. And of course, it is possible that no such order would ever be entered in a particular case, depriving that detainee of any meaningful chance for judicial review.") Section 1252(b)(9) thus does not deprive this Court of jurisdiction.

3. Section 1252(a)(5)

Likewise, it is well settled that § 1252(a)(5) only strips a district court of habeas jurisdiction where a petitioner seeks judicial review of a final order of removal. *See Singh v. Gonzales*, 499 F.3d 969, 977-78 (9th Cir. 2007) (citing *Puri v. Gonzales*, 464 F.3d 1038, 1041 (9th Cir. 2006)) (holding that "the REAL ID Act's jurisdiction-stripping provisions . . . does [sic]

not apply [if the] claim is not a direct challenge to an order of removal"). Because Petitioner does not challenge any order of removal, § 1252(a)(5) does not strip this Court of jurisdiction over their challenge to the lawfulness of their detention while their removability is adjudicated by the BIA.

C. The Federal Respondents' interpretation of 8 U.S.C. § 1225 is erroneous.

The Court is already fully familiar with the statutory and operational framework governing immigration detention. The Petition for Writ of Habeas Corpus (ECF No. 1) in this matter outlines in detail how detention functions under the INA, including the legislative history and agency practice surrounding §§ 1225 and 1226, as well as the contours of the Government's newly implemented mandatory detention policy. Moreover, the Court has recently examined these same issues in depth in *Escobar Salgado v. Mattos*, No. 2:25-CV-01872-RFB-EJY, 2025 WL 3205356 at 3-10 (D. Nev. Nov. 17, 2025). Accordingly, the relevant legal and factual background is already well developed in the record before the Court. Therefore, in order to preserve its arguments on the record, Petitioner focus solely on the statutory interpretation of 8 U.S.C. §§ 1225 and 1226.

1. Petitioner's Detention Is Unlawful Under the INA

The Federal Respondents assert that § 1225(b)(2) applies to Petitioner and mandates their detention without a bond hearing. The Court should reject the Federal Respondents' construction of the relevant sections of the INA because their argument runs afoul of well-settled judicial canons of statutory construction. In sum, the Respondent's argument is based upon an expansive definition of "applicant for admission" under § 1225 of the INA. Based upon this broad

construction of the statutory definition of applicant for admission, Respondents then assert that any aliens, like Petitioner, who have entered and remained in the country unlawfully necessarily fall within this definition of applicant for admission. As applicants for admission, Petitioner, according to Respondents' argument, are thus subject to the mandatory detention provision in § 1225(b)(2) and not the bond procedures afforded under § 1226. As explained below, Respondents' interpretation is inconsistent with multiple fundamental canons of statutory construction, as well as legislative history and decades of agency practice. The Court should hold that the proper construction of §§ 1225 and 1226 demonstrates that Petitioner are in fact entitled to a bond hearing under § 1226(a) and its implementing regulations.

i. Textual Interpretation of Sections of 1225(b)(2) and 1226(a) of the INA

Section 1225(a)(1) defines "aliens treated as applicants for admission" under this Section as follows:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

The plain text of § 1225(a)(1), at first blush, would appear to encompass aliens, like Petitioner, charged with being "present in the United States without being admitted" under § 1182(a)(6)(A) and thus categorize them as "applicants for admission." The government's new statutory interpretation relies heavily upon this broad construction of the plain language of the statute as to the definition of an "applicant for admission." Based upon this broad reading, the Respondents

assert that any alien who falls under the definition of "an applicant for admission" is subject to the detention and removal proceedings set forth in § 1225(b). Section 1225(b)(2)(A) provides:

> In general. 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 240 [8 USCS § 1229a].

Id. (emphasis added). Thus, a straightforward and simplistic review of the plain text of § 1225 by itself would seem to indicate that any alien unlawfully in the country is subject to detention until removal proceedings conclude. *Id.* However, § 1225 is not the only statute implicated in the apprehension and detention of aliens. In construing § 1225, the Cour should also look at § 1226, as statutory construction requires looking at the "overall statutory scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989).

Section 1226 is entitled "[a]pprehension and detention of aliens" and states that "on 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." 8 U.S.C. § 1226(a). It goes on to provide, "[e]xcept as provided in subsection (c) and pending such decision," when a alien is arrested under this Section, the Attorney General "may" detain them or release them on bond "of at least $1,500" or "conditional parole." *Id.* at §§ 1226(a)(1)-(2). This discretionary decision of the Attorney General is implemented through a bond hearing before an IJ, where evidence is considered regarding whether detention or release on bond is warranted, including evidence of a alien's ties to the U.S., their criminal history, and other factors relevant to whether

they are a flight risk or a danger to the community. 8 C.F.R. § 1236.1(d); *See also Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).

Section 1226(c) then "carves out a statutory category of aliens who may *not* be released under § 1226(a)." *Jennings*, 583 U.S. at (2018) (emphasis in original). This subsection mandates detention for an alien "who falls into one of several enumerated categories involving criminal offenses and terrorist activities." *Id.* Importantly, the text of § 1226(c) requires detention for certain aliens charged as "deportable" (meaning they were previously lawfully admitted to the United States) or "inadmissible" under, inter alia, 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (meaning they have not been admitted to the United States). *See* 8 U.S.C. §§ 1226(c)(1)(A)–(E). Relevant here, § 1226(c) requires detention for an alien who is deemed inadmissible because he is "present in the United States without being admitted or paroled" under § 1182(a)(6)(A) and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements" of certain crimes. 8 U.S.C. §§ 1226(c)(1)(E)(i)–(ii).

A plain reading of the exceptions under § 1226(c), and the fact that such "exceptions" to the availability of being released on bond exist, supports a finding that § 1226(a) applies to all aliens who like Petitioner, are charged as being "present in the United States without being admitted or paroled" under § 1182(a)(6)(A) but who have not been implicated in any of the enumerated crimes set forth in § 1226(c). *See Shady Grove Orthopedic Assocs. P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (finding that where Congress creates "specific exceptions" to a statutes general applicability, it "proves" that absent those exceptions, the statute generally

applies). There would be no need for Congress to create exceptions for individuals like Petitioner if they were subject to mandatory detention without review under § 1225(b)(2). *Id.*

Respondents' reading of the INA directly conflicts with the above plain reading of § 1226(a) as applying by default to all aliens charged with being present without being admitted or paroled, because it asserts that any alien who falls under the definition of "an applicant for admission," under § 1225(a)(1) is subject to the detention and removal proceedings set forth in § 1225(b). Respondents seek to resolve the apparent conflict of their reading of § 1225 with a plain reading of § 1226 by asserting the former should prevail over the latter. As explained by the BIA in *Yajure Hurtado*, the government's new reading asserts that because § 1226 "does not purport to overrule the mandatory detention requirements for arriving aliens and applicants for admission explicitly set forth" in § 1225(b), any alien who entered the country without inspection "shall be detained" under § 1225(b)(2) during the pendency of removal proceedings. *Matter of Yajure Hurtado*, 29 I&N 216, 218-19 (quoting § 1225(b)(2)).

Respondents' reading of the INA fails to adequately consider the entirety of the text of § 1225, and paragraph (b)(2) in particular, in contravention of fundamental canons of statutory construction. As discussed in detail below, when read in context, and harmoniously with § 1226, the plain meaning conveyed by the text of § 1225(b) is that it applies within a specific context: at or near the border, to aliens "arriving" in the U.S— not those already present within its borders.

First, the title of § 1225 indicates that it concerns "inspection by immigration officers," and "expedited removal of inadmissible arriving aliens." 8 U.S.C. § 1225. Moreover, paragraph (a)(1) explains its definition of "aliens treated as applicants for admission" is for purposes of

"inspection." *Id.*, § 1225(a)(1). Section 1225(b) concerns "[i]nspection of applicants for admission." Paragraph (b)(1) goes on to set forth the procedure for inspection and expedited removal of "aliens *arriving* in the United States and certain other aliens who have not been admitted or paroled." *Id.*, § 1225(b)(1) (emphasis added). Paragraph (b)(1) then states it applies to "an alien . . . who is arriving in the United States," and other "certain other aliens" designated by the Attorney General "who [have] not been admitted or paroled into the United States" and "who [have] not affirmatively shown . . . that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the determination of inadmissibility." *Id.*

Section 1225(b)(2), the provision at issue here, concerns "[i]nspection of other aliens" not covered by Paragraph (b)(1). Paragraph (b)(2)(A) states:

> [I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

Id., § 1225(b)(2)(A). By its plain text, § 1225(b)(2) thus applies where several conditions are met: (1) an "examining immigration officer" in the context of "inspection" (2) determines that an individual is an "applicant for admission" who is (3) "seeking admission." By its plain text, § 1225(b)(2)(A) narrows the above broader definition of "applicants for admission" under § 1225(a)(1) and states that it applies in the context of (1) "inspection" by an "examining immigration officer" to (2) "applicants for admission" as defined above, who are (3) "seeking admission," and (4) to whom § 1225(b)(1) does not address.

Again, Respondents assert that "applicant for admission" is the key phrase, and that the utilization of that phrase in § 1225(b)(2) necessarily stretches it to encompass any alien in the U.S. who has not been admitted, even where they are already present in the country, having entered without inspection some time ago. This expansive reading of the term has been rejected by the Ninth Circuit. As the Ninth Circuit held in interpreting the phrase "applicant for admission" within the context of the application of § 1225(b)(1) to an alien who was placed in expedited removal proceedings thirteen years after entry, "an immigrant submits an 'application for admission' at a distinct point in time" and "stretching the phrase" to continue "potentially for years or decades" "would push the statutory text beyond its breaking point." *U.S. v. Gambino-Ruiz*, 91 F.4th 981, 988-89 (9th Cir. 2024) (citing *Torres v. Barr*, 976 F.3d 918, 922-26 (9th Cir. 2020)). Thus, Petitioner and other similarly situated aliens who have resided in the U.S. for an extended period of time cannot be properly characterized as perpetual "applicant[s] for admission" for purposes of "inspection" under § 1225, when they are not in fact intercepted in the context of inspection by immigration officers at or near ports of entry.

Section 1225(b)'s limited spatial and temporal application to aliens intercepted at or near a port of entry is further evident in other provisions of § 1225 that suggest Congress's focus was on inspection of aliens at ports of entry or of recent arrivals, not longtime residents intercepted far from any border. *See K Mart Corp. v. Cartier, Inc.*, 488 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statue, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.") (citations omitted); *See also Biden v. Texas,* 597 U.S. 785, 799-800 (evaluating statutory structure to

inform interpretation of the INA). For example, § 1225's title refers to the "inspection" of "inadmissible arriving" aliens, while its subsections set forth procedures for "examining immigration officer[s]" §§ 1225(b)(2)(A), (b)(4), to engage in "[i]nspection[s]" of individuals "arriving in the United States," §§ 1225(a)(3), (b)(1), (b)(2), (d). The plain meaning of the terms inspection and examination is not spatially and temporally unlimited—rather it describes a specific legal process one undergoes when trying to enter the country at a border or port of entry. Thus, the notion that an ICE officer conducting removal operations within the continental United States, far from any port of entry, is engaging in "Inspection of Applicants for Admission" as contemplated in § 1225(b) contradicts the plain meaning of the text when placed in context of the overall Section and its headings.

Further, § 1225(a)(3), entitled "Inspection," provides that "[a]ll aliens (including alien crewman) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). This suggests that the type of inspection by an examining immigration officer referred to in §1225(b)(2)(A) is an inspection by an examining immigration officer that occurs at the time an alien first applies for or otherwise seeks admission to the United States—not an encounter with an ICE officer conducting removal operations far from any port of entry, long after the alien encountered by ICE first entered the country. As such, the structure of § 1225(b)(2) further indicates that it authorizes mandatory detention for aliens entering, attempting to enter, or who have recently entered the U.S., and does not encompass individuals like Petitioner, who entered without admission.

Moreover, Respondents' reading of "applicants for admission" ignores the fact that that term is further limited in §1225(b)(2) by the active construction of the phrase "seeking admission" which entails some type of affirmative action taken to obtain entry. *See, e.g., Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *See also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025). It is inconsistent with the ordinary meaning of the phrase "seeking admission" to apply this section to all aliens already present and residing in the U.S., regardless of whether they are taking any affirmative acts that constitute "seeking admission." As the *Lopez Benitez* Court analogized, "someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater." *Id.* at *7.

Therefore, the statutory text, when read in accordance with its ordinary meaning, and in context, indicates that for purposes of mandatory detention under § 1225(b)(2)(A), the phrases "applicants for admission" and "seeking admission," taken together, are limited in temporal and geographic scope and apply within the specific context of the inspection of "arriving" aliens, at or near ports of entry. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (to discern the ordinary meaning of statutory language, "words must be read and interpreted in their context, not in isolation.") (quotations and citations omitted). In other words, the phrase "seeking admission" in § 1225(b)(2)(A) narrows the class of "applicants for admission" who are subject to mandatory detention, such that not all "applicants for admission" already "present in the United States," as defined in § 1225(a)(1), are subject to inspection and mandatory detention as prescribed in

paragraph (b)(2). *See Lopez Benitez*, 2025 WL 2371588, at *6 ("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.").

Indeed, the reading asserted by Respondents and the BIA in *Yajure Hurtado* depends on discounting the phrase "seeking admission" as a mere redundancy of the phrase "applicants for admission." *See Yajure Hurtado*, 29 I&N at 221. Respondents assert the phrases "applicants for admission" and "seeking admission" are "synonymous," based on a phrase in a different paragraph of the Section, § 1225(a)(3), which requires "inspection" of all aliens "who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States." *See* ECF No. 10, Exh. B at 8 (quoting 8 U.S.C. § 1225(a)(3)). Respondents cite to the Supreme Court's decision in *U.S. v. Woods*, 571 U.S. 31 (2013), to argue that the word "or" in that phrase introduces an appositive which is "a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')" and shows that Congress intended "applicants for admission" and aliens "seeking admission" to mean the same thing. *Id.* (quoting *Woods*, 571 U.S. at 45). But as identified by another district court in rejecting the same argument and citation, "the case cited by the government to suggest that the word 'or' introduce[s] an appositive' actually says the opposite is generally true." *Romero v. Hyde*, _ F. Supp. 3d. _, No. CV 25-11631-BEM, 2025 WL 2403827, at *10 n.31 (D. Mass. Aug. 19, 2025) (citation omitted); *See Woods*, 571 U.S. at 45 ("Moreover, the operative terms are connected by the conjunction 'or.' While that can sometimes introduce an appositive—a word or phrase that is

synonymous with what precedes it . . .—its ordinary use is almost always disjunctive, that is, the words it connects are to be given separate meanings.").

Moreover, the very BIA precedent Respondents and the BIA in *Yajure Hurtado* cite as supporting the interpretation of "applicants for admission" and "seeking admission" as synonymous, distinguishes between the two as delineating distinct categories of aliens, such that a alien could be "seeking admission" without falling under the § 1225(a)(1) definition of "applicant for admission" because they are neither "present in the United States" nor arriving in the United States. *See Matter of Lemus-Losa*, 25 I&N Dec. 734, 741 (BIA 2012) (describing the circumstances in which an alien could "seek admission" without arriving or being present in the United States: "for example, by applying for a visa at a consulate abroad"). Likewise, the BIA in *Lemus-Losa* explicitly distinguished acts defining "an applicant for admission" from those "seeking admission." *See Id.* at 735 (where an alien who initially entered the U.S. without inspection, departed, then reentered, and applied for adjustment of status, finding that "in some cases such an alien will have reentered the United States unlawfully, thereby making himself an 'applicant for admission' by operation of law, while seeking 'admission' through adjustment of status.").

These distinctions recognize that the use of the two different phrases by Congress is not a redundancy, but rather, conveys a meaningful difference. Interpreting the two phrases accordingly comports with canons of statutory interpretation. *See, e.g., Sw. Airlines Co.*, 596 U.S. at 457-58 (discussing and applying "the meaningful-variation canon") (citing A. Scalia & B. Garner, Reading Law 170 (2012) ("[W]here [a] document has used one term in one place, and

a materially different term in another, the presumption is that the different term denotes a different idea.")); *See also United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning.") (citation omitted).

Just as Respondents' reading would render the phrase "seeking admission" in § 1225(b)(2) redundant, accepting Respondents' reading would also render the exceptions of § 1226 under Paragraph (c) that apply to certain categories of inadmissible aliens superfluous or meaningless. *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) ("a court must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.") (citation and quotation marks omitted). The fact that the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) amended § 1226(c) to add additional categories of aliens who are subject to mandatory detention further supports a plain reading of § 1226(a) as applying by default to aliens charged as inadmissible because they are present in the country without having been lawfully admitted. *See Gieg v. Howarth*, 224 F.3d 775, 776 (9th Cir. 2001) ("When Congress acts to amend a statute, [courts] presume it intends its amendments to have real and substantial effect."); *See also Diaz Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025), at *7 ("if, as the Government argue[s], . . . a alien's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect").

In *Yajure Hurtado*, the BIA asserts that the fact that portions of § 1226(c) would be rendered superfluous should not dissuade its broad reading of § 1225(b)(2)(A) because the references to inadmissibility in § 1226(c) can be dismissed as a redundancy by Congress. *See Yajure Hurtado*, 29 I&N at 222 (quoting *Barton v. Barr*, 59 U.S. 222, 239 (2020) ("redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication")). The government thus insists § 1226(c) should be read out of the INA to the extent it is irreconcilable with its broad new reading of § 1225(b)(2). But the differences between § 1225 and § 1226 do not indicate the former should prevail over the latter—rather, they can be read in harmony, as applying to different classes of aliens.

A harmonious reading must prevail over a reading that would create an unnecessary conflict or redundancy between the two provisions, because "the Court does not lightly assume Congress adopts two separate clauses in the same law to perform the same work," and there is no evidence that Congress did so in enacting the exceptions under § 1226(c) as amended by the Laken Riley Act. *United States v. Taylor*, 596 U.S. 845, 847 (2022). A harmonious reading of §§ 1225 and 1226 of the INA is consistent with the Supreme Court's interpretation of these same sections. Specifically, the Supreme Court in *Jennings* interpreted §§ 1225 and 1226 in a manner that harmonizes them, rather than puts them in conflict with one another. In discussing § 1225, the Court described the procedures under that section as part of a process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether an

alien seeking to enter the country is admissible." 583 U.S. at 287. In contrast, when discussing § 1226, the Supreme Court described it as governing "the process of arresting and detaining" aliens "who are already present inside the U.S." pending a decision on their removability because they were "inadmissible at the time of entry." *Id.* at 285, 288. The Court summarized the interplay between the two Sections as follows:

> 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).

Id. at 289 (emphasis added). This interpretation comports with the plain meaning of the statutory provisions, when read in accordance with canons of statutory construction— perhaps most importantly, the "harmonious-reading canon," which counsels that "there can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously." *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 180 (2012) ("The imperative of harmony among provisions is more categorical than most other canons of construction because it is invariably true that intelligent drafters do not contradict themselves (in the absence of duress).").

Thus, the plain meaning of the relevant statutory provisions, when interpreted according to fundamental canons of statutory construction, clearly establishes that Respondents and the BIA's new statutory interpretation of § 1225(b)(2) runs far afoul of the statutory text and structure.

2. The Legislative History does not support Respondent's Interpretation of Mandatory Detention

Legislative history is an "additional tool of analysis," and "only the most extraordinary showing of contrary intentions from those data would justify a limitation on the 'plain meaning' of the statutory language." *Garcia v. U.S.*, 469 U.S. 70, 75 (1984). Respondents and the BIA's account of legislative intent is not supported by the legislative record they refer to, and in fact, the legislative history further supports the above harmonious reading of §§ 1225 and 1226 and demonstrates the many flaws in the government's new interpretation of § 1225(b)(2).

The legislative history of the IIRIRA amendments further supports interpreting the INA as subjecting aliens like Petitioner, who are already present and residing in the U.S., to discretionary detention with its associated procedural protections under § 1226(a), rather than mandatory detention under § 1225(b).

In enacting IIRIRA, Congress specified that § 1226(a) simply restated the discretionary detention authority applicable to all aliens present in the U.S. pending deportability proceedings, formerly codified at 8 U.S.C. § 1252(a) (1) (1994). H.R. Rep. No. 104-469, pt. 1, at 229 (declaring § 1226(a) "restates the current provisions in [the predecessor statue] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States."); *see also* H.R. Rep. No. 104-828, at 210 (same). Respondents assert however that Congress intended § 1225(b)(2) to mandate the detention of all aliens "who have not been lawfully admitted" during removal proceedings, "regardless of their physical presence in the country" in an effort to replace "certain aspects of the current 'entry doctrine,"

"an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *See* ECF No. 10, Exh. B at 14-15 (citing *Torres*, 976 F.3d at 928 (citing *Yin Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)); H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996)).

However, a review of this legislative history as discussed by the Ninth Circuit in *Torres*, and in the portions of the House Report cited by Respondents, reveals that Congress sought to address this "anomaly" in the context of removal proceedings under the INA—by consolidating the formerly bifurcated deportation and exclusion proceedings—with no mention of any intent to alter detention authority under the INA. *See Torres*, 976 F.3d at 928, ("Now, in removal proceedings, the relevant distinction for procedural purposes is whether the immigrant has been lawfully admitted, regardless of actual presence."); *Id.* (comparing aliens burden of proof when considered an "applicant for admission" under 8 U.S.C. § 1229a(c)(2)(A) with the government's burden of proof when a alien in removal proceedings has been lawfully admitted under § 1229a(c)(3)(A)); H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) "[wa]s 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") (emphasis added).

The IIRIRA amendments created a standard removal proceeding before an IJ to determine whether an alien "has or has not been lawfully admitted to the U.S." H.R. Rep. No. 104-469, p. 1, at 157-58. This standard removal proceeding consolidated the former two types of

removal proceedings for "exclusion" and "deportation." *Id.* Prior to IIRIRA, "[a] deportation hearing was the 'usual means of proceeding against an alien already physically [but not lawfully] in the United States,' while an exclusion hearing was the 'usual means of proceeding against an alien outside the United States seeking admission.'" *Torres*, 976 F.3d at 927 (quoting *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc) (alterations in original). In the context of removal proceedings, an alien in a "deportation hearing" had greater procedural and substantive rights than an alien who presented themselves at a port of entry for inspection who would be placed in an "exclusion hearing." *See Landon v. Plasencia*, 459 U.S. 21, 25-26 (1982) (explaining some of the differences between deportation and exclusion hearings).

In creating standard removal proceedings under § 1229a, nothing in the legislative history indicates Congress intended to alter the detention regime for aliens pending the outcome of those proceedings—to the contrary, Congress clarified the IIRIRA amendments did not alter the ability of aliens who are present in the country illegally to secure release on bond under § 1226(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210. As one district court put it, "the BIA erred in its analysis [in *Yajure Hurtado*] by identifying one of Congress' concerns in enacting IIRIRA and then treating it as Congress' sole concern driving the statute." *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *11-12 (N.D. Cal. Sept. 12, 2025). This Court should also agree that "Congress' concern about adjusting the law in some respects to reduce inequities in the removal process does not suggest Congress intended to entirely up-end the existing detention regime by subjecting all inadmissible aliens to mandatory detention, a seismic shift in the established policy and practice of allowing

discretionary release under Section 1226(a)—the scope of which Congress did not alter." *Id.* at *12. Moreover, the regulations enacting the INA specifically maintain that detention and an IJ's consideration of requests for "custody or bond" are specifically designated as "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R § 1003.19(d). The government's new account of Congress's intent as drastically expanding mandatory detention is simply not expressed in the legislative history that Respondents and the BIA rely on.

In fact, the legislative history reflects that Congressional intent was the opposite of what the government now contends: that mandatory detention under § 1225(b)(2) was contemplated and intended to apply to "arriving" not citizens, not those already present in the country. The IIRIRA amendment at § 1225(b)(2) is specifically referred to by Congress as involving the "[i]nspection of other *arriving aliens*." H.R. Rep. 104-469, pt. 1, at 229 (emphasis added). And the term "arriving alien" employed at several points throughout the IIRIRA amendments was intended to distinguish "aliens at the border of the United States from those who have made a substantial physical entry into the United States." *See Implementation of Title III of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Hearing Before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary*, 105th Cong. 17–18 (1997), at 99 (Statement by Representative Lamar Smith, Chairman of the House Judiciary Committee's Subcommittee on Immigration and Claims). And with regards to detention under § 1225(b)(2), it was explicitly noted that Congress was referring to "custody of aliens applying at land borders" in enacting that section. *Id.* at 101.

Importantly, in distinguishing between aliens "arriving" versus aliens residing in the U.S., Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of aliens already present and residing in the U.S. compared to the minimal rights of aliens seeking to enter or recently arriving in the country. *See* H.R. Rep. No. 104-469, p. 1 at 163-66 (recognizing the "constitutional liberty interest to remain in the U.S." held by aliens "present in the U.S." versus the lack of a liberty interest in entering the U.S. held by "aliens seeking admission," i.e., "initial entrants," i.e., "applicant[s] for initial entry") (first quoting *Landon v. Plasencia*, 549 U.S. 21, 32 (1982), then quoting *Knauff v. Shaughnessy*, 338 U.S 537 (1950)).

This distinction "between an alien who has effected an entry into the United States and one who has never entered" which "runs throughout immigration law" recognizes arriving aliens have less due process protections than those present and residing within the country's borders. *See Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001) (collecting cases setting forth this longstanding distinction); *Id.* at 693 ("an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'"). By expanding mandatory detention under § 1225(b)(2) only to "arriving aliens" within the context of inspection at borders and ports of entry, Congress respected the more robust due process rights held by aliens already present in the country. As the Ninth Circuit observed, "§ 1226(a) stands out from the other immigration detention provisions in key respects." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (noting that § 1226(a) and its implementing regulations "provide extensive procedural protections that are unavailable under other detention provisions."). The procedural protections

for a detainee under § 1226(a) include "an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change." *Id.* None of these protections are available under § 1225. The legislative history reflects that Congress intended the more robust protections under § 1226 to apply to aliens present in the country, in recognition of their substantial liberty interest under the Due Process Clause, while limiting mandatory detention under § 1225 to "arriving aliens."

If, as Respondents contend, Congress's true intent in enacting IIRIRA was to exponentially expand immigration detention under the INA—such that millions of people currently living and working in the country would be confined—it would have said so more clearly within the amendments and legislative record. *See* Whitman v. Trucking Associations, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not one might say, hide elephants in mouseholes."). As the court in *Romero* aptly posed, "[r]ealistically speaking, if Congress's intention was so clear, why did it take thirty years to notice?" *Romero*, 2025 WL 2403827, at *12.

Finally, the government's new reading of § 1225(b)(2) runs afoul of the presumption that Congress enacted a constitutional statute. By subjecting aliens like Petitioner to mandatory detention, despite their significant due process rights as individuals present in the U.S., with no consideration of their deep financial, community, and familial ties in the country, the government has proffered "an interpretation of a federal statute that engenders constitutional issues" despite

the fact that a more "reasonable alternative interpretation" does not raise such constitutional questions. *See Gomez v. U.S.*, 490 U.S. 858, 858 (1989); *Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem.") Thus, by collapsing the distinction between "aliens who have established connections in this country" and their greater due process rights as compared to an arriving alien, i.e., "an alien at the threshold of initial entry," the government needlessly interprets § 1225(b)(2) in a manner that would render it unconstitutional. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (finding that an alien who was apprehended "just 25 yards from the border" in the process of trying to enter the country illegally was "at the threshold of initial entry" and thus subject to lesser due process rights in deportation proceedings than "aliens who have established connections in this country").

3. Agency Practice is Further Evidence of Respondents' Erroneous Interpretation

Lastly, "the longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." *Loper Bright Enters. v. Raimando*, 603 U.S. 369, 386 (2024). The fact that Respondents' reading is inconsistent with existing regulations governing IJs' bond jurisdiction, as well as decades of agency practice, is further persuasive evidence that Petitioner and those similarly situated continue to be subject to discretionary detention under § 1226(a). *See*, e.g., 8 C.F.R. § 1003.19(h)(2) (limiting an IJ's bond jurisdiction only over certain classes of aliens such as arriving aliens and those encompassed under § 1226(c)). Likewise, Respondents' reading of § 1225 is undermined by the fact that it vests immensely expanded detention authority in DHS—a shift of "vast economic and

political significance"—while contravening decades of consistent agency practice applying § 1226(a) to aliens like Petitioner. *See, e.g., Util. Air Regul. Grp. V. EPA*, 573 U.S. 302, 324 (2014) ("When an agency claims to discover in a longextant statute an unheralded power. . . [the courts] typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.") (citations omitted).

Until the government adopted its new interpretation of § 1225(b)(2), for nearly three decades since IIRIRA was enacted, the longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to aliens who entered the U.S. without inspection and were apprehended while present in the U.S, in contrast to those apprehended at or near a port of entry who could be designated as a so-called "arriving alien." The EOIR's regulations drafted to implement the IIRIRA amendments explained this distinction. *See Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination … . 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. This procedure maintains the status quo …") (emphasis added). Consistent with that distinction, the regulations define the term "arriving alien" as follows:

> The term 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.

8 C.F.R. § 1001.1. The Department of Justice first issued its current definition of "arriving alien" shortly after the enactment of IIRIRA. *See* 62 Fed. Reg. 10,312, 10,312 (Mar. 6, 1997). It explained that "[a]fter carefully considering [several statutory] references [to arriving aliens], the Department felt that the statute seemed to differentiate more clearly between aliens at ports-of-entry and those encountered elsewhere in the United States." *Id.* at 10,312–13. Accordingly in the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond, while § 1225(b) has been applied to "arriving" aliens apprehended at the border or in the process of crossing the border.

And as discussed above, Congress enacted the Laken Riley Act against this backdrop of longstanding agency practice applying § 1226(a) to inadmissible aliens already residing in the country. Another "customary interpretive tool" is the principle that "[w]hen Congress adopts a new law against the backdrop of a 'longstanding administrative construction,'" courts "generally presume the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S.Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–98 (1981)). In *Monsalvo Velazquez*, while recognizing that "[i]n truth, the statute is susceptible to both understandings," the Supreme Court interpreted a deadline expressed in terms of "days" in § 1229c of the INA to "extend deadlines falling on a weekend or legal holiday

to the next business day," rather than counting "every calendar day." *Id.* at 1242. The Court adopted this interpretation because Congress enacted the relevant subsection "against the backdrop of [a] consistent, longstanding administrative construction" giving this specialized meaning to the term "day." *Id.* Similarly, here, Congress adopted the Laken Riley amendments to § 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under § 1226(a) to inadmissible aliens like Petitioner. It is therefore presumed that Congress intended "the same understanding" when it amended the INA this year. *See Id.*

Even though the BIA's decision in *Yajure Hurtado* is inconsistent with decades of agency practice, Respondents assert the Court should afford it substantial weight under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight to be afforded to an agency's interpretation by a federal court depends "upon the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements." *Skidmore*, 323 U.S. at 140. But the BIA's reasoning in *Yajure Hurtado* is invalid for all the reasons discussed above. Moreover, *Yajure Hurtado* drastically departs from prior BIA precedent, without acknowledging that departure. *Yajure Hurtado* contradicts a BIA decision designated as precedential as recently as August of this year. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025) (stating unequivocally that an alien who entered the country without inspection in January 2022 was detained pursuant to 8 U.S.C. § 1226(a)). Thus, this Court should find that the BIA's new interpretation of § 1225(b)(2) in *Yajure Hurtado* is unpersuasive and should be afforded little weight under Skidmore. *See also Murillo Chavez v. Bondi*, 128 F.4th 1076, 1087 (9th Cir. 2025) (noting that after *Loper Bright*, courts may only look to agency interpretation as

persuasive and "may not defer to an agency interpretation of the law simply because a statute is ambiguous.") (citing *Loper Bright*, 603 U.S. at 413).

In sum, the Court should hold that the text and canons of statutory interpretation, legislative history, and long history of consistent agency practice, demonstrate that Petitioner is subject to detention under § 1226(a) and its implementing regulations, not § 1225(b)(2)(A), and that the government's new interpretation and policy under that provision, is unlawful.

4. Other District Courts' Minority Interpretation is unpersuasive.

The Respondents argue that there is a growing body of persuasive authority that supports their position. ECF No. 10 at 4. However, this Court has already considered the minority view and stated that "[i]n each of those cases, the district courts did not meaningfully contend with the statutory text in accordance with canons of statutory construction, nor the legislative history, and longstanding agency practice" and are thus unpersuasive. *Escobar Salgado*, 2025 WL 3205356 at 37 n. 13.

D. Request for EAJA Fees is appropriate.

Petitioner's request for attorney's fees is not premature. A litigant is a "prevailing party" for purposes of the Equal Access to Justice Act ("EAJA") when the litigation yields a judicially sanctioned or otherwise legally significant change in the relationship between the parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 604 (2001). As the Court stated in its Order to Show Cause, the Court "preliminarily believes Petitioner likely can demonstrate that his circumstances warrant the same relief as this Court ordered [in other habeas cases]." ECF No. 6 at 1. Therefore, EAJA fees are not premature.

The Federal Respondents' position is also not "substantially justified." Under controlling Ninth Circuit precedent, substantial justification requires the Government to demonstrate that both its underlying conduct and its litigation position had a reasonable basis in law and fact. *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). Here, the Government's underlying conduct—its reliance on the new mandatory detention policy under 8 U.S.C. § 1225 to detain individuals historically processed under § 1226—lacks any basis in statutory text, long-standing agency practice, or constitutional principles. This Court alone has already granted petitioners relief in fifteen similar challenges.[2] Respondents have failed to show substantial justification for an underlying detention decision that contravenes decades of administrative practice, and the statutory structure Congress enacted.

Nor does the existence of two recent out-of-circuit district court decisions endorsing the Federal Respondents' view render its position reasonable. The Ninth Circuit has squarely held that the Respondents' position is not substantially justified where it conflicts with binding circuit law, well-established statutory interpretation rules, or the plain meaning of the statute—even if

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[2] *See, e.g., Herrera v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Perez Sanchez v. Bernacke*, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094 (D. Nev. Oct. 24, 2025); *Bautista Avalos v. Bernacke*, 2:25-CV-01987-RFB-BNW (D. Nev. Oct 27, 2025); *Arce-Cervera v. Noem*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Alvarado Gonzalez v. Mattos*, No. 2:25-CV-01599-RFB-NJK (D. Nev. Oct. 30, 2025); *Rodriguez Cabrera v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687 (D. Nev. Nov. 3, 2025); *Berto Mendez v. Noem*, No. 2:25-cv-02602-RFB-MDC (D. Nev. Nov. 7, 2025); *Hernandez Duran v. Bernacke*, No. 2:25-CV-02105-RFB-EJY, 2025 WL 3237451 (D. Nev. Nov. 19, 2025); *Cabrera-Cortes v. Knight*, No. 2:25-CV-01976-RFB-MDC, 2025 WL 3240971 (D. Nev. Nov. 20, 2025).

other courts have adopted a contrary reading. *See Shafer v. Astrue*, 518 F.3d 1067, 1071 (9th Cir. 2008). Respondents' reliance on *Medina Tovar v. Zuchowski*, 41 F.4th 1085 (9th Cir. 2022), is misplaced. That case recognizes that disagreement among judges may be relevant only when the government's interpretation is otherwise grounded in a plausible reading of the statute. Here, however, Respondents' construction of § 1225 is incompatible with the INA's bifurcated detention framework, with DHS's own long-standing interpretation that § 1225 does not apply to aliens released into the interior, and with the Court's detailed statutory analysis in *Escobar Salgado*, 2025 WL 3205356 at 17-37, which rejected the legal basis underlying Respondents' new detention policy. A position inconsistent with this Court's own reasoning in a materially identical case cannot be deemed substantially justified. *See Thangaraja v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005).

Finally, the purposes of EAJA strongly support a fee award. Congress enacted EAJA to deter the Government from adopting or defending unreasonable agency actions and to ensure that individuals are not forced to bear the financial burden of litigating against unjustified government conduct. Denying fees in this case—where Petitioner was compelled to seek habeas relief to challenge an unprecedented and unlawful detention policy—would undermine EAJA's core aim and reward conduct that should instead be discouraged. Because Respondents' underlying conduct and its litigation position were not substantially justified, Petitioner is entitled to fees under 28 U.S.C. § 2412(d)(1)(A).

IV. Conclusion

For the foregoing reasons, Petitioner requests that the Petition be granted so that may he be allowed to pay the bond granted by the IJ and be released immediately.

RESPECTFULLY SUBMITTED this November 26, 2025.

TRUJILLO | ACOSTA LAW

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