

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**BARTOLOME ANTONIO GONZALEZ
GONZALEZ,**

Petitioner,

vs.

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security (DHS), *et al.*,

Respondents.

CASE NO.: 26-CV-20308

**PETITIONER’S REPLY IN SUPPORT OF PETITIONER’S EMERGENCY PETITION
FOR WRIT OF HABEAS CORPUS**

COMES NOW Petitioner, Bartolome Antonio Gonzalez Gonzalez, by and through undersigned counsel, files this Reply in Support of Petitioner’s Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, stating in support thereof as follows:

BACKGROUND

Respondents urge this Court to adopt an unprecedented expansion of 8 U.S.C. § 1225(b)(2)(A), asserting that any noncitizen who ever entered without inspection is forever an “applicant for admission,” regardless of residence, time in the country, or procedural posture. This interpretation, applied to an individual arrested three years after entering the interior, contradicts the statutory scheme, decades of administrative practice, and binding Eleventh Circuit precedent.

Respondents understand, and it is undisputed that the INA creates two separate detention tracks, one under § 1225, which applies for inspection-based custody, and a second one under § 1226 for interior arrests during removal proceedings. For nearly 30 years, DHS treated interior arrests as governed by § 1226(a), requiring an individualized custody determination. Respondents now abandon that framework and rely almost exclusively on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a recent BIA decision that conflicts with the text and structure of the INA. A decision that already has multiple circuit decisions in contradiction.

Respondents' interpretation cannot withstand scrutiny. It disregards the INA's carefully constructed statutory structure, relies on selective language from Jennings, and effectively nullifies § 1226(a) by grouping all detention authority into § 1225(b). Their reading would permit perpetual mandatory detention of any noncitizen who once entered without inspection, no matter how long they have lived in the United States--raising profound constitutional concerns under the Fifth Amendment.

Additionally, Petitioner's habeas challenge raises a pure question of law concerning the statutory authority for his ongoing detention and the constitutionality of that detention in the absence of a bond hearing. The government's threshold contention that this Court lacks jurisdiction misapprehends both the nature of the claim and the governing framework. Far from collaterally attacking removal proceedings, Petitioner seeks judicial review of whether § 1225 or § 1226 lawfully governs his custody, an inquiry that itself defines the Court's jurisdiction and lies at the core of habeas review under 28

U.S.C. § 2241. Because this case presents an independent and collateral challenge to unlawful detention rather than a review of removal, jurisdiction properly lies in this Court. For these reasons, the Petition must be granted.

ARGUMENT

I. Petitioner's Detention Is Governed by 8 U.S.C. § 1226(a), Not § 1225(b)(2)

The government argues that petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because he entered the United States without inspection and is therefore an applicant for admission. That argument fails to account for the text, structure, and application of the Immigration and Nationality Act (INA), and to binding precedent from the Supreme Court.

A. Brief History of the Immigration and Nationality Act

The Immigration and Nationality Act of 1952 (INA), codified in Chapter 12 of Title 8 of the United States Code, governs all aspects of the immigration law. *See* 8 U.S.C. §§ 1101 *et seq.* As reflected in the text of the statute, the INA involves the interplay between the manifold issues arising from foreign nationals and their decisions to arrive, stay, depart, or be removed from the United States. *See e.g.*, § 1181(c) (cross-referencing the admission of refugees with the admission of immigrants; § 1201(b) (differentiating registration requirements for noncitizens based on classes enumerated in § 1102); § 1301 (conditioning the issuance of visas in accordance with § 1201).

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), which “substantially amended” the portions of the INA’s

judicial review scheme with a “new (and significantly more restrictive) one.” *Nken v. Holder*, 556 U.S. 418, 424 (2009). Along with changes to the availability of judicial review, IRRIRA added § 1225 to the INA, which establishes the expedited removal process of a certain class of noncitizens. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 102, 109 (2020); *see also Biden v. Texas*, 597 U.S. 785, 804 (2022). In contrast, the predecessor to the current language of § 1226 existed in the Original INA. *See* INA of 1952, Pub. L. No. 82-414, 66 Stat. 200. Recently, Congress amended portions of § 1226 through the passage of the Laken Riley Act. Pub. L. No. 119-1, 139 Stat. 3 (2025).

B. Evaluating Inadmissibility of Noncitizens

Congress created two distinct statutory custody tracks, each with mutually exclusive release mechanisms. Track One is § 1225 for applicants for those who are apprehended upon entry or attempt thereof. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). This track applies at the border and to recent entrants, who will be subject to mandatory detention under § 1225(b) and can be released only through § 1182(d)(5)(A) parole. *Id.* at 287-88.

Then, we have track two under § 1226 for interior arrests, which applies to persons arrested inside the United States and can be released through a bond or conditional parole. *Id.* at 288-89. Thus, noncitizens detained under § 1226(a) are entitled to receive bond hearings at the outset of detention. *Id.* at 306.

C. The Plain Language of the Statute Supports Petitioner's Position

Statutory interpretation begins with the "the language of the statute itself." *United States v. Aldrich*, 566 F.3d 976, 978 (11th Cir. 2009). An important canon of statutory interpretation is that courts shall presume that a statute means what it says and says what it means. *Id.* "[S]tatutes should be construed so that no clause, sentence, or word shall be superfluous, void, or insignificant." *Id.*

Section 1225(b)(2) mandates the detention of applicants for admission "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to admission[.]" 8 U.S.C. § 1225(b)(2). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). By using the term "seeking admission," Section 1225(b)(2) limits its application to aliens actively attempting to lawfully enter the United States. That interpretation is supported by Section 1225's repeated reference to "arriving aliens"¹ and the existence of Section 1226 - a separate statute that allows for detention and removal of noncitizens already present in the country.

The Supreme Court discussed the differences between Sections 1225 and 1226 in *Jennings*. It explained that Section 1225 "authorizes the Government to detain certain

¹ "The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." 8 CFR § 1001.1(q).

aliens seeking admission into the country[']” while Section 1226 “authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]” *Jennings*, 583 U.S. at 289.

It is no accident that noncitizens in the country are treated differently than those seeking entry. As the Supreme Court noted “our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely ‘on the threshold of initial entry.’” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); see also *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“But once a [noncitizen] enters the country, the legal circumstances changes, for the Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens] whether their presence here is lawful, unlawful, temporary, or permanent.”).

When considering amendment of the INA in 1996, Congress again acknowledged that noncitizens present in the United States have more due process rights than new arrivals. See H.R. Rep. 104-469, p.1, at 163-66 (recognizing “that an alien present in the U.S. has a constitutional liberty interest to remain in the U.S., and that this liberty interest is most significant in the case of a lawful permanent resident alien.”). Following the amendment, federal regulations explained, “Despite being applicants for admission, aliens 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.” *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Marc. 6, 1997).

Despite this history, DHS announced a change to its policies in a memo to ICE employees dated July 8, 2025. There, DHS notified that its position that applicants for admission “are subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by [8 U.S.C. § 212(d)(5)] parole.” *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission*, AILA Doc. No. 25071607 (July 8, 2025); see also *Merino v. Ripa*, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025) (discussing the memo).

DHS’s new interpretation flies in the face of the plain language and historical understanding of the INA discussed above. It also nullifies Congress’s recent amendment of the INA through the Laken Riley Act, codified at 8 U.S.C. § 1226(c)(1)(E). The amendment mandates detention of noncitizens who meet certain criminal and inadmissibility criteria. If mere inadmissibility already made detention Section 1225, the Laken Riley Act would have no effect.

D. The Government’s Interpretation of 8 U.S.C. § 1225(b)(2) would Render § 1226(c) Superfluous

Respondents endorse an interpretation of § 1225 that effectively removes § 1226 from existence, or otherwise making § 1226 a mere redundancy. Not so. If the Court were to accept Respondents’ position that all noncitizens already in the country were

“applicants for admission” and “seeking admission,” then there would be no possible set of noncitizens to which § 1226(a) would apply. Much less would it make sense for Congress to have passed the Laken Riley Act to mandate detention of those who, the government claims, are already covered by § 1225(b)(2). Such a premise would render the enactment of the Laken Riley Act useless and “Congress presumably does not enact useless laws[.]” *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in the judgment).

Respondent’s expansive interpretation of “applicants for admission” who are “seeking admission” would effectively nullify a portion of the INA through the DHS’s legislative or interpretative exercise of power. Under the separation of powers, this is unacceptable. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (establishing that “[t]he views of the Executive Branch could inform the judgment of the Judiciary, but [do] not supersede it.”); *See also Wayman v. Southard*, 23 U.S. 1, 46 (1825) (“the legislature makes, the executive executes, and the judiciary construes the law.”).

E. The Government’s Position is Internally Inconsistent

Respondents argue that Petitioner is subject to detention under § 1225(b)(2) is contradictory to their own Notice of Custody Determination issued to Mr. Gonzalez on June 27, 2022, where they expressly invoked the authority of § 1226. *See* (ECF No. 13-4). By so doing, Respondents claim to be detaining the Petitioner under the authority of § 1225, yet their own filing invokes the detention authority of § 1226. The INA does not permit the agency to mix statutory regimes or to deny bond eligibility by misclassifying

the very statute under which it has chosen to proceed. *See Jennings*, 583 U.S. at 302 (reasoning that the statutory scheme does not contemplate switching detention regimes mid-stream simply by issuing a warrant after arrest).

Respectfully Submitted,

/s/Eduardo R. Soto, Esq.

Eduardo R. Soto, Esq.

Florida Bar No. 0858609

Eduardo Soto & Associates, P.A.

999 Ponce de Leon Blvd., Suite 1040

Coral Gables, Florida 33134

Office: (305) 446-8686

Email: federal@esotopa.com