UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF OKLAHOMA

JUAN CHAVEZ CAMPA,	)	
Petitioner,	)	
v.	)	**No. CIV-26-1-HE**
	)	
	)	
JOSHUA JOHNSON, et. al.	)	
Respondent,	)	

REPLY MEMORANDUM

NOW COMES, the Petitioner, and presents this reply memorandum to the respondent's opposition memorandum, in support the petitioner states as follows:

JURISDICTION

Section 1252(b)(9) provides that the Court of Appeals is the exclusive forum for "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States." 8 U.S.C. § 1252(b)(9). Petitioner challenges the legality of his detention and the denial of his right to seek bond while his removal case proceeds—neither of which are actions arising from a decision to remove Petitioner from the United States. The Supreme Court has stated that § Section 1252(b)(9) "does not present a jurisdictional bar" where petitioners are "not asking for a review of an order removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined." *Jennings v. Rodrigeuz*, 583 U.S. 281, 294 (2018). Petitioner is not challenging the underlying removal proceedings in the habeas petition, rather petitioner asserts he is being unlawfully detained under

the mandatory detention framework of Section 1225(b), as opposed to the discretionary one under 8 U.S.C. §1226(a).

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Petitioner is not challenging the "commence[ment]" of removal proceedings, the "adjudication" of his case, or the "execut[ion] of removal orders against him. Petitioner is challenging the unlawful nature of his detention without a bond hearing.

MALDONADO BAUTISTA

Respondent is a class member in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.). In *Maldonado Bautista* the court certified the Bond Eligible Class, defined as:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

The Respondent is a noncitizen without lawful status detained at the Kay County Justice Facility who (1) entered the United States without inspection , (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Accordingly, as a member of the Bond Eligible Class, Petitioner is entitled to the application of the law as stated in the *Maldonado Bautista* orders granting summary judgment and class certification. *See* 2025 WL 3288403, at *9 ("When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible

Class as a whole.").

The Immigration Court is obligated to apply the law to all class members, as determined in the binding, final judgment issued in *Maldonado Bautista*. The Executive Office for Immigration Review is a Defendant in *Maldonado Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011). This understanding of declaratory judgments—and thus immigration court's obligation to comply with the declaratory judgment in *Maldonado Bautista*—is consistent with the decisions of many courts. *See, e.g.*, *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("[T]he discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court."), *abrogated on other grounds by*, *Schieber v. United States*, 77 F.4th 806 (D.C. Cir. 2023), *cert. denied*, 144 S. Ct. 688 (2024); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"); *Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay

pending appeal."), *rev'd on other grounds*, 184 F.3d 900 (D.C. Cir. 1999).

EXHAUSTION

For a habeas corpus petition under § 2241, the exhaustion of administrative remedies is not a statutory or jurisdictional requirement, but rather a prudential matter of this Court's discretion. *See Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). First, courts consider whether "pursuit of administrative remedies would be a futile gesture." *Shearson*, 725 F.3d at 594. Here, requiring Petitioner to wait for an immigration judge to deny a bond hearing or for the BIA to deny a bond appeal would be futile. Waiver based on futility is especially appropriate when the administrative agency has predetermined the disputed issue by having a clearly stated position that the petitioner is not eligible for the relief sought. Because the BIA recently issued a precedential, binding decision holding that all noncitizens who entered without admission or parole are ineligible for § 1226(a) bond hearings, *see Yajure Hurtado*, 29 I&N Dec. 216, the BIA and IJ will undoubtedly deny Petitioner's bond request. Thus, seeking bond is futile because Respondents have predetermined the disputed issue. Courts have waived prudential exhaustion requirements when the "legal question is fit for resolution and delay means hardship." *Shalala v. Illinois Council on Long Term Care*, 529 U.S. 1, 13 (2000). On average, the BIA took over six months to decide bond appeals in 2024, with hundreds of cases taking a year or longer to resolve. *See Rodriguez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025) at 1245. Here, the delays inherent in the administrative process would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process. Meanwhile, "the legal question" of which detention statute properly applies "is 'fit' for resolution." *Shalala*, 529 U.S. at 13. The legality of Petitioner's detention is a pure question of statutory interpretation and constitutional due process analysis. Thus, because the Court can

decide these purely legal questions now, Petitioner could be released within a few weeks as compared to the anticipated half-year wait through the BIA appeal route.

Waiver is appropriate when a petitioner raises "non-frivolous" constitutional questions that cannot be adequately addressed through the administrative process. *Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006). Since the "BIA lacks authority to review constitutional challenges," *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006), neither an immigration judge nor the Board of Immigration Appeals is positioned to properly adjudicate Petitioner's due process claim. Finally, the need for waiver is amplified in the context of a habeas corpus petition, which demands a "swift" remedy in the face of illegal detention. *Fay v. Noia*, 372 U.S. 391, 400 (1963).

BOND ELIGIBILITY

The structure, text, and legislative history of the INA make clear that § 1225 applies only to the inspection of recent arrivals at or near the U.S. border, and was never meant to encompass people like Petitioner who have been residing in the interior of the country for years. Instead, § 1226 was intended to provide the proper process for detaining those latter individuals. Additionally, parsing the specific text of § 1225(b)(2)(A) further demonstrates that the provision clearly does not apply to Petitioner, since he is not "applicants for admission" who is "seeking admission" before an "examining immigration officer "

The text, structure, and purpose of the INA all support Petitioner's argument that § 1226(a) governs their detention, and not § 1225(b)(2)(A). § 1226(a) and § 1225(b)(2)(A) work in tandem to cover different categories of noncitizens: § 1226 provides a discretionary detention scheme for individuals who are arrested while "already in the country" and detained "pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while

§ 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *id.* at 287. Indeed, there is a "line historically drawn between these two sections" and the categories of noncitizens they respectively cover. *Martinez v. Hyde*, --- F. Supp. 3d. ---, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

This understanding situates each detention provision "in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 486 (2015). *See also Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (looking to statutory structure to inform interpretation of INA provision). Placing a provision in its larger context is especially important where the provision "may seem ambiguous in isolation" but can be "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." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). And the one meaning which permits a logical and compatible effect here is that § 1225 and § 1226 each cover *different* categories of noncitizens. Section 1225's plain text shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)–(b), (d). That section sets out procedures for "inspection[s]" of people "arriving in the United States," 8 U.S.C. § 1225(a)(3), (b)(1), (b)(2), (d); repeatedly refers to "examining immigration officer[s]," *id.* § 1225(b)(2)(A), (b)(4); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id.* § 1225(a)(2), (b)(2)(B), (b)(2)(C). Even the title of § 1225 refers to the "inspection" of "inadmissible *arriving*" noncitizens (emphasis added), and the title of subsection 1225(b)(2) likewise refers to "inspection." *See Dubin v.*

United States, 599 U.S. 110, 120–21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute . . . especially . . . [where] it reinforces what the text's nouns and verbs independently suggest.") *Merit Mgmt. Grp., LP v. FIT Consulting, Inc.*, 583 U.S. 366, 380 (2018) (similar). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the U.S. border. Petitioner, of course, arrived at the border years ago and has been residing in the United States since.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested "on a warrant . . . pending a decision on whether [they are] to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226(a) thus applies to those "already in the country" who are detained "pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. On its face, the provision plainly applies to Petitioner, who was arrested "on a warrant" while already in the U.S. and is now detained "pending a decision on" his removal. *Id.* Thus, § 1226(a), and not § 1225(b)(2)(A), is the proper detention authority for Petitioner. The legislative history and implementing regulations likewise make clear that Section 1226(a) was always intended to apply to people who entered without inspection and are residing in the United States. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting Congress's intent for § 1226(a) to simply "restate" its predecessor statute, which provided "the authority of the Attorney General to arrest, detain, and *release on bond* a[ ] [noncitizen] who is not lawfully in the United States") (emphasis added); Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (explaining that "[noncitizens] who are present without having been admitted or paroled (formerly referred to as aliens who entered

without inspection) will be eligible for bond and bond redetermination[,]" and "[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge.....This procedure maintains the status quo.").

This is not a novel interpretation of the INA. It has been *Respondents' own* understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course in July. Indeed, Respondents' own understanding of § 1226(a) as covering people in the interior was so uncontroversial for so long that it is now deeply entrenched in DHS's operations. For example, the Notice to Appear form used to initiate removal proceedings against Petitioner distinguishes between noncitizens "arriving" into the United States and those already "present in the United States." (Here, DHS deliberately chose *not* to select the "arriving" option, instead only designating that Petitioner was "present in the United States." (*See,* ECF Document 7 exhibit 1 Notice to Appear).

But now, Respondents suddenly contend that § 1226(a) does not apply to people like Petitioner who are charged with inadmissibility but have long resided in the United States, thus denying bond hearings to Petitioner and thousands like him. Respondents' new reading defies the plain text of § 1226, which expressly applies to "inadmissible" noncitizens. Section 1226(a) states that noncitizens detained via a warrant while facing removal proceedings may be released on bond or parole "[e]xcept as provided in subsection (c)." 8 U.S.C. § 1226(a). Subsection (c), in turn, exempts certain "inadmissible" noncitizens from § 1226(a)'s discretionary detention scheme. These "statutory exceptions would be unnecessary" if Congress did not intend for § 1226(a) to cover noncitizens alleged to be inadmissible, like Petitioner here. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). *See also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (discussing § 1226 and

explaining that "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." (quoting *Shady Grove*, 559 U.S. at 400)).

Moreover, Congress added one of these references to inadmissibility just last year. In the Laken Riley Act, Congress added subsection § 1226(c)(1)(E), which mandates detention for noncitizens who have been arrested for, charged with, or convicted of certain crimes and who are also inadmissible under various provisions of the INA, including § 1182(a)(6)(A)—the statute under which Petitioner here is charged, and which applies to "aliens present in the United States without being admitted or paroled." *See* Pub L. No. 119-1, 139 Stat. 3 (2025). By classifying these inadmissible noncitizens as ineligible for bond under § 1226(c) *if* they satisfy additional conditions regarding their criminal history, Congress reaffirmed that § 1226 encompasses the detention of inadmissible noncitizens. Indeed, "when Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995). *See also Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025)("[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.") (internal quotation marks omitted).

Respondents' preferred reading of the INA, which categorically places noncitizens charged with inadmissibility under § 1225(b)(2)(A), "'would largely nullify a statute Congress enacted this very year, [and] must be rejected.'" *Pizarro Reyes*, 2025 WL 2609425, at *5 (quoting *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)). *See also Lopez-Campos*, 2025 WL 2496379, at *8 ("Respondents' interpretation of the statutes

would render this recently amended section superfluous."). That, again, is so because, if *every* noncitizen who entered without inspection was already subject to mandatory detention under § 1225(b)(2)(A), there would be no need for a separate provision (i.e., § 1226(c)) mandating detention if they also satisfied additional conditions. In sum, the only reading of § 1226 that gives meaning to all of its parts is that it encompasses people like Petitioner who were apprehended in the interior and are charged with being inadmissible because they entered the country without inspection. Thus, because § 1226(a) clearly governs Petitioner's detention, granting his habeas petition would uphold the INA's text, structure, and intent.

Respondents' attempt to subject Petitioner to mandatory detention under § 1225(b)(2)(A) defies the plain text of that provision. Congress made clear that to fall under Section § 1225(b)(2)(A), noncitizens must satisfy three criteria: that they be (1) an "applicant for admission" who is (2) "seeking admission" to the United States (3) before an "immigration officer." By using these three unique terms in the same provision, Congress meant for each of them to introduce *distinct* requirements that must all be satisfied before the provision applies. *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." (internal quotations omitted)); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (similar); *Pulsifer v. United States*, 601 U.S. 124, 141 (2024) (similar). Petitioner does not satisfy any of these three criteria, let alone all of them. Thus, § 1225(b)(2)(A) cannot govern Petitioner's detention.

At the outset, it is questionable whether Petitioner is an "applicant for admission" as that term is used in § 1225(b)(2)(A). Section 1225(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 (whether or not at a designated port of arrival and including an alien who

is brought to the United States after having been interdicted in international or United States waters). In a vacuum, the first clause of this definition might appear to encompass Petitioner. But it is an axiomatic principle of statutory interpretation that "we must (as usual) interpret the relevant words not in a vacuum, but with reference to the statutory context, structure, history, and purpose." *Abramski v. United States*, 573 U.S. 169, 179 (2014) *King v. Burwell*, 576 U.S. 473 (2015) at 486 (statutory terms must be understood "in their context and with a view to their place in the overall statutory scheme"); *Kentucky v. Biden*, 23 F.4th 585, 603 (6th Cir. 2022) (each word must be given "'its ordinary, contemporary, common meaning, while keeping in mind that statutory language has meaning only in context.") (cleaned up). This is the case even when a statutory term seems unambiguous, such as when it is defined in the statute. *See Yates v. United States*, 574 U.S. 528, 537 (2015).

Under any reasonable and context-sensitive understanding of these terms, Petitioner is not an "applicant for admission." When viewed in its statutory context, this term cannot be understood without acknowledging Congress's choice to deploy the term within § 1225's border inspection scheme. *See* Section I. That context underscores that the definition in (a)(1) is limited by other aspects of the statute to those who undergo an initial inspection at or near the border shortly after arrival. *See Pizarro Reyes*, 2025 WL 2609425, at *5 ("The Court finds that the overall context of § 1225 limits the scope of the terms 'applicant for admission' and 'seeking admission.'"). Moreover, the term "applicant for admission" appears nowhere in § 1226, the "default" detention statute applying to those "already" in the country. *Jennings*, 583 U.S. at 288, 301. This comparative context further clarifies that the term refers to a specific category of "arriving" noncitizens being "inspected" at or near the border. *See* 8 U.S.C. § 1225. And Petitioner, of course, is not at the border applying for admission. Thus, Petitioner cannot

be detained under § 1225(b)(2)(A). But whether or not Petitioner is an "applicant for admission," § 1225(b)(2)(A) also requires an independent and separate showing that Petitioner is "seeking admission" to the United States—which Petitioner very clearly is not. The term "seeking admission" is not defined anywhere in the INA, making the structure and context of § 1225 even more instructive. Interpreting the INA properly shows that "seeking admission" describes a narrow class of recent arrivals who are presenting themselves for admission at or near the border. Petitioner clearly does not fall within that class.

Again, the structure, text, and legislative history of § 1225 clearly show that it deals with inspections of recent arrivals at or near the border. *See* Section I. By deploying "seeking admission" within § 1225's border inspection scheme—and not § 1226—Congress intended to limit this term to covering just the detention of noncitizens seeking admission *at or near the border*. *See Pizarro Reyes*, 2025 WL 2609425 at *5; *Martinez*, 2025 WL 2084238, at *8. That is why the statute's implementing regulations, which were "promulgated mere months after passage of the statute and have remained consistent over time," *Lopez Benitez v. Francis*, --- F. Supp. 3d. ---, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025), describe those seeking admission as "arriving aliens," 8 C.F.R. § 235.3(c)(1), who are "*coming or attempting to come into* the United States," 8 C.F.R. § 1.2 (emphasis added). *See Martinez*, 2025 WL 2084238 at *6 (the regulations' use of "arriving alien" is "roughly interchangeable with an 'applicant . . . seeking admission'" as used in § 1225(b)(2)(A)). *See also Salcedo Aceros v. Kaiser*, No. 25-CV-06924, 2025 WL 2637503, at *10 (N.D. Cal. Sept. 12, 2025) (same). Thus, only those who take affirmative steps to seek admission while "coming or attempting to come into the United States" can reasonably be said to be "seeking admission" under § 1225(b)(2)(A). *See Lopez-Campos*, 2025 WL 2496379 at *7 ("seeking admission" refers to "when people are being

inspected, which usually occurs at the border, when they are seeking lawful entry into this country"). Petitioner is not presenting himself for admission at the border; he arrived at the border years ago and has been residing in the United States since. Petitioner simply wishes to *remain* in the country he has long called home—not to enter it. Thus, Petitioner cannot be considered to be "seeking admission" in any reasonable way, rendering § 1225(b)(2)(A) wholly inapplicable to Petitioner's detention.

Even if Petitioner was somehow found to be an "applicant for admission" who is "seeking admission," Section 1225(b)(2)(A) would only authorize Petitioner's mandatory detention if an "immigration officer" "examin[ed]" Petitioner and "determine[d]" that he was clearly inadmissible. Petitioner is currently in removal proceedings before an immigration judge, with the opportunity for further review by the BIA and the federal courts, who are tasked with determining whether Petitioner is inadmissible and subject to removal, or whether Petitioner is entitled to any relief from removal. But immigration judges are not *immigration officers* as that term is used in the statute. Nor are federal judges.

The term "immigration officer" is defined in the statute's implementing regulations as "the following employees of the *Department of Homeland Security*," such as asylum officers, deportation officers, and Border Patrol agents. 8 C.F.R. §1.2 (emphasis added). Notably, the definition does not encompass immigration judges and appellate immigration judges, who are employees of the *Department of Justice* (the parent agency for the Executive Office for Immigration Review (EOIR), Board of Immigration Appeals (BIA), and immigration courts) and are covered under a *separate* definition for "immigration judge." *See* 8 C.F.R. § 1.2. Thus, even if Petitioner was somehow an "applicant for admission" who is also "seeking admission" into the United States, Petitioner still would not fall within § 1225(b)(2)(A) because his

removal proceedings are before an immigration judge, not an immigration officer.

Section 1225(b)(2)(A)'s use of the term "examining immigration officer" gives further weight to the structural argument that § 1225 obviously sets out a scheme for inspections at or near the border, where arriving noncitizens will typically be examined by an "immigration officer"—such as when they are apprehended by a Border Patrol agent or interviewed by an asylum officer. Petitioner, however, is not being examined by immigration officers at or near the border. Instead, Petitioner is charged by a warrant with having entered the country without authorization and has now been placed in removal proceedings before an immigration judge, where he is seeking various forms of relief from removal. This is clearly not the circumstance contemplated by § 1225(b)(2)(A). Instead, it is the circumstance contemplated by § 1226 (covering people who are "pending a decision [by the immigration courts] on whether [they are] to be removed from the United States"). In sum, under any reasonable interpretation of § 1225, Petitioner is not an "applicant for admission" who is "seeking admission" before an "examining immigration officer." The simple reality is that Petitioner is not trying to enter the United States; he is already here. Thus, § 1225(b)(2)(A) has no role in Petitioner's ability to be detained pending a decision on their removal.

Finally, the fact that the BIA recently affirmed Respondents' practice does not change this conclusion. In *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), the BIA ruled that people who "surreptitiously cross into the United States" qualify as "applicants for admission" under § 1225(b)(2)(A), and thus Immigration Judges "have no authority to redetermine the custody conditions of a [noncitizen] who crossed the border unlawfully without inspection," even if that noncitizen has lived in the United States for years. *Id.* at 228. Not only is the BIA's misguided reasoning in *Yajure Hurtado* out of step with virtually every federal court to treat

the same issue, but this Court is not bound by the BIA's interpretation of federal statutes.

First, a multitude of federal courts,—including in decisions issued after *Yajure Hurtado*—have addressed the exact same question and explicitly rejected the reasoning underlying the BIA's ruling as unpersuasive and at odds with INA's text and structure. *See, e.g., Pizarro Reyes*, 2025 WL 2609425, at *6–7; *Beltran Barrera v. Tindall*, No. 25-CV-541, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025); *Chogllo Chafla v. Scott*, No. 25-CV-00437, 2025 WL 2688541, at *7–8 (D. Me. Sept. 21, 2025). As the Northern District of California explained, the BIA's "strained interpretation" "treats the phrases 'applicant for admission' and 'seeking admission' as synonymous, which renders the phrase 'seeking admission' in section 1225(b)(2) superfluous." *Valencia Zapata v. Kaiser*, No. 25-CV-07492, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025). *See also Beltran Barrera*, 2025 WL 2690565, at *5 ("it [is] difficult to find that an individual is 'seeking admission' when that noncitizen never attempted to do so.").

Second, federal courts are "not bound by the BIA's interpretation" of the INA. *Pizarro Reyes*, 2025 WL 2609425 at *6. To the contrary, federal courts "must exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 412 (2024). A court's decision of whether to find an agency interpretation persuasive depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). And here, the BIA's reasoning in *Yajure Hurtado* fails to explain why or how dozens of federal courts have gotten the answer wrong. And it fails to explain why the agency itself held the contrary position for decades. "Realistically speaking, if Congress's

intention was so clear, why did it take thirty years to notice?" *Romero v. Hyde*, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025).

Thus, like every federal court to consider the persuasiveness of *Yajure Hurtado*, this Court should decline to follow the superficial reasoning of the BIA and instead exercise its "independent judgment in determining the meaning of statutory provisions." *Loper Bright*, 603 U.S. at 394.

Petitioner's ongoing detention without bond also violates his due process rights. At the "heart" of the Fifth Amendment's due process clause is "the freedom from imprisonment—government custody, detention, and other forms of physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Depriving a person of their liberty is only permissible as punishment for crimes, or in "certain special and narrow nonpunitive [i.e. civil] circumstances." *Id.* (quotation omitted). That due process guarantee extends to noncitizens regardless of "whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693. Civil immigration detention is not punishment for a crime. Thus, it can only be justified "where a special [non-punitive] justification . . . outweighs the individual's constitutionally protected interest" in liberty—usually only by a finding that such detention is necessary to prevent their flight or protect against dangers to the community. *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also United States Salerno*, 481 U.S. 739, 750 (1987). A hearing on whether such a special justification necessitates civil detention is the most basic protection required by the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Addington v. Texas*, 441 U.S. 418, 428 (1979). And the nature of that hearing is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). That test weighs (1) the nature of "the

private interest" being deprived; (2) "the risk of erroneous deprivation" and (3) the "fiscal and administrative burdens" posed by providing additional process. *Id.* All three *Mathews* factors favor Petitioner.

As to the private interest, Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Petitioner is limited to ensuring their appearance at their future immigration proceedings (i.e., "flight risk") and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690. But because Respondents denied Petitioner a proper bond hearing, "there is nothing in the record demonstrating that [Petitioner] is a flight risk or a danger to the community." *Lopez Benitez*, 2025 WL 2371588, at *12. Therefore, the risk of erroneously depriving Petitioner of physical freedom is unbearably high. *See Lopez-Campos*, 2025 WL 2496379, at *9 ("the risk of erroneously depriving [petitioner] of his freedom is high if the IJ fails to assess his risk of flight and dangerousness."). Without the bond hearing that he is entitled to under § 1226(a), Petitioner will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Nor can the government complain about the administrative burden of providing hearings that it has provided for decades.

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's petition for writ of habeas corpus and order Respondent to either: (1) afford Petitioner a bond hearing before an Immigration Judge; or (2) release Petitioner from custody.

Respectfully Submitted

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