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9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 David Zarza Davalos,

13 Petitioner

14 v.

15 Kristi Noem, *et al.*,

16 Respondents

)  
)  
) No. 2:25-cv-04459-SHD (ASB)

)  
) PETITIONER'S REPLY TO  
) RESPONDENTS' RESPONSE  
) TO ORDER TO SHOW CAUSE

17  
18 **I. INTRODUCTION**

19 1. Petitioner, by and through undersigned counsel, hereby replies to  
20 Respondents' Response to the Court's Order to Show Cause, and hence to the Petition  
21 for Writ of Habeas Corpus.

22 2. For decades, Respondents have applied 8 U.S.C. § 1226(a), and not  
23 8 U.S.C. § 1225, to people like Petitioner who are present in the United States without  
24 inspection, who were not apprehended upon arrival, and have lived in the United States  
25 for many years. In this case, the most natural reading of the statute is reflected in the  
26 consensus interpretation of it for nearly 30 years by the former INS, then DHS, EOIR,  
27 and DOJ.  
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**I. ARGUMENT**

3. Section 1226(a) is the INA’s default detention authority for noncitizens “already present in the United States” while DHS decides whether they are to be removed in § 1229a proceedings. By contrast, § 1225(b) governs inspections “at the Nation’s borders and ports of entry” for noncitizens “seeking admission” to the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The government’s new theory—that anyone who entered without inspection and is later arrested in the interior is forever an “applicant for admission” “seeking admission” under § 1225(b)(2)(A)—collapses this basic structural distinction and renders superfluous both the “seeking admission” language in § 1225(b)(2)(A) and Congress’s explicit choice to place certain EWIs in § 1226(c)(1)(E)’s mandatory-detention carve-out.

4. Following the passage of IRRIRA in 1996, the Immigration and Naturalization Service (“INS”) and Executive Office for Immigration Review (“EOIR”) published the regulations for 8 U.S.C. § 1225 and 1226 on March 6, 1997. See “Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,” 62 Fed. Reg. 10312, 10323 (March 6, 1997).

5. In its preamble to the regulations in 1997, INS addressed the issue of the characterization of aliens who are present in the United States without having been admitted or paroled as “applicants for admission.” There, INS stated “[d]espite 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.” Later on the same page, INS and EOIR stated “inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.”

6. In addition, the regulation at 8 CFR 236.1(c)(2) expressly authorizes that “Any officer authorized to issue a warrant of arrest may, in the officer’s

1 discretion, release an alien not described in section 236(c)(1) of the Act, under the  
2 conditions at section 236(a)(2) and (3) of the Act; provided that the alien must  
3 demonstrate to the satisfaction of the officer that such release would not pose a danger  
4 to property or persons, and that the alien is likely to appear for any future proceeding.”

5 7. These regulations are the original authority for the decades-long  
6 practice of INS and then ICE officers to set a bond and release aliens who were present  
7 in the United States without admission or parole (or even release them upon their own  
8 recognizance) and also the authority of immigration judges to redetermine their  
9 custody status by conducting bond hearings and ordering their release upon the  
10 payment of a bond (subject to the limits of INA Section 236(c)).

11 8. The regulation at 8 CFR 236.1(c)(5) goes on to limit an  
12 immigration judge’s authority under Section 236 and says that an immigration judge  
13 may not exercise such authority to release an alien on bond in three situations: (1)  
14 “arriving aliens” who seek admission at a port-of-entry or who are interdicted in  
15 international or U.S. waters; (2) aliens described in section 237(a)(4) of the Act; and  
16 (3) aliens described in section 236(c)(1) of the Act. This regulation implies and  
17 assumes that Section 236 does allow immigration judges authority to set bond for other  
18 aliens who are present inside the United States without admission or parole.

19 9. Therefore, the 1997 regulations at 8 CFR 236.1 that INS and EOIR  
20 promulgated following the enactment of Sections 1225 and 1226 are clear evidence of  
21 INS’s and EOIR’s own contemporaneous understanding that the intent of Congress  
22 was that a person who was apprehended inside the United States who had not been  
23 admitted or paroled *is* eligible under Section 1226 for release on bond by either an  
24 immigration officer or an immigration judge.

25 10. Thus, in the decades that followed the passage of IRRIRA in 1996,  
26 people who had entered without inspection and were thereafter arrested within the  
27 United States and placed in removal proceedings were considered for release on bond  
28 and also received bond hearings before an IJ under Section 1226, unless their criminal

1 history rendered them ineligible. This practice by EOIR, INS, and then DHS, was a  
2 reflection of and implementation of the law as it is written.

3 11. This long-standing, contemporaneous construction by the very  
4 officials charged with implementing the statute is entitled to “great weight” and should  
5 not be discarded absent “cogent reasons” and a clear showing that it is erroneous. See  
6 *Nat’l Lead Co. v. United States*, 252 U.S. 140, 145–46 (1920) (“great weight” to long-  
7 continued contemporaneous construction); *Houghton v. Payne*, 194 U.S. 88, 239–42  
8 (1904) (quoting *United States v. Finnell*, 185 U.S. 236, 244 (1902) (“not overruled  
9 except for cogent reasons”)); see also *Loper Bright Enters. v. Raimondo*, 603 U.S. \_\_\_,  
10 slip op. at 16–19 (2024) (reaffirming that courts may accord weight to long-settled  
11 executive interpretations under Skidmore-type principles). The Lyons Memo and  
12 *Matter of Yajure Hurtado* abruptly abandon that settled construction, retroactively re-  
13 branding all persons who entered the United States without inspection (regardless of  
14 how long they have lived here) as applicants “seeking admission” subject to mandatory  
15 detention under § 1225(b)(2)(A). The government’s about-face reinterpretation of §  
16 1225(b)(2)(A) conflicts with the statutory text and *Jennings’s* explanation of the  
17 relationship between § 1225 and 1226.

18 12. Two recent decisions further confirm that Respondents’ new  
19 interpretation is unlawful. In *Maldonado Bautista v. Santacruz*, the Central District of  
20 California granted partial summary judgment and later certified a nationwide “Bond  
21 Eligible Class” of noncitizens who entered without inspection, were not apprehended  
22 upon arrival, and are not subject to §§ 1226(c), 1225(b)(1), or 1231. The court held  
23 that the government’s 2025 no-bond policy is “inconsistent with the plain language of  
24 the INA” and that such individuals are detained under § 1226(a), not § 1225(b)(2)(A),  
25 and are therefore eligible for bond hearings before immigration judges. *Maldonado*  
26 *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL  
27 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (granting partial summary judgment and  
28 holding the 2025 no-bond policy “inconsistent with the plain language of the INA” and

1 confirming that class members are detained under § 1226(a), not § 1225(b)(2)(A));  
2 *Maldonado Bautista v. Santacruz*, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D.  
3 Cal. Nov. 25, 2025) (certifying nationwide “Bond Eligible Class” and extending  
4 declaratory relief to the class). Likewise, in *Cerritos Echevarria v. Bondi*, the  
5 District of Arizona rejected the same argument advanced in Petitioner’s case,  
6 concluding that § 1225(b)(2)(A)’s mandatory detention provision applies only to  
7 “applicants for admission” who are, in fact, seeking admission at the border, and that  
8 long-resident noncitizens arrested in the interior—like Petitioner—fall instead under §  
9 1226(a)’s default detention framework and are entitled to bond hearings. *Cerritos*  
10 *Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL, 2025 WL 2821282, at \*4-5 (D.  
11 Ariz. Oct. 3, 2025).

12 13. Another district court explained that if, as the Lyons Memo asserts,  
13 § 235 “rather than section 236, is the applicable immigration detention authority for all  
14 applicants for admission,” then applying § 1225’s mandatory detention provisions to  
15 “all noncitizens who have not been admitted” “would render superfluous provisions of  
16 Section 1226 that apply to certain categories of inadmissible noncitizens.” *Rodriguez*  
17 *Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, --- F. Supp. 3d ----, 2025 WL 1193850,  
18 at \*11 (W.D. Wash. Apr. 24, 2025) (quoting Lyons memo). “Put another way, Section  
19 1226(c)(1)(E)’s mandated detention for inadmissible noncitizens who are implicated in  
20 an enumerated crime, including those ‘present in the United States without being  
21 admitted or paroled,’ would be meaningless since ‘all noncitizens who have not been  
22 admitted’ would already be governed by Section 1225’s mandatory detention  
23 authority.” *Id.* at 11–12.

24 14. This Court should follow these cases. The statutory text, structure,  
25 contemporaneous regulations, decades of uniform practice, and the growing body of  
26 federal case law—including *Maldonado Bautista* and *Echevarria*—all point in one  
27 direction: individuals like Petitioner, who are present in the U.S. without inspection but  
28 were later arrested after years of residence in the United States and are in § 1229a

1 proceedings without a final removal order, are detained under § 1226(a), not §  
2 1225(b)(2)(A), and are therefore entitled to an individualized bond hearing.

3 **II. CONCLUSION**

4 15. For the reasons set forth above, Petitioner's detention is not  
5 authorized by 8 U.S.C. § 1225(b)(2)(A) and instead is governed by § 1226(a).  
6 Respondents have detained Petitioner for months under an unlawful mandatory-  
7 detention theory that disregards the statutory text, Congress's recent amendment of §  
8 1226, longstanding regulations, and decades of consistent agency practice. Where  
9 detention is unlawful, the proper remedy in habeas is release.

10 16. The immigration judge's "alternative" \$10,000 bond order does not  
11 cure the statutory violation. That order was entered in the same decision in which the  
12 IJ disclaimed jurisdiction under *Matter of Yajure Hurtado*, and it would permit  
13 Petitioner's ongoing incarceration solely because he cannot afford to pay \$10,000  
14 bond. Having found that Petitioner is not a danger and has a record sufficient to  
15 support custody redetermination, there is no lawful basis to continue to detain him  
16 while this Court corrects Respondents' legal error.

17 17. Petitioner therefore respectfully requests that this Court grant the  
18 Petition, declare that § 1225(b)(2)(A) does not authorize Petitioner's detention, hold  
19 that he is detained under § 1226(a), and order Respondents to immediately release  
20 Petitioner from immigration custody, subject only to such standard conditions of  
21 supervision as DHS may lawfully impose.

22 DATED this 10<sup>th</sup> day of December, 2025.

23 Respectfully submitted,

24 /s/ Robert E. Coughlon, Jr.

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