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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF GEORGIA
10 WAYCROSS DIVISION

11 EXEQUIEL GOMEZ-TORREZ,

12 Petitioner,

13 v.

14 Warden, et al.,

15 Respondents.

Case No. 5:26-cv-51

**REPLY TO RESPONDENTS'
RESPONSE AND IN SUPPORT OF
PETITION FOR WRIT OF
HABEAS CORPUS**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INTRODUCTION..... 2

ARGUMENT 2

I. THE COURT HAS JURISDICTION TO HEAR PETITIONER’S CLAIM 2

II. PLAINTIFF IS DETAINED UNDER § 1226(a) NOT UNDER § 1225(b)(2)..... 3

 a. Legislative History, EOIR Regulations, and DHS Practice 5

 b. The Statute 7

CONCLUSION 15

INTRODUCTION

1 The facts of the matter are not in dispute. Petitioner is being held by ICE without bond due
2 to ICE and the Board of Immigration Appeals' ("BIA") interpretation of "applicants for admission"
3 that was rejected by this Court. *See Villa v. Normand*, No. 5:25-cv-89, 2025 WL 3095969 (S.D.
4 Ga. Nov. 4, 2025), report and recommendation adopted, 2025 WL 3188406 (S.D. Ga. Nov. 14,
5 2025). The Court should continue to reject this line of reasoning and order the Petitioner released.
6

ARGUMENT

I. THE COURT HAS JURISDICTION TO HEAR PETITIONER'S CLAIM

7
8 Under 28 U.S.C. § 2241(c), habeas relief may be extended to a prisoner only when he "is in
9 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
10 2241(c)(3). A federal court has jurisdiction over such a petition if the petitioner is "in custody"
11 and the custody is allegedly "in violation of the Constitution or laws or treaties of the United States."
12 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490 (1989).

13 Petitioner was detained within the Southern District when he filed the Petition, and he asserts
14 that his continued detention violates due process. Therefore, the Court has jurisdiction over his
15 claims. *Trump v. J. G. G.*, 604 U.S. 670, 3 672 (2025) (per curiam) (noting jurisdiction for "core
16 habeas petitions" lies in the district of confinement).

17 Moreover, Respondents' arguments about the effect of 8 U.S.C. § 1252(g) are irrelevant to
18 petitioner's claim. Respondents' cite to *Gupta v. McGahey*, 709 F. 3d 1062 (11th Cir. 2013) and
19 to *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194 (11th Cir. 2016) for the proposition
20 that § 1252(g) bars review of ICE's decision to take a noncitizen into custody and detain them in
21 the first instance. Petitioner is not challenging Respondents' ability to take him into custody. He
22 is challenging under what authority he is being held. In other words, Petitioner concedes that ICE
23 can detain him, but what is relevant to his claim is whether that detention comes with a right to a
24

1 bond hearing per § 1226 or not. Petitioner contends that he does have a right to a bond hearing and
2 the denial of that right per *Matter of Yajure Hurtado* is what gives rise to his claim.

3 In an event, this Court previously heard these arguments from Respondent's and found them
4 unpersuasive. Relying on *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th
5 Cir. 2021) and *Madu v. U.S. Attny. Gen.*, 479 F.3d 1362 (11th Cir. 2006), the Court in *Vill v.*
6 *Normand*, 2025 WL 3095969 (S.D. Georgia 2025) held, "jurisdiction is appropriate over a claim
7 that instead challenges the legal bases of a detention decision."

8 Thus, this Court has jurisdiction to hear petitioner's claims for relief and his claim is not barred
9 by statute.

10 **II. PLAINTIFF IS DETAINED UNDER § 1226(a) NOT UNDER § 1225(b)(2)**

11 The deprivation of petitioner's liberty springs from new and novel interpretations of the
12 Immigration and Nationality Act ("INA") that have come to the fore over the past few months.
13 Despite the language of the statute, Congressional intent in enacting Illegal Immigration Reform
14 and Immigrant Responsibility Act ("IIRIRA"), agency regulations, and longstanding agency
15 practice, on July 8, 2025, DHS issued a memo to all employees of Immigration and Customs
16 Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with
17 the Department of Justice (DOJ), has revisited its legal position on detention and release authorities.
18 See [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
19 [applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission) (last accessed August 4, 2025). DHS has determined that section 1225
20 of the Immigration and Nationality Act (INA), rather than section 1226, is the applicable
21 immigration detention authority for all applicants for admission.

22 As a result, DHS began to consider *all* noncitizens who have entered the United States
23 without inspection and are subject to the grounds of inadmissibility, including long-time U.S.
24 residents, subject to mandatory detention under § 1225(b) and ineligible for release on bond. Thus,

1 according to DHS “[t]he only aliens eligible for a custody determination and release on
2 recognizance, bond, or other conditions under [§ 1226(a)] during removal proceedings are aliens
3 admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227], with the
4 exception of those subject to mandatory detention under [§ 1226(c)].” *Id.*

5 Because DHS’s position lacked a precedential basis at that time, some bond proceedings
6 continued for those, like petitioner, who entered the United States without inspection. However, on
7 September 5, 2025, the BIA decided that their new “plain language” reading of the statute
8 confirmed DHS’s position in its July 8th memo that all of those who entered the United States
9 without inspection were applicants for admission, and, so, their detention was mandatory under §
10 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

11 However, this Court need not and should not give deference to the BIA’s novel and
12 erroneous interpretation of the INA’s detention statutes. *See Loper Bright Enterprises v. Raimondo*,
13 603 U.S. 369 (2024) (observing that while “agencies have special competence in resolving
14 statutory ambiguities,” “[c]ourts do”); *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)
15 (explaining that the “weight of such a judgment in a particular case will depend upon the
16 thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier
17 and later pronouncements, and all those factors which give it power to persuade, if lacking power
18 to control”). As explained by the District Court in *Salcedo Aceros v. Kaiser, et al.*, the BIA’s
19 “current position is inconsistent with its earlier pronouncements” which took the opposite position,
20 and under *Loper*, “the Court has no obligation to defer to the BIA’s view, particularly when that
21 view has not ‘remained consistent over time.’” 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025)
22 (quoting *Loper*, 603 U.S. at 386; citing *Skidmore*, 323 U.S. at 140).

1 Thus, this Court can and should reject the BIA’s interpretation of the INA in *Matter of*
2 *Yajure Hurtado* as the BIA’s interpretation is inconsistent with the text of § 1226 and § 1225,
3 Congress’s intent in enacting the IIRIRA in 1996, agency regulations, and long-standing agency
4 practice.

5 a. Legislative History, EOIR Regulations, and DHS Practice

6 The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
7 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104—
8 208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c)
9 as most recently amended earlier this year by the Laken Riley Act (“LRA”), Pub. L. No.119-1,
10 139 Stat. 3 (2025). The legislative history of IIRIRA also supports a limited construction of § 1225
11 and the conclusion that § 1226(a) applies to petitioner.

12 In passing IIRIRA, Congress was focused on the perceived problem of recent arrivals to the
13 United States who do not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58,
14 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about
15 subjecting all people present in the United States after an unlawful entry to mandatory detention if
16 arrested. This is important, as prior to IIRIRA, people like Ms. Lopez Garcia were not subject
17 to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest
18 noncitizens for deportability proceedings, which applied to all persons within the United States).
19 Had Congress intended to make such a monumental shift in immigration law (potentially
20 subjecting millions of people to mandatory detention), it would have explained so or spoken more
21 clearly. *See Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468–69 (2001). But to the extent it
22 addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a)
23 merely “restates the current provisions in section 242(a)(1) regarding the authority of the Attorney
24

1 General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United*
2 *States.*” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828,
3 at 210 (same).

4 Following enactment of the IIRIRA, the Executive Office of Immigration Review drafted new
5 regulations explaining that, in general, people who entered the country without inspection were
6 not considered detained under § 1225 and that they were instead detained under § 1226(a). *See*
7 *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of*
8 *Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
9 Specifically, EOIR explained that “[d]espite being applicants for admission, [noncitizens] who are
10 present without having been admitted or paroled (formerly referred to as [noncitizens] who entered
11 without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323.

12
13 In the decades that followed, most noncitizens who entered without inspection—unless
14 they were subject to some other detention authority—received bond hearings. This practice was
15 also consistent with the practice prior to the enactment of IIRIRA, in which noncitizens who were
16 not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See*
17 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §
18 1226(a) simply “restates” the detention authority previously found at § 1252(a)). Such a
19 longstanding and consistent interpretation “is powerful evidence that interpreting the Act in [this]
20 way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J.,
21 dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in
22 part on “over 60 years” of government interpretation and practice to reject government’s new
23 proposed interpretation of the law at issue). Thus, the legislative history, agency regulations
24 enacted at the time of IIRIRA’s passage, and long-standing agency practice demonstrate that §

1 1226(a) detention was meant to apply and did in fact, apply to people who were present in the
2 interior of the United States after entering the country without inspection both prior to IIRIRA and
3 in the past thirty years after its enactment.

4 b. The Statute

5 The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First,
6 8 U.S.C. §1226 authorizes the detention of noncitizens in standard non-expedited removal
7 proceedings before an IJ. *See* 8 U.S.C. §1226(a). Individuals in § 1226(a) detention are entitled to
8 a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 11226.1(d), while
9 noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to
10 mandatory detention, *see* 8 U.S.C. §1226(c). Second, the INA provides for mandatory detention
11 of noncitizens subject to expedited removal under 8 U.S.C. §1225(b)(1) and for other *recent*
12 *arrivals* seeking admission referred to under 8 U.S.C. §1225(b)(2). Finally, the Act also provides
13 for detention of noncitizens who have been previously ordered removed, including individuals in
14 withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

15 The plain text of § 1226 demonstrates that it, not § 1225(b), applies to Petitioner’s
16 detention. Section 1226(a), “provides the general process for arresting and detaining [noncitizens]
17 who are present in the United States and eligible for removal.” *Diaz v. Garland*, 53 F.4th 1189,
18 1196 (9th Cir. 2022) (citation omitted). As the Supreme Court has remarked, § 1226(a), “sets out
19 the default rule: The Attorney General may issue a warrant for the arrest and detention of a[]
20 [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United
21 States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1226(a)). Section
22 1226(c) carves out a statutory category of noncitizens for whom detention is mandatory, consisting
23 of individuals who have committed certain “enumerated . . . criminal offenses [or] terrorist
24

1 activities.” 8 U.S.C. § 1226(c). Among the individuals carved out and subject to mandatory
2 detention are certain categories of “inadmissible” noncitizens. *See* 8 U.S.C. § 1226(c)(1)(A), (D),
3 (E). This is in stark contrast with mandatory detention provision under 8 U.S.C. § 1225(b)(2),
4 which “supplement[s] § [1226’s] detention scheme.” *Diaz*, 53 F.4th at 1197. Section 1225(b)
5 “applies primarily to [noncitizens] seeking entry into the United States (‘applicants for admission’
6 in the language of the statute).” *Jennings*, 583 U.S. at 297; *see* 8 U.S.C. § 1225(b) (entitled
7 “Inspection of applicants for admission”).

8 Thus, the plain text of § 1226(a) applies to noncitizens like petitioner. The fact that § 1226(a)
9 is the default rule for arrest and detention and that section (c) carves out exceptions for
10 inadmissible noncitizens further demonstrates that the discretionary bond procedures apply to
11 noncitizens like petitioner who are present without being admitted or paroled and have not
12 been implicated in any crimes set forth in subsection (c). The Supreme Court has held that when
13 Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those
14 exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.*
15 *Co.*, 559 U.S. 393, 400 (2010).

16 The recent enactment of Laken Riley Act (“LRA”) further supports this finding. The Act
17 added language to § 1226(c) that directly references people who have entered without inspection
18 or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
19 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under 8 U.S.C. §
20 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or 8 U.S.C. §
21 1182(a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United
22 States) *and* who have been arrested, charged with, or convicted of new certain crimes (not
23 previously covered by INA § 1226(c)) are now subject to § 1226(c)’s mandatory detention
24

1 provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress
2 reaffirmed that § 1226(a) covers noncitizens who are not subject to section (c) but are charged as
3 removable under § 1182(a)(6)(A) or 1182(a)(7). *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir.
4 2001) (“[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment
5 to have real and substantial effect.”).

6 If § 1226(a) did not apply to petitioner—like the BIA contends—vast portions of the § 1226
7 would be rendered meaningless. This is because the BIA contends that noncitizens like petitioner
8 who entered without inspection are really “applicants for admission” and therefore subject to
9 mandatory detention under § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
10 2025). Courts have made it clear that statutes must be interpreted as a whole, “giving effect to
11 each word and making every effort not to interpret a provision in a manner that renders other
12 provisions of the same statute inconsistent, meaningless or superfluous.” *Shulman v. Kaplan*, 58
13 F.4th 404, 410–11 (9th Cir. 2023) (quoting *Rodriguez v. Sony Computer Ent. Am., LLC*, 801 F.3d
14 1045, 1051 (9th Cir. 2015)).

15 It is noteworthy that “[w]hen Congress adopts a new law against the backdrop of a
16 longstanding administrative construction,” courts “generally presume[] the new provision should
17 be understood to work in harmony with what has come before.” *Monsalvo Velazquez v. Bondi*, 145
18 S. Ct. 1232, 1242 (2025) (internal quotation marks omitted). Here, the BIA’s sudden reversal,
19 particularly after Congress just recently amended § 1226 to include the LRA provisions—further
20 undermines the argument that the detention authority for noncitizens like petitioner lies under §
21 1225(b) instead of § 1226(a).

22
23 Furthermore, § 1225(b)(A) concerns a completely different category of noncitizens. In
24 *Jennings*, the Supreme Court discussed § 1225 as part of a process that “generally begins at the

1 Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen]
2 seeking to enter the country is admissible.” 583 U.S. at 287. As for § 1226, *Jennings* described it
3 as governing “the process of arresting and detaining” noncitizens who are living “inside the United
4 States” but “may still be removed,” including noncitizens “who were inadmissible at the time of
5 entry.” *Id.* at 288. The Court then summarized the distinction as follows: “In sum, U.S.
6 immigration law authorizes the Government to detain certain [noncitizens] seeking admission into
7 the country under §§ [1225](b)(1) and (b)(2). It also authorizes the Government to detain certain
8 [noncitizens] *already in the country pending the outcome of removal proceedings* under §§
9 [1226](a) and (c).” *Id.* at 289 (emphasis added); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
10 591 U.S. 103, 140 (2020) (a noncitizen “who *tries to enter* the country illegally is treated as an
11 applicant for admission . . . and a [noncitizen] who is detained *shortly after unlawful entry* cannot
12 be said to have effected an entry”) (emphasis added) (cleaned up).

13 The BIA’s newfound position misconstrues the phrase “applicant for admission” to suggest that
14 every person, other than those who have been admitted, are subject to mandatory detention.
15 Section 1225(a)(1) defines an “applicant for admission” as a person who is “present in the United
16 States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1).
17 According to the BIA, § 1225(b)(1) generally applies to arriving aliens and § 1225(b)(2) serves as
18 a broader catchall provision for all applicants for admission not covered by § 1225(b)(1). *See*
19 *Matter of Yajure Hurtado* at 218. In other words, that every noncitizen who entered without parole
20 or inspection is an “applicant for admission” per § 1225(a)(1) and is therefore subject to mandatory
21 detention. However, § 1225(b)(2)(A) states in full that:

22
23 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant
24 for admission, if the examining immigration officer determines that an *alien seeking*

1 *admission is not clearly and beyond a doubt entitled to be admitted, the alien shall*
2 *be detained for a proceeding under section 1229a of this title. Id.* (emphasis added).

3 Thus, for § 1225(b)(2)(A) to apply, several conditions must be met—in particular, an
4 "examining immigration officer" must determine that the individual is: (1) an "applicant for
5 admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be
6 admitted." The BIA's position conveniently overlooks these conditions and treats "applicants for
7 admission" the same as those "seeking admission." The phrase "seeking admission" is undefined
8 in the statute but necessarily implies some sort of present-tense action. *See Matter of M-D-C-V-*,
9 28 I. & N. Dec. 18, 23 (BIA 2020) ("The 'use of the present progressive, like use of the present
10 participle, denotes an ongoing process.'" (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12
11 (9th Cir. 2020))). Indeed, only those who take affirmative acts, like submitting an "application for
12 admission," or presenting themselves at a port of entry asking to enter the country, are those that
13 can be said to be "seeking admission" within § 1225(b)(2)(A).

14 By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to
15 sweep into this section individuals like petitioner who have already entered and are now residing
16 in the United States. *See Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding
17 that an individual submits an "application for admission" only at "the moment in time when the
18 immigrant actually applies for admission into the United States.")¹ Accordingly, § 1225(b)(2)'s
19 reference to "applicants for admission" must be read in their context and a view to their place in
20 the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 11226, 1240 (9th Cir.

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22
23 ¹ In *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that
24 anyone who is presently in the United States without admission or parole is someone "deemed
to have made an actual application for admission." *Id.* (emphasis omitted).

1 2022) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an
2 act’s “broader structure . . . to determine [the statute’s] meaning”).

3 The Board’s recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) reinforces this
4 position. The Board held that a noncitizen who was apprehended “approximately 5.4 miles away
5 from a designated port of entry and 100 yards north of the border” was detained under § 1225(b)
6 and not § 1226(a). *Id.* at 67. In other words, the noncitizen was apprehended upon arrival. The Board
7 then explained that such persons are properly treated as “arriv[ing] in the United States,” given that
8 they are “detained shortly after unlawful entry,” and “[are] apprehended’ just inside’ the
9 southern border, and not at a point of entry, on the same day [they] crossed into the United
10 States.” *Id.* at 68 (quoting *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020)). Notably, the
11 Board’s decision supports the argument that § 1226(a) “applies to [noncitizens] already present in
12 the United States,” while § 1225(b) “applies primarily to [noncitizens] seeking entry into the
13 United States and authorizes DHS to detain a[] [noncitizen] without a warrant at the border.” *Id.*
14 at 70 (internal quotation marks omitted).

15 The broader statutory structure of immigration detention authority also demonstrates the
16 inapplicability of § 1225(b) to petitioner’s case. *See King*, 576 U.S. at 492 (explaining that an act’s
17 “broader structure” can be a useful tool “to determine [a statute’s] meaning.”); *see also Biden v.*
18 *Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of
19 INA provision). This is particularly true where “a provision . . . may seem ambiguous in isolation.”
20 *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988).
21 In such situations, the statute’s meaning “is often clarified by the remainder of the statutory
22 scheme . . . because only one of the permissible meanings produces a substantive effect that is
23 compatible with the rest of the law.” *Id.*

1 The broader text of § 1225 reinforces this understanding of the two sections' structure and
2 application. § 1225 concerns "expedited removal of inadmissible *arriving* [noncitizens]." 8 U.S.C.
3 § 1225 (emphasis added). Paragraph (b)(1) encompasses only the "inspection" of certain "arriving"
4 noncitizens and other recent entrants the Attorney General designates, and only those who are
5 "inadmissible" for having misrepresented information to an inspecting officer or for lacking
6 documents to enter the United States. Paragraph (b)(2) is similarly limited to people applying for
7 admission when they arrive in the United States. The title explains that this paragraph addresses
8 the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but
9 whom (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A).

10 By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to
11 sweep into this section individuals like petitioner who have already entered and are now residing
12 in the United States. Otherwise, the language "seeking admission" in § 1225(b)(2) would serve no
13 purpose, as the statute specifies that it is addressing a person who is both an "applicant for
14 admission" and who is determined to be "seeking admission." *Id.*

15 Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving
16 from contiguous territory," i.e., "the case of [a noncitizen] . . . who is arriving on land." 8 U.S.C.
17 § 1225(b)(2)(C). This language further underscores Congress's temporal requirements in § 1225
18 and focus on those who are arriving into the United States. Similarly, the title of § 1225 refers to
19 the "inspection" of "inadmissible arriving" noncitizens. *See, e.g., Dubin v. United States*, 599 U.S.
20 110, 120–21 (2023) (relying on section title to help construe statute).

21
22 Finally, the entire statute is premised on the idea that an inspection occurs near the border and
23 shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C.
24 § 1225(b)(2)(A), (b)(4), and sets out procedures for "inspection[s]" of people "arriving in the

1 United States,” *Id.* § 1225(a)(3), (b)(1), (b)(2), (d). Thus, the text of the § 1226 and § 1225 when
2 construed in isolation and together within the broader statutory scheme demonstrate
3 definitively that petitioner can only be detained under § 1226(a).

4 In sum, the Immigration Court’s refusal to hear petitioner’s bond motion pursuant to the
5 BIA’s novel and erroneous interpretation of the INA’s detention statutes cannot be squared with
6 the legislative history of IIRIRA, the LRA amendments, EOIR regulations enacted soon after
7 IIRIRA’s passage, DHS and the BIA’s own positions on the INA’s detention authorities for the
8 past thirty years, and the language of § 1226 and § 1225 of the INA.

9 The vast majority of courts who have confronted this issue, including this one, have found the BIA’s
10 interpretation to contradict the plain text of § 1225. *See, e.g., Ayala Amaya v. Bondi et. al.*, No. 25-16428
11 (D.N.J. 2025) and, most recently, *Lazaro Maldonado Bautista et al v. Ernesto SantaLopez Garcia*
12 *Jr et al*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025); *Soto v. Soto, et al.*, No. 25-cv-16200,
13 2025 WL 2976572, at *5 (D.N.J. Oct. 22, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-03682, 2025
14 WL 2802947 (D. Minn. Oct. 1, 2025); *Quispe v. Crawford*, No. 25-cv-01471, 2025 WL 2783799
15 (E.D. Va. Sept. 29, 2025); *Savane v. Francis*, No. 25-cv-06666, 2025 WL 2774452 (S.D.N.Y.
16 Sept. 28, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025);
17 *Salazar v. Dedos*, No. 25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lepe v. Andrews*,
18 No. 25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 25-cv-
19 01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. 25-cv-04048,
20 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-00096, 2025 WL
21 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall*, No. 25-cv-00541, 2025 WL 2690565
22 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, No. 25-cv-01408, 2025 WL 2682255 (E.D. Va.
23 Sept. 19, 2025); *Vazquez v. Feeley*, No. 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17,
24

1 2025); *Garcia Cortes v. Noem*, No. 25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025);
2 *Lopez Santos v. Noem*, No. 25-cv-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Perez v.*
3 *Kramer*, No. 25-cv-03179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*,
4 No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-
5 cv-07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-
6 cv-00326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *J.O.E. v. Bondi*, No. 25-cv-03051, 2025
7 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL
8 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Raycraft*, No. 25- cv-12486, 2025 WL
9 2496379 (E.D. Mich. Aug. 29, 2025); *Lopez Benitez*, 2025 WL 2371588.

10 Because of the BIA's mistaken interpretation, petitioner has been deprived of his statutory
11 rights resulting in a deprivation of his physical liberty. This Court should order his release.

12
13 **CONCLUSION**

14 Petitioner's detention under § 1225(b)(2)(A) violates his rights under the Immigration and
15 Nationality Act and his due process rights. The Court should remedy this violation by either
16 ordering his immediate release.

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23 DATED this 26 of January 2026

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