UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CESAR HERNANDEZ RESENDIZ, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	§ § § § § § § § §	Civil Action No. 4:25-CV-05940

THE FEDERAL RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

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TABLE OF CONTENTS

Contents

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

I. SUMMARY OF THE ARGUMENT

Respondents Kristi Noem, Department of Homeland Security, Todd Lyons, Pamela Bondi, and Bret Bradford (hereinafter, the "Federal Respondents")[1] hereby request that the Court deny the petition for writ of habeas corpus and grant summary judgment in the Government's favor, in accordance with Federal Rule of Civil Procedure 56.[2]

This case asks whether an alien present in the United States who has never been admitted is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). This challenge to the mandatory detention framework must fail on the merits as a plain reading of 8 U.S.C. § 1225 instructs that Petitioner is subject to mandatory detention. As an alien who has not been admitted into the United States, Petitioner is an "applicant for admission" and therefore "shall be detained" during the pendency of his removal proceedings. 8 U.S.C. § 1225(b)(2)(A). This Court should deny Petitioner's habeas petition, as it and multiple other district courts in the Fifth Circuit alone have done. *See, e.g.*, *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.).

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[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also id.* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the Federal Respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code. Therefore, while the named warden is the proper party in form, the Federal Respondents respond herein as the real party in interest.

[2] In light of Petitioner having also moved "for temporary restraining order and/or preliminary injunction" (Dkt. No. 2), the arguments herein are also directed in opposition against a grant of such extraordinary relief as Petitioner cannot show a substantial likelihood of success on the merits.

II. BACKGROUND

As Petitioner Cesar Hernandez Resendiz concedes, he is a native and citizen of Mexico and entered the United States without inspection. Dkt. No. 1 ¶¶ 1, 15. Resendiz alleges that he came into ICE custody after a November 2025 check-in. *Id.* ¶ 27. On December 1, 2025, Resendiz was placed in removal proceedings and served with a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled. *See* Exhibit 1 (Notice to Appear). In the NTA, the examining immigration official determined that Resendiz was not entitled to admission, explained the basis for charging Petitioner with being subject to removal, and ordered him to appear in immigration court. *Id.* Records do not show that Resendiz ever sought a bond. Resendiz directly brings this habeas claim asserting that his detention is unlawful because he falls under the INA's discretionary detention provision.

As a preliminary matter, it is useful to properly diagnose this atypical habeas petition filed by Resendiz. This Court is well-familiar with habeas petitions on this issue, which are generally no more than at most 10-to-20 pages long. Yet this petition, without exhibits, is itself 75 pages, filled with substantive legal argument.[3] The most apparent reason for this maneuver is to creatively circumvent any page limits and word counts imposed on motion practice by putting the arguments in the pleadings themselves, despite that federal pleadings should contain no more than "a short and plain statement of the claim showing that the

[3] As opposed to, for instance, a convoluted factual record or a great number of causes of action. Indeed, the facts section and the claims for relief section are each under two pages long; almost the entire petition is dedicated to argument.

pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). And in return, the opposing party will be hard-pressed to address all the points raised therein, particularly when subject to length restrictions in motion practice.

More fundamentally, this protracted petition is designed to inundate and overwhelm both the Court and the opposing party with a flood of discussions (many of which are distractions and/or arguments without merit) which cloak its author with a perceived shroud of expertise, while making a contrary ruling feel insurmountable. As one court puts,

> Judges impose page limits for a reason. They force parties to hone their arguments and to state those arguments succinctly. Page limits cause, or should cause, parties to dispense with arguments of little or no merit in favor of those arguments that have a better chance of carrying the day.

Kernan v. Comm'r, 108 T.C.M. (CCH) 503 (T.C. 2014), *aff'd sub nom. Kernan v. Comm'r of Internal Revenue*, 670 F.App'x 944 (9th Cir. 2016). This point is particularly evident here, where many of the arguments advanced in Resendiz's pleadings do not even make it into (1) his actual claims for relief, nor (2) his motion for preliminary injunctive relief where he argues the merits.[4] In those places, his arguments actually appear quite typical. This contrast reveals his own assessment as to the value of the other points heaped into his 75-page petition.

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[4] By way of just one example which Resendiz begins his legal discussion with, he invokes the Fourth Amendment, and the term "Fourth Amendment" appears 23 times throughout his arguments. Yet, his claims for relief do not even arguably allege a Fourth Amendment violation, and there is zero mention of the Fourth Amendment anywhere in his motion for preliminary injunctive relief. Of course, there is no merit to such argument, as this Court has previously held. *Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447, at *2 (S.D. Tex. Dec. 31, 2025) (rejecting the argument that the manner of arrest has bearing on the lawfulness of detention during removal proceedings).

By way of another example, Resendiz seems to argue in his petition that the Ex Post Facto Clause is applicable here, but that argument is also entirely absent from his claims for relief or his more sincere motion for preliminary injunctive relief. For good reason, as that theory is not even a colorable one given, *inter alia*, that Clause applies only to penal laws. *E.g.*, *Collins v. Youngblood*, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed.2d 30 (continue)

The Federal Respondents move for summary judgment and include herein argument on why Resendiz's petition must be denied as a matter of law, including on the main statutory points raised in Resendiz's motion for preliminary injunctive relief. Subject to both temporal and word count constraints, the Government will attempt to address, to the extent practicable, the deluge of ancillary points raised in Resendiz's petition. In consideration of word count, and given this Court's familiarity with the issue, the Government will forego recitation of background discussions, including the summary judgment standard, the nature of habeas claims, and high-level background on the relevant detention authorities.

III. ARGUMENT

Resendiz presents three claims: (1) a violation of the INA, (2) a violation of due process, and (3) a violation of ICE's regulations. The Federal Respondents first address Counts II and III, ancillary arguments which can be summarily disposed of, before turning to the main statutory dispute.

A. COUNT II: VIOLATION OF DUE PROCESS

Count II asserts that detention without a bond hearing during removal proceedings is itself a violation of due process. This claim is a throwaway argument which can be swiftly rejected, as it is well-settled that detention during the pendency of removal proceedings presents no due process concerns. *See, e.g.*, *Carlson v. Landon*, 342 U.S. 524, 238, 72 S.Ct. 525, 96 L.Ed. 547 (1952) ("Detention is necessary a part of th[e] deportation procedure."); *Wong*

(1990) ("[I]t has long been recognized by this Court that the constitutional prohibition on ex post facto laws applies only to penal statutes which disadvantage the offender affected by them.").

The point is that the onslaught of points urged in Resendiz's petition yet omitted from his more sensible motion for preliminary injunctive relief should be viewed with deserved skepticism.

Wing v. United States, 163 U.S. 228, 235, 16 S.Ct. 977, 41 L.Ed. 140 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As Supreme Court has stated in no unmistakable terms, "Detention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003).

Tellingly, Petitioner cites one case in this count: *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). *See* Dkt. No. 1 ¶ 159 n.147. His misplaced reliance on *Zadvydas* only highlights the de-merits of his argument, as *Zadvydas* and its six-month presumption apply only to aliens in "post-removal-period detention," i.e., it addresses the impropriety of indefinite post-removal order detention. 533 U.S. at 701. Indeed, the Supreme Court in *Demore* plainly contrasted *Zadvydas* post-removal-order detention with detention during removal proceedings, finding the latter permissible in light of the "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings[.]" 538 U.S. at 526. The Supreme Court explicitly distinguished the two types of detentions, rejecting the extension of *Zadvydas* to detention during removal proceedings and explaining at length why the two were fundamentally different. *See id.* at 527–31.

This Court has considered and rejected this very argument, explaining precisely the above: that while post-removal period detention under *Zadvydas* "require[es] a constitutional constraint on unbounded detention," detention pending a determination of removability "is a constitutional part of [the removal] process." *Jimenez v. Thompson*, 4:25-CV-05026, 2025 WL

3265493, at *1 (S.D. Tex. Nov. 24, 2025) (quoting *Demore*, 538 U.S. at 531); *see also Zi v. Gillis*, No. 5:19-CV-00150, 2020 WL 7390488, at *2 (S.D. Miss. Oct. 6, 2020) ("*Zadvydas* does not apply to Petitioner as he is currently detained pending removal proceedings.").[5]

Petitioner's argument that mandatory detention without a bond hearing is itself unconstitutional necessarily requires that the statutory provision 8 U.S.C. § 1225(b)(2)(A), which *requires* detention—is itself unconstitutional.[6] There is no support for such an argument.

B. COUNT III: REGULATORY VIOLATION

Count III, which alleges a violation of a federal bond regulation, is functionally duplicative of Resendiz's Count I statutory claim. The bond regulation that he avails himself to is only applicable if he is subject to discretionary detention, as opposed to mandatory detention. *See* 8 C.F.R. § 1003.19(a) (discussing "[c]ustody and bond determinations made by the service pursuant to 8 CFR part 1236," which "may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236"). Thus, the statutory dispute remains the core issue.

C. COUNT I: APPLICABLE DETENTION STATUTE

Finally is Resendiz's true, central claim: that his detention without a bond hearing violates the INA because he does not fall under 8 U.S.C. § 1225(b)(2)(A). In support, Resendiz can make textual arguments interpreting the terms of Section 1225(b)(2)(A), or he can make

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[5] Given this point, Resendiz's application of the *Mathews* factors in his motion for preliminary injunctive relief is academic.

[6] The mandatory detention provision provides for just that: mandatory detention. *See* 8 U.S.C. § 1225(b)(2)(A). If Petitioner's argument is that his detention without bond hearing under that statute violates due process, he is necessarily making the claim that the mandatory detention statute itself is unconstitutional; after all, the statute does not merely permit detention, the statute requires it. Petitioner has failed to identify, and undersigned counsel is unaware, of a single case holding that 8 U.S.C. § 1225(b)(2)(A) is unconstitutional (as opposed to merely inapplicable in certain contexts, as a statutory matter).

contextual arguments, whether it be legislative history or canons of interpretation based on the Laken Riley Act.

As this Court has declared on this very issue, "canons of statutory construction (like the presumption against superfluity) apply only where the text is ambiguous . . . but where, as here, the statutory text is unambiguous, canons of construction don't support departure from that text." *Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447, at *2 (S.D. Tex. Dec. 31, 2025). All the same, the Federal Respondents will show that every analysis informs that Resendiz falls squarely within 8 U.S.C. § 1225(b)(2)(A).

1. As this Court has held, the text is unambiguous that aliens present in the United States who have not been admitted are subject to mandatory detention.

By the plain terms of the INA, "[a]n alien present in the United States who has not been admitted . . . shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1); *see, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) (quoting 8 U.S.C. § 1225(a)(1) and explaining that an alien present in the country who has not been admitted is treated as an applicant for admission). And in turn, "in the case of an alien who is an applicant for admission," if that alien "is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" for removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

In his motion for preliminary injunctive relief, Petitioner devotes the entirety of his statutory argument to try to counter this straightforward text—including, as this Court is familiar with, arguing that despite being an applicant for admission, he is no longer "seeking admission." For many reasons, this argument cannot stand.

a. The two terms are synonymous.

The text states that "in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* . . . " These two phrases are uttered in the same breath and nothing textual nor contextual indicates that "seeking admission" is somehow a distinct concept. *See, e.g.*, *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.) ("Insofar as the term 'applicant for admission' is more passive than 'seeking admission,' this is inherent in the nature of agent nouns and their corresponding gerunds."); *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (rejecting this "hair-splitting parsing of the statute's text [which] contradicts the ordinary meaning" and "makes no sense"); *Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (rejecting this purported distinction as "pack[ing] a lot of meaning into what appears to be an alternate phrasing"); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) ("'[A]pplicant' and 'seeker' are, indeed, accepted synonyms." (citing multiple dictionaries)).

Even as a colloquial matter, this distinction "makes no sense." *Olalde*, 2025 WL 3131942 at *3. Indeed, it would be bafflingly illogical to construe a statute to begin a sentence by defining the subject ("in the case of an alien who is an applicant for admission") only to switch to a new subject ("an alien seeking admission") right after having defined the subject.[7] From an ordinary language perspective, there is no distinction.

[7] If a statute read, "In the case of a fisherman, if the person fishing does not properly bait their hook . . . ," surely one would not think that the provision discussed two distinct groups of people.

b. The term "or otherwise" confirms the ordinary meaning.

The terms are in fact linked in a related sub-provision in the same section of the INA, which refers to all aliens "who are applicants for admission *or otherwise seeking admission.*" 8 U.S.C. § 1225(a)(3) (emphasis added). The "or otherwise" signifies two points. First, it highlights that the INA considers "applicants for admission" to be a *subset* of "seeking admission." *See, e.g.*, *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). This language informs that at most, not all aliens "seeking admission" are necessarily "applicants for admission," but all "applicants for admission" are necessarily "seeking admission." And as Petitioner cannot contest, he is an applicant for admission. And second, the word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45, 134 S.Ct. 557, 187 L.Ed.2d 472 (2013). For both these reasons, "seeking admission" cannot be a distinct concept.

c. The notion that someone already inside the country can no longer be "seeking admission" is contradicted by the INA's definition of "admission."

There is perhaps some intuitive appeal to the argument that "seeking admission" is inapplicable to an alien already in the United States; as the argument might go, how could someone be seeking admission into the country if they are already in the country? But to someone well-versed in the INA, this argument crumbles upon a sincere inquiry.

The INA does not speak colloquially—certainly not in this context, as confirmed by the INA's statutory definition of "admission" which is defined *not* as "entry," as Resendiz

implicitly interprets that word, but rather as "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Admission, then, does not mean entry; it means *lawful* entry. *Id.* An alien is an applicant for admission notwithstanding any time he has been present in the United States if that alien has never lawfully gained entry into the country; he is still "seeking admission" because he has not attained what "admission" means: "lawful entry."[8] *See, e.g.*, *Olalde*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (making this same observation when ruling for the Government); *Chen v. Almodovar*, No. 1:25-CV-8350, 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (same); *see also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws[.]").

d. Multiple federal appellate courts have implicitly rejected a distinction between the terms.

Albeit not addressing this precise issue, two federal appellate courts have implicitly rejected this strained effort to separate the terms, treating them as synonymous. *See Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar v. Ashcroft*, 394 F.3d 8, 13 (1st Cir. 2005) (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission").

[8] This distinction should be intuitive. By way of a common analogy, a person might have physically entered a movie theater after sneaking past security, but that of course does not mean he has been admitted into the theater.

e. Congress could have used the term "arriving alien" in Section 1225(b)(2)(A) but chose differently.

Finally, Congress used the phrase "arriving alien" at various points throughout Section 1225, but not Section 1225(b)(2)(A).[9] *See, e.g.*, 8 U.S.C. §§ 1225(a)(2) (b)(1), (c), (d)(2). The two terms indeed stand in direct contrast, as Section 1225(b) applies to two distinct groups of "applicants for admission": Section (b)(1) applies to "arriving" or recently arrived aliens who must be detained pending expedited removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287. And in contrast to Section 1225(b)(1), Section 1225(b)(2) focuses *not* on arrival or entry but rather on *admission*. By Resendiz's argument, Section 1225(b)(2) is inapplicable to him because he was already in the country; but this group is precisely who the provision is geared toward, as the only other option—an "arriving" alien—falls under a different provision altogether. As put by this Court in agreement, Section 1225(b)(2)(A) "simply cannot be said to be limited to aliens arriving at the border." *Cabanas*, 2025 WL 3171331 at *5.

2. Beyond the plain text of Section 1225(b)(2)(A), no other considerations suggest departure from its clear terms.

As the foregoing shows, and the Court has agreed, the text of Section 1225(b)(2)(A) unambiguously applies to aliens like Resendiz who entered without inspection, are present in the country, and have never been admitted. *Naranjo*, 2025 WL 3771447 at *2 (remarking that

[9] This choice was deliberate; as explained by the Ninth Circuit, Congress passed IIRIRA "to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (quoting H.R. Rep. 104-469, pt. 1, at 225). And through this shift (including in Section 1225(b)(2)(A)), IIRIRA corrected "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Id.*

"here, the statutory text is unambiguous," and "canons of statutory construction (like the presumption against superfluity) apply only where the text is ambiguous" (citation omitted)). This finding, then, concludes the inquiry. All the same, the Government briefly addresses a myriad of the points raised in Resendiz's petition.

a. The Laken Riley Act does not even purport to, and in any event cannot, override the clear statutory text.

In both his pleadings and motion for preliminary injunctive relief, Resendiz relies on the Laken Riley Act ("LRA") argument. But as considered and rejected by the BIA, the fact that the LRA required mandatory detention for a subset of illegal aliens that are also subject to mandator detention under § 1225(b)(2) is not a basis to ignore the mandatory detention requirement of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222 (BIA 2025). As the Supreme Court explained in *Barton v. Barr*, 590 U.S. 222, 239, 140 S.Ct. 1442, 206 L.Ed.2d 682 (2020), "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." And "[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* Of particular note: while this principle is generally true, in *Barton* the Supreme Court was indeed interpreting the *very same statute*—the INA. Nothing in the LRA purported to alter or amend § 1225(b)(2)'s mandatory detention requirement. *See Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) ("Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case.").

This Court previously put it well, recognizing that the Laken Riley Act *did* have effect when enacted, forcing the Government "to exercise the full extent of executive authority" which, at that point, it had thus far declined to do; but "[i]t doesn't follow that the Laken Riley Act undercuts the more fulsome, executive authority that Congress provided to exist independently under the text of § 1225(b)(2)(A)." *Cabanas*, 2025 WL 3171331 at *6; *see also Chen*, 2025 WL 3484855 at *6 (noting that the LRA was a response to Congress's "perception that the Executive Branch had *failed to enforce* the detention options that were already available to it" (emphasis added)). In any event, this argument proceeds by way of interpretive canon, which is inapplicable here where the text is unambiguous.

b. Resendiz's interior vs. exterior distinction has no basis in law.

Resendiz repeatedly attempts to draw a distinction between aliens arriving at the border and aliens already present, arguing that Section 1225 only applies at the border and not inside the United States. *See, e.g.*, Dkt. No. 2 at 20 ("Section 1225 . . . governs the process of inspection and admission at the border."); Dkt. No. 1 ¶ 103 ("§ 1225 is a statute applicable at or near the border"). This argument is baffling and based on a patent misstatement of the law, as Section 1225 explicitly also includes aliens already "present in the United States who ha[ve] not been admitted." 8 U.S.C. § 1225(b)(2)(A); *see, e.g.*, *Hernandez Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) ("This contention, however, cannot be squared with the definition of an 'applicant for admission,' which expressly includes those present in the United States without inspection."); *Chen*, WL 3484855 at *5 ("[T]he term 'applicant for admission' in Section 1225 is specifically defined to include an 'alien *present* in the United States who has not been admitted.'" (emphasis in original)).

c. Resendiz misrepresents the dicta in *Jennings*

Some litigants misunderstand *Jennings* when the Supreme Court states, "[Section] 1226 applies to aliens already present in the United States." 583 U.S. at 303. It would be an understandable mistake—but mistake all the same—to misread this statement. This statement makes the unspectacular observation that every application of Section 1226 is to aliens already present in the country—not the inverse, that every alien already present in the country falls under Section 1226.[10] Nor could it be the other way around, as *Jennings* itself unspectacularly observed that "an alien who . . . 'is present' in this country but 'has not been admitted[]' is treated as 'an applicant for admission,'" 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)), and such aliens fall, of course, under Section 1225(b). *See id.*

Indeed, *Jennings* dealt with a Mexican citizen who had been a lawful permanent resident of the United States, i.e., an alien who was actually admitted, who the Government later sought to remove. Of course Section 1226(a)—and not Section 1225(b)(2)(a)—would be applicable in *Jennings*, as that alien *had* been admitted into the country.

d. The contrary position of prior administrations is neither here nor there.

Throughout his briefing, Resendiz repeatedly raises the notion that the Government's reading of the statute cannot be correct merely because it "is inconsistent with decades of prior statutory interpretation and practice." Dkt No. 1 ¶ 110; *see also, e.g.*, Dkt. No. 2 at 9 (arguing that "decades of agency practice[] leave no doubt he is entitled" to a bond). He even devotes considerable time identifying a past Solicitor General's representation of a prior

[10] The mistake is akin to misreading "Every golden retriever is a dog" as "Every dog is a golden retriever."

administration's position, as if those statements are some sort of "Gotcha" on this issue here. *See* Dkt. No. 1 ¶¶ 99–102. This line of persuasion is not even a recognized canon of construction and carries no legal appeal. As put by this Court, "whether [this position] is in line with the priorities of prior Administrations[] simply isn't the remit of an Article III court." *Cabanas*, 2025 WL 3171331 at *6. Other courts have similarly taken the probative value of prior inconsistent positions for what they are worth. *See, e.g.*, *Chen*, 2025 WL 3484855 at *7 ("A failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law."); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *4 (E.D. Wis. Dec. 8, 2025) ("The fact that previous administrations did not seek to administer or enforce the laws Congress had enacted, however, does not change the meaning of those statutes.").

e. The Government's position has considerable national support

The Federal Respondents would finally respond to Resendiz's remark that the Government's "radical," "sweeping and unsupported" reading is belied by "judicial consensus" (Dkt. No. 1 ¶¶ 3, 4) by identifying just some of the many courts which have adopted the Federal Respondents', the BIA's, and this Court's interpretation, as the list continues to grow. *See, e.g.*, *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Chen v. Almodovar*, No. 1:25-CV-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Ramos v. Lyons*, No. 2:25-CV-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Valencia v. Chestnut*, -- F.Supp.3d --, 2025 WL

3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Devine, J.); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.); *Chavez v. Noem*, -- F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.).[11] And as earlier mentioned, multiple federal appellate courts have implicitly adopted the Government's position on this issue. *See Jiminez-Rodriguez*, 996 F.3d at 194 n.2 ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar*, 394 F.3d at 13 (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission").

The Government would urge the Court to stand firm on its own prior, and these courts', well-reasoned and textually faithful analysis.

IV. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court deny the habeas petition and enter judgment in favor of the Government.

Dated: January 7, 2026 Respectfully submitted,

[11] This list of favorable authorities is not and does not purport to be exhaustive.

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CERTIFICATE OF WORD COUNT

I certify that this filing contains 4,987 words, including footnotes and excluding tables, captions, and certificates.

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CERTIFICATE OF SERVICE

I certify that on January 7, 2026, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

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