

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

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JOSE ALEXANDER PEREZ ZEPEDA )	
) <i>Petitioner</i>	Case No. 1:25-cv-3789-SKC-STV
v. )	<b>REPLY IN SUPPORT OF PETITION</b>
ROBERT HAGAN, <i>et al.</i> )	<b>FOR WRIT OF HABEAS CORPUS</b>
) <i>Respondents.</i>	<b>PURSUANT TO 28 U.S.C. § 2241</b>
_____ )	

For decades it has been universally understood that individuals like Mr. Perez Zepeda who have entered the United States, even unlawfully, are not subject to mandatory detention pending completion of their removal proceedings absent certain criminal history. Yet on July 8, 2025, the government abruptly reversed the statutory interpretation it has embraced for years, choosing to interpret the Immigration and Nationality Act (INA) to mandate the detention of anyone who entered without inspection, regardless of how long they have resided in this country. Mr. Perez Zepeda remains detained pursuant to this novel interpretation that the Department of Homeland Security (DHS) happened upon almost thirty years after the statute at issue was enacted.

Mr. Perez Zepeda filed a petition for a writ of habeas corpus on November 22, 2025, seeking release or, alternatively, release under a reasonable bond amount that he is promised under § 1226(a) and its implementing regulations, and challenging his mandatory detention under 8 U.S.C. § 1225(b)(2) as an individual who is “seeking

admission” into the United States. No reasonable person could describe Mr. Perez Zepeda as “seeking admission” to a country he has lived in for sixteen years. Accordingly, the Court should rule in alignment with the overwhelming majority of district courts, including a nationwide class action vacating DHS’s policy, all of which have rejected Respondents’ effort to subvert the legislative process and rewrite the INA by adopting a new “interpretation” of a thirty-year old statute. Further, the Court should hold, beyond the clear and continuing statutory violation, that due process prohibits Mr. Perez Zepeda’s arbitrary detention absent any showing that his continued detention is necessary to serve a compelling governmental interest.

### ARGUMENT

#### **I. Mr. Perez Zepeda is Not Subject to Detention Under § 1225(b)(2).**

This Court should hold, consistent with the overwhelming weight of authority in this District and beyond—including a nationwide class action—that Mr. Perez Zepeda is not subject to mandatory detention under § 1225(b)(2). *See, e.g., Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Loa Caballero v. Baltasar*, No. 25-cv-3120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Garcia Cortes v. Noem*, No. 25-cv-2677, 2025 WL 265880 (D. Colo. Sept. 16, 2025); *Maldonado Bautista v. Santacruz*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (vacating DHS’s policy); *see also Aguilar v. Bondi*, No. g:25-cv-1453, 2025 WL 3471417, at \*5 (W.D. Tex. Nov. 26, 2025); *Colin v. Holt*, No. 25-cv-1189, 2025 WL 3645176 (W.D. Ok. Dec. 16, 2025); *Pu Sacvin v. De Anda-Ybarra*, No. 25-cv-1031 (D.N.M. Nov. 14, 2025). Both the plain language of the statute and due process require granting of this habeas petition. *See Mendoza Gutierrez*, 2025 WL 2962908,

at \*5 (stating that the “plain text, overall structure, and uniform case law interpreting” § 1225 and § 1226 “compels the conclusion that § 1225’s provision for mandatory detention of noncitizens ‘seeking admission’ does not apply to someone like Mr. Gutierrez, who has been residing in the United States for more than two years”) (cleaned up) (collecting citations).

Section 1225(b)(2) states, “in the case of an alien who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for” removal proceedings. 8 U.S.C. § 1225(b)(2). While Mr. Perez Zepeda concedes he is an “applicant for admission” as defined at § 1225(a), he cannot now be described as “seeking admission” who is seeking inspection by an immigration officer to come into a country he has lived in and raised a family in for more than sixteen years.

Without materially acknowledging the overwhelming weight of decisions (or the substance of these decisions) ruling against the government on this issue, Respondents assert argue that Congress intended § 1225(b)(2)(A) to apply broadly to everyone in the United States who has not been admitted. Resp. at 3-5, 11-14. But this Court should reject that argument, and instead follow *Mendoza Gutierrez*, 2025 WL 2962908, at \*5, and the other decisions within this circuit.

In particular, Respondents invite the Court to ignore § 1225(b)(2)’s plain language limiting its scope to noncitizens who are “seeking admission” who are undergoing inspection. See Resp. 3-11. But as several courts have acknowledged, “seeking admission” is only one criteria found in § 1225(b)(2). See *Lopez Benitez v.*

*Francis*, No. 25-cv-5937, -- F. Supp. 3d --, 2025 WL 2371588, at \*6 (S.D.N.Y. Aug. 13, 2025) (describing three “criteria”: (1) that the noncitizen is an “applicant for admission”; (2) that the noncitizen is actively “seeking admission”; and (3) that the “examining immigration officer determines ‘is not clearly and beyond a doubt entitled to be admitted.’”); *see also Leonardo G.Z. v. Noem*, 25-cv-600, 2025 WL 3755590, 9 (N.D. Ok. Dec. 29, 2025). Critically, if “applicant for admission” was the same as “seeking admission,” the statute would violate the rule against surplusage. *See id.*; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“[N]o clause, sentence, or word shall be superfluous, void, or insignificant.”) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at \*6 (D. Mass. July 24, 2025); *Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at \*5 (E.D. Va. Sept. 29, 2025).

Respondents also ignore that § 1225(b)(2) applies only to noncitizens seeking admission who an examining officer determines are not “clearly and beyond a doubt entitled to be admitted.” The INA states that with respect to a noncitizen, “‘admission’ and ‘admitted’ mean . . . the lawful entry of [such] person into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Mr. Perez Zepeda is not seeking “admission” as Congress has defined that term as “he was not seeking entry, much less ‘lawful entry . . . after inspection’ and authorization.” *Aguilar v. Bondi*, No. 5:25-cv-1453, 2025 WL 3471417, at \*5 (W.D. Tex. Nov. 26, 2025) (quoting 8 U.S.C. § 1101(a)(13)(A)); *see also Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008) (“Under th[e] statutory definition, ‘admission’ is the

lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status.”) (emphasis in original). Respondents’ selective statutory analysis ignores not only the entire statutory provision but ignores the titles and headings of the sections<sup>1</sup> and improperly applies the provisions and policies of cases falling under § 1225(b) to individuals who are not seeking inspection by an immigration officer at a port of entry or close in time to an unlawful entry into the United States. *See Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, \*8 (D.N.J. Sept. 26, 2025).

Respondents’ interpretation also would nullify recent amendments to the INA in the Laken Riley Act, now codified within 8 U.S.C. § 1226(c). *See Hasan v. Crawford*, No. 25-cv-1408, 2025 WL 2682255, at \*8 (E.D. Va. Sept. 19, 2025). Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds *and* meet certain criminal criteria. 8 U.S.C. § 1226(c)(1)(E). Such a statute would be entirely redundant if a noncitizen’s inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *See id.*; *Lopez Benitez*, 2025 WL 2371588, at \*3. Section 1225(b)(2) had been on the books for almost three decades when Congress passed the Laken Riley Act. In that time, neither the courts nor the Government had ever interpreted § 1225(b)(2) to mandate the detention of *all* noncitizens who entered the United

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<sup>1</sup> Section 1225 is titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.” Section 1226 is titled “Apprehension and detention of aliens.” *See Zumba*, 2025 WL 2753496, \*8 (“§ 1225 repeatedly cabin[s] its application to “Inspections,” which, as petitioner convincingly argues, occurs as ports of entry, their functional equivalent, or near the border.”).

States without inspection. It was against that backdrop that Congress passed the Laken Riley Act. When it did, Congress did not feel compelled to clarify the interpretation of § 1225(b)(2) that had been universally accepted since its inception in 1997. Instead, it mandated detention for certain classes of inadmissible noncitizens—individuals that would already have been subject to mandatory detention under Respondents’ reading on § 1225(b)(2). If Congress believed the courts and the Government were misapplying § 1225(b)(2) it had three decades to correct the error. It did not. And the Court should reject Respondents’ attempt to subvert the legislative process and amend a thirty-year-old statute through a new “interpretation” that renders subsequent acts of Congress null and void. Respondents attempt to minimize this contradiction (Resp. at 14) is unconvincing, as the redundancy *is* relevant and not so easily dismissed. *Lopez Benitez*, 2025 WL 2371588, at \*3.

Additionally, Respondents’ substantial reliance on *Jennings v. Rodriguez* is misplaced. *Jennings* primarily focused on the detention provisions under § 1225(b)(1), not (b)(2), and there is no claim that § 1225(b)(1) is applicable in this case. Moreover, in *Jennings*, the Supreme Court affirmed that § 1226(a) rather than § 1225(b)(2) “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 303. The Court acknowledged that “once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission,” but explained that “Section 1226 generally governs the process of

arresting and detaining *that group of aliens* pending their removal.” *Id.* at 288 (emphasis added). Mr. Perez Zepeda belongs to “that group of aliens” and he is accordingly not subject to detention under § 1225(b)(2)(A).

Finally, while Respondents argue that past practice cannot alone dictate the result in this case, *see* Resp. 14-16, they fail to acknowledge that past practice *is* relevant. *See Merchan-Pacheo v. Noem*, 206 WL 88526, \*12 (D. Colo. Jan. 12, 2026) (“An Agency’s power to persuade rests at least in part on its consistency with earlier and later pronouncements.”) (quoting *Rodriguez v. Bostock*, 25-cv-5240, 2025 WL 2782499, \*26 (W.D. Wash. Sept. 30, 2025) (quoting *Loper Bright Enters. V. Raimondo*, 603 U.S. 369, 432-33 (2024) (internal marks omitted). For these reasons, as well as those discussed in *Mendoza Gutierrez*, 2025 WL 2962908, as well as *Maldonado Bautista*, 2025 WL 3678485, this Court should conclude that 8 U.S.C. § 1225(b)(2) is not the proper statute of detention in this case and therefore order Mr. Perez Zepeda’s release, *see Luna v. Warden*, 2025 WL 3787494, at \*11 (W.D. Tex. Dec. 29, 2025) (ordering release because the petitioner was not lawfully detained under § 1225(b)(2) and that was “the only detention authority that Respondents have invoked to justify Petitioner’s detention”). Alternatively, the Court should order a bond hearing at which the government bears the burden of proof. *Cf. Loa Caballero*, 2025 WL 2977650, at \*9.

**II. Mr. Perez Zepeda’s Detention Without a Bond Hearing Violates Due Process.**

Additionally (or alternatively), the Court should determine that Mr. Perez Zepeda’s continued detention, particularly without a meaningful opportunity to have

a neutral arbiter decide whether that detention is necessary to ensure his appearance at removal proceedings or protect the community, violates his right to due process. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Government detention violates th[e] Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and ‘narrow’ nonpunitive ‘circumstances’ where a special justification . . . outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.”) (internal citations omitted).

Respondents decline to substantively engage with the substantive and procedural due process claims raised in Mr. Perez Zepeda’s petition. Instead, Respondents sole argument is that Mr. Perez Zepeda is not entitled to more process than what Congress provided him by statute. Resp. 17. This argument rests on a misinterpretation of *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118-19 (2020). Resp. 17-18. *Thurassigiam*. merely affirmed what the Supreme Court has held for years—that for noncitizens on “the threshold of initial entry,” “whatever the procedure authorized by Congress is, it is due process as far as a[ noncitizen] denied entry is concerned.” *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Thuraissigiam*, 591 U.S. at 138-39.

Yet Mr. Perez Zepeda is not at “the threshold of entry.” He has not been “denied entry” nor was he apprehended twenty-five yards from the border while in the process of entering the United States like the petitioner in *Thuraissigiam*. 591 U.S. at 139. He entered the United States over sixteen years ago and has resided more than a

thousand miles from the border ever since. As the Supreme Court has stressed, once Mr. Perez Zepeda “enter[s] the country, [his] legal circumstances change[], for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent.” *Zadvydas*, 533 U.S. at 693; *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (distinguishing noncitizens arriving at our shores from those “who have never been naturalized, nor acquired any domicil or residence within the United States) (emphasis added). Thus, even if the Court were to accept Respondents’ erroneous argument that Mr. Perez Zepeda is subject to § 1225(b)(2), that statutory distinction is not determinative of the process he is due under the Constitution. Because he entered the United States over many years ago, his proceedings must “conform to traditional standards of fairness encompassed in due process of law.” *Mezei*, 345 U.S. at 212. Respondents cite no case even suggesting that the general constitutional principle limiting the due process rights of those denied entry should be extended to those like Mr. Perez Zepeda who have “passed through our gates,” his detention must comport with due process. For the reasons set forth in his Petition, it does not.

**CONCLUSION**

For the foregoing reasons, the Court should grant relief and order Mr. Perez Zepeda released from custody or, alternatively, order the imposition of a reasonable bond amount.

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Respectfully submitted,

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