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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

8 JESUS PEREZ-REGALADO,
9 Petitioner,

Case No. 2:25-cv-02409-RFB-EJY

1 v.

0 THOMAS E. FEELEY, Director of
1 Enforcement and Removal Operations, Salt
2 Lake City Field Office, Immigration and
3 Customs Enforcement; KRISTI NOEM,
4 Secretary, U.S. Department of Homeland
5 Security; U.S. DEPARTMENT OF
6 HOMELAND SECURITY; PAMELABONDI,
7 U.S. Attorney General; EXECUTIVE OFFICE
8 FOR IMMIGRATION REVIEW; JOHN
9 MATTOS, Warden of NEVADA SOUTHERN
10 DETENTION CENTER, in their official
11 capacities

**PETITIONER'S TRAVERSE TO
FEDERAL RESPONDENTS'
RESPONSE TO ORDER TO SHOW
CAUSE**

3 Respondents.
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1 **INTRODUCTION**

2 Petitioner Jesus Perez-Regalado respectfully submits this Traverse to the Federal
3 Respondents' Response to the Order to Show Cause regarding his Amended Petition for Writ of
4 Habeas Corpus. This case presents a straightforward question of statutory interpretation with
5 significant constitutional implications: whether Petitioner, a Mexican national who has resided in
6 the United States for approximately nineteen years since entering without inspection in 2006, is
7 subject to mandatory detention under 8 U.S.C. § 1225(b)(2) as an "applicant for admission" or
8 whether his detention should be governed by 8 U.S.C. § 1226(a), which would entitle him to a
9 bond hearing.
10

11 The Federal Respondents contend that Petitioner is subject to mandatory detention under
12 § 1225(b)(2) based on the Board of Immigration Appeals' recent decision in *Matter of Yajure*
13 *Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This interpretation, however, contradicts the statutory
14 text, legislative intent, constitutional protections afforded to long-term residents, and this Court's
15 consistent rulings in similar cases. As the Federal Respondents acknowledge, this Court has
16 repeatedly held that similarly situated petitioners are entitled to bond hearings under § 1226(a).
17 Petitioner respectfully requests that the Court grant the writ of habeas corpus to the extent of
18 ordering a bond hearing consistent with due process and proper statutory interpretation.
19

20 **FACTUAL BACKGROUND**

21 Petitioner Jesus Perez-Regalado is a citizen of Mexico who entered the United States
22 without inspection in or about 2006 at an unknown location. Since that time, he has resided
23 continuously within the United States for approximately nineteen years. He is the father of three
24 U.S. citizen children: Jazmin, age 21, [REDACTED], age 16, and [REDACTED] age 14. His eldest daughter,
25 Jazmin, suffers from pectus excavatum and has undergone four major surgeries since the age of

1 14, including a complex modified procedure this past July involving titanium bars and
2 stabilizers. She remains under strict physical restrictions until at least January 2026 and requires
3 continuous follow-up care until 2029. Because of her condition, she cannot work or support
4 herself; She depends entirely on her father for transportation, financial stability, emotional
5 support, and continued medical treatment. Petitioner's wife, Rocio, suffers from strokes; she is in
6 need of constant care, further, she has significant ties to the Las Vegas community.

7 After posting bail for a domestic violence accusation, he was apprehended on November 6,
8 2025, in Las Vegas, and placed in removal proceedings under 8 U.S.C. § 1229a. Respondents
9 have improperly classified Petitioner under 8 U.S.C. 1225(b)(2)(A), a statute *reserved for*
10 *arriving aliens* and denied him bond jurisdiction pursuant to *Matter of Yajure-Hurtado*, 29 I. &
11 N. Dec. 216 (BIA 2025). He has never been before a judge, his former attorney without the
12 knowledge or consent of Petitioner, moved up his hearing and waived his presence and right to
13 be heard.

14
15 Petitioner is detained under 8 U.S.C. § 1226(a), which permits release on bond. The
16 government's new interpretation of § 1225(b)(2) contradicts statutory text, legislative history, and
17 longstanding agency practice. This classification is legally erroneous and contrary to the
18 reasoning of the District of Nevada in Case No. 2:25-cv-01819-RFB-BNW, which granted
19 habeas relief to a similarly situated long-term interior resident. Section 1225(b)(2)(A) applies
20 only to arriving aliens, not long-term interior residents like Petitioner.

21
22 Petitioner's continued detention violates statutory and constitutional limits governing
23 immigration detention, as confirmed by Supreme Court, Ninth Circuit, and district court
24 precedent. Thus, Respondents' reliance on that statute is unlawful.

1 Petitioner's continued detention without a bond hearing violates both statutory constraints
2 and constitutional requirements required by the Supreme Court, Ninth Circuit and all relevant
3 district courts

4 Petitioner has received no individualized custody review, and the automatic stay
5 provision under 8 C.F.R. § 1003.19(i)(2) deprives Petitioner of meaningful procedural
6 safeguards, resulting in arbitrary and unreasonably prolonged detention.

7
8 Petitioner's continued detention has resulted in exceptional and extremely unusual
9 hardship to his U.S. Citizen children, especially to [REDACTED], who suffers from Pectus Excavatum,
10 a congenital deformity of the chest wall characterized by a sunken sternum and rib cage, as
11 mentioned prior. If not treated properly, it could significantly affect cardiopulmonary function,
12 physical endurance, and overall health. This disease requires continuous medical monitoring,
13 diagnostic imaging and surgical intervention. This level of coordinated care is largely
14 unavailable or extremely limited in many countries abroad. Relocation to a country with limited
15 medical resources and instability will worsen these emotional challenges, especially during
16 adolescence, critical developmental period. *Figueroa v. Mukasey*, 543 F.3d 487 (9th Cir. 2008),
17 impliedly overruled on other grounds in *Abebe v. Mukasey*, 554 F.3d 1203 (9th Cir. 2009)
18 *Ramirez-Perez v. Garland*, No. 19-73276, 2024 WL 885133, at *1 (9th Cir. Mar. 1, 2024)
19 significant medical needs of qualifying children are central to hardship analysis.

20
21 In addition to [REDACTED]'s serious medical challenges posed, her hardship is significantly
22 worsened by the fact that her father, the Petitioner, is the primary and is, for all practical
23 purposes, the only source of financial support, emotional stability and logistical coordination for
24 her medical treatment. If her father continues to be detained, [REDACTED] will face immediate and
25 severe disruptions to her medical treatment, which goes well beyond ordinary hardship. The loss

1 of financial support directly exacerbates the medical hardship recognized by court such as
2 *Figueroa v. Mukasey, supra*, where inability to afford ongoing care was a major hardship factor.

3 Petitioner's continued detention is not merely a family separation. It directly threatens the
4 daughter's ability to receive life-altering medical care. This factor alone, combined with other
5 hardship elements substantially meets the "exceptional and extremely unusual hardship"
6 standard.

7 On November 5, 2025, Petitioner was arrested in Las Vegas, Nevada, on charges of
8 domestic violence. The following day, after the state bond was posted, November 6, 2025, the
9 Department of Homeland Security (DHS) detained Petitioner pursuant to immigration authorities
10 and issued a Notice to Appear (NTA) charging him with removability under INA §§
11 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) for unlawful entry and lack of valid entry documents.
12 Petitioner was placed in removal proceedings under 8 U.S.C. § 1229a.

13 Counsel appeared *without* Petitioner before an Immigration Judge on November 17,
14 2025. Petitioner was never notified that his bond hearing had been rescheduled (moved up for
15 convenience of counsel and the court apparently) and therefore deprived of the opportunity to
16 appear. He did not knowingly or voluntarily waive his appearance, nor authorize prior counsel
17 to do so. The Immigration Judge denied bond, finding that Petitioner is subject to mandatory
18 detention as an "applicant for admission" under 8 U.S.C. § 1225(b)(2), citing the Board of
19 Immigration Appeals' (BIA) recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216
20 (BIA 2025). Petitioner has not appealed the bond denial to the BIA
21

22 Petitioner challenges the lawfulness of his detention without bond, asserting that the
23 statutory framework governing his detention is 8 U.S.C. § 1226(a), which permits bond hearings,
24

25 ¹ Former counsel, without notice (much less consent) to Petitioner, unilaterally, for counsel's
convenience, waived Petitioner's presence three days before the Petitioner expected to appear..

1 rather than the mandatory detention provisions of § 1225(b)(2). The Federal Respondents
2 acknowledge that this Court has consistently ruled in favor of similarly situated petitioners in
3 multiple cases, finding they are entitled to bond hearings. Nevertheless, the Federal Respondents
4 ask this Court to depart from its precedent based on the BIA's recent decision in *Hurtado* and
5 out-of-circuit district court decisions.

6 SUMMARY OF ARGUMENT

7
8 Petitioner's detention should be governed by 8 U.S.C. § 1226(a), which provides for
9 discretionary detention and bond hearings, rather than the mandatory detention provisions of 8
10 U.S.C. § 1225(b)(2). This conclusion is supported by two primary arguments:

11 First, the plain language of § 1225(b)(2)(A) applies only to aliens who are actively
12 "seeking admission" at or near the time of entry, not to long-term residents like Petitioner who
13 has been living in the United States for approximately nineteen years. The phrase "seeking
14 admission" in § 1225(b)(2)(A) must be given independent meaning beyond the statutory
15 definition of "applicant for admission," or it would be rendered superfluous. The Federal
16 Respondents' interpretation—that all aliens present without admission are subject to mandatory
17 detention regardless of their circumstances—leads to absurd results that Congress could not have
18 intended and contradicts decades of agency practice.

19
20 Second, the principle of constitutional avoidance requires interpreting § 1225(b)(2) to
21 permit bond hearings for long-term residents like Petitioner. The Fifth Amendment's Due
22 Process Clause applies to all persons within the United States, including undocumented
23 immigrants, and provides protection against arbitrary detention. As an individual's ties to the
24 United States increase over time, so too does their constitutional status and the procedural
25 protections to which they are entitled. Mandatory detention without an individualized bond

1 redetermination raises serious constitutional concerns when applied to long-term residents who
2 have developed significant ties to the United States.

3 For these reasons, the Court should hold that Petitioner's detention is governed by §
4 1226(a), which would entitle him to a bond hearing, rather than by § 1225(b)(2), which would
5 subject him to mandatory detention.

6 ARGUMENT

7 **I. SECTION 1226(a), NOT SECTION 1225(b)(2), GOVERNS PETITIONER'S** 8 **DETENTION BECAUSE HE IS NOT "SEEKING ADMISSION" WITHIN THE** 9 **MEANING OF THE STATUTE**

10 The Immigration and Nationality Act (INA) establish different detention authorities
11 depending on an alien's status and circumstances. The proper interpretation of these provisions
12 requires examining them in context and as part of a coherent statutory scheme. As the Supreme
13 Court has instructed, a reviewing court should not examine a particular statutory provision in
14 isolation, as "[t]he meaning -- or ambiguity -- of certain words or phrases may only become
15 evident when placed in context." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120,
16 120 S. Ct. 1291 (2000). Courts must interpret statutes "as a symmetrical and coherent regulatory
17 scheme" and "fit, if possible, all parts into a harmonious whole." *Id.*

18 The INA provisions at issue appear in Part IV of Title 8, Chapter 12, which addresses
19 "Inspection, Apprehension, Examination, Exclusion, and Removal." *Johnson v. Guzman Chavez*,
20 594 U.S. 523, 141 S. Ct. 2271 (2021). These sections proceed sequentially through the removal
21 process: § 1225 addresses inspection of aliens and referrals for removal hearings; § 1226
22 authorizes detention pending removal decisions; and § 1231 governs detention after a removal
23 order. *Id.* This sequential structure provides important context for interpreting the scope of each
24
25

1 provision.

2 Two statutory provisions are central to this case:

- 3 1. First, 8 U.S.C. § 1225(b)(2)(A) provides that "in the case of an alien who is an applicant
4 for admission, if the examining immigration officer determines that an alien seeking
5 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be
6 detained for a proceeding under section 1229 a of this title." 8 USCS § 1225.
7
- 8 2. Second, 8 U.S.C. § 1226(a) provides that "[o]n a warrant issued by the Attorney General,
9 an alien may be arrested and detained pending a decision on whether the alien is to be
10 removed from the United States." This provision further states that the Attorney General
11 "may" either "continue to detain the arrested alien" or release the alien on bond or
12 conditional parole. 8 USCS § 1226.

13 The Supreme Court has recognized that § 1225(b)(2) is a "catchall provision that applies
14 to all applicants for admission not covered by [§ 1225(b)(1)]." *Jennings v. Rodriguez*, 583 U.S.
15 281, 138 S. Ct. 830 (2018). The Court has also held that §§ 1225(b)(1) and (b)(2) "mandate
16 detention of applicants for admission until certain proceedings have concluded." *Id.* However,
17 the Court did not address the specific question presented here: whether § 1225(b)(2) applies to
18 long-term residents who entered without inspection many years ago.

19 Respondent entered the United States without inspection in 2006. After his arrest in 2025,
20 DHS placed him into § 240 removal proceedings. By statute, INA § 235(b)(2)(A) applies to
21 arriving aliens encountered at ports of entry during inspection. By contrast, INA § 236(a)
22 governs custody for aliens already inside the country who are placed in § 240 removal
23 proceedings.
24

25 //

DHS'S MISAPPLICATION OF INA § 235(B)(2)(A)

1
2 Until recently, DHS itself recognized that INA § 236(a) was the proper detention
3 authority for individuals “present without admission or parole” (PWAP) and charged directly
4 into § 240 proceedings. Now, DHS argues that INA § 235(b)(2)(A) is more favorable to its
5 position and asks this Court to abandon decades of precedent.

6 The plain language, statutory structure, and congressional intent confirm otherwise. INA
7 § 236(a) has long governed custody determinations for aliens already inside the country—those
8 arrested and detained while living here unlawfully. *See Lopez-Campos v. Raycraft*, No. 2:25-cv-
9 12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).

10
11 INA § 235(b)(2)(A) provides that immigration officials “shall” detain “an applicant for
12 admission, if the examining immigration officer determines that an *alien seeking admission* is
13 not clearly and beyond a doubt entitled to be admitted.” This provision is directed to arriving
14 aliens at ports of entry or the border. *Id.*

15 DHS now claims the term “applicant for admission” includes not only arriving aliens but
16 also anyone present in the United States without admission or parole. See Dep’t of Homeland
17 *Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). But this reading ignores the statutory word
18 “seeking.” *Lopez-Campos, supra*. The phrase implies an ongoing act of seeking entry, which by
19 its nature occurs at inspection at the border—not years after someone has been living inside the
20 country. *Id.*

21
22 He was not “seeking admission” when apprehended and there was no “examining
23 immigration officer” conducting an inspection at a port of entry. There is no logical
24 interpretation that would find that Mr. Regalado was actively “seeking admission” after having
25

1 resided here, albeit unlawfully, for almost twenty years. *Id.* Accordingly, INA § 235(b)(2)(A)
2 does not apply.

3 **II. INA § 236(A) PROVIDES THE PROPER AUTHORITY FOR THE IJ'S**
4 **CUSTODY REDETERMINATION.**

5 By contrast, INA § 236(a) squarely applies here. It provides that upon “a warrant issued by
6 the Attorney General; an alien may be arrested and detained pending a decision on whether the
7 alien is to be removed.” *Id.* The statute expressly authorizes bond determinations by an IJ for
8 aliens in § 240 proceedings.

9 Respondent has been physically present in the U.S. since 2006 without admission or
10 parole. He was arrested and detained. He is in § 240 proceedings, charged under INA §
11 212(a)(6)(A)(i). Therefore, the Attorney General, “may continue to detain” and “may release on
12 bond.” *Id.* While this language is discretionary, the statute provides that the alien has the right to
13 request a custody redetermination (i.e., bond hearing) before an IJ – which is precisely what Mr.
14 Regalado has done. INA § 236, 8 U.S.C. § 1226. Likewise, *Matter of Yajure Jurtado*, 27 I&N
15 Dec. 795, 797–98 (BIA 2020) and *Matter of Adeniji*, 25 I&N Dec. 1102, 1111 (BIA 1999)
16 confirm that custody authority for such respondents lies under § 236(a), giving the Immigration
17 Judge jurisdiction to redetermine bond.
18

19 Like *Lopez-Campos*, *supra*, the NTA in Respondent’s case reflects this reality: DHS
20 checked the box for “alien present in the United States who has not been admitted or paroled,”
21 not “arriving alien.” Only after Respondent requested a bond hearing did DHS attempt to recast
22 his detention authority under § 235(b)(2)(A). *Id.*

23 Congressional intent further confirms this reading. If Congress had intended for INA §
24 235 to govern all aliens present in the country who have not been admitted—regardless of how
25 long they have been here—then the recent amendment through the Laken Riley Act, which

1 exempts a subset of aliens, would be pointless, not merely a “doubly sure” as DHS suggests.
2 (DHS Appeal Brief, pg 21).

3 The only logical reading is that INA § 235 applies in a specific and narrower context,
4 such as recent arrivals at or near the border, while INA § 236 governs those, like Petitioner, who
5 has lived in this country for over nineteen years. Moreover, Petitioner is prima facie eligible for
6 cancellation of removal under INA § 240A(b). His statutory eligibility for relief provides an
7 additional and compelling incentive to appear at all future hearings, further demonstrating that he
8 falls squarely within § 236(a) custody authority.

9 The Federal Respondents' argument that these phrases are synonymous violates the
10 fundamental canon of statutory construction that "a statute ought, upon the whole, to be so
11 construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or
12 insignificant." *Duncan v. Walker*, 533 U.S. 167, 121 S. Ct. 2120 (2001). Courts are "reluctant to
13 treat statutory terms as surplusage" in any setting. *Id.* This principle is particularly important
14 when the term occupies "so pivotal a place in the statutory scheme" as does the phrase "seeking
15 admission" in § 1225(b)(2)(A). *id.* If Congress had intended § 1225(b)(2)(A) to apply to all
16 "applicants for admission" as defined in § 1225(a)(1), it would have simply used that term rather
17 than adding the qualifier "seeking admission."
18

19 Numerous district courts have recognized this distinction. As one court explained, "If §
20 1225(b)(2)(A) applied to each 'applicant for admission,' the phrase 'seeking admission' would be
21 surplusage. The canon against surplusage urges courts to give each word meaning." *Chang*
22 *Barrios v. Shepley*, No. 1:25-CV-00406-JAW, 2025 WL 2772579, at *8 (D. Me. Sept. 29, 2025).
23

24 Similarly, another court noted, "If all applicants for admission were seeking admission to
25 the country, there would be no need to include the phrase seeking admission in the statute." *Loa*

1 *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 U.S. Dist. LEXIS 208290 (D. Colo. Oct.
2 22, 2025).

3 **III. PETITIONER IS NOT "SEEKING ADMISSION" WITHIN THE MEANING OF**
4 **§ 1225(B)(2)(A).**

5 Petitioner, who has been living in the United States for 19 years, is not "seeking
6 admission" in any meaningful sense of that phrase. He was arrested within the interior of the
7 United States, far from any border, and was not attempting to enter the country when
8 apprehended. The phrase "seeking admission" implies an affirmative act—an attempt to gain
9 lawful entry—not merely the status of being present without admission.

10 This interpretation is consistent with the historical distinction between exclusion and
11 deportation proceedings that existed prior to IIRIRA. As the courts have explained, those
12 "seeking 'admission' and trying to avoid 'exclusion' were already within our territory (or at its
13 border), but the law treated them as though they had never entered the United States at all; they
14 were within United States territory but not 'within the United States.'" *Patel v. McElroy*, 143
15 F.3d 56 (2d Cir. 1998). In contrast, those "who had been admitted (or found their way in) but
16 sought to avoid 'expulsion' had the added benefit of 'deportation proceedings'; they were both
17 within United States territory and 'within the United States.'" *Id.* While IIRIRA eliminated the
18 formal distinction between exclusion and deportation proceedings, merging them into "removal"
19 proceedings *Cruz-Miguel v. Holder*, 650 F.3d 189 (2d Cir. 2011), it did not eliminate the
20 substantive distinction between aliens at the border seeking entry and those who have been living
21 in the country for extended periods. The phrase "seeking admission" in § 1225(b)(2)(A)
22 preserves this distinction by limiting mandatory detention to those actively attempting to gain
23 admission.
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1 As one court recently explained, the government's "sweeping and unlimited reading of
2 'applicants for admission' ignores the fact that that term is further limited in § 1225(b)(2) by the
3 active construction of the phrase 'seeking admission' which entails some kind of affirmative
4 action taken to obtain authorized entry." *Echevarria v. Bondi*, No. CV-25-03252, 2025 U.S. Dist.
5 LEXIS 196174 (D. Ariz. Oct. 3, 2025).

6 **IV. THE FEDERAL RESPONDENTS' INTERPRETATION LEADS TO ABSURD** 7 **RESULTS.**

8 The Federal Respondents' interpretation—that all aliens present without admission are
9 subject to mandatory detention under § 1225(b)(2) regardless of their circumstances—leads to
10 results that Congress could not have intended. Under this reading, virtually all undocumented
11 immigrants in the United States would be subject to mandatory detention without possibility of
12 bond if placed in removal proceedings, regardless of their ties to the community, lack of flight
13 risk, or non-dangerousness.

14 Such an interpretation raises serious constitutional concerns. The Supreme Court has
15 recognized that permanent detention without the possibility of bond would be constitutionally
16 problematic and has construed immigration statutes to avoid such results. *Usama Jamil Hamama*
17 *v. Adducci*, 946 F.3d 875 (6th Cir. 2020). The canon of constitutional avoidance permits courts
18 "to choose between competing plausible interpretations of a statutory text, one of which
19 implicates constitutional problems the other would avoid." *D.B. v. Cardall*, 826 F.3d 721 (4th
20 Cir. 2016). This canon "allows courts to avoid the decision of constitutional questions" and is "a
21 tool for choosing between competing plausible interpretations of a statutory text, resting on the
22 reasonable presumption that Congress did not intend the alternative which raises serious
23 constitutional doubts." *Clark v. Suarez Martinez*, 543 U.S. 371, 125 S. Ct. 716 (2005).

24 The Supreme Court has applied this principle in the immigration context, construing an
25

1 immigration statute "to contain an implicit 'reasonable time' limitation" due to "serious
2 constitutional concerns" with the "indefinite detention" of certain aliens. *D.B. v. Cardall*.
3 Similarly, here, interpreting § 1225(b)(2)(A) to apply only to aliens actively seeking admission at
4 or near the time of entry avoids the serious constitutional concerns that would arise from
5 subjecting long-term residents to mandatory detention without bond.

6
7 **V. THE BIA'S DECISION IN *MATTER OF YAJURE HURTADO* IS NOT ENTITLED
8 TO DEFERENCE**

9 Federal Respondents rely heavily on the BIA's recent decision in *Matter of Yajure*
10 *Hurtado*. However, this decision represents a dramatic departure from decades of agency
11 practice, during which immigration judges routinely held bond hearings for undocumented
12 immigrants who had been living in the United States. The Supreme Court has recognized that
13 when an agency changes its existing position, it "must at least 'display awareness that it is
14 changing position' and 'show that there are good reasons for the new policy.'" *Encino Motorcars,*
15 *LLC v. Navarro*, 579 U.S. 211, 136 S. Ct. 2117 (2016). Moreover, the agency must be "cognizant
16 that longstanding policies may have 'engendered serious reliance interests that must be taken into
17 account.'" *Id.* An "unexplained inconsistency" in agency policy is "a reason for holding an
18 interpretation to be an arbitrary and capricious change from agency practice." *Id.*

19 Furthermore, "an agency interpretation that conflicts with the agency's earlier
20 interpretation is entitled to considerably less deference than a consistently held agency view."
21 *Cargill v. Garland*, 57 F.4th 447 (5th Cir. 2023). The BIA's sudden reversal of its longstanding
22 interpretation significantly diminishes any deference owed to *Hurtado*.

23 **VI. SECTION 1226(A) IS THE PROPER AUTHORITY FOR PETITIONER'S**
24 **DETENTION**

1 The more reasonable interpretation of the statutory scheme is that § 1225(b)(2)(A)
2 applies to aliens who are actively "seeking admission" at or near the time of entry, while §
3 1226(a) applies to aliens who have been living in the United States for extended periods. Unlike
4 § 1225(b)(2), § 1226(a) "applies to a wide swath of noncitizens, many of whom have no criminal
5 record at all." *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). This provision allows for
6 bond hearings, where a noncitizen can demonstrate "that such release would not pose a danger to
7 property or persons, and that the alien is likely to appear for any future proceeding." *Id.*

8 This interpretation is consistent with the traditional understanding of these provisions. As
9 one court explained, "§ 1226 applies to noncitizens already present in the United States, while §
10 1225 authorizes detention of certain noncitizens seeking admission." *Ortiz Donis v. Chestnut*,
11 No. 1:25-CV-01228 JLT SAB (E.D. Cal. 2025).

12 Numerous district courts have rejected the Federal Respondents' expansive construction
13 of § 1225(b)(2). These courts have "examined the text, structure, agency application, and
14 legislative history of 1225(b)(2) and concluded that it applies only to noncitizens 'seeking
15 admission,' a category that does not include noncitizens like [Petitioner], living in the interior of
16 the country." *Aceros v. Kaiser*, No. 25-cv-06924-EMC (N.D. Cal. Sep. 12, 2025). As one court
17 held, "the detention of noncitizens such as Petitioner, who are arrested and detained within the
18 United States, is governed by 8 U.S.C. § 1226(a) and [Petitioner] is thus entitled to a bond
19 hearing." *Rocha v. Hyde, Civil Action*, No. 25-CV-12584-ADB, (D. Mass. Oct. 2, 2025).

20 Indeed, the Federal Respondents acknowledge that this Court has consistently ruled in
21 favor of similarly situated petitioners in multiple cases, finding they are entitled to bond
22 hearings. The Federal Respondents cite eight cases in which this Court has rejected their
23 interpretation of § 1225(b)(2). This consistent precedent further supports Petitioner's position.
24
25

1 **VII. THE CASES CITED BY THE GOVERNMENT HAVE BEEN REJECTED IN**
2 **THE MAJORITY OF JURISDICTIONS.**

3 As recently as October 27, 2025, in *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL
4 3006763, (W.D. Ky. Oct. 27, 2025) the District Court specifically and persuasively analyzed
5 and rejected. *Chavez & Vargas Lopez*,² holding at pp 2-4:

6 “This Court is not obligated to follow those rulings because they are contrary to cases
7 within the Sixth Circuit and the overwhelming majority of cases across the country.
8 Moreover, Chavez creates an internal split within the District of Nebraska. See Garcia
9 *Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); see also, *Jacinto v. Trump*,
10 F.Supp.3d 2025 WL 2402271 (D. Neb. Aug. 19, 2025). And although not within the same
11 district court, there is now a split within California district courts as well. See *Arrazola-*
12 *Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (holding that Section 1226,
13 not Section 1225 applies to Petitioner). The Court finds it noteworthy, too, that neither
14 *Chavez* nor *Vargas Lopez* interact with the majority case law that exists either within their
15 district, circuit, or the country. Both decisions appear to take a review on the matter as one
16 of first impression. That is, neither decision makes any reference to the existing body of
17 case law that exists within their district or the United States at large. And specifically,
18 neither decision makes any reference to any of this Courts' previous decisions. Furthermore,
19 even after a thorough review of those decisions by the Court, the Court finds the analysis in
20 *Beltran Barrera* correct. *Beltran Barrera v. Tindall et al*, No. 3:2025cv00541 (W.D. Ky.
21 2025). Although both *Chavez & Vargas Lopez* also conducted their own analysis, the Court
22

23
24 ² *Chavez v. Noem*, F.Supp.3d, 2025 WL 2730228 (S.D. Cal. Sep. 24, 2025) and *Vargas Lopez*
25 *v. Trump*, F.Supp.3d 2025 WL 2780351 (D. Neb. Sep. 30, 2025).

1 believes they did not analyze the entirety of the statutes. This Court reviewed “each and
2 every word” of the statutes, including “the title.” *Barrea*, 2025 WL 2690565, at *4. The
3 Supreme Court has told lower courts that when a statute is ambiguous, a “title is especially
4 valuable [where] it reinforces what the text's nouns and verbs independently suggest.” *Yates*
5 *v. United States*, 574 U.S. 528, 552, 135 S.Ct. 1074, 191 L.Ed.2d 64 (Alito, J., concurring in
6 judgment). Thus, this Court held that the title of Section 1225, “Inspection by immigration
7 officers; expedited removal of inadmissible arriving aliens; referral for hearing” with the
8 addition of “arrival” in comparison to Section 1226, reinforces the specific and narrow
9 nature of Section 1225. *Barrea*, 2025 WL 2690565, at *4. The addition of “arrival”
10 reinforces the narrowness, as the statute focuses on noncitizens who arrive via “crewman”
11 or as “stowaways.” *Id.* Further, neither opinion thoroughly analyzed the context of where
12 Section 1225 sits within the immigration scheme, as *Barrera* does. *Id.* (holding that the
13 including of the catchall provision of Section 1226, after a narrower Section 1225, is “likely
14 no coincidence”) (quoting *Pizarro Reyes*, 2025 WL 2609425, at *5).

16 “And lastly, contrary to both *Chavez & Vargas Lopez*, this Court expressly disagreed
17 with the holding in *Matter of Yajure Hurtado*. 29 I&N Dec. 216 (2025). *Chavez* does not
18 appear to interact with *Hurtado* at all, outside of recognizing that it is “precedential.”
19 *Chavez*, F.Supp.3d 2025 WL 2730228, at *3. *Vargas Lopez* correctly notes that *Hurtado* is
20 not binding on them, but agrees with the analysis. F.Supp.3d 2025 WL 2780351, at *9.
21 On the contrary, this Court expressly stated that the BIA does not control over federal
22 district courts, and that this Court believes the decision in *Hurtado* was incorrect. *Beltran*,
23 2025 WL 2690565, at *5. *Orellana v. Noem*, No. 4:25-CV-112-RGJ, 2025 WL 3006763, at
24 *3–4 (W.D. Ky. Oct. 27, 2025)”
25

1 Petitioner submits that *Orellana v. Noem* is recent, persuasive and should control in the
2 instant case.

3 **VIII. THE PRINCIPLE OF CONSTITUTIONAL AVOIDANCE REQUIRES**
4 **INTERPRETING THE STATUTE TO PERMIT BOND HEARINGS FOR**
5 **LONG-TERM RESIDENTS.**

6 ***The Fifth Amendment's Due Process Protections Apply to All Persons Within the United States***

7 The Fifth Amendment provides that no "person" shall "be deprived of life, liberty, or
8 property, without due process of law." *USCS Const. Amend. 5*. This constitutional protection
9 extends to all persons within the United States, including undocumented immigrants. The courts
10 have consistently recognized that the Constitution establishes due process rights for all persons
11 within the United States, including aliens, whether their presence is lawful, unlawful, temporary,
12 or permanent. *Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d Cir. 2024). This fundamental
13 principle is deeply rooted in our constitutional jurisprudence and serves as a critical safeguard
14 against arbitrary government action.

15
16 As one court explained, "The Constitution protects both citizens and non-citizens. Under
17 the Fifth Amendment, an alien is entitled to due process of law in deportation proceedings."
18 *Zuniga-Perez v. Sessions*, 897 F.3d 114 (2d Cir. 2018). Another court noted that "The Fifth
19 Amendment entitles noncitizens to due process of law in removal proceedings. The Due Process
20 Clause applies to all persons within the United States, including aliens, whether their presence
21 here is lawful, unlawful, temporary, or permanent." *Baker v. Johnson*, 109 F. Supp. 3d 571
22 (S.D.N.Y. 2015).

23 ***There exists Due Process Requirements for Civil Detention***

24 At the core of due process is the right to notice and a meaningful opportunity to be heard.
25 *Nolasco v. Holder*, 637 F.3d 159 (2d Cir. 2011). The courts have recognized that civil detention

1 of aliens during removal proceedings can serve legitimate government purposes, such as
2 preventing flight and ensuring removal if ordered. *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th
3 Cir. 2008). However, even when detention is statutorily authorized, due process requires
4 adequate procedural protections to ensure that the government's asserted justification for physical
5 confinement outweighs the individual's constitutionally protected interest in avoiding physical
6 restraint. *Id.*

7 The courts have emphasized that there is "an important difference between whether
8 detention is statutorily authorized and whether it has been adequately determined to be necessary
9 as to any particular person." *Id.* This distinction is crucial in the present case, where Petitioner
10 has been detained without an individualized determination of whether such detention is
11 necessary to serve the government's legitimate interests.

12 The Federal Respondents rely on *Demore v. Kim*, 538 U.S. 510 (2003), for the
13 proposition that "detention during removal proceedings is a constitutionally permissible part of
14 that process." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 123 S. Ct. 1708 (2003). However,
15 *Demore* involved the detention of criminal aliens under § 1226(c), not the detention of non-
16 criminal aliens who have been living in the United States for many years. Moreover, the Court in
17 *Demore* emphasized the "limited period" of detention at issue, which is not necessarily the case
18 here. *Id.*

19 As one court has noted, "Due process protections do not disappear simply because
20 mandatory detention under Section 1226(c) is at least initially permissible. The government may
21 have 'significantly more latitude in detaining noncitizens,' as it argues, but even broad latitude
22 cannot be constitutionally unconstrained." *Doe v. Becerra*, 732 F. Supp. 3d 1071 (N.D. Cal.
23 2024).

Constitutional Status Changes with Length of Residence

1
2 The Supreme Court has recognized that an alien's constitutional status changes as they
3 develop ties to the United States. In *Landon v. Plasencia*, 459 U.S. 21, (1982), the Court
4 acknowledged that "once an alien gains admission to our country and begins to develop the ties
5 that go with permanent residence, his constitutional status changes accordingly." *Landon v.*
6 *Plasencia*, 459 U.S. 21, 103 S. Ct. 321 (1982). The Court further noted that an individual's
7 interest in remaining in the United States is "without question, a weighty one" as they stand to
8 lose "the right to stay and live and work in this land of freedom" and "the right to rejoin [their]
9 immediate family." *Id.*

10
11 This principle is particularly relevant to Petitioner, who has resided in the United States
12 for approximately nineteen years and has undoubtedly developed significant ties to this country
13 during that time. The constitutional protections afforded to Petitioner are therefore stronger than
14 those afforded to a recent arrival at the border. The Supreme Court has recognized that aliens are
15 "accorded a generous and ascending scale of rights as [they] increase[] [their] identity with our
16 society." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 110 S. Ct. 1056 (1990). This
17 principle reflects the understanding that as an individual's connection to the United States grows
18 stronger over time, so too does their entitlement to constitutional protections.

The Principle of Constitutional Avoidance Applies in this case

19
20
21 The canon of constitutional avoidance is "a tool for choosing between competing
22 plausible interpretations of a statutory text, resting on the reasonable presumption that Congress
23 did not intend the alternative which raises serious constitutional doubts." *D.B. v. Cardall*, 826
24 F.3d 721 (4th Cir. 2016). This canon "is not a method of adjudicating constitutional questions by
25

1 other means" but rather "a means of giving effect to congressional intent, not of subverting it."
2 *Clark v. Suarez Martinez*, 543 U.S. 371, 125 S. Ct. 716 (2005).

3 ***Constitutional Avoidance in an Immigration Context***

4 The Supreme Court has applied this principle in the immigration context, recognizing
5 that jurisdiction-limiting and discretion-protecting immigration statutes have limits that derive at
6 Least in part from constitutional principles. *Bunthoeun Kong v. United States*, 62 F.4th 608 (1st
7 Cir. 2023). In particular, the Court has held that "the post-removal-period statute must not be
8 read to permit indefinite, unreviewable detention." *Id*

9
10 In *Zadvydas v. Davis*, the Supreme Court construed an immigration detention statute "to
11 contain an implicit 'reasonable time' limitation" due to "serious constitutional concerns" with the
12 "indefinite detention" of certain aliens. *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491 (2001).
13 This approach demonstrates the Court's willingness to interpret immigration detention statutes in
14 a manner that avoids serious constitutional concerns.

15 ***Constitutional Concerns with Mandatory Detention of Long-Term Residents***

16 The Federal Respondents' interpretation of § 1225(b)(2) raises serious constitutional
17 concerns when applied to long-term residents like Petitioner. Reading § 1225(b)(2) to mandate
18 detention without bond for individuals who have resided in the United States for many years
19 would raise significant due process concerns. The Supreme Court has noted that §§ 1225(b)(1)
20 and (b)(2) "mandate detention of applicants for admission until certain proceedings have
21 concluded" and that "nothing in the statutory text imposes any limit on the length of detention."
22 *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830 (2018). However, the Court has also
23 recognized that "permanent detention under 8 U.S.C.S. § 1226(c) would be unconstitutional" and
24
25

1 has construed statutes to avoid such a result. *Usama Jamil Hamama v. Adducci*, 946 F.3d 875
2 (6th Cir. 2020).

3 The Ninth Circuit has previously "applied the canon of constitutional avoidance to
4 interpret other immigration provisions—8 U.S.C. §§ 1225(b), 1226(c), and 1231(a)(6)—as
5 providing a statutory right to a bond hearing once detention becomes prolonged." *Diaz v.*
6 *Garland*, 53 F.4th 1189 (9th Cir. 2022). This approach recognizes the serious constitutional
7 concerns raised by prolonged detention without an individualized bond determination.
8

9 In the civil detention context, due process requires that detention be reasonably related to
10 its purpose and not excessive in relation to that purpose. *United States v. Salerno*, 481 U.S. 739,
11 107 S. Ct. 2095 (1987). Mandatory detention without an individualized determination of flight
12 risk or danger to the community raises serious constitutional concerns, particularly for long-term
13 residents with substantial ties to the United States.

14 ***Distinguishing Between Recent Arrivals and Long-Term Residents***

15 The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
16 eliminated the bright-line distinction between exclusion and deportation, merging the two into
17 proceedings for "removal." *Cruz-Miguel v. Holder*, 650 F.3d 189 (2d Cir. 2011). After IIRIRA,
18 both aliens arriving at the border and aliens already present in the United States without
19 inspection are deemed "applicants for admission" who must be inspected by immigration officers
20 to determine their admissibility.^{id.} However, prior to IIRIRA, there were well-recognized
21 distinctions between "exclusion" and "deportation" proceedings. *Patel v. McElroy*, 143 F.3d 56
22 (2d Cir. 1998). Those seeking "admission" and trying to avoid "exclusion" were treated as
23 though they had never entered the United States at all, while those who had been admitted or
24 found their way in had the added benefit of "deportation proceedings." *Id.* This historical
25

1 distinction reflects the understanding that individuals who have developed ties to the United
2 States should be afforded greater procedural protections.

3 The Supreme Court has recognized that the constitutional sufficiency of procedures "varies
4 with the circumstances" and that courts must consider "the interest at stake for the individual, the
5 risk of an erroneous deprivation of the interest through the procedures used as well as the
6 probable value of additional or different procedural safeguards, and the interest of the
7 government in using the current procedures rather than additional or different procedures."

8 *Landon v. Plasencia.*

9
10 **IX. APPLICATION OF CONSTITUTIONAL AVOIDANCE TO PETITIONER'S
CASE**

11 Applying the principle of constitutional avoidance to Petitioner's case, the Court should
12 interpret § 1225(b)(2) to apply only to recent arrivals seeking admission, not to long-term
13 residents like Petitioner who have been living in the United States for nineteen years. This
14 interpretation would avoid the serious constitutional concerns raised by mandatory detention
15 without bond for long-term residents. While the government has a legitimate interest in "efficient
16 administration of the immigration laws at the border," *Landon v. Plasencia*, this interest must be
17 balanced against the individual's liberty interest and the risk of erroneous deprivation of that
18 interest. For long-term residents like Petitioner, the liberty interest is particularly strong, and the
19 risk of erroneous deprivation is significant when detention is mandatory without an
20 individualized determination of flight risk or danger to the community.

21
22 The Supreme Court has cautioned against reading statutes to permit indefinite,
23 unreviewable detention. *Bunthoeun Kong v. United States*. Similarly, the Court should avoid
24 reading § 1225(b)(2) to mandate detention without bond for long-term residents, as such an
25 interpretation would raise serious constitutional concerns.

1 Some district courts have already applied the principle of constitutional avoidance in this
2 context. For example, one court held that it would "apply the canon of constitutional avoidance
3 and construe 8 U.S.C.S. § 1225(b)(2)(A) as requiring an individualized bond hearing, before an
4 immigration judge, for aliens facing prolonged detention under that provision." *Centeno-Ortiz v.*
5 *Culley, No. 11-cv-1970 - IEG (POR), (S.D. Cal. Jan. 19, 2012).*

6 The principle of constitutional avoidance requires interpreting § 1225(b)(2) to permit
7 bond hearings for long-term residents like Petitioner. The Fifth Amendment's Due Process
8 Clause applies to all persons within the United States, including undocumented immigrants, and
9 provides protection against arbitrary detention. *Black v. Dir. Thomas Decker, Zuniga-Perez v.*
10 *Sessions.* As an individual's ties to the United States increase over time, so too does their
11 constitutional status and the procedural protections to which they are entitled. *Landon v.*
12 *Plasencia.*

13 Mandatory detention without an individualized bond determination raises serious
14 constitutional concerns when applied to long-term residents who have developed significant ties
15 to the United States. The principle of constitutional avoidance allows the Court to choose an
16 interpretation of the statute that avoids these constitutional concerns. *D.B. v. Cardall.* By
17 interpreting § 1225(b)(2) to apply only to recent arrivals and not to long-term residents like
18 Petitioner, the Court can avoid the serious constitutional questions raised by the Federal
19 Respondents' interpretation.
20

21 Therefore, the Court should hold that Petitioner's detention is governed by § 1226(a), which
22 would entitle him to a bond hearing, rather than by § 1225(b)(2), which would subject him to
23 mandatory detention. This interpretation is consistent with the principle of constitutional
24
25

1 avoidance and with the recognition that due process requires adequate procedural protections to
2 ensure that detention is necessary as to any particular person. *See Prieto-Romero v. Clark*.

3 Accordingly, the Court should order a prompt bond hearing under § 1226(a), at which
4 Petitioner is physically present, represented by counsel, and afforded a meaningful opportunity to
5 present evidence and testimony. Petitioner requests to be present at this bond hearing because his
6 prior counsel unilaterally and arbitrarily waived his appearance, and he has not yet had the
7 opportunity to personally address the Immigration Judge regarding the factors relevant to
8 custody, including flight risk and danger. Fundamental principles of due process require that
9 Petitioner be permitted to participate meaningfully in his own bond determination, particularly
10 where liberty interests are at stake.

11 CONCLUSION

12
13 For the foregoing reasons, Petitioner Jesus Perez-Regalado respectfully requests that this
14 Court grant the writ of habeas corpus and order a bond hearing pursuant to 8 U.S.C. § 1226(a).
15 The plain language of the statute, properly interpreted in context and in light of constitutional
16 concerns, supports the conclusion that § 1226(a), not § 1225(b)(2), governs Petitioner's
17 detention. This interpretation is consistent with this Court's prior rulings in similar cases and with
18 the due process protections afforded to long-term residents of the United States.

19 Dated this 3rd day of January 2026.

20
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