IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FERNANDO GARCIA TOBON Petitioner v. GRANT DICKEY, *et. al*, Respondents	Civil Action No. 4:25-CV-06145

PETITIONER'S REPLY TO "THE FEDERAL RESPONDENTS' RESPONSE TO THE HABEAS PETITION AND ORDER TO SHOW CAUSE"

I.- ARGUMENT

The Government cites to: *Sanchez v. Smith*, No. 4:25-cv-05384, 2025 U.S. Dist. LEXIS 262494 (S.D. Tex. 2025) cited by the Government as *Sanchez v. Smith*, No. 4:25-CV-05384, 2025 WL 3687914, at *2–3 (S.D. Tex. Dec. 19, 2025); *Jimenez v. Thompson*, No. 4:25-cv-05026, 2025 U.S. Dist. LEXIS 230315 (S.D. Tex. 2025) cited by the Government as *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025),[1] for the proposition that this Court has considered and rejected the argument that Petitioner's detention "without any constitutionally adequate opportunity to demonstrate that he is not a danger to the community nor a flight risk" violates Fifth Amendment due process. It may be the case that this Court has stated that there is no Fifth Amendment due process violation when an individual is

[1] Counsel for Respondent uses LexisNexis as research tool.

detained pursuant to 8 U.S.C. § 1225, however, there are some issues regarding statutory interpretation that should be considered by this Court.

A.- DUE PROCESS

The Government cites to the Supreme Court for the proposition that "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); see also *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 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.")." See ECF No. 9 at 2-3.

Now as to *Demore v. Kim*, the U.S. Supreme Court is saying that because "Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." See *Demore v. Hyung Joon Kim*, 538 U.S. 510, 532, 123 S. Ct. 1708, 1726 (2003)(Concurrence by Justice Keneddy). Furthermore, Justice Kennedy joins the majority under the assumption that the "Respondent was entitled to a hearing in which he could have 'raised any nonfrivolous argument available to demonstrate that he was not properly included in a mandatory detention category.'… *Ante*, at 155 L Ed 2d, at 732 and n 3 (citing 8 CFR § 3.19(h)(2)(ii) (2002); *In re Joseph*, 22 I. & N. Dec. 799 (1999)). *Demore v. Hyung Joon Kim*, 538 U.S. 510, 532, 123 S. Ct. 1708, 1726 (2003)(Concurrence by Justice Keneddy). In other words, the U.S. Supreme Court decided *Demore v. Hyung Joon Kim*, with the understanding that there was a mechanism available

to determine whether a noncitizen could actually challenge his mandatory detention categorization, and that mechanism was a *Matter of JOSEPH*, 22 I. & N. Dec. 799 (BIA 1999) hearing. To that effect the Southern District of Texas explained in *Garza-Garcia v. Moore*, even when DHS asserts that a respondent is subject to mandatory detention, the Immigration Judge retains authority to examine that claim in a *Matter of Joseph* hearing. *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 906–07 (S.D. Tex. 2007). The court emphasized that denying access to a *Joseph* hearing based on DHS labeling someone as an "arriving alien" is "nonsensical," noting that *Demore v. Kim* presumes the availability of a *Joseph* review whenever DHS seeks to impose 8 U.S.C. § 1226(c), INA § 236(c) detention. *Id*. Now granted, this case is about which statutory provision actually applies, and *Demore v. Kim* dealt with an individual who was actually a legal permanent resident who accepted removability based on criminal activity. See *Demore v. Hyung Joon Kim*, 538 U.S. 510, 513-514 (2003). While the U.S. Supreme Court discusses that "this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process. As we said more than a century ago, deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.' *Wong Wing* v. *United States,* 163 U.S. 228, 235, 41 L. Ed. 140, 16 S. Ct. 977 (1896); see also *Flores, supra,* at 305-306, 123 L Ed 2d 1, 113 S Ct 1439; *Zadvydas,* 533 U.S., at 697, 150 L Ed 2d 653, 121 S Ct 2491 (distinguishing constitutionally questioned detention there at issue from 'detention pending a determination of removability'); *id*., at 711, 150 L Ed 2d 653, 121 S Ct 2491 (Kennedy, J., dissenting) ('Congress' power to detain aliens in connection with removal or exclusion . . . is part of the Legislature's considerable authority over immigration matters')." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 523 (2003). The U.S. Supreme Court also said in that same decision that: "It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."

Demore v. Hyung Joon Kim, 538 U.S. 510, 523 (2003). Due process under the Fifth Amendment at least means that an administrative agency may not apply Congress's enacted law any way it sees fit regardless of what Congress actually enacted. It has been recognized that "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 521 (2003)(citing to *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). The due process clause of the Fifth Amendment forbids the Government from depriving any person of "life, liberty, or property, without due process of law."[2] The U.S. Supreme Court has also said that: "[t]he Fifth Amendment's Due Process Clause forbids the Government to 'deprive' any 'person . . . of . . . liberty . . . without due process of law.' Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The U.S. Supreme Court has further explained that:

"The Due Process Clause of the Fifth Amendment provides that 'No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .' This Court has held that the Due Process Clause protects individuals against two types of government action. So-called 'substantive due process' prevents the government from engaging in conduct that 'shocks the conscience,' *Rochin* v. *California*, 342 U.S. 165, 172 (1952), or interferes with rights 'implicit in the concept of ordered liberty,' *Palko* v. *Connecticut*, 302 U.S. 319, 325-326 (1937). When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976). This requirement has traditionally been referred to as 'procedural' due process." *United States v. Salerno*, 481 U.S. 739, 746 (1987). In the context of civil proceedings detention

[2] See U.S. CONST. amend. V.

is supposed to be nonpunitive, however imprisonment—even when called detention is still imprisonment. "What's in a name? That which we call a rose By any other name would smell as sweet;."[3] Now consider the indignity, ugliness and punitive aspects of imprisonment for a crime, while it might have been well deserved, it is incarceration. Consider further that just because it may be associated with a civil process and called "detention" "what is in a name? That which we call incarceration, by any other name—like detention—smells just as indignant, ugly and punitive." That may be why our founding fathers wrote the Fifth Amendment the way they did: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." It does not matter that the Person was born in the United States, became a U.S. Citizen through Naturalization, or is a Legal Permanent Resident of the United States, is in the United States as a legal Visa Holder, under TPS or crossed the border without documents, what matters is that the individual in question is a person. The Fifth Amendment applies to undocumented individuals—noncitizens. Further, the precursor of the Fifth and Sixth Amendments, Article I Section IX Habeas Corpus Clause states, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."[4] For purposes of the Fifth Amendment there is no distinction between citizens and non-citizens. While it may be acknowledged that citizens enjoy different rights than non-citizens, there is no textual support for this in terms of habeas corpus or the Fifth Amendment. Yes, DHS may detain non-citizens, but there is nothing in the constitution that allows them to detain non-citizens without due process of law. Detention, no matter how you slice it, is a deprivation of liberty and cannot be enforced without due process of law. Furthermore, detention—the deprivation of liberty—may be

[3] Romeo and Juliet, Act 2 Scene 2, by William Sheakespear.
[4] U.S. CONST. art. I, § 9, cl. 2.

challenged in Habeas. See U.S. CONST. art. I, § 9, cl. 2. The U.S. Supreme recently determined in the context of the Alien Enemies Act that Venezuelan Nationals who were being removed from the United States were entitled to Due Process. See *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). The U.S. Supreme Court made clear that:

> "It is well established that the Fifth Amendment entitles aliens to due process of law" in the context of removal proceedings. *Reno* v. *Flores*, 507 U. S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993). So, the detainees are entitled to notice and opportunity to be heard 'appropriate to the nature of the case.' *Mullane* v. *Central Hanover Bank & Trust Co*., 339 U. S. 306, 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950). More specifically, in this context, AEA detainees must receive notice after the date of this order that they are subject to removal under the Act. The notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025).

There is no question that due process under the Fifth Amendment applies in the context of the present case. Petitioner is entitled to have due process and the great writ of Habeas applies. The question here is not whether the Government may detain the Petitioner temporarily, but rather can they do so without providing due process. And the mechanism to test whether due process has been provided is this writ of habeas corpus pursuant to Article I § 9 clause 2 of the U.S. Constitution.

B.- STATUTORY CHALLENGE

The question in this case is which statute applies. The answer to this question will solve the issue presented in this Habeas Petition. If 8 U.S.C. § 1226 (a) applies—as we believe it does—then Petitioner should receive a Matter of Joseph hearing and this would be consistent with due process under the Fifth Amendment. If, on the contrary, 8 U.S.C. § 1226 (a) does not apply but rather 8 U.S.C. § 1225(b)(2)(A) is the applicable statute then Petitioner may be denied a Matter of

Joseph hearing consistent with due process.[5] Now the position of Petitioner is straight forward: 8 U.S.C. § 1226 (a) applies and not 8 U.S.C. § 1225(b)(2)(A). This conclusion is derived from a textualist reading of 8 U.S.C. § 1225(b)(2)(A).

a) The statutory Provision:

Let us consider 8 U.S.C. § 1225(b)(2)(A) and (B) (ii), which expressly states that:

> "**(A)** In general. Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240 [8 USCS § 1229a].
>
> **(B)** Exception. Subparagraph (A) shall not apply to an alien—
> **(i)** who is a crewman,
> **(ii)** to whom paragraph (1) applies, or
> **(iii)** who is a stowaway."

Now subparagraph A shall not apply to an alien "to whom paragraph 1 applies. Paragraph 1 states in relevant part that: "[a]n alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." Because Petitioner is covered under, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) which exempts from its application those noncitizens who can demonstrate "to the satisfaction of an immigration officer" that they have "been physically present in the United States for the two year period immediately prior to date of the determination of inadmissibility" then it follows that 8 U.S.C. § 1225(b)(2)(A) does not apply. This is a purely textual application of the law as enacted by Congress. The text of the law must be applied because

[5] Of course, even if 8 U.S.C. § 1225(b)(2)(A) did apply, consistent with due process the detention will be limited to the time required to complete the Removal Proceedings.

it is the best and fairest way to determine—free of prejudice—the meaning of the law. As the late Supreme Court Justice, Scalia, and Garner wrote:

> "In the broad sense, everyone is a textualist. Even Judges without textualist convictions habitually open their opinions by stating: "We begin with the words of the statute." This statement belabors the obvious. One naturally must begin with the words of the statute when the very subject of the litigation is what the statute requires. But to say that one *begins* with the words of the statute is to suggest that one does not *end* there. Like the starting line of a boat race, the text is (on this view) thought to be a point of departure for a much longer journey. So, when you read qualified introductory bows to the text, brace yourself for a nontextual solution–maybe a far-fetched one."[6]

The interpretation given by the Attorney General through the BIA in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), is a far-fetched one, that should be given no deference pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), by Federal Courts, including the Federal Fifth Circuit Court of Appeals. Consider further that *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) does not consider this aspect of the statutory provision. *Matter of Yajure-Hurtado* attempts to address this part of the statutory scheme structure but simply makes a conclusory statement to the effect that:

> "Section 236 does not purport to overrule the mandatory detention requirements for arriving aliens and applicants for admission explicitly set forth in section 235(b)(1) and (2) of the INA, 8 U.S.C. § 1225(b)(1), (2). Thus, while an inadmissible alien who establishes that he or she has been present in the United States for over 2 years is not subject to the expedited removal process, the alien nevertheless "shall be detained for a proceeding under section 240." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A)." *Matter of Yajure-Hurtado*, 29 I&N Dec. 216, 219-220 (BIA 2025).

The decision of the BIA in essence renders meaningless the exemption from the application of 8 U.S.C. § 1225(b)(2)(A). The application of 8 U.S.C. § 1225(b)(2)(A) and (B) (ii) to this context

[6] SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 16 (Thomson/West Ed. 2012).

requires that The Court examine what to do with the exemption found in paragraph 1 and simply dismiss it because it does not want to apply it. The Statute as written by Congress requires that the words they wrote and enacted into law—irrespective of what they might have intended—be actually applied. The text must be construed as a whole. See *K Mart Corp. v. Cartier*, 486 U.S. 281, 291 (1988); *Household Credit Servs. v. Pfennig*, 541 U.S. 232, 239 (2004); *Inhance Techs., L.L.C. v. United States EPA*, 96 F.4th 888 (5th Cir. 2024); also see SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 167 (Thomson/West Ed. 2012). "A court must first 'look to the particular statutory language at issue.'… In addition to the particular statutory section of the INA before the Court, 'the language and design of the statute as a whole' is instructive in determining the provision's plain meaning…. Here, the INA's design and structure buttress the conclusion that the persecutor bar applies irrespective of voluntariness." *Negusie v. Holder*, 555 U.S. 511, 543-44 (2009)(J. Thomas in Dissent). It is well established that the text must be construed as a whole. In interpreting 8 U.S.C. § 1225 the whole statute and not just 8 U.S.C. § 1225 (b) (2) (A) must be looked at. Furthermore, the provision at 8 U.S.C. § 1225 (b) (2) (A) recognizes an exemption to those who paragraph 1 applies. Paragraph 1 further exempts from application of 8 U.S.C. § 1225 those individuals who can demonstrate "to the satisfaction of an immigration officer" that they have "been physically present in the United States for the two year period immediately prior to date of the determination of inadmissibility." See 8 U.S.C. §1225(b)(1)(A)(iii)(II). This is the case for Petitioner; he has been present in the United States for over twenty years.

Now an additional problem for the BIA's interpretation of 8 U.S.C. § 1225 is that the statutory provision read as follows: "**(A)** In general. Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines

that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240 [8 USCS § 1229a].” Now Petitioner is not seeking admission. In order for this provision to apply the statute would have to read another way. There are two different terms used by Congress in the same sentence and they are “applicant for admission” and “seeking admission.” These are two different terms with different meanings. Another cannon of interpretation called the “presumption of consistent usage” basically states that “a word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning.” SCALIA & GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 170 (Thomson/West Ed. 2012). In 8 U.S.C. § 1225(b)(2)(A), “Congress did not say ‘applicants for admission’ are subject to mandatory detention. Instead, it said that an applicant for admission, who is ‘an alien seeking admission’ is subject to mandatory detention, indicating that there is some difference between an ‘applicant for admission’ and an ‘alien seeking admission.’” *Diaz v. Olson*, No. 25 CV 12141, 2025 U.S. Dist. LEXIS 213312, at *10 (N.D. Ill. 2025). The “presumption of consistent usage cannon” suggest that this interpretation is the correct one. The “whole text” canon points in the same direction. Ultimately what is being considered is the text and not what the intentions of Congress might have been. In *Matter of Yajure-Hurtado* at 223-225, the BIA discusses the undesirable consequence of a statutory scheme that gave those who entered without inspection a right to request release on bond while those who presented themselves to authorities were subject to mandatory custody. However, the issue is still what did Congress enacted as reflected in the legislation that was written into the Immigration and Nationality Act not what did they intend. There are people who are deemed to be Applicants for Admission. See 8 U.S.C. § 1225(a)(1). Congress decided to classify certain group of people as “Applicant’s for Admission” despite the fact that in the ordinary sense of the word “applicant” they

were not applying for anything. That is why they are deemed by Congressional decree—the law as set out in 8 U.S.C. § 1225(a)(1)—to be Applicant's for Admission. "Because of § 1225(a)(1), the universe of 'applicants for admission' is not coextensive with noncitizens 'seeking admission.' If the categories overlapped perfectly, there would be no need for Congress to have used the phrase 'seeking admission' in § 1225(b)(2)(A). *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, 143 S. Ct. 1720, 216 L. Ed. 2d 370 (2023) ('[E]very clause and word of a statute should have meaning.'); *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S. Ct. 441, 151 L. Ed. 2d 339 (2001) ('[N]o clause, sentence, or word shall be superfluous, void, or insignificant.'). Reading the statute to give meaning to every word and phrase, a noncitizen 'seeking admission' must be different than an 'applicant for admission.'" *Diaz v. Olson*, No. 25 CV 12141, 2025 U.S. Dist. LEXIS 213312, at *10-11 (N.D. Ill. 2025). The requirement is to give every clause and word of a statute meaning. See *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ('[E]very clause and word of a statute should have meaning.'); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ('[N]o clause, sentence, or word shall be superfluous, void, or insignificant.'). As a matter of statutory interpretation, it must also be clarified that pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) article III Courts need to read the statute free from any commitment—deference—to the agency interpretation. That is the Chevron doctrine no longer lives.[7] The U.S. Supreme Court explained that:

> "Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers, as noted, anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment. And even *Chevron* itself reaffirmed that "[t]he judiciary is the final authority on issues of statutory construction" and recognized that "in the absence of an administrative interpretation," it is "necessary" for a court to "impose its own

[7] *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984) is now overruled. See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

> construction on the statute." *Id.*, at 843, and n. 9, 104 S. Ct. 2778, 81 L. Ed. 2d 694. *Chevron* gravely erred, though, in concluding that the inquiry is fundamentally different just because an administrative interpretation is in play. The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities. That is no less true when the ambiguity is about the scope of an agency's own power—perhaps the occasion on which abdication in favor of the agency is *least* appropriate." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400-01 (2024).

The point is simply this, the BIA is not the ultimate authority on what 8 U.S.C. § 1225, or for that matter the Immigration or Nationality Act, means, but rather this Court and in general Article III Courts. This is what the founding fathers intended. The U.S. Supreme Court expressed it in the following way:

> "The view that interpretation of ambiguous statutory provisions amounts to policymaking suited for political actors rather than courts is especially mistaken, for it rests on a profound misconception of the judicial role. It is reasonable to assume that Congress intends to leave policymaking to political actors. But resolution of statutory ambiguities involves legal interpretation. That task does not suddenly become policymaking just because a court has an 'agency to fall back on.' *Kisor*, 588 U. S., at 575, 139 S. Ct. 2400, 204 L. Ed. 2d 841 (opinion of the Court). Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences. Indeed, the Framers crafted the Constitution to ensure that federal judges could exercise judgment free from the influence of the political branches. See The Federalist, No. 78, at 522-525. They were to construe the law with '[c]lear heads . . . and honest hearts,' not with an eye to policy preferences that had not made it into the statute. 1 Works of James Wilson 363 (J. Andrews ed. 1896)." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 403-04 (2024).

Furthermore, it has also been determined that in reference to 8 U.S.C. § 1225 (b)(2)(A):

> "The statute has a temporal element—the petitioner is doing something. *See United States v. Balint*, 201 F.3d 928, 933 (7th Cir. 2000) (quoting *United States v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351, 117 L. Ed. 2d 593 (1992)) ("'Congress' use of a verb tense is significant in construing statutes.'"). The use of the word "seeking" implies a continuing action. On the other hand, an applicant for admission includes the passively designated noncitizen "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). I read the different verb tenses to mean that an applicant for admission needs also to be actively seeking admission for § 1225(b)(2)(A) to apply." *Diaz v. Olson*, No. 25 CV 12141, 2025 U.S. Dist. LEXIS

213312, at *11 (N.D. Ill. 2025).

The Court's interpretation is based on the statute as written by Congress which as discussed in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) is within the realm of article III courts to do. It is logical to see why the U.S. Supreme Court would also approve of this interpretation. The District Court of the Northern District of Illinois explained:

> "The Supreme Court has distinguished between noncitizens seeking admission and those already in the country. *Jennings*, 583 U.S. at 289 ('U.S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).' (emphasis added)). *Jennings* says that a noncitizen present in the country, including noncitizens 'who were inadmissible at the time of entry' may be removed, and that § 1226 is the default rule for those noncitizens. *Id.* at 288. Noncitizens who were inadmissible at the time of entry include those who lack a valid entry document at the time of their arrival to the United States. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107-08, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020) (citing 8 U.S.C. §§ 1182, 1229a(e)(2)(A)). There is a difference between applicants for admission and those seeking admission, and § 1226(a) governs detention of noncitizens who are present in the United States despite being inadmissible at the time they entered—like the government says Corona Diaz was." *Diaz v. Olson*, No. 25 CV 12141, 2025 U.S. Dist. LEXIS 213312, at *11-12 (N.D. Ill. 2025).

The U.S. Supreme Court noted that:

> "As noted, §1225(b) applies primarily to aliens seeking entry into the United States ("applicants for admission" in the language of the statute). Section 1225(b) divides these applicants into two categories. First, certain aliens claiming a credible fear of persecution under §1225(b)(1) "shall be detained for further consideration of the application for asylum." §1225(b)(1)(B)(ii). Second, aliens falling within the scope of §1225(b)(2) "shall be detained for a [removal] proceeding. §1225(b)(2)(A)." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

It further stated that:

> "While the language of §§1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, §1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention

> pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, "[e]xcept as provided in subsection (c) of this section." Section 1226(c) in turn states that the Attorney General "shall take into custody any alien" who falls into one of the enumerated categories involving criminal offenses and terrorist activities. 8 U. S. C. §1226(c)(1). Section 1226(c) then goes on to specify that the Attorney General "may release" one of those aliens "*only if* the Attorney General decides" both that doing so is necessary for witness-protection purposes and that the alien will not pose a danger or flight risk. §1226(c)(2) (emphasis added)." *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).

The U.S. Supreme Court has explained in no uncertain terms that "§1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings…" and that "§1225(b) applies primarily to aliens seeking entry into the United States ("applicants for admission" in the language of the statute)." It seems that a straight forward application of the teachings of the United Staes Supreme Court will resolve this issue in favor of Petitioner.

The Petitioner in this case was never subjected to expedited removal. Instead, the Department, exercising its discretion, placed Petitioner directly in full removal proceedings under 8 U.S.C. § 1229a.[8] The Petitioner was issued a warrant for his detention as required by 8 U.S.C. § 1226(a). Like Diaz in *Diaz v. Olson*, No. 25 CV 12141, 2025 U.S. Dist. LEXIS 213312, at *13-14 (N.D. Ill. 2025), Petitioner here was arrested by ICE on a warrant. The Court there specifically stated that:

"DHS issued a warrant, citing 8 U.S.C. § 1226, is consistent with the procedures

[8] The Department's discretion is subject to the limitations set by the U.S. Constitution and the Act and Statutes enacted by Congress pursuant to its enumerated powers under U.S. CONST. art. I. Equally, the powers of the Attorney General are confined by U.S. CONST. art. II. And it is the providence of the U.S. Supreme Court and the judiciary to make sure that the separation of powers as delineated in the U.S. Constitution are not faded into nonexistence—that would be the equivalence of a tyrannical form of Government from which the founding father were declaring independence. See *Marbury v. Madison*, 5 U.S. 137 (1803).

> applicable under § 1226(a) rather than § 1225(b). Corona Diaz was arrested under a warrant pursuant to 8 U.S.C. § 1226, and he is entitled to continuing the process under that provision. *Cf.* ***[*14]*** *Regents of the Univ. of Cal.*, 591 U.S. at 24 (holding that under arbitrary and capricious review of agency action, '[t]he basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted,' not on 'impermissible post hoc rationalizations')." *Diaz v. Olson*, No. 25 CV 12141, 2025 U.S. Dist. LEXIS 213312, at *13-14 (N.D. Ill. 2025).

On September 5, 2025, the BIA issued a precedential decision adopting the interpretation that 8 U.S.C. § 1225 (b)(2)(A) is what governs situations like the Petitioner in this case as opposed to 8 U.S.C. § 1226, and this interpretation is a departure from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Federal courts across each district in Texas have uniformly rejected the Government's interpretation of § 1225(b)(2)(A) when applied to long-term residents apprehended in the interior. See *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 U.S. Dist. LEXIS 201967 (S.D. Tex. 2025) (rejecting *Yajure Hurtado* as inconsistent with statutory text, structure, legislative history, and decades of agency practice); *Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 U.S. Dist. LEXIS 229093 (E.D. Tex. 2025) (holding that interior arrests fall under § 1226(a)); *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 249952 (N.D. Tex. 2025) (magistrate judge recommending habeas relief because § 1226(a), not § 1225(b)(2), governs detention of long-term residents), report and recommendation adopted, *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 234517 (N.D. Tex. 2025) (district judge adopting findings in full). Additional Texas courts agree. See *Lopez-Arevelo v. Bondi*, No. 4:25-cv-1999, 2025 WL 2691828 (S.D. Tex. Sept. 30, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206523 (S.D. Tex. 2025); *Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 U.S. Dist. LEXIS 226367 (W.D. Tex. 2025); and *Miranda Silva v. Noem*, No. H-25-5784 (S.D. Tex. Dec. 17,

2025). It is noted that this Court has held in opposite. See *Montoya Cabanas v Bondi*, 2025 WL 3171331 (SD Tex); *Maceda Jimenez v Thompson*, 2025 WL 3265493 (SD Tex).

This Court should reconsider its previous decisions in *Montoya Cabanas v Bondi*, 2025 WL 3171331 (SD Tex); *Maceda Jimenez v Thompson*, 2025 WL 3265493 (SD Tex) to address some of the arguments herein made.

Courts nationwide have reached the same conclusion that favors Petitioner in this case. See *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). See also *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (rejecting *Yajure Hurtado*'s interpretation); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing *Yajure Hurtado*).

These courts uniformly hold that § 1226(a), not § 1225(b), governs detention of individuals like Petitioner—long-term residents apprehended in the interior who are not "seeking admission" in any present sense. The Government cites many decisions contrary to the position of Petitioner in this case.[9]

[9] See ECF No. 9 at 4-5.

C.- THE BAUTISTA JUDGEMENT AND APA CLAIMS

Finally, with regards to the APA claims I will point out the following: the Final Judgement issued in *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 262265 (C.D. Cal. 2025) (just decided on December 18, 2025), confirms that noncitizens like Respondent are members of a Certified Class and as such eligible for a bond determination hearing under INA § 236(a), 8 U.S.C. § 1226 (a). It is important to note that Executive Office of Immigration Review (EOIR) is an included Defendant in the *Bautista v. Santacruz* case. Furthermore, note that the U.S. Supreme Court has stated that while the so called "universal injunctions" "likely exceed the equitable authority that Congress has granted to federal courts...", it is not the case with the modern class action: "the modern class action, which is governed in federal court by Rule 23 of the Federal Rules of Civil Procedure. 7A Wright, Federal Practice and Procedure §1751, at 10 ("It was the English bill of peace that developed into what is now known as the class action"); see *Hansberry* v. *Lee*, 311 U. S. 32, 41, 61 S. Ct. 115, 85 L. Ed. 22 (1940) ("The class suit was an invention of equity")." *Trump v. CASA, Inc.*, 606 U.S. 831, 837, 849 (2025). Class Certifications that follow FRCP 23 like the "Bond Eligible Class" members established in *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 262265 (C.D. Cal. 2025) have the blessing of the U.S. Supreme Court and must be respected because Administrative Agency decisions may not Constitutionally override the law as established by the United States Supreme Court. See U.S. CONST. art. III, *Marbury v. Madison*, 5 U.S. 137 (1803), and *Trump v. CASA, Inc.*, 606 U.S. 831 (2025).

Petitioner respectfully request that a hearing be set in this matter.

CONCLUSION

For the above reasoning the Petitioner requests that the Habeas Petition, be granted. The Petitioner also requests a hearing be set.

Respectfully submitted,

Hinojosa & Salinas, PLLC
2020 Southwest Fwy., Ste. 220
Houston, TX 77098
Tel: (713) 665-5060
Fax: (713) 520-8808

By: /s/ Roberto M. Hinojosa
Roberto M. Hinojosa
Texas Bar No. 24043730
Federal Bar No. 898145
E-mail: attorneyrmh@yahoo.com

CERTIFICATE OF SERVCE

I certify that on January 3, 2026, the foregoing was filed and served on counsel for Respondents via the Court's CM/ECF service.