IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-04089-NYW

JUAN ANTONIO DIAZ LOPEZ

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

For decades it has been universally understood that individuals like Mr. Diaz who have entered the United States, even unlawfully, are entitled to seek release on bond absent past criminal convictions that would subject them to mandatory detention. Yet on July 8, 2025, the government abruptly reversed the statutory interpretation it embraced for decades, choosing to interpret the Immigration and Nationality Act (INA) to mandate the detention of anyone who entered without inspection pending their removal, regardless of how long they have resided in this country. Mr. Diaz remains detained pursuant to this novel interpretation that the Department of Homeland Security (DHS) happened upon almost thirty years after the statute at issue was enacted. Mr. Diaz filed a petition for a writ of habeas corpus on December 19, 2025, seeking, at a minimum, the bond hearing he is promised under 8 U.S.C. § 1226(a) and its implementing regulations, and challenging his mandatory detention under 8 U.S.C. § 1225(b)(2) as an individual who is "seeking admission" into the United States. No reasonable person could describe Mr. Diaz as "seeking admission" to a country he has lived in for over thirteen years. Accordingly,

the Court should, as it has previously, reject Respondents' effort to subvert the legislative process and rewrite the INA by adopting a new "interpretation" of a thirty-year old statute. Further, the Court should hold, beyond the clear and continuing statutory violation, that due process prohibits Mr. Diaz's arbitrary detention absent any showing that his continued detention is necessary to serve a compelling governmental interest.

ARGUMENT

I. Mr. Diaz is Subject to Detention Under 8 U.S.C. § 1226(a), not § 1225(b)(2).

District courts throughout the Tenth Circuit, including this one, have almost universally concluded that noncitizens like Mr. Diaz who have entered the United States without inspection and have continued residing in the United States for years after entry are subject to detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2). *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025) (Wang, J.); *see also, e.g.*, *Orellana v. Noem*, No. 25-CV-03976-PAB, 2025 WL 3706417 (D. Colo. Dec. 22, 2025); *Ramos v. Dedos*, No. 1:25-CV-00975-MLG-KRS, 2025 WL 3653928 (D.N.M. Dec. 17, 2025); *Colin v. Holt*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Cortez-Gonzalez v. Noem*, --- F. Supp. 3d ----, 2025 WL 3485771 (D.N.M. Dec. 4, 2025); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-CV-01031-KG-JFR, 2025 WL 3187432 (D.N.M. Nov. 14, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Velasquez Salazar v. Dedos*, --- F. Supp. 3d ----, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-CV-01031-KG-JFR, 2025 WL 3187432 (D.N.M. Nov. 14, 2025). The statute's plain text and Supreme Court precedent should compel this Court to do so again.

Respondents' argue that "§ 1225(b)(2) applies to 'applicants for admission,' which include noncitizens who entered without inspection and have been present in the country for more than two years." Resp. 10. Yet § 1225(b)(2) does not apply to *all* applicants for admission. It mandates the detention only of those who are "seeking admission" and only if an "examining immigration officer determines that [they are] not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Respondents counter that "anyone falling within the category of 'applicant for admission is deemed as a matter of law, to be seeking admission." Resp. 11. Yet as this Court previously held, the "presumption of consistent usage and the meaningful-variation canon" instruct[] that "[i]n a given statute, the same term usually has the same meaning and different terms usually have different meanings." *Loa Caballero*, 2025 WL 2977650, at *6 (quoting *Pulsifer v. United States*, 601 U.S. 124, 149 (2024)). "[B]y treating the terms 'applicant for admission' and 'alien seeking admission' as synonymous, Respondents' interpretation violates the principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025); *see also Castanon Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, 2025 WL 3552514, at *9 (7th Cir. Dec. 11, 2025) ("[I]t is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an 'applicant for admission' to 'an alien present in the United States who has not been admitted or who arrives in the United States.' It could easily have included noncitizens who are 'seeking admission' within the definition but elected not to do so.") (internal citation omitted).

Mr. Diaz is not subject to § 1225(b)(2) because he cannot be described as "seeking admission" to the country he has lived in for the past thirteen years. The INA states that with respect to a noncitizen, "'admission' and 'admitted' mean . . . the lawful entry of [such] person into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Mr. Diaz is not seeking "admission" as Congress has defined that term as "he was not seeking entry, much less 'lawful entry . . . after inspection' and authorization." *Aguilar v. Bondi*, No. 5:25-cv-1453, 2025 WL 3471417, at *5 (W.D. Tex. Nov. 26, 2025) (quoting 8 U.S.C. § 1101(a)(13)(A)); *see also Martinez v.* Mukasey, 519 F.3d 532, 544 (5th Cir. 2008) ("Under th[e] statutory definition, 'admission' is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status.") (emphasis in original).

Respondents heavily cite the Supreme Court's decision in *Jennings v. Rodriguez* to argue that "[s]ection 1225(b) applies to all applicants for admission, not just arriving aliens or those who unlawfully entered the country recently." Resp. 7. Yet *Jennings* affirmed that § 1226(a) rather than § 1225(b)(2) "applies to aliens already present in the United States." *Jennings*, 583 U.S. at 303. The Court acknowledged that "once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission," but explained that "Section 1226 generally governs the process of arresting and detaining *that group of aliens* pending their removal." *Id.* at 288 (emphasis added). Mr. Diaz belongs to "that group of aliens" and his detention is governed by § 1226(a). *See also id.* at 289 ("In sum, 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).").

Finally, as Mr. Diaz highlighted in his Petition, Respondents' new interpretation of the statute renders the amendments to the INA in the Laken Riley Act superfluous. Pet. ¶ 68. Respondents do not even dispute this. Section 1225(b)(2) had been on the books for almost three decades when Congress passed the Laken Riley Act. In that time, neither the courts nor the Government had ever interpreted § 1225(b)(2) to mandate the detention of *all* noncitizens like Mr. Diaz who entered the United States without inspection. It was against that backdrop that Congress passed the Laken Riley Act. When it did, Congress did not feel compelled to clarify the interpretation of § 1225(b)(2) that had been universally accepted since its inception. Instead, it mandated detention for certain classes of inadmissible noncitizens—individuals that would already have been subject to mandatory detention under Respondents' novel reading of § 1225(b)(2). *See* 8 U.S.C. § 1226(c). If Congress believed the courts and the Government were misapplying § 1225(b)(2) it had three decades to correct the error. It did not. And the Court should reject Respondents' attempt to subvert the legislative process and amend a thirty-year-old statute through a new "interpretation" that renders subsequent acts of Congress null and void.

II. Prior Practice and Legislative History Support Petitioner's Interpretation of the INA.

Respondents' arguments that prior agency practice and legislative history are consistent with their new interpretation fail. First, Respondents' do not dispute that for almost thirty years it afforded noncitizens like Mr. Diaz who entered without inspection bond hearings under § 1226(a) consistent with a plain text reading of the statute. Instead,

Respondents argue that the Department "regarded them as eligible for bond hearings as a matter of administrative discretion not statutory interpretation." Resp. 13. But the Department cannot argue that it released noncitizens subject to § 1225(b) on bond for thirty years, as a matter of discretion, when individuals subject to that statute are *only* eligible for release on parole under 8 U.S.C. § 1182(d)(5)(A), not bond. *Jennings*, 583 U.S. at 300 ("That express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released."). Second, immediately after the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, was passed the Government explained that "[d]espite being applicants for admission, aliens who are present without having been admitted are paroled . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). This did not reflect an exercise of administrative discretion but rather the Government's concerted effort to "amend the regulation to comply with the amended Act"—i.e., IIRIRA. *Id.* Thus, the interim rule it issued was based on and reflected the Government's interpretation of the statute, not an exercise of discretion.

Respondents next urge the Court to afford little weight to its prior practice, claiming that there was "little analysis to support" the statutory interpretation it embraced for thirty years, asking the Court instead to adopt its new interpretation. Yet in *Loper Bright Enterprises v. Raimondo*, the Supreme Court acknowledged that while courts must "exercise[] independent judgment," that "often included according due respect to Executive Branch interpretations," "especially . . . when an Executive Branch interpretation was issued roughly contemporaneously with the statute and remained consistent over time." 603 U.S. 369, 385-86 (2024). Such was the case here where the

Government clarified, immediately after IIRIRA's passage, that those who entered without inspection were entitled to release on bond and applied that interpretation for almost three decades.

Nor does the legislative history weigh in favor of Respondents' new statutory interpretation. Respondents argue that "by substituting 'admission' for 'entry' and by replacing deportation and exclusion proceedings with a general 'removal' proceeding . . . [IIRIRA] expanded § 1225 . . . to include all applicants for admission." Resp. 14 (quoting Hing Sum v. Holder, 602 F.3d 1092, 1100 (9th Cir. 2010)). Respondents' discussion of the legislative history omits the fact that the predecessor statute included discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994)) ("[A]ny such [noncitizen] taken into custody may, in the discretion of the Attorney General ... be continued in custody ... [or] be released under bond[.]"). When it passed IIRIRA, Congress explained that the new § 1226(a) "restates the current provisions in section 242(a)(1) [1252(a)(1)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Mendoza Gutierrez*, 2025 WL 2962908, at *8 (quoting H.R. REP. 104-469, 229). "Because noncitizens like [Mr. Diaz] were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports [Mr. Diaz's] position that he too is subject to discretionary detention." *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025).

III. The Denial of Bond Violates Mr. Diaz's Due Process Rights.

Respondents refusal to allow Mr. Diaz to seek release on bond also violates his constitutional right to due process. Respondents contend that Mr. Diaz has "'only those

rights regarding admission that Congress has provided by statute,' and 'the Due Process Clause provides nothing more.'" Resp. 16 (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). Yet this argument rests on a misinterpretation of *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118-19 (2020). *Thurassigiam*. merely affirmed what the Supreme Court has held for years—that for noncitizens on "the threshold of initial entry," "whatever the procedure authorized by Congress is, it is due process as far as a[noncitizen] denied entry is concerned." *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Thuraissigiam*, 591 U.S. at 138-39.

Yet Mr. Diaz is not at "the threshold of entry." He has not been "denied entry" nor was he apprehended twenty-five yards from the border like the petitioner in *Thuraissigiam*. 591 U.S. at 139. He entered the United States over thirteen years ago and has resided here ever since. As the Supreme Court has stressed, once Mr. Diaz "enter[s] the country, [his] legal circumstances change[], for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. 678, 693 (2001); *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (distinguishing noncitizens arriving at our shores from those "who have never been naturalized, nor acquired any domicil or residence within the United States"). Thus, even if the Court were to accept Respondents' erroneous argument that Mr. Diaz is subject to § 1225(b)(2), that statutory distinction is not determinative of the process he is due under the Constitution. Because he entered the United States over thirteen years ago, his proceedings must "conform to traditional standards of fairness encompassed in due process of law." *Mezei*, 345 U.S. at 212. Respondents cite no case even suggesting that the general constitutional principle

limiting the due process rights of those denied entry should be extended to those like Mr. Diaz who have "passed through our gates." His detention must comport with due process. For the reasons set forth in his Petition, it does not.

Respondents next argue that Mr. Diaz has not been prejudiced because he is not "being denied procedures in his immigration proceedings, where he can challenge the determination that § 1225(b)(2)(A) applies." Resp. 16-17. First, that is precisely what he has been denied. DHS Policy and BIA precedent deny him any opportunity to argue that he is entitled to bond under § 1226(a) and is not subject to § 1225(b)(2). Second, Mr. Diaz's continued detention without the opportunity to seek release on bond is clearly prejudicial. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. Indeed, freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Accordingly, "[g]overnment detention violates th[e Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and 'narrow' nonpunitive 'circumstances' where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (emphasis in original) (internal citations omitted). Respondents have not put forth any special justification for Mr. Diaz's continued detention, and the Government's general interest in ensuring Mr. Diaz's appearance at his removal proceedings and protecting the community does not outweigh his constitutionally protected interest in avoiding physical restraint, particularly where an immigration judge would necessarily consider those interests when deciding whether to set bond. *See*

Hasan v. Crawford, No. 1:25-cv-1408, 2025 WL 2682255, at *10 (E.D. Va. Sept. 19, 2025) ("Any interest that the federal respondents may have in securing Hasan's presence at immigration proceedings has been accounted for by the IJ's imposition of bond.").

The Court should likewise reject Respondents' argument that *Demore v. Kim*, 538 U.S. 510 (2003), which upheld the constitutionality of mandatory detention for certain classes of criminal noncitizens should extend to noncitizens like Mr. Diaz whom Congress did not identify as posing a danger to the community. Resp. 17. *Demore* "upheld the constitutionality of a mandatory detention procedure as 'applie[d] to a class of noncitizens who had already been convicted (beyond a reasonable doubt) of committing certain serious crimes" based on legislative findings "suggesting their likelihood of not appearing for removal hearing and their likelihood of subsequent arrests before deportation proceedings began." *Doe v. Moniz*, --- F. Supp. 3d ----, 2025 WL 2576819, at *10 (D. Mass. Sept. 5, 2025) (quoting *Hernandez-Lara v. Lyons*, 10 F.4th 19, 35 (1st Cir. 2021)) (emphasis in original). That holding addressing the process due convicted criminals does not justify the continued detention of Mr. Diaz without any process to determine whether his continued detention would serve the government's interest in protecting the community or ensuring his appearance for removal proceedings.

CONCLUSION

For the foregoing reasons and for the reasons set forth in Mr. Diaz's Petition, the Court should grant the writ of habeas corpus and order Mr. Diaz's release, or in the alternative a bond hearing at which 8 U.S.C. § 1225(b)(2)(A) cannot be invoked to deny bond, DHS bears the burden of proof, and the immigration judge considers Mr. Diaz's ability to pay bond as part of the factors in setting bond.

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Respectfully submitted,

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