

December 29, 2025
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

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CAMP EAST MONTANA DEPUTY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

GREYVIN MARTIN ORTEGA CATON,
A 
Petitioner,

v.

PAMELA BONDI,
Attorney General of the United States, and

KRISTI NOEM,
Secretary of the Department of
Homeland Security, (DHS) and,

TODD LYONS,
Acting Director of Immigration &
Customs Enforcement, (ICE), and

WARDEN,
Warden of ERO Camp East Montana,
Detention Facility,

Respondents.

Civil Action No.

Hon.

EP-25-CV-00749-LS

ORAL ARGUMENT
REQUESTED

BRIEF IN SUPPORT OF HABEAS CORPUS PETITION

INTRODUCTION

Petitioner is a 42 year old male, native and citizen of Nicaragua who has been detained at the ERO Camp East Montana Detention Facility since 11/2025. He was detained by Immigration & Customs Enforcement (“ICE”) in 10/2025 at a routine check-in date, and later moved to the Court’s jurisdiction. Petitioner has two United States citizen children, and resides with them and their mother in New Jersey. He hereby petitions the U.S. District Court to declare his detention unlawful and stay his removal outside of the Western District of Texas jurisdiction during the pendency of these proceedings.

Respondents have unlawfully detained and now seek to remove him from the U.S. Petitioner asks this Court for an order declaring his detention unlawful. Petitioner’s removal proceedings remain pending before the immigration court (“EOIR”) in El Paso, TX. He is not subject to an order of removal, and has a pending application for asylum and other protection relief. He has never filed for a bond hearing with EOIR because such a request is fruitless. The Board of Immigration Appeals (“BIA”) recently issued a precedential decision precluding success on any bond before EOIR.

Absent an order from this Court, Petitioner will continue to remain in detention unlawfully. Petitioner asks the Court to find that Defendants have unlawfully detained him, and order his immediate release from custody.

FACTS OF THE CASE

The Petitioner is a 42 year old male, native and citizen of Nicaragua who has lived in United States for over three years. Exhibit 1, ICE Records. He entered the United States without parole or inspection in 09/2022, and encountered by ICE at entry. ICE then paroled him into the country with an I-94, where he ended up settling in Pleasantville, New Jersey. *Id.* at 4, 6. Petitioner has resided in New Jersey since that date until his unlawful detention earlier this year. He lives here with the mother of his three children, two of which are United States citizens, and other family members here in Pleasantville, New Jersey.

A Notice to Appear (“NTA”) in Removal Proceedings was issued on 10/02/2025. Exhibit 2, Notice to Appear. The NTA was issued approximately three years after Petitioner’s entry in 2022.

The Petitioner was detained by ICE in 10/2025 at the Mount Laurel Field Office in New Jersey. Exhibit 1. He was detained at a routine check in, that he had been appearing at regularly since his entry in 2022. Petitioner is currently detained at the ERO Camp East Montana Detention Facility in El Paso, Texas. Exhibit 6, ICE Locator Search Results.

The conditions at ERO Camp East Montana Detention Facility “are dangerous and inhumane,” according to Congresswoman Veronica Escobar (TX-16). Exhibit 3 at 4, Letter from Congresswoman Escobar. The

Congresswoman continues “to have grave concerns regarding operations and conditions at Camp East Montana.” *Id.* at 1. She is not alone.

The American Civil Liberties Union (“ACLU”) and other organizations also note the “alarming conditions of confinement and repeated instances of coercion, physical force, and threats against immigrants facing third-country deportations, in violation of agency policies and standards, as well as statutory and constitutional protections.” Exhibit 4, Letter from ACLU. The ACLU provided well over a dozen sworn declarations⁴ from immigrant detainees at ERO Camp East Montana detailing the conditions at the tent-facility. The conditions involve “cramped, squalid soft-sided tents with 72 people per unit, where toilets and showers flood eating areas with raw sewage” and that “officers have beaten detainees and used threats of violence, criminal charges, and imprisonment.” Exhibit 4 at 2.

Petitioner’s removal proceedings remain pending before EOIR, and his next hearing is 01/16/2026. Exhibit 5, Notice of Hearing. He is not subject to an order of removal, and has already filed an application for Asylum and other related protection relief. *Id.*

Petitioner has not filed a motion for bond with EOIR. A recent BIA decision precludes him from succeeding on any request for bond. *Matter of Yajure Hurtado*,

⁴ ACLU, “Index of Supporting Declarations,” accessed 12/22/2025, found at: <https://kfoxtv.com/resources/pdf/c8d7ecd4-ecba-4f02-8b1f-04dd8fdb6370-RedactedDecswithIndexCombinedFINAL.pdf>

29 I&N Dec. 216 (BIA 2025). Nor is Petitioner a classmember under *Maldonado Bautista v. Noem*, No. 5:25-cv-01873 (Order dated Dec. 18, 2025). Maldonado only extends class membership to noncitizens who “were not or will not be apprehended upon arrival.” *Id.* Petitioner was detained by immigration authorities at entry, and as such is not a classmember. Exhibit 1.

Petitioner has exhausted all administrative remedies. He is unable to prevail on any request for a bond before the immigration court because of unlawful BIA precedent.

Petitioner has no open warrants or negative criminal history that would change circumstances to warrant his arrest and removal outside of the Western District of Texas. *Id.* The records ICE submitted to the immigration court confirm he has no criminal history; his only arrest are his civil detentions by ICE. Exhibit 1 at 6.

Petitioner’s removal from United States cannot be effectuated in the reasonably foreseeable future. Absent judicial review of his custody claim, Petitioner will continue to be illegally detained by ICE. He seeks the only avenue of judicial review available to him, habeas review.

EXHAUSTION OF REMEDIES

Petitioner has exhausted all practicable administrative remedies. Petitioner cannot seek to challenge his detention before EOIR because he will be unlawfully denied relief. Petitioner is precluded from prevailing on any bond appeal with the BIA following the unconstitutional case *Matter of Yajure Hurtado*. That decision precludes Petitioner from obtaining bond before EOIR, improperly finding Immigration Judges lack jurisdiction to issue bonds to persons like Petitioner who entered United States without inspection. *Id.*

To be a classmember of *Maldonado Bautista*, Petitioner would have had to entered without inspection and not been encountered by immigration authorities. Because he was briefly detained and then paroled at entry, Petitioner cannot be considered a classmember of *Maldonado Bautista*.

Any EOIR bond request will be denied, as will any appeal to the BIA. As such, any attempt at a bond hearing in immigration court is fruitless. Petitioner has therefore exhausted all administrative remedies for the purposes of this action.

LEGAL ARGUMENT

I. THIS COURT HAS JURISDICTION OVER THIS HABEAS CORPUS PETITION.

This Court has jurisdiction over the instant habeas petition. The Writ of Habeas Corpus has a pre-eminent role in our constitutional system and “is the fundamental instrument for safeguarding individual freedom against arbitrary or lawless state action.” *Harris v. Nelson*, 294 U.S. 286, 290 (1969); U.S. Const. Art. I §9 c12. In *INS v. St. Cyr.*, 533 U.S. 289 (2001), the United States Supreme Court reaffirmed that aliens detained by the former INS can petition for writs of habeas corpus under 28 U.S.C. §2241. The Court held that “[a]t its historic core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been the strongest.” *Id.* at 301. Similarly, in the Supreme Court case of *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court held that it had jurisdiction to review detention pursuant to INA § 241, 8 U.S.C § 1231(a)(6). Habeas review is unquestionably available to Petitioner.

Specifically, this Court has jurisdiction because Petitioner has met two requirements. First, a habeas petition has been filed. And second, the Petitioner is physically in this district. Upon information belief, Petitioner is currently at the ERO Camp East Montana Detention Facility, within the confines of this federal district.

II. PETITIONER'S DETENTION IS UNLAWFUL.

A. Introduction.

Petitioner's detention on a mandatory basis as argued by the Respondents is a novel interpretation of the law. For almost thirty years, noncitizens such as Respondent have been entitled to seek bond hearings under the plain language and interpretation of the statutory framework. The Respondents now argue that is incorrect, and Petitioner is subjected to mandatory detention, against all precedent and interpretation and plain reading of the relevant statute. Federal courts across the nation have resoundingly found this novel interpretation unconstitutional and ordered habeas relief. This Court should do the same.

B. The INA Statutory Framework Was Established in 1996.

The Immigration and Nationality Act ("INA", 8 U.S.C. § 1101 et. seq.) prescribes three basic forms of detention for noncitizens in removal proceedings. Despite recent attempts by the current Executive to greatly expand detention of noncitizens, the INA, Congress and the federal courts have recognized the rights of noncitizens to seek bonds after entry without inspection ("EWI").

Three basic statutory schemes are established by the INA. First, INA § 236 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* INA § 236; 8 U.S.C. § 1229a. Individuals in INA § 236(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8

C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* INA § 236(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under INA § 235(b)(1) and for other *recent arrivals* seeking admission referred to under INA § 235(b)(2). Finally, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

The detention provisions at INA § 236(a) and § 235(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 236(c) was most recently amended in early 2025 by the LRA, Pub. L. No.119-1, 139 Stat. 3 (2025).

C. Since 1997, Noncitizens Who EWI’d Have Had the Right to Seek Bond.

Following the enactment of the IIRIRA, the Executive Office of Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under INA § 235 and that they were instead detained under INA § 236(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6,

1997). In the decades that followed, most noncitizens who entered without inspection— unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior the enactment of the IIRIRA, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

D. In 2025, the Current Executive Tries to Redefine Bond Eligibility.

On 07/08/2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (“DOJ”), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” The memo further stated DHS’ new position with regard to custody determinations as follows:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a

designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

See <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last accessed August 4, 2025) (*emphasis original*).

As a result, according to DHS *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with

deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).” *Id.*

E. The Board Follows DHS and Attempts to Reinterpret Established Law.

In 09/2025, the Board issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision uses incorrect legal reasoning to tow the line with DHS and find “aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure Hurtado* at 220. The decision utilizes much of the same flawed reasoning as the DHS Memorandum, while citing incorrectly to precedent and statutory authorities. *Id.*

F. The Federal Courts Widely Criticize the Executive’s Flawed Reasoning.

Federal District Courts are routinely finding the Executive’s new arguments regarding expanded detention rather lacking. “Indeed, for nearly 30 years, § 1225 has applied to noncitizens who are either seeking entry to the United States or have a close nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States.” *Rivera Zumba v. Bondi*, 2025 D. NJ 2:25-cv-14626. Courts all across the country have rejected this “novel interpretation of the immigration detention statutes.” *Martinez v. Hyde*,

F. Supp. 3d --, 2025 WL 2084238 at 4-5; *see also* *Maldonado Vazquez v. Feeley*, 2025 D. Nev. WL 2676082; *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border.”); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years).

At this point, the vast majority of the District Courts⁵ have reached the same conclusion, including several cases in this District. *See, e.g.,* *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859, at *1–5 (W.D. Tex. Oct. 21, 2025); *Lopez Arevalo v. Ripa*, No. EP-25-cv-337 (W.D. Tex. Sep. 21, 2025); *Morales Penaloza v. Bondi*, No. 25-cv-18686 (D.N.J. Dec. 19, 2025); *Castillo Corea v. Bondi*, No. 3:25-cv-18481 (D.N.J. Dec. 12, 2025); *Ayala v. Bondi*, No. 1:25-cv-16428 (D.N.J. Oct. 30, 2025); *Penuela v. Bondi*, No. 9:25-cv-00249 (E.D. Tex. Nov. 11, 2025); *Soto v. Soto, et al.*, No. 25–cv–16200, 2025 WL 2976572, at *5 (D.N.J. Oct. 22, 2025); *Belsai D.S. v. Bondi*, No. 25–cv–03682, 2025 WL 2802947 (D. Minn. Oct.

⁵ This list of cases is by no means exhaustive. There are well over 300 cases nationwide from District Courts that have all reached the same conclusion; that ICE’s detention under 8 U.S.C. § 1225(b)(2) is unconstitutional. ICE continues to detain people nonetheless, in defiance of the Courts’ authority.

1, 2025); *Quispe v. Crawford*, No. 25-cv-01471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Savane v. Francis*, No. 25-cv-06666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Salazar v. Dedos*, No. 25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. 25-cv-04048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-00096, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall*, No. 25-cv-00541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, No. 25-cv-01408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Vazquez v. Feeley*, No. 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Garcia Cortes v. Noem*, No. 25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Lopez Santos v. Noem*, No. 25-cv-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Perez v. Kramer*, No. 25-cv-03179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *J.O.E. v. Bondi*, No. 25-cv-03051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL

2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Raycroft*, No. 25–cv–12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Lopez Benitez*, 2025 WL 2371588.

As discussed above, a District Court recently issued an order granting national class certification to noncitizens who “were not or will not be apprehended upon arrival.” *See* Facts at 5, *supra*; *Maldonado Bautista*. Petitioner was detained by immigration authorities at entry, and as such is not a classmember. Exhibit 1. Nonetheless, the Court found detention by ICE after entry was plainly under 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2) as now claimed by Respondents.

This Court should follow suit and reach the same conclusion, that Petitioner could only be detained pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b).

G. IJs Possess Jurisdiction to Release Noncitizens Who EWI’d.

i. A Plain Reading of INA § 236(a) Mandates Bond Eligibility.

The plain text of INA § 236 demonstrates that it, not INA § 235(b), applies to this noncitizen’s detention. INA § 236(a) “provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal.” *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citation omitted). As the Supreme Court has remarked, INA § 236(a) “sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288

(2018) (quoting INA § 236(a)). Section 236(c) carves out a statutory category of noncitizens for whom detention is mandatory, consisting of individuals who have committed certain “enumerated . . . criminal offenses [or] terrorist activities.” INA § 236(c). Among the individuals carved out and subject to mandatory detention are certain categories of “inadmissible” noncitizens. *See* INA § 236(c)(1)(A), (D), (E). This is in stark contrast with mandatory detention provision under INA § 235(b)(2), which “supplement[s] § [236’s] detention scheme.” *Diaz*, 53 F.4th at 1197. Section 235(b) “applies primarily to [noncitizens] seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Jennings*, 583 U.S. at 297; *see* INA § 235(b) (entitled “Inspection of applicants for admission”).

Thus, the plain text of INA § 236(a) applies to noncitizens here in the United States who entered without inspection. The fact that INA § 236(a) is the default rule for arrest and detention and that section (c) carves out exceptions further demonstrates that the discretionary bond procedures apply to noncitizens who are present without being admitted or paroled and have not been implicated in any crimes set forth in subsection (c). The Supreme Court has held that when Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

ii. The LRA, Passed in 2025, Also Supports this Finding.

The recent enactment of LRA further supports this finding. The Act added language to INA § 236(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under INA § 212(a)(6)(A) (the inadmissibility ground for entry without inspection) or INA § (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of new certain crimes (not previously covered by INA § 236(c)) are now subject to § 1226(c)'s mandatory detention provisions. *See* INA § 236(c)(1)(E). By including such individuals under INA § 236(c), Congress reaffirmed that § 236(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 212(a)(6)(A) or 212(a)(7). *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir. 2001) (“[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.”).

iii. The Proposed Statutory Reading Renders It Meaningless.

If INA § 236(a) did not apply to noncitizens who entered without inspection—like DHS contends—vast portions of the INA § 236 would be rendered meaningless. This is because DHS contends that noncitizens are really “applicants for admission” and therefore subject to mandatory detention under INA

§ 235(b)(2). Courts have made it clear that statutes must be interpreted as a whole, “giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.” *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (quoting *Rodriguez v. Sony Computer Ent. Am., LLC*, 801 F.3d 1045, 1051 (9th Cir. 2015)).

It is noteworthy that “[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,” courts “generally presume[] the new provision should be understood to work in harmony with what has come before.” *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (internal quotation marks omitted). Here, DHS’ sudden reversal—particularly after Congress just recently amended INA § 236 to include the LRA provisions—further undermines the Department’s argument that the detention authority for noncitizens lies under INA § 235(b) instead of INA § 236(a).

H. The Position of DHS and the Board Is Clearly Incorrect.

i. INA § 235(b)(2) Does Not Apply to Noncitizens Who EWI’d.

As noted above, the Executive’s new position contends that all noncitizens who EWI’d are subject to mandatory detention under INA § 235(b)(A) because they are an “applicant for admission.” But INA § 235(b)(A) concerns a completely different category of noncitizens. In *Jennings*, the Supreme Court discussed INA § 235 as part of a process that “generally begins at the Nation’s borders and ports of

entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible.” 583 U.S. at 287. As for INA § 236, *Jennings* described it as governing “the process of arresting and detaining” noncitizens who are living “inside the United States” but “may still be removed,” including noncitizens “who were inadmissible at the time of entry.” *Id.* at 288.

The Court then summarized the distinction as follows: “In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ [235](b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country pending the outcome of removal proceedings* under §§ [236](a) and (c).” *Id.* at 289 (emphasis added); *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a noncitizen “who *tries to enter* the country illegally is treated as an applicant for admission . . . and a [noncitizen] who is detained *shortly after unlawful entry* cannot be said to have effected an entry”) (emphasis added) (cleaned up). The Board in *Yajure Hurtado* cites to both *Jennings* and *Thuraissigiam*, but fails to acknowledge or deal with the entire statutory framework as the Supreme Court did.

ii. The Executive Conflates Applicant for Admission and EWI.

The Executive’s newfound position misconstrues the phrase “applicant for admission” to suggest that every person, other than those who have been admitted,

are subject to mandatory detention. INA § 235(a)(1) defines an “applicant for admission” as a person who is “present in the United States who has not been admitted or who arrives in the United States.” INA § 235(a)(1). According to DHS, INA 235(b)(1) generally applies to arriving aliens and INA § 235(b)(2) serves as a broader catchall provision for all applicants for admission not covered by INA § 235(b)(1). In other words, DHS argues that every noncitizen who entered without parole or inspection is an “applicant for admission” pursuant to § 235(a)(1) and is therefore subject to mandatory detention. However, INA § 235(b)(2)(A) states in full that:

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 1229a of this title.*

Id. (emphasis added).

Thus, for section 235(b)(2)(A) to apply, several conditions must be met—in particular, an “examining immigration officer” must determine that the individual is: (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt entitled to be admitted.” DHS’ position conveniently overlooks these conditions and treats “applicants for admission” the same as those “seeking admission.” The phrase “seeking admission” is undefined in the statute but necessarily implies some sort of present-tense action. *See Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020) (“The ‘use of the present progressive, like use of

the present participle, denotes an ongoing process.” (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020)). Indeed, only those who take affirmative acts, like submitting an “application for admission,” are those that can be said to be “seeking admission” within § 235(b)(2)(A).

By limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not intend to sweep into this section individuals who have already entered and are now residing in the United States. *See Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding that an individual submits an “application for admission” only at “the moment in time when the immigrant actually applies for admission into the United States.”) Accordingly, INA § 235(b)(2)’s reference to “applicants for admission” must be read “in their context and with a view to their place in the overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act’s “broader structure... to determine [the statute’s] meaning”).

iii. Statutory Analysis Shows the Executive’s Position Is Nonsensical.

The Board’s recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) reinforces this position. The Board held that a noncitizen who was apprehended “approximately 5.4 miles away from a designated port of entry and 100 yards north of the border” was detained under INA § 235(b) and not INA §

236(a). *Id.* at 67. In other words, the noncitizen was apprehended upon arrival. The Board then explained that such persons are properly treated as “arriv[ing] in the United States,” given that they are “detained shortly after unlawful entry,” and “[are] apprehended’ just inside ‘the southern border, and not at a point of entry, on the same day [they] crossed into the United States.’” *Id.* at 68 (quoting *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020)). Notably, the Board’s decision supports the argument that INA § 236(a) “applies to [noncitizens] already present in the United States,” while INA § 235(b) “applies primarily to [noncitizens] seeking entry into the United States and authorizes DHS to detain a[] [noncitizen] without a warrant at the border.” *Id.* at 70 (internal quotation marks omitted).

The broader statutory structure of immigration detention authority also demonstrates the inapplicability of INA § 235(b) to this case. *See King*, 576 U.S. at 492 (explaining that an act’s “broader structure” can be a useful tool “to determine [a statute’s] meaning.”); *see also Biden v. Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of INA provision). This is particularly true where “a provision . . . may seem ambiguous in isolation.” *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). In such situations, the statute’s meaning “is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” *Id.*

The broader text of INA § 235 reinforces this understanding of the two sections' structure and application. INA § 235 concerns "expedited removal of inadmissible *arriving* [noncitizens]." INA § 235 (emphasis added). Paragraph (b)(1) encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible" for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but whom (b)(1) does not address. *Id.* § 235(b)(2), (b)(2)(A).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals who already entered without inspection and are now residing in the United States. Otherwise, the language "seeking admission" in INA § 235(b)(2) serve no purpose, as the statute specifies that it is addressing a person who is both an "applicant for admission" and who is determined to be "seeking admission." *Id.*

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e., "the case of [a noncitizen] . . . who is arriving on land." INA § 235(b)(2)(C). This language further underscores

Congress's temporal requirements in INA § 235 and focus on those who are arriving into the United States. Similarly, the title of § 235 refers to the "inspection" of "inadmissible arriving" noncitizens. *See, e.g., Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," INA § 235(b)(2)(A), (b)(4), and sets out procedures for "inspection[s]" of people "arriving in the United States," *id.* § 235(a)(3), (b)(1), (b)(2), (d).

iv. Case Law Does Not Support the Executive's Position.

The long held understanding by Congress, DHS, EOIR, and other immigration authorities is that INA § 235(b)(2) applies narrowly to those who were "detained shortly after unlawful entry," and "[are] apprehended' just inside 'the southern border, and not at a point of entry, on the same day [they] crossed into the United States.'" *Q. Li* at 68. The Board itself acknowledged as much in *Q. Li*, finding "an applicant for admission who is arrested and detained without a warrant *while arriving* in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond

under section 236(a) of the INA, 8 U.S.C. § 1226(a).” *Id.* at 69 (emphasis added); *see also Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019) (noting that “. . . section 235 (under which detention is mandatory) and section 236(a) (under which detention is permissive) can be reconciled only if they apply to different classes of aliens.”) (quoting *Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015) (concluding that “permissive and mandatory [provisions] are in harmony, as they apply to different situations”).

v. The Board’s Precedents Now Conflict with Each Other.

The Executive’s attempts to change the long held precedent that a noncitizen who entered without inspection is subject to mandatory detention and not eligible for bond is not supported by precedent—even precedent from the Board. Earlier this very year, the Board held that INA § 236 “‘*applies to aliens already present in the United States*’ and ‘authorizes detention only ‘[o]n a warrant issued’ by the Attorney General leading to the alien’s arrest.” *Q. Li.* at 70 (emphasis added) (quoting *Jennings*, 583 U.S. at 302–303). The Supreme Court’s decision in *Jennings* also demonstrates that INA § 235 is a process that “generally begins at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible,” whereas INA § 236 governs “the process of arresting and detaining” noncitizens who are living “inside the United States” but “may still be removed,” including noncitizens “who

were inadmissible at the time of entry.” 583 U.S. at 287, 288. The same Board now twists itself to hold that INA § 236 only applies to noncitizens who were admitted. *Yajure Hurtado*. Federal courts all across the country have rejected this position, as it conflicts with almost thirty years of established law. *See section II.G.i, supra*.

I. EOIR Cannot Provide Petitioner Adequate Due Process.

EOIR is an administrative arm of the Department of Justice.⁶ “A massive purge of judges has left the federal government’s web of immigration courts decimated and in disarray.” Fn. 1., *supra*. “So far this year, the Trump administration has dismissed at least 98 of the approximately 700 immigration judges who were on the bench.” *Id.* Throughout 2025, EOIR has consistently fired immigration judges “with higher than average rates of granting migrants asylum, judges with dual citizenship and those with a history of providing legal defense to immigrants.” *Id.* Meanwhile, the Department of Justice is actively recruiting “deportation judges.” Fn. 2, *supra*.

The weaponization of EOIR is aimed at accomplishing the Department’s goal of mass deportations, not provide access to justice. *Id.* It is hard to see how such an agency could provide adequate Due Process in these circumstances.

⁶ *See* Department of Justice, “Office of the Chief Administrative Hearing Officer,” updated 11/17/2025, accessed 12/09/2025 at: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer>

III. THIS COURT SHOULD ORDER PETITIONER'S IMMEDIATE RELEASE AND OTHER HABEAS RELIEF.

Respondents have clearly violated Petitioner's rights under the Fifth Amendment Due Process Clause and the APA by depriving him of his liberty and incarcerating him without the possibility of bond. This Court should issue a writ of habeas corpus and order Respondents to immediately release Petitioner, enjoin them from redetaining him, and to grant him the same conditions of supervision, if any, prior to his detention, or alternatively grant him an individualized bond hearing in accordance with INA § 236(a).

This Court should order Petitioner's immediate release because Respondents continue to defy the established law of this and other District Courts, and his detention is unconstitutional and unlawful. Because "Petitioner's arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore [Petitioner] is to immediate[ly] release him and enjoin the Government from further similar transgressions." *Morales Penaloza*. In *Morales Penaloza*, like this matter, the Petitioner was detained at entry, released from custody, and then years later re-detained by ICE, now supposedly under 8 U.S.C. § 1225(b)(2).

CONCLUSION

For the foregoing reasons, this Court should grant the instant writ and immediately order Petitioner released on any reasonable conditions as the DHS may set.

Respectfully Submitted,


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Dated: 12/24/2025

CERTIFICATE OF SERVICE

I, Jason Scott Camilo, Esq., do hereby certify that I have electronically served this document to all parties via the Court's CM/ECF system. I electronically served a copy of the following documents on or about 12/30/2025 to the United States Attorney for the Western District of Texas at usatxw.civil.immigration.notices@usdoj.gov:

- Motion to Appear *Pro Hace Vice*
- Verified Habeas Corpus Petition
- Exhibits in Support of Habeas Corpus Petition
- Petitioner's Brief in Support of Writ of Habeas Corpus
- Habeas Order
- Form JS-44
- Certificate of Service

Dated: 12/30/2025

/s/ Jason Scott Camilo, Esq.
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