UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case Number: 26-cv-20673-CA

JULIO CESAR ESCALONA NARANJO,

Petitioner,

v.

MIAMI ICE FIELD OFFICE DIRECTOR, et al.
in their official capacity,

Respondents.

_____ /

PETITIONER'S TRAVERSE

Petitioner respectfully submits this traverse in reply to the Respondents' return [ECF No. 4] filed on February 6, 2025. In their return, Respondents effectively concede that there is no material factual distinction between the present case and a long line of decisions already issued by this Court. [ECF No. 4] pp. 2-3. The Southern District of Florida has already decided the precise issue at hand with near unanimous agreement. *See e.g. Ocampo Fernandez v. Ripa*, Case No. 25-CV-24981-DSL (S.D. Fla 2025); *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025); *Aguilar Merino v. Noem,* No. 25-CV-23845-Martinez (S.D. Fla. Oct. 15, 2025). The vast majority of courts have ruled that persons in Petitioner's situation are statutorily entitled to a bond hearing in more than 2,100 cases nationwide, despite the agency's insistence on its erroneous interpretation of the relevant immigration statutes—which is a stark departure from historical agency practice.[1]

[1] https://www.msn.com/en-in/news/world/judges-rebuke-trump-immigration-policy-as-white-house-lashes-out-at-the-numbers/ar-AA1UCpN4?ocid=BingNewsSerp

I. Introduction

Respondents' return misreads both the text and structure of the Immigration and Nationality Act ("INA"). Respondents illogically stretch §1225(b)(2) far beyond its intended border inspection context, disregard Congress's explicit distinction between "inspection" under Section 1225 and "arrest and custody" under Section 1226. Properly interpreted, Petitioner's detention falls under Section §1226(a), the statute that governs post-entry arrests within the United States and provides for discretionary bond consideration. The vast majority of federal district courts ruling on this issue have declined to grant deference to the Board of Immigration Appeals' agency decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025) and have independently found that 1226(a) applies. *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025); *Martinez v. Hyde,* 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez-Campos*, No. 2:25-CV12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

II. Statutory Framework

A. The Statutory Boundary Between Sections 1225 and 1226

Congress created two distinct detention regimes: Section 1225(b) covers *inspection-stage applicants for admission* – individuals encountered at or near a port of entry. Section 1226(a) governs *post-inspection* and *post-entry arrests* of non-citizens already present in the United States pending removal proceedings. This division appears in both the statutory text and its implementing

regulations. Section 1225(a)(3) provides that "all applicants for admission shall be inspected by immigration officers." §1225(b)(2)(A) then requires detention of such applicants who, upon examination and while "seeking admission", are not clearly admissible. By contrast, §1226(a) authorizes the Attorney General to arrest and detain "an alien pending a decision on whether the alien is to be removed." (and a decision is pending here). It is an extremely eccentric misreading of the immigration detention framework if someone who (as is the case here) was detained by Florida law enforcement during a traffic stop years after entering the country were considered to be "seeking admission." For that reason, Respondents would prefer to read that language out of the statute. It is the latter provision, §1226(a), that expressly allows continued detention, release on bond, or conditional parole.

B. Structure and Legislative Intent

Reading §1225(b)(2) to include every noncitizen not formally "admitted" would render §1226(a) largely useless. Congress could not have intended a single subsection of Section 1225 to swallow virtually the entire framework of discretionary custody Congress preserved in Section 1226. The legislative history of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") confirms that Section 1225 was designed to consolidate inspection procedures *at or near the border or ports-of-entry*, while Section 1226 remained the detention authority for arrests *inside the country*. *See* Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-108, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579 (codified at 8 U.S.C. § 1225); H.R. Conf. Rep. No. 104-828, at 209-10 (1996) (explaining that § 302 "revises section 235 of the INA to consolidate the inspection and removal process at ports of entry," while § 303 "retains the Attorney General's discretionary authority to detain or release aliens pending removal proceedings under Section 236").

C. Subject-Matter Jurisdiction Over Petitioner's Section 1226(a) Detention

Federal courts are "courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). 28 U.S.C. § 2241 is the primary federal habeas statute, which authorizes federal courts to hear "statutory and constitutional challenges to post-removal-period detention." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). 8 U.S.C. § 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." 8 U.S.C. § 1252(g).

The Supreme Court has interpreted § 1252(g) narrowly, emphasizing that it does not create a general bar to judicial review or sweep in all claims "arising from" deportation proceedings; rather, courts must focus on whether the claim challenges one of the three covered actions themselves. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (explaining that § 1252(g) is a "discretion-protecting provision" intended to prevent the deconstruction or prolongation of removal proceedings and does not bar review of all claims arising from deportation proceedings); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020); *Jennings*, 583 U.S. at 294.

In addition, the Eleventh Circuit has similarly distinguished between claims that directly challenge one of the three discrete actions listed in §1252(g), specifically commencing proceedings, adjudicating cases, or executing removal orders, and claims challenging the legality of detention. *See Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). Specifically, in this district, the Court reaffirmed that principle, holding that §1252(g) does not bar review of claims seeking only the substantive legality of detention rather than challenging the

commencement or execution of removal proceedings. *See Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025) ("In sum, the Court does not believe that § 1252(g) clearly bars review of this case to the extent Petitioner seeks only 'substantive review of the underlying legal bases' of his detention."). Consequently, claims that challenge the underlying legality of detention or the statutory authority governing detention, rather than the Attorney General's discretion to commence or execute removal, are not barred by § 1252(g) and remain fully reviewable, including challenges under § 1226(a) and related habeas provisions.

Petitioner does not challenge the Government's discretion to commence proceedings, adjudicate cases, or execute removal orders, and the detention decision is unrelated to any of these discrete acts. Instead, Petitioner challenges the underlying legal basis of his *detention* under § 1226(a) or 1225(b)(2); i.e., Petitioner does not challenge the initiation, adjudication, or execution of any removal proceedings; he challenges only the lawfulness of his detention while awaiting such proceedings. Likewise, § 1252(b)(9) restricts judicial review of final orders of removal, *yet Petitioner has no final order of removal and has never had one*. Nor is he challenging any aspect of his removal proceedings. He is challenging his detention without a bond hearing. This case concerns the ongoing legality of detention under § 1226(a), which governs post-entry custody, provides for discretionary bond consideration, and is reviewable by the courts.

Accordingly, there is no applicable jurisdictional bar, and this Court retains full subject-matter jurisdiction to hear Petitioner's claims. *See Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025) (analyzing 1252 and finding no jurisdictional bars were applicable.)

D. Section 1225(b)(2) Does Not Apply

The Government's argument that Petitioner is an "applicant for admission" subject to detention under 8 U.S.C. § 1225(b)(2) mischaracterizes both the statutory text and the relevant case law. While § 1225 defines an "applicant for admission" to include aliens present in the United States without admission, the provision does not automatically place every noncitizen into a category that precludes review of detention under § 1226(a). As the Supreme Court has emphasized, statutory interpretation must begin with the plain language, but context and application are equally critical. *See Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)).

Petitioner's circumstances fall squarely within the category of noncitizens present without admission, not arriving aliens at a port of entry. During Petitioner's arrest and detention last year, he did not engage with the inspection regime applied to actual applicants for admission at a point of entry. *See* 8 U.S.C. § 1225(a)(1). Courts have repeatedly recognized that § 1225(b)(2) is designed to govern removal procedures for such aliens, but it does not automatically impose a detention framework that displaces judicial review under § 1226(a) for arrests in the interior of the country. *See Lopez-Arevelo*, 2025 WL 2691828, at *6.

Courts considering the precise question at issue here have concluded that § 1226(a), not § 1225(b)(2), governs detention of noncitizens arrested inside the country. *See Barrera-Espinoza v. ICE*, No. 2:24-cv-01987, 2024 WL 8453112 (W.D. Wash. Dec. 12, 2024); *Pizarro Reyes v. Garland*, No. 1:25-cv-20317, 2025 WL 2927148 (S.D. Fla. May 7, 2025); *Rodriguez Vazquez v. Garland*, No. 2:25-cv-00412, 2025 WL 3510183 (W.D. Wash. June 4, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 4369132 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lepe v. Bondi*, No. 3:25-cv-01602, 2025 WL 4520799 (S.D. Cal. Aug.

5, 2025); *Lopez-Campos*, No. 2:25-CV12486. 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Barrera v. Tindall*, No. 3 :25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D.Tex. Sept. 22, 2025); *Zumba v. Bondi*, No. 25-CV-14626-KSH-, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Hypolite v. Noem*, No. 1:25-cv-04304, 2025 WL 5893911 (E.D.N.Y. Sept. 29, 2025); *Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Covarrubia v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025); *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025).

E. The *Alvarez Puga* Decision Confirms that Section 1226(a) Governs Detention Following Interior Arrest

The Government's position has already been rejected in the Southern District of Florida in *Alvarez Puga*, namely, whether a noncitizen arrested inside the United States after entry is detained under Section 1225(b)(2) or Section 1226(a). *Alvarez Puga v. Assistant Field Office Director*, No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025). The *Alveraz Puga* Court held unequivocally that Section 1226(a) applies. In doing so, it carefully examined the text, structure, and history of both provisions, concluding that Section 1226(a) governs those already present in the United States and that no jurisdictional bars apply to habeas relief. *Id.* at *7-11. The *Alvarez Puga* court explained that reading Section 1225(b)(2) to encompass arrests well within the interior of the United States would make Section 1226(a) superfluous and contradict the INA's structure. Reviewing the statutory text and the newly enacted Laken Riley Act amendments, the court reasoned that Congress designed Section 1226(a) as the default detention framework for noncitizens already present in the United States, reserving § 1225 for "arriving aliens in the inspection process." *Id.* at 8–9. The court also rejected the Government's reliance on *Matter of*

Yajure Hurtado, explaining that federal courts need not—and may not—defer to an agency interpretation of the law simply because a statute is ambiguous. *Id.* at *10 (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)). That holding squarely rejects the interpretation advanced by the Government here and provides persuasive authority confirming that Section 1226(a) governs detention following an interior arrest.

F. The Phrase "Examining Immigration Officer" in Section 1225(b)(2)(A) Refers to Border and Port-of Entry-Inspection Personnel, Not ICE Agents Performing Interior Arrests

Section 1225(b)(2)(A) provides that "*an alien who is an applicant for admission ... shall be detained for a proceeding under section 1229a* [standard removal proceedings] *if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.*" 8 U.S.C. § 1225(b)(2)(A). The statutory text, its placement within Section 1225, and the implementing regulations exclude the extension of "examining immigration officer" to ICE officers conducting arrest and detention in the interior of the U.S.

1. Text and Structure

The phrase "examining immigration officer" appears only in Section 1225(b)(2)—within a portion of the INA that codifies *inspection* procedures. Section 1225(a)(3) commands that "[a]ll applicants for admission shall be inspected by immigration officers." Congress then uses the verb *examine* in Section 1225(b)(1)–(2) to describe the inspection process. Read in context, "examine" refers to the face-to-face assessment of an applicant for admission at a port of entry. Nothing in Section 1225 extends that function to officers who execute interior arrests under § 1357(a). The Supreme Court has repeatedly described Section 1225 as governing "inspection and admission" procedures at the threshold of entry. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108–

09 (2020) (describing Section 1225 as establishing "the process for inspecting and admitting arriving aliens"). By contrast, Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The placement of the phrase "examining immigration officer" in § 1225(b)(2) thus confines it to the inspection context.

2. Legislative Intent and Regulatory Context

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") confirms Congress's intent to maintain separate detention tracks. Representative Lamar Smith, the Act's sponsor, explained during implementation hearings that Section 1226 was intended to apply to "aliens already present in the United States," as opposed to those "arriving at a point of entry." (H.R. Conf. Rep. No. 104-828, at 98 (1996)). *Aguilar* relied on this same legislative record, noting that DHS's recent expansion of Section 1225 finds no support in IIRIRA's history and is inconsistent with Congress's design distinguishing arriving from present noncitizens. No. 25-cv-61932 at *7. As *Aguilar* explained, the regulatory definition of "arriving" uses present-tense language that applies only to individuals actively seeking entry. *see id.* The court reasoned that this phrasing cannot encompass noncitizens who have long resided within the United States. *id* at *6. That reasoning applies with equal force to Petitioner.

3. Judicial Consensus

Aguilar Merino also firmly stands for the proposition that Petitioner is entitled to a new bond hearing or release: "DHS's interpretation of the applicability of § 1225(b)(2), rather than § 1226, to noncitizens who have resided in the county for years and were already in the United States when apprehended, runs afoul of the statutes' legislative history, plain meaning, and interpretation by courts in the First, Second, Fifth, Sixth, Eight, and Ninth Circuits." *Aguilar Merino v. Noem,*

No. 25-CV-23845 (S.D. Fla. Oct. 15, 2025). A companion case referenced *supra* also rejected the Respondents' reliance on *Matter of Yajure Hurtado* and DHS's interpretation of the applicability of § 1225(b)(2), when concluding:

> "Respondents' reliance on the BIA's decision in *Matter of Yajure Hurtado* — rejecting the argument that a noncitizen who entered the United States without inspection and has resided here for years is not 'seeking admission' under section 1225(b)(2)(A) — is also misplaced. The Court need not defer to the BIA's interpretation of law simply because the statute is ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[C]ourts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." (alteration added)). As explained, the statutory text, context, and scheme of section 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so. Additionally, numerous courts that have examined the interpretation of section 1225 articulated by Respondents — particularly following the BIA's decision in *Matter of Yajure Hurtado* — have rejected their construction and adopted Petitioner's. … For these reasons, the Court finds that section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)."
> *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025) at *10.

§ 1225 applies cannot logically apply to someone who has resided in the country for years. *Alvarez Puga v. Ripa*, a recent decision from the District of Southern Florida, considered whether a habeas petitioner was subject to mandatory detention under §1225(b)(2)(A). *See Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). The court began its analysis by looking at the plain text of the statute.

As relevant here, §1225(b)(2)(A) states: "[I]n 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." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). *Alvarez Puga* then explained, "the statutory text, context, and scheme of section 1225 do not support a finding that a

noncitizen is "seeking admission" when he never sought to do so." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025).

As the court in *Alvarez Puga* reasoned, "[i]f Respondents' interpretation of section 1225 is correct — that the mandatory detention provision in section 1225(b)(2)(A) applies to all noncitizens present in the United States who have not been admitted — then Congress would have had no reason to enact section 1226(c)(1)(E) [the Laken Riley Act provisions]." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. Florida October 15, 2025). Those provisions apply mandatory detention to persons present without admission if they commit certain crimes. See 8 U.S.C. 1226(c)(1)(E). Congress' passage of the Laken Riley Act would have been entirely unnecessary if all persons present without admission were already subject to mandatory detention. Respondents' interpretation of §1225 violates a canon of statutory construction: the rule against surplusage. *See Corley v. United States*, 556 U.S. 303, 314 (2009) ("[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]"); *see also United States, ex rel Polansky v. Exec. Health Res., In*. 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S.S 167, 174 (2001)).

While Petitioner was never "admitted" to the United States in that he never lawfully entered it, it does not follow that he was actively seeking admission at the time of his detention. He has already entered the country. Respondents' interpretation of §1225b(2)(A) simply ignores the statute's present-tense active language. *See Matter of M-D-C-V-*, 28 I&N. Dec 18, 23 (B.I.A. 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, 1011-1012 (9th Cir. 2020)). And by

treating the terms "applicant for admission" and "seeking admission" as synonymous, Respondents' interpretation violates the principle that Congress is presumed to act intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings. *See Yale New Haven Hosp. v. Becerra,* 56 F.4th 8, 21 (2d Cir. 2022) (describing the "meaningful-variation canon" as "the principle that where a statutory scheme has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea") (citing *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022)).

Many new district court decisions have reaffirmed this analysis by *Alvarez Puga*. As the *Alvarez Puga* Court concluded, "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A). Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a)." *Alvarez Puga v. Ripa*, 25-24535-cv-Altonaga (S.D. FLA October 15, 2025).

III. Conclusion

For the foregoing reasons, Petitioner respectfully submits that Petitioner's detention is governed by 8 U.S.C. § 1226(a), which provides for discretionary bond consideration, and the statutory and constitutional claims raised here remain fully reviewable. The authorities cited by Respondents do not support their expansive reading of § 1225(b)(2), nor do they bar judicial review of Petitioner's detention. Accordingly, the Court should reject the Government's arguments, maintain jurisdiction over the Petition, and grant the relief requested by Petitioner, namely, Petitioner respectfully requests that the government either immediately provide an individualized bond hearing or release him. Petitioner also respectfully requests that this Court should reserve jurisdiction to enforce its Order against any agency claiming legal custody of Petitioner, including the U.S. Attorney General which oversees the immigration courts.

Respectfully submitted,

Dated: February 9, 2026

/s/ Felix A. Montanez
Felix A. Montanez, Esq.
Fl Bar No. 102763
Preferential Option Law Office, LLC
P.O. Box 60208
Savannah, GA 31420
Tel: (912) 604-5801
felix.montanez@preferentialoption.com

Counsel for the Petitioner