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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Edin Eleazar Quinonez Orosco, Petitioner, vs. Todd M. Lyons, Acting Director Immigration & Customs Enforcement, John Doe, Acting Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (Ice); John Mattos, Warden, Nevada Southern Detention Center; Kristi Noem, Secretary, United States Department of Homeland Security; Pamela Bondi, Attorney General of the United States; Sirce Owen, Executive Office for Immigration Review, Respondents.	Case No.: 2:25-cv-2240 **PETITIONER'S REPLY IN SUPPORT OF THE PETITION**

Petitioner, through undersigned counsel hereby reply to the Federal Respondents Response to the Amended Habeas Petition.

I. ARGUMENT

A. The Current Position of DHS is a Complete Reversal of Prior Interpretations & Caselaw

The DHS memo issued on July 8, 2025 was issued precisely to change decades of accepted interpretations and contravene current caselaw. If the statute should be read the way the government proposes, why has it never made this argument in the last 30 years since the passage of the law. It was done without notice to the public, opportunity to comment or publication. It is one of many examples of the current administration seeking to detain and deport immigrants without due process of law and contrary to long established law.

"[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." Loper Bright, 603 U.S. at 386 (cleaned up). 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 noncitizens such as arriving noncitizens 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 noncitizens 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 long-extant 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).

Contrary to the new DHS argument, petitioners are not applicants for admission who are seeking admission in expedited removal proceedings and are therefore not subject to mandatory detention and the cases cited by the government are not on point and do not stand for this proposition.

There are two distinct statutes that deal with removal of noncitizens. 8 U.S.C § 1225 (Expedited Removal) & § 1229(a) (Removal Proceedings). All of the petitioners are in removal proceedings under section 1229(a) rather than under section 1225. Removal proceedings under section 1229(a) (§240 of the INA) are initiated by the DHS issuance of a Notice to Appear ("NTA"). The NTA for the petitioner was attached at Exhibit A to the Habeas petition and establishes that each petitioner is in removal proceedings under section 240 of the INA; 8 U.S.C § 1229(a).

Yet the government argues that they are subject to mandatory detention under §1225 even though they have submitted no documentation that they are in removal proceedings under that section of law. That is because section 1225 which is referred to as Expedited Removal only applies at the border, within a certain time and distance from the border or when someone has been in the U.S. for less than two years. The government ignores these time and distance limitations of section 1225.

Created in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act, ("IIRIRA") the expedited removal statute applies to noncitizens who arrive at a port of entry and to some noncitizens who enter without having been admitted or paroled and who have not been continuously present in the United States for at least two years. *See* 8 C.F.R. § 1.2; 8 U.S.C. § 1225(b)(1)(A)(i), (iii).

Initially, the application of expedited removal was limited to noncitizens who arrived at a port of entry.1 In 2002, the government expanded the reach of expedited removal to apply to noncitizens who entered by sea without inspection. *Id.* Two years later, the use of expedited removal was expanded to also apply to those who crossed a land border without inspection, and were encountered by immigration authorities both within two weeks of their arrival and within 100 miles of the border. *Id.* For more than a decade, the government did not broaden its use of expedited removal to other noncitizens.

However, on two occasions since, the government has expanded the application of the expedited removal process to the full scope permitted by law.2 From June 2020 through March 2022, and again in January 2025 to the present, immigration officers have been authorized to apply it to:

a. Any noncitizen who arrived at a port of entry, at any time, and is determined to be inadmissible for fraud or misrepresentation or lacking proper entry documents and

b. Any noncitizen who entered without inspection (by land or sea), was never admitted or paroled, is encountered anywhere in the United States, and cannot prove that they have been physically present in the United States for the two years preceding the immigration officer's determination that they are inadmissible for fraud or misrepresentation or lack of proper entry documents. *Id.*(emphasis added).

Even under the expanded application, expedited removal does not apply to someone who was not caught at the border and has been physically present in the U.S. for more than two years, which is precisely why the petitioners are not in expedited removal proceedings. Yet the government argues that even though they are not subject to expedited removal, they are subject to mandatory detention under section 1225, the expedited removal statute.

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1 *See* Hillel R. Smith, "The Department of Homeland Security's Authority to Expand Expedited Removal," *Congressional Research Service*, last updated April 6, 2022, 1, https://crsreports.congress.gov/product/pdf/LSB/LSB10336.

2 *See* "Designating Aliens for Expedited Removal," 84 Fed. Reg. 35409 (July 23, 2019), rescinded by "Rescission of the Notice of July 23, 2019, Designation Aliens for Expedited Removal," 87 Fed. Reg. 16022 (March 21, 2022); *and* "Designating Aliens for Expedited Removal," 90 Fed. Reg. 8139 (January 24, 2025).

The NTA in this case, establish that the petitioner is not in expedited removal but are instead in INA 240 removal proceedings (8 U.S.C. §1229(a)) and thus they are not subject to mandatory detention. Instead, they are eligible for bond under INA 236. (8 U.S.C. §1226). The government is conflating these two statutes and attempting to justify the mandatory detention of noncitizens in 240 removal proceedings (section 1229(a)) by implicating section 1225, a statute to which they are not and have never been subject to.

Prior to *Yajure-Hurtado,* the BIA decision that upheld the new DHS position as DOJ had already agreed to do in the July memo, the Immigration Judges ("IJ") that decided these bond issues in court all agreed with this assertion and determined that petitioners similarly situated to Mr. Quinonez are not subject to 1225 and therefore not subject to mandatory detention. Unfortunately, the Immigration Court is bound by the BIA case and is now denying all bond in similar matters.

In its endeavor to justify its position, the government cites caselaw out of context that does not support its current position. For example, the government cites the Supreme Court case of *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018). In that case a lawful permanent resident of the U.S. was being detained under section 1226 (c) which mandates the detention of noncitizens with certain criminal convictions. *Id.* Mr. Rodriguez was inside the U.S. not at a port of entry or within 100 miles and DHS was arguing that he was subject to mandatory detention, NOT under 1225 as DHS argues here, but under 1226(c) due to a conviction that subjected him to mandatory detention. *Jennings* at 838. The court specifically stated that section 1225 applies to those at the border and 1226 apply to noncitizens already present in the U.S. *Jennings* at 838, 842, 846. Therefore, the court distinguishes between the two sections of the law and when each applies. *Id.* (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 838.

The BIA case in *Matter of Q.Li*, 29 I&N Dec. 66 (BIA 2025) actually supports the petitioner's argument. In that case, the BIA analyzed mandatory detention for someone who was caught at the border, later released on parole and then re-detained by ICE after an Interpol notice seeking the noncitizen for document forgery and human smuggling. The BIA found in that case, that the noncitizen was subject to mandatory detention because she was

subject to section 1225(b) only because she was initially encountered 100 yards from the border and later released on parole. *Id.*

The BIA noted that the Supreme Court of the United States has clarified that "an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry,'" and is in the same position as an alien seeking admission at a port of entry. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)(emphasis added). The BIA also noted that it has held in other contexts, that the term "arriving" applies to aliens, like the respondent, "who [are] apprehended" just inside "the southern border, and not at a point of entry, on the same day [they] crossed into the United States." *Id. citing Matter of M-D-C-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (emphasis added).

The BIA in that case concluded an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a). *Id.*

The Supreme Court in the cases cited above have distinguished the application of 1225 to cases of individuals who were caught in close proximity to the border while arriving into the U.S. The other case where 1225 may apply is to those who entered the U.S. without inspection and have only been physically present in the U.S. for less than two years. Neither of these limiting factors applies to the current petitioners. None of them was caught by ICE while arriving in the U.S., within 100 miles of the border or within the first two years of physical presence in the U.S. Therefore, according to the IJ analysis, and the published cases they are not subject to mandatory detention under section 1225 but are instead eligible for bond under section 1226.

B. Under the Plain Text of the Statute the Petitioner is Not an Applicant for Admission who is Seeking Admission

This court's decision in *Maldonado Vazquez v. Feeley* 2:25-cv-01542-RFB-EJY explains why the government's argument fails, to wit: that all non-citizens who entered without inspection are applicants for admission and much of the following argument is taken from that thoughtful decision.

The Government's sweeping and unlimited 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 kind of affirmative action taken to obtain authorized 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 plain, ordinary meaning of the phrase "seeking admission" to apply this section to all noncitizens already present and residing in the U.S., regardless of whether they are taking any affirmative acts that constitute "seeking admission."

Accordingly, the statutory text indicates that for purposes of mandatory detention under § 235(b)(2)(A), the phrases "applicants for admission" and "seeking admission," taken together, are limited in temporal scope, and cannot be read to apply indefinitely to all noncitizens residing in the U.S. for years or decades. Instead, the DHS reading effectively ignores the phrase "seeking admission" and asserts that only the phrase "applicants for admission" controls. But that interpretation, which relies on conflating the phrases "applicants for admission" and "seeking admission" as "synonymous," would render the phrase "seeking admission" redundant, and "[o]ne of the most basic interpretative canons instructs that a 'statute should be construed so that effect is given to all its provisions."(*quoting Corley v. United States*, 556 U.S. 303, 314 (2009)).

Section 235's limited temporal focus is further evident in other provisions of § 235 which indicate that Congress was focusing on ports of entry or recent arrivals, not longtime noncitizen 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 (2022) (evaluating statutory structure to inform interpretation of the INA).

For example, § 235's title refers to the "inspection" of "inadmissible arriving" noncitizens, while its subsections set forth procedures for "examining immigration officer[s]" §§ 235(b)(2)(A), (b)(4), to engage in "[i]nspection[s]" of individuals "arriving in the United States," §§ 235(a)(3), (b)(1), (b)(2), (d). As such, the structure of § 235(b)(2) further indicates that it authorizes mandatory detention for noncitizens entering, attempting to enter, or who have recently entered the U.S., and does not encompass individuals like respondent, who entered long ago, have been residing in the U.S. for many years and are not taking any affirmative steps that could be characterized as "seeking admission."

This is further consistent with Supreme Court precedent interpreting § 235(b) and finding it "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)."

Jennings v. Rodriguez, 583 U.S. 281 (2018). A noncitizen like the petitioner, who has already entered and is present in the country, simply cannot be characterized as "seeking entry" consistent with the ordinary meaning of that phrase. *See Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (finding "an alien who tries to enter the country illegally is treated as an 'applicant for admission,'" pursuant to § 235(a)(1)).

This reading of § 235 as applying only to arriving or recently arriving noncitizens is further supported when viewed in comparison to § 236. The title of § 236 indicates it concerns "apprehension and detention of aliens." INA § 236. Section 236(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 303. Noncitizens like the petitioner, who are charged with entering the country without inspection and thus inadmissible and removable, are covered by the statute during the pendency of their removal proceedings. *See Jennings*, 583, U.S. at 288 (§ 236 "generally governs the process of arresting and detaining" noncitizens who are deportable under § 1227(a), including "aliens who were inadmissible at the time of entry. . .").

The structure of § 236 further demonstrates it applies to noncitizens charged as "inadmissible" under the INA, because subsection § 236(c) carves out discrete categories of noncitizens subject to mandatory detention, including noncitizens who are "inadmissible for entering without inspection" and who have been charged with or convicted of certain crimes. *Id.* § 236(c)(1)(E); *see Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010) (holding that when "Congress has created specific exceptions" to a rule it "proves" the rule applies generally, because otherwise "the statutory exceptions would be unnecessary.") Accepting the DHS reading would render the exceptions of § 236 that apply to certain categories of inadmissible noncitizens 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).

Additionally, the fact that the Laken Riley Act amended § 236(c) to add additional categories of noncitizens who are subject to mandatory detention indicates that § 236(a) applies to noncitizens charged as inadmissible by default. *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,*

2025 WL 2084238, at *7 ("if, as the Government argue[s], . . . a noncitizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect").

These two statutes can be read together without any irreconcilable conflict. This is because the differences between § 235 and § 236 do not indicate the former should prevail over the latter—rather, they indicate that Congress intended for different classes of noncitizens to be subject to each provision, i.e., mandatory versus discretionary detention. As the Ninth Circuit observed, § 236(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 § 236(a) and its implementing regulations "provide extensive procedural protections that are unavailable under other detention provisions."). The procedural protections for a detainee under § 236(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 § 235.

Again, this does not render the two provisions irreconcilable, rather, the statutory scheme subjects some classes of noncitizens to mandatory detention under § 235, and subjects others—namely noncitizens who are present and have resided in the U.S. for an extended period—to permissive detention. See Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc., 778 F.3d 1059, 1081 (9th Cir. 2015) ("permissive and mandatory descriptions are in harmony, as they apply to different situations.").

C. EAJA Fees Are Permissible in Habeas Proceedings

EAJA requires a court to award fees and costs in a civil action against the United States where a party can demonstrate that (1) they are a prevailing party, (2) the government's position was not substantially justified, and (3) no special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). The party must also provide a statement of the total amount of fees and costs sought along with an itemized account of time expended and rates charged. 28 U.S.C. § 2412(d)(1)(A); § 2412(d)(1)(B). Absent a special factor, fees are based on the statutory rate of $125 per hour, subject to annual cost-of living adjustments published by the Ninth Circuit. 28 U.S.C. § 2412(d)(1)(A); § 2412(d)(2)(A); *see also Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005).

RESPECTFULLY SUBMITTED this 3rd day of December, 2025.

PERRETTA LAW OFFICE

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