

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MARIO PONCE	)	
	)	Civil Acton No. 4:25-cv-5797
Petitioner,	)	
	)	EXPEDITED ORAL HEARING
v.	)	REQUESTED
	)	
KRISTI LYNN NOEM, <i>et al</i>	)	
	)	
Respondents.	)	
_____	)	

**PETITIONER’S OPPOSITION TO RESPONDENTS’ MOTION TO DISMISS AND  
RESPONSE TO, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

The Petitioner, Mario Ponce, (“Petitioner”), hereby files his opposition to Respondents’ motion to dismiss, and response, in the alternative, to motion for summary judgment. Petitioner respectfully requests that the Honorable Court deny Respondents’ motions, grant Petitioner’s petition for a writ of habeas corpus, and enter an order for Respondents to either release Petitioner, or give him a bond hearing before an immigration judge (“IJ”), within three days of the Court’s order.

**I. PRELIMINARY STATEMENT**

By way of background, this case arises from an Immigration Judge’s order, denying Petitioner’s *Bond Determination Request*. The Immigration Judge ruled that the Petitioner was subject to the Board of Immigration Appeals’ (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that the Executive Office for Immigration Review (EOIR) lacked jurisdiction over the Petitioner’s custody determination.<sup>1</sup>

<sup>1</sup> Immigration Judges are administrative officers, part of the Executive Office for Immigration Review (EOIR), which is an agency within the U.S. Department of Justice (DOJ) that handles immigration court proceedings and adjudicates

BIA, EOIR's apex appellate authority, has incorrectly construed the statute. Petitioner challenges the Board of Immigration Appeals' (BIA) determination that he and similarly situated detainees are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and fall outside the scope of 8 U.S.C. § 1226(a). Regrettably, immigration Judges, bound by this administrative precedent set in *Hurtado*, are actively implementing this misinterpretation, depriving the Petitioner and similarly situated detainees their right to due process of law—no one shall be “deprived of life, liberty or property without due process of law” by the federal government. U.S. Const. amend. V.<sup>2</sup> Petitioner posits that the statute affecting his detention is ambiguous and that, consistent with the U.S. Supreme Court's mandate under the new *Loper Bright* standard, this Court must independently decide the correct meaning of the statute, rather than simply accepting the Executive Office for Immigration Review's interpretation of the law as “reasonable” guidance. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Applying the landmark holding in *Loper Bright*, federal district courts across the country, including this District, have consistently granted habeas petitions against the denial of bond motions by Immigration Judges, determining that similarly situated petitioners are not subject to the mandatory detention under 8 U.S.C. § 1225(b)(2), whether such detention is based on the statute's plain language and structure, the legislative history of the Immigration and Nationality Act (INA), the right to challenge unlawful imprisonment via habeas corpus, or because they failed to exhaust administrative remedies. These courts have resoundingly rejected the Board of

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cases, making decisions on removability and relief from removal. They work in immigration courts nationwide and are supervised by the Office of the Chief Immigration Judge (OCIJ) under the EOIR.

<sup>2</sup> The critical legal challenge stems from the U.S. Supreme Court's decision in *Loper Bright*, which explicitly overruled the Chevron deference doctrine. *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984). *Loper Bright* determined that the Administrative Procedure Act (APA) requires courts to exercise independent judgment when deciding whether an agency has acted within its statutory authority, prohibiting deference to an agency's interpretation merely because a statute is ambiguous. This argument proposes that the IJs' rulings, which defers to the BIA's interpretation of a disputed statute concerning mandatory detention, is now impermissible under the *Loper Bright* standard, requiring a court to independently review the BIA's statutory interpretation.

Immigration Appeals' decision in *Hurtado*, which had adopted and implemented a new, broad interpretation of the law to mandate detention for most noncitizens who entered without inspection, regardless of how long they resided in the U.S.

By way of illustration, a recent nationwide injunction, issued in *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, 5:25-cv-01873, (C.D. Cal.), on November 25, 2025, has since blocked the enforcement of *Hurtado*, restoring the right to a bond hearing for individuals arrested in the interior of the country. Furthermore, federal courts have generally found that the lack of an available administrative remedy within the BIA, following its decision to deny bond jurisdiction, meant petitioners were not required to exhaust administrative options before seeking relief in federal court.

Similarly, on December 9, 2025, the Honorable Keith P. Ellison, United States District Judge for the Southern District, Houston Division, rejected Respondents' arguments regarding the application of 8 U.S.C. § 1225(b)(2) relative to mandatory detention, including the reasoning that petitioner failed to exhaust administrative remedies. Judge Ellison granted Petitioner Brisa Lilia Lopez Gomez's *Petition for a Writ of Habeas Corpus* and denied Respondents' motion to dismiss. *Lopez-Gomez v. Noem*, 4:25-cv-05667 (S.D. Tex. December 9, 2025) (Ellison, J.). Ex. A. *Order Granting Petition for a Writ of Habeas Corpus*. In this order, Judge Ellison particularly cited a generis of cases from this and other districts, including: (1) *Mendez Velazquez v. Noem*, 4:25-cv-04527 (S.D. Tex. Oct. 30, 2025) (Ellison, J.); (2) *Rivera-Henriquez v. Tate*, 4:25-CV-045436, (S.D. Tex. Sep. 26, 2025); (3) *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); (5) *Fuentes v. Lyons et al.*, 25-cv-00153 (S.D. Tex. Oct. 16, 2025); (6) *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at \*8 (S.D.N.Y. Aug. 13, 2025), and ruminated that he was persuaded by the reasoning in decisions, referenced

*supra*, and determined that the Petitioner in *Lopez-Gomez*, was properly subject to 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2).<sup>3</sup>

It is undisputed that Petitioner satisfies the “similarly situated” standard relative to the petitioners in those cases, and respectfully asserts that he too is subject to 8 U.S.C. § 1226(a) (governing release on bond or recognizance), rather than 8 U.S.C. § 1225(b)(2) (governing mandatory detention for certain inadmissible noncitizens). Thus, notwithstanding parties’ dispute over the exhaustion of administrative remedies, the substance of this case concerns the applicability of 8 U.S.C. § 1225 or § 1226 to the Petitioner’s detention. Accordingly, based on the interpretation of the subject controversial statute by district courts nationwide, including the Honorable Judge Kieth P. Ellison, and in light of the U.S. Supreme Court’s ruling in *Loper Bright, supra*, Respondents are relegated to this Court’s statutory interpretation of 8 U.S.C. § 1225(b)(2) and 1226(a).

## II. INTRODUCTION

The Court should deny Respondents’ *Motion to Dismiss and, in the Alternative, Motion for Summary Judgment* (Dkt. No. 8). In support of his opposition to Respondents’ motion to dismiss and response to motion for summary judgment, Petitioner will respectfully show the Court as follows:

While there is no statutory exhaustion of administrative remedies requirement in 28 U.S.C. § 2241, Petitioner acknowledges that courts may, nonetheless, impose a prudential exhaustion requirement. However, this Court has the authority to grant equitable relief and exercise its discretion to waive the prudential exhaustion requirement, especially in detention cases involving

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<sup>3</sup> Regrettably, where the Respondents have selectively cited certain persuasive decisions, e.g. *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.) including others, they have omitted a compendium of cases that controvert their position.

significant liberty interests. The Board of Immigration Appeals' systemic delays in adjudicating bond appeals, which can take months or even years, warrant excusing any exhaustion requirements. Subjecting Petitioner to this prolonged process would be futile and result in irreparable injury; specifically, the continued, unconstitutional deprivation of liberty.

Furthermore, Petitioner is challenging the new Department of Homeland Security (DHS) policy issued on July 8, 2025. This policy instructs all Immigration and Customs Enforcement (ICE) employees to consider anyone arrested within the United States and charged with inadmissibility under § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A), and therefore subject to mandatory detention. This fundamental challenge to the legality of the detention requires an immediate judicial review, as administrative remedies are inadequate. Respondents erroneously argue for mandatory detention under 8 U.S.C. § 1225(b)(2), citing the BIA's decision in *Hurtado* and other rulings. However, this argument misinterprets the statute, as Petitioner does not fit the "arriving alien" definition; instead, federal courts, including the judges in this district, have determined that individuals like Petitioner are properly detained under the discretionary authority of § 1226(a), distinguishing them from those covered by the mandatory detention provisions of § 1225(b)(2).

### III. OPPOSITION TO MOTION TO DISMISS

- i. **There is no statutory requirement of exhaustion of administrative remedies, this Court can waive prudential exhaustion.**

The exhaustion of administrative remedies is not required by statute in this context;<sup>4</sup> no provision of the immigration laws clearly makes failure to exhaust a jurisdictional bar to review.

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<sup>4</sup> If a statute requires a plaintiff to exhaust administrative remedies, his failure to do so deprives this court of subject-matter jurisdiction. *Taylor v. U.S. Treas. Dep't*, 127 F.3d 470, 475 (5th Cir. 1997) (per curiam) ("Whenever the Congress statutorily mandates that a claimant exhaust administrative remedies, the exhaustion requirement is jurisdictional because it is tantamount to a legislative investiture of exclusive original jurisdiction in the agency."). "[N]o one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy

*Miranda v. Garland*, 34 F.4th 338, 352 (4th Cir. 2022). However, Petitioner acknowledges that in the absence of a statutory mandate, the jurisprudential doctrine of exhaustion controls. *Taylor v. U.S. Treas. Dep't*, 127 F.3d 470, 475 (5th Cir. 1997) (per curiam). Under this prudential doctrine, unexhausted claims may fail to state a claim upon which relief can be granted, but the requirement is not jurisdictional in nature. Courts retain the discretion to waive prudential exhaustion requirements, particularly in extraordinary circumstances. *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004); *Taylor*, 127 F.3d at 477.

The Petitioner respectfully requests that the Court exercise this discretion to excuse the failure to exhaust. A waiver of prudential exhaustion is appropriate if: (1) Administrative remedies are inadequate or not efficacious; (2) Pursuit of administrative remedies would be a futile gesture; and (3) Irreparable injury will result. *Laing*, 370 F.3d at 1000. Petitioner acknowledges he bears the burden of demonstrating at least one of these factors applies. *See Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993, 1003 (9th Cir. 2018).

Particularly, prudential exhaustion should not compel the Petitioner to endure the very harm he seeks to avoid. Requiring him to appeal the Immigration Judge's denial of bond orders to the Board of Immigration Appeals and wait months or even years for a decision forces this endurance. Exhaustion is not required where administrative remedies are "inadequate or not efficacious" or where "irreparable injury will result." *Id.* Furthermore, courts can waive the requirement when it "may occasion undue prejudice to subsequent assertion of a court action," particularly when such prejudice arises from an "unreasonable or indefinite time frame for administrative action." *McCarthy v. Madigan*, 503 U.S. 140, 146-47 (1992) (internal citations

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has been exhausted." *McKart v. United States*, 395 U.S. 185, 193 (1969). If an individual has not exhausted available administrative remedies, district courts generally should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies. *See Morrison-Knudsen Co. v. CHG Int'l, Inc.*, 811 F.2d 1209, 1223 (9th Cir. 1987).

omitted), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731 (2001). The BIA's significant delays inflict irreparable injury upon the Petitioner; thus, the exceptions regarding irreparable harm and agency delay apply and warrant waiving any prudential exhaustion requirement in this case.

#### **A. Futility**

Futility is an exception to the prudential exhaustion requirement. Petitioner has been subjected to the new DHS policy issued on July 8, 2025 instructing all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The DHS policy states it was issued "in coordination with the Department of Justice (DOJ)."<sup>5</sup> Petitioner has been denied a bond hearing by an IJ based on this new policy. Further, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. BIA Decision, Case No. XXX-XXX-269, May 22, 2025. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are "applicants for admission" and subject to detention under § 1225(b)(2)(A). *See Mot. to Dismiss, Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-31. Under these facts, appeals to the BIA would be futile.

#### **B. Irreparable Injury**

Irreparable injury is an exception to any prudential exhaustion requirement. Because Petitioner was denied bond and ordered mandatorily detained, each day they remain in detention is one in which his statutory and constitutional rights have been violated. Similarly situated district

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<sup>5</sup> IJs function within the Executive Office for Immigration Review which is a component of the Department of Justice.

courts have repeatedly recognized this fact. As one court has explained, “because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process.” *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, “if Petitioner is correct on the merits of his habeas petition, then Petitioner has already been unlawfully deprived of a [lawful] bond hearing[,] [and]... each additional day that Petitioner is detained without a [lawful] bond hearing would cause him harm that cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL 4355182, at \*3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these points. *See, e.g., Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003-04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-ISC, 2020 WL 2759731, at \*6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR, 2020 WL 1984301, at \*5 (N.D. Cal. Apr. 27, 2020); *Birru v. Barr*, No. 20-CV-01285-LHK, 2020 WL 1905581, at \*4 (N.D. Cal.

Petitioner has asserted both statutory and constitutional claims and has a “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Moreover, the irreparable injury Petitioner faces extends beyond a chance at physical liberty. There are several “irreparable harms imposed on anyone subject to immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar medical and psychiatric care in ICE detention facilities.” *Id.*

### C. Agency Delay

The BIA's delays in adjudicating bond appeals warrant excusing any exhaustion requirement. A court's ability to waive exhaustion based on delay is especially broad here given the interests at stake. As the Ninth Circuit has explained, U.S. Supreme Court precedent "permits a court under certain prescribed circumstances to excuse exhaustion where 'a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment [of a lack of finality] is inappropriate.'" *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*, 424 US, 319, 330 (1976)). Of course, as noted above, Petitioner's interest here in physical liberty is a "fundamental" one. *Hernandez*, 872 F.3d at 993.

Moreover, the U.S. Supreme Court has explained that "relief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951). Despite this fundamental interest and the Supreme Court's admonition that only speedy relief is meaningful, the BIA takes over half a year in most cases to adjudicate an appeal of a decision denying bond. In these cases, noncitizens in removal proceedings often remain locked up in a detention facility with conditions "similar . . . to those in many prisons and jails" and separated from family. *Rodriguez*, 583 US, at 329 (Breyer, J., dissenting); *see also, e.g., Hernandez*, 872 E3d at 996. District courts facing situations similar to the one at issue here acknowledged that the BIA's months-long review is unreasonable and results in ongoing injury to the detained individual. *See, e.g., Perez*, 445 F. Supp. 3d at 286.

As one other district judge observed, "the vast majority of . . . cases... have 'waived exhaustion . . . where several additional months may pass before the BIA renders a decision on a pending appeal [of a custody order]." *Montoya Echeverria*, 2020 WL 2759731, at \*6 (quoting

*Rodriguez Diaz*, 2020 WL 1984301, at \*5); *see also Hechavarria*, 358 F. Supp. 3d at 237-38 (citing *McCarthy* and BIA delays as reason to waive prudential exhaustion requirement).

Petitioner respectfully asserts that appeals to the BIA would be futile, further detention constitutes irreparable injury, and agency delays in adjudicating bond appeals warrants excusing exhaustion. The language of the DHS Guidance Notice, the IJs' practice of denying bond hearings based on that Notice, and the cited BIA decision in Petitioner's Application sufficiently demonstrate DHS and DOJ's commitment to the positions detailed in the Notice, which would render appellate review at the BIA inadequate or futile.

In light of the foregoing, Petitioner respectfully requests that this Court deny respondents' motion to dismiss.

#### **IV. RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

##### **i. This Court should deny respondents' motion for summary judgment**

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if the dispute over that fact may affect the outcome of the lawsuit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A court need not consider irrelevant and unnecessary factual disputes. *Id.* A dispute is genuine if a reasonable jury could return a verdict for the non-moving party based on the evidence. *Id.* The movant bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To do so, the moving party must present evidence that either negates an essential element of the non-movant's case or demonstrates the non-movant does not have evidence sufficient to support its case. *Id.* If the movant has met its burden, the non-movant must set forth specific facts showing there is a genuine issue for a trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith*

*Radio Corp.*, 475 U.S. 574, 587 (1986). In deciding a summary judgment motion, a court must believe the non-movant's evidence and draw all justifiable inferences in its favor. *Anderson*, 477 U.S. at 255.

Respondents' motion for summary judgment seeks a declaration that Petitioner is subject to 8 U.S.C. § 1225(b)(2)(A), and asks the Court to deny Petitioner's habeas petition and grant their motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. Respondents are not entitled to summary judgment as a matter of law, as the case presents a question of statutory interpretation. Below, Petitioner provides background on the relevant statutes and explains how they operate. This background offers necessary context for evaluating the text of the statutory provisions. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

#### **A. The INA and IIRIRA**

The **Immigration and Nationality Act of 1952** ("INA"), codified in Chapter 12 of Title 8 of the United States Code, serves as the foundational statute governing all aspects of U.S. immigration law. As detailed in 8 U.S.C. §§ 1101 et seq., the Act addresses critical issues such as qualifications for noncitizen admissions, procedures for naturalization and loss of nationality, refugee assistance programs, and removal protocols, including those for noncitizen terrorists. Immigration law necessitates navigating the manifold interplay between a noncitizen's arrival, stay, departure, or removal from the US. This is evident in various cross-referenced sections within the Act, such as § 1181(c) (linking refugee and immigrant admissions), § 1201(b) (differentiating noncitizen registration based on classes in § 1101), § 1229(a) (connecting grounds of

inadmissibility to removal proceedings), and § 1301 (conditioning visa issuance according to § 1201).

In 1996, Congress enacted the **Illegal Immigration Reform and Immigrant Responsibility Act** (“IIRIRA”), which “substantially amended” the INA’s judicial review framework with a “new (and significantly more restrictive) one” (*Nken v. Holder*, 556 U.S. 418, 424 (2009)). Beyond altering the availability of judicial review, IIRIRA introduced § 1225 to the INA, which outlines the expedited removal process for certain classes of noncitizens (*Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020); *Biden v. Texas*, 597 U.S. 785, 804 (2022)). The precursor to the current language of 8 U.S.C. § 1226, concerning the apprehension and detention of noncitizens, existed in the original 1952 INA. Most recently, Congress amended portions of § 1226 through the passage of the Laken Riley Act, which became Pub. L. No. 119-1 on January 29, 2025. 139 STAT. 3. PUBLIC LAW 119-1—JAN. 29, 2025.

#### **B. Evaluating Inadmissible Noncitizens**

8 U.S.C. § 1225 and § 1226 govern how the executive branch evaluates inadmissible noncitizens. Inspection or apprehension of the noncitizen is a necessary precondition of removal: only after a noncitizen is identified as inadmissible can removal proceedings happen. The Supreme Court has already differentiated these two sections, distinguishing their application by the category of noncitizens to which their provisions apply. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). *Jennings* held the Government may “detain certain [noncitizens] seeking admission into the country” under § 1225(b) while § 1226 “authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings.” *Id.* (emphasis added).

In particular, the statutory language of § 1225 details the process by which immigration officers inspect noncitizens arriving in the United States, refer them for hearings, and initiate procedures for expedited removal. *See* § 1225(a) (defining the categories of individuals that immigration officers are to inspect and statements these individuals may provide at inspection); § 1225(b) (detailing the process for conducting inspections, including screening, interviews, and referrals); § 1225(c) (providing grounds for expedited removal involving security concerns); § 1225(d) (outlining immigration officers' authority relating to inspection).

On the other hand, § 1226 describes how noncitizens may be apprehended and detained. *See* § 1226(a) (supplying an exhaustive list of scenarios noncitizens may face pending a removal decision, including being released on bond); § 1226(b) (describing the Attorney General's authority to revoke bond or parole); § 1226(c) (detailing the category of noncitizens that the Attorney General must take into custody); § 1226(d) (directing the Attorney General to create a system to identify criminal noncitizens); § 1226(e) (limiting judicial review of the Attorney General's discretionary decisions).

Beyond how noncitizens are identified as inadmissible, a key distinction between these two sections is the right to a bond hearing. Noncitizens detained under § 1226(a) are entitled to receive bond hearings at the outset of detention. 8 C.F.R. §§ 236.1(d)(1); *see also Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018). As articulated by the Ninth Circuit, "§ 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). It provides extensive procedural protections, including 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.*).

The gravamen of the present dispute lies in which section applies to the Petitioner, who was present in the United States without inspection at the time of his arrest and subsequent inadmissibility charge. Petitioner posits that § 1226(a) applies to him and those similarly situated. Respondents counter that § 1225(b)(2) is the governing authority because Petitioner is an “applicant for admission.” The determination of whether Petitioner is an “applicant for admission” is dispositive. If he is, § 1225 governs, mandatory detention applies, and he would not be entitled to the procedural safeguards and bond hearings provided under § 1226(a).

### **C. Plain Language of the INA**

Petitioner asserts that the plain language of the Immigration and Nationality Act (INA) supports his interpretation. Petitioner argues that the application of 8 U.S.C. § 1226(a) “does not turn on whether someone has been previously admitted,” thereby affording access to a bond hearing for inadmissible noncitizens. Furthermore, Petitioner contends that the text of 8 U.S.C. § 1225 reflects a limited temporal scope. Because § 1225(b)(2)(A) requires an “active construction” of the phrase “seeking admission” solely for “applicants for admission,” he argues that it cannot apply to him. Respondents, however, presume that Petitioner is an “applicant for admission” on the grounds that § 1225(b)(2) governs all individuals seeking admission who are not covered by § 1225(b)(1).

#### **1. The INA’s Definition Section**

Canons of statutory interpretation require courts to “presume that [the] legislature says in a statute what it means and means in a statute what it says there” (*Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992)). Thus, a court must “begin[] with the statutory text, and ends there as well if the text is unambiguous” (*BedRoc Ltd., LLC v. United States*, 541 U.S. 176,

183 (2004)), as “[s]tatutory definitions control the meaning of statutory words” (*Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949)).

The Immigration and Nationality Act (INA) provides clear definitions:

A “[noncitizen]” is “any person not a citizen or national of the United States” (§ 1101(a)(3)).

“Admission” and “admitted” mean “the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer” (§ 1101(a)(13)(A)).

Later, § 1225(a)(1) states that a noncitizen “present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission.”

When we apply the INA’s own definitions, “applicants for admission” are noncitizens who have not “lawful[ly entered] into the United States after inspection and authorization by an immigration officer” (See § 1101(a)(13)(A); § 1225(a)(1)). Despite these clear terms, the Respondents’ argument suggests § 1225(b)(2) somehow encompasses Petitioner as an “applicant for admission,” an interpretation that conflicts with the statute’s plain language.

Respondents ignore a crucial portion of *Jennings*. [Opp. at 21]. It is true that 8 U.S.C. § 1225(b)(2) applies to “other [noncitizens]” who “is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2). *Jennings* considered § 1226 as existing in harmony with § 1225(b)(2), where § 1226(a) “authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 270, 289 (2018). Individuals who have not been inspected and authorized by an immigration officer lack the trait to be categorized as “applicants for admission.” The statutory

language of § 1225(b)(2) contemplates a determination by an “examining immigration officer” regarding a noncitizen’s admissibility. *See* 8 U.S.C. § 1225(b)(2). When considering the statutory definitions of the Immigration and Nationality Act (INA) and the plain text of § 1225, it is unambiguous that “applicants for admission” do not include noncitizens already in the United States like Petitioner—individuals that were not determined inadmissible by an “examining immigration officer.”

This is further supported by the heading under which § 1225(a)(1) falls. This subsection falls under § 1225, which addresses “[i]nspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing.” 8 U.S.C. § 1225. Individuals who are present in the United States and have not been inspected and authorized by an immigration officer are merely part of the broadly defined term “[noncitizen]”: any person not a citizen or national of the United States. 8 U.S.C. § 1101(a)(4).

The plain language of 8 U.S.C. § 1226(a) supports Petitioner’s interpretation, and “no insuperable textual barrier” hinders this reading; therefore, § 1226(a) is the appropriate governing authority over Petitioner’s detention. *See Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 321 (2014).

## **2. The INA’s Statutory Scheme**

“[R]easonable statutory interpretation demands accounting for both specific context in which... language is used” and the “broader context of the statute as a whole” (*Utility Air Regulatory Group*, 573 U.S. at 321, citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). Petitioner’s interpretation of these statutes “produces a substantive effect that is compatible with the rest of the law” (*United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 372 (1988)). Petitioner asserts that § 1225 and § 1226 establish distinct regimes designed

to address separate categories of noncitizens. Section 1226 provides the “default detention authority” for all persons detained pending a removal decision, while § 1225 possesses a limited temporal scope concerning only the “inspection” and “expedited removal of inadmissible arriving [noncitizens].”

Judicial authority supports this distinction. *See Rodriguez v. Bostock*, 2025 WL 2782499, at 17 (W.D. Wash. Sept. 30, 2025) (concluding a “plain reading of [section 1226] implies that default discretionary bond procedures in section 1226(a) apply to noncitizens who... are ‘present in the United States without being admitted or paroled’ under section 1182(a)(6)(A) but have not been implicated in any crimes as set forth in section 1226(c)”). The court there found the language of § 1226 “lend[ed] strong textual support that ‘inadmissible’ noncitizens... are included within section 1226.” *Id.*

Accepting Respondents’ position—that all noncitizens already in the country (regardless of whether they were inspected and authorized by an immigration officer) were automatically “applicants for admission”—would leave no possible set of noncitizens to which § 1226(a) could apply. Respondents’ proposed interpretation requires that any and all inadmissible noncitizens are also “applicants for admission.” Such a premise cannot be harmonized with other portions of the INA. *See United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in the judgment) (explaining that the “presumption against ineffectiveness” means “that Congress presumably does not enact useless laws”). *See also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174–79 (2012) (regarding the rule against surplusage).

A meaningful distinction exists between § 1225 and § 1226. The text of these subsections reveals a crucial difference in their treatment of detention: detention under § 1226 is permissive;

detention under § 1225 is mandatory. The Ninth Circuit concluded these “permissive and mandatory descriptions are in harmony, as they apply to different situations.” *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015). Respondents’ expansive interpretation of “applicants for admission” would effectively nullify a portion of the INA through an impermissible DHS legislative or interpretive exercise of power. Neither is appropriate under the separation of powers. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 386 (2024) (establishing that “[t]he views of the Executive Branch could inform the judgment of the Judiciary, but [do] not supersede it.”).

Petitioner’s interpretation—that § 1226(a) is the governing authority and that he is not an “applicant for admission”—is consistent with the statutory scheme of the INA. *See generally* § 1226. Nowhere in § 1226 is the phrase “applicants for admission,” “admission,” or “admitted” used in the context raised in § 1225. Respondents unacceptably collapse § 1226 into nonexistence under a wide-reaching interpretation of “applicants for admission,” rendering § 1226(a) meaningless.

Where statutory language is unambiguous and “the statutory scheme is coherent and consistent,” the Court must end its inquiry. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989). The statutory provisions are unambiguous and consistent with Petitioner’s interpretation.

Respondents are not entitled to summary judgment as a matter of law; therefore, considering the above, Petitioner respectfully requests this Court deny Respondents’ motion for summary judgment.

## V. CONCLUSION

Petitioner's detention is governed by 8 U.S.C. § 1226(a), not the mandatory detention scheme of 8 U.S.C. § 1225(b)(2); therefore, Petitioner is statutorily entitled to a bond hearing. While 28 U.S.C. § 2241 does not impose a statutory exhaustion requirement, this Court retains discretion to enforce prudential exhaustion, but should waive it here because (1) the core issue involves a purely legal question of statutory interpretation (i.e., which section applies); (2) administrative remedies are inadequate for resolving such novel legal issues; and (3) requiring exhaustion would be futile and cause irreparable harm by prolonging unlawful detention.

#### VI. PRAYER FOR RELIEF

Wherefore, the Petitioner respectfully requests this Court to deny Respondents' *Motion to Dismiss* and, in the alternative, for *Summary Judgment*; declare that Petitioner's detention, the challenged action, violates the Due Process Clause of the Fifth Amendment; issue a *Writ of Habeas Corpus* ordering Respondents to release Petitioner immediately or provide him with a bond hearing within three days of this Court's order; award Petitioner attorney's fees and costs under the Equal Access to Justice Act or any other basis justified under law; and grant any further relief this Court deems just and proper.

Respectfully submitted,

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Dated: December 14, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Instrument was sent via ECF on December 14, 2025, to all counsel of record.