IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VALENTINA DE LOS ANGELES
TIAPA MORENO,

Petitioner,

v. No.2:26-cv-00273-MIS-DLM

PAMELA BONDI, et. al.,

Respondents.

RESPONSE TO PETITION

The United States represents Federal Respondents ("Respondents"[1]) in this habeas corpus action, in which Petitioner challenges her detention by U.S. Immigration and Customs Enforcement ("ICE"). On February 4, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. Doc. 1.

Respondents have carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for ICE's detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing, and whether Petitioner must first exhaust her administrative remedies before applying to this Court. While reserving all rights, including the right to appeal, Respondents submit this abbreviated response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law, Respondents will be happy to submit one upon request.

[1] Dora Castro, Warden, Otero County Processing Center, is one of the Respondents listed by Petitioner. Doc. 1. The undersigned does not represent Warden Castro as Otero is a private facility, and Warden Castro is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply equally to Warden Castro.

It is Respondents' position that Petitioner is subject to mandatory detention under § 1225(b), because she was present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). However, Respondents acknowledge that this Court recently reached the opposite conclusion in *Duhan v. Noem*, Case No. 2:26-cv-00019-MIS-JFR, 2026 U.S. Dist. LEXIS 20895 (D.N.M. Feb. 2, 2026) on facts similar to those currently before the Court. In a decision issued on February 2, 2026, this Court, following the rationale of other courts that have addressed the issue, including others in this District, concluded that the petitioner's detention was not governed by § 1225, and that his detention was instead pursuant to § 1226. *See Duhan v. Noem*. Specifically, the Court stated that "8 U.S.C. §1226(a) governs Petitioner's detention" and that habeas relief was proper because Petitioner's "continued detention without a bond hearing violates his Fifth Amendment right to due process." *Id.* 3.[2]

On the legal issue of which statute governs Petitioner's detention here—whether it is 8 U.S.C. § 1226(a), or 8 U.S.C. § 1225(b)—Respondents acknowledge that this Court's decision in *Duhan v. Noem,* would control the result here if the Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention.

Thus, while Respondents do not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, Respondents hereby rely upon, and incorporate by reference,

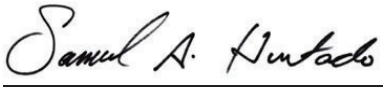
[2] Respondents further acknowledge that this Court entered a ruling in another case involving similar legal issues on January 13, 2026. *See Lopez-Romero v. Lyons*, Case No. 2:25-cv-0113-MIS-JHR, 2026 WL 92873 (D.N.M. Jan. 13, 2026).

the legal arguments presented in *Duhan v. Noem*,[3] and the Court can decide this issue without further briefing.

Finally, the United States believes that this matter can be decided without a hearing. If, however, the Court determines that a hearing would be helpful, the United States will attend and present Respondent's position.

Respectfully submitted,

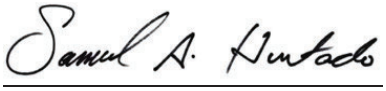
TODD BLANCHE
Deputy Attorney General
RYAN ELLISON
First Assistant United States Attorney



SAMUEL A. HURTADO
Assistant United States Attorney
201 Third Street NW, Suite 900
Albuquerque, New Mexico 87102
(505) 346-7274; Fax (505) 346-7205
Samuel.A.Hurtado@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 18, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.



SAMUEL A. HURTADO
Assistant United States Attorney

Brian D. Clark
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Avenue South, Suite 2200 Minnea polis, MN 55401
(612) 339-6900
Fax (612) 339-0981
bdclark@locklaw.com

[3] Specifically, the United States incorporates by reference all arguments raised in its opposition brief in *Duhan v. Noem*, Case No. 2:26-cv-00019-MIS-JFR, 2026 U.S. Dist. LEXIS 20895 (D.N.M. Feb. 2, 2026). A copy of that brief is attached as Exhibit A hereto.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SAGAR DUHAN,

Petitioner,

v. No. 2:26-cv-00019-MIS-JFR

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; HECTOR RIOS, Warden of Otero County Processing Center; TODD LYONS, Acting Director, Immigration and Customs Enforcement and Removal Operations; and MARY DE ANDA-YBARRA, Regional Director, Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement,

Respondents.

RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS (DOC. 1)

INTRODUCTION

Respondents, the Secretary of the Department of Homeland Security ("DHS"), the Attorney General for the United States, the Acting Director of the Immigration and Customs Enforcement ("ICE"), and the El Paso Field Office Director of ICE (collectively "Respondents"), hereby submit this Response in Petitioner's Writ of Habeas Corpus (Doc. 1).[1]

Petitioner is a noncitizen of the United States and national of India, who entered the country unlawfully and without inspection. Petitioner is currently detained pending removal proceedings before the U.S. Immigration Court under 8 U.S.C. § 1229a. Petitioner asks the Court

[1] The undersigned counsel is not appearing for the Warden of the Otero County Processing Center. Otero County Processing Center is a private facility, and the Warden is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to the Warden, as the Warden is detaining the Petitioner at the request of the United States.

GOVERNMENT EXHIBIT A

to order Respondents to schedule a bond hearing before an Immigration Judge. *See* Doc. 1 at 19. Petitioner alleges he is not subject to mandatory detention under Section 1225(b)(2)(A) and should be eligible for bond review under Section 1226(a). *See* Doc. 1 at 17; *see also* 8 U.S.C. §§ 1225(b)(2), 1226(a). Petitioner argues Respondents' application of Section 1225(b)(2)(A) violates the Immigration and Nationality Act ("INA"), federal regulations, and the Fifth Amendment. *See* Doc. 1 at 17-18. Petitioner also seeks attorney's fees and costs under the Equal Access to Justice Act. ("EAJA"). *Id.* at 19.

Respondents request the Court deny the Petition (Doc. 1). Petitioner is correctly classified as an "applicant for admission" under Section 1225(b)(2)(A) based on the plain language of that statute and the recent precedential decision by the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*. *See* 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. Petitioner unlawfully entered the United States without inspection in 2023 and is currently without lawful status. As such, he is subject to mandatory detention under Section 1225(b)(2)(A). Also, Petitioner is not entitled to any additional due process beyond that specifically prescribed by statute. Furthermore, Petitioner should not be awarded attorney's fees and costs under the EAJA because the Government's position is substantially justified.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a noncitizen of the United States and citizen of India, without lawful status in the United States. Exhibit A (Notice to Appear). On or about March 29, 2023, Petitioner entered the United States without inspection at or near Tecate, California from Mexico. *Id.*; Doc. 1 at 17. On or about March 29, 2023, a Customs and Border Patrol (CBP) Agent encountered Petitioner, who admitted to the Agent of being a citizen and national of India and unlawfully entering the United States from Mexico. Exhibit B (Record of Deportable/Inadmissible Alien, 5/11/2023).

The CBP paroled Petitioner pursuant to Immigration and Nationality Act ("INA") Section 212(d)(5), without issuing charging documents. *Id.*

On or about May 11, 2023, ICE served Petitioner, by regular mail, a Notice to Appear for master hearing before the Immigration Court and charged him with entry without inspection pursuant to INA Section 212(a)(6)(A)(i) and subject to removal from the United States. Exhibit A; Exhibit B. On or about December 6, 2025, a Border Patrol Agent contacted and detained Petitioner (who was driving a freightliner truck) at a U.S. Border Patrol Checkpoint in the Sierra Blanca, Texas Border Patrol Station's Area of Responsibility. Exhibit C (Record of Deportable/Inadmissible Alien, 12/06/2025). Petitioner was placed under arrest for being illegally present in the United States.[2] *Id.* Upon information and belief, ICE is proceeding under the May 11, 2023, Notice to Appear, which charges Petitioner under INA § 212(a)(6)(A)(i). Exhibit A. According to his Petition, "Petitioner is seeking asylum and related remedies before the Executive Office of Immigration Review." Doc. 1 at 16. Petitioner's next hearing before the Immigration Court is January 29, 2026. Exhibit D (Notice of In-Person Hearing). Petitioner is represented by counsel in his immigration case. *Id.*

LEGAL BACKGROUND

I. Detention of "Arriving Aliens" Under Section 1225.

Generally, when a noncitizen arrives in the United States they are "an applicant for admission," who must "be inspected by immigration officers" to ensure that they may be admitted

[2] Petitioner represents that at the time of his detention, Petitioner had authorization to work in the United States and was working as a truck driver. *See* Doc. 1 at 16. The fact that Petitioner was employed and had an employment authorization card is irrelevant to the analysis of whether Section 1225 or 1226 applies to Petitioner because employment authorization does not confer lawful immigration status. *See e.g.*, *Xiao Lu Ma v. Sessions*, 907 F.3d 1191 (9th Cir. 2018) (holding that grant of application for alien's employment authorization did not confer lawful status for purpose of alien's eligibility for status adjustment).

into the country. 8 U.S.C. § 1225(a)(1), (a)(3). These noncitizens are often referred to as "arriving aliens" and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 C.F.R. § 1001.1; *see also* 8 U.S.C. § 1225(b)(1)(A)(i). Even if an arriving alien is not determined to be inadmissible pursuant to Section 1225(b)(1), they may still be subject to mandatory detention. *See e.g.*, 8 U.S.C. § 1225(b)(2)(A). An applicant who is not determined to be inadmissible nonetheless "*shall be detained* for a [removal] proceeding" unless the examining immigration officer determines that the noncitizen is "clearly and beyond a doubt entitled to be admitted." *Id.* (emphasis added).

II. Statutory Framework and History.

Prior to 1996, the Immigration and Nationality Act ("INA") treated noncitizens differently based on whether they had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Noncitizens who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. §§ 1225(a)-(b) (1995); *id*. § 1226(a) (1995). In contrast, noncitizens who physically entered the United States unlawfully would be placed in deportation proceedings. *Id*.; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion

proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of a noncitizen into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the "*pivotal factor in determining an alien's status*" would be "whether or not the alien has been *lawfully* admitted." *See* House Rep., at 226 (emphasis added); *see also Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA effected these changes through several provisions codified in Section 1225 and Section 1226. Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that a noncitizen "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission." 8 U.S.C. § 1225(a)(1). Section 1225(b) divides removal proceedings into two tracks—expedited removal and non-expedited "240" proceedings—and mandates that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]."[3] *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin"). While Section 1225(b)(2) does not allow for release on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

Section 1226, on the other hand, addresses the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from

[3] Section 1225(b)(1) provides for "expedited removal" proceedings, *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

the United States." *Id*. § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the noncitizen on bond or conditional parole. *Id*. §§ 1226(a)(1)-(2). That "default rule," however, does not apply to certain criminal noncitizens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c).

For many years after IIRIRA, DHS treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under Section 1226(a) rather than mandatory detention under Section 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. On July 8, 2025, DHS revisited its legal position on detention and release authorities and issued interim guidance that brought practices in line with the statute's plain text. Specifically, DHS concluded that all noncitizens who enter the country without being admitted (or who otherwise arrive in the United States without proper documentation) are subject to detention under INA Section 235(b) and may not be released from ICE custody except by INA Section 212(d)(5) parole.

On September 5, 2025, the Board of Immigration Appeals ("BIA") adopted this interpretation through a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be "arriving aliens" and are properly detained under Section 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220.

ARGUMENT

I. Section 1225(b)(2) Mandates Detention of Aliens Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. Section 1225(a) defines "applicant for admission" to encompass a noncitizen who either "arrives in the United States" or who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). As to the latter phrase, Judge Browning noted that the "physical-presence limitation [] gives operative content to Congress' decision to treat certain non-admitted aliens present inside the United States as applicants for admission for inspection purposes." *Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005, at *16 (D.N.M. Jan. 20, 2026) Thus, an alien who enters the country without inspection is, and remains, an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.[4]

It cannot be disputed that Respondents previously operated under a different understanding of Section 1225(b)(2)(A), such that noncitizens present in the interior of the United States who had entered without admission have historically been detained under Section 1226(a). However,

[4] This reading is consistent with the everyday meaning of the statutory terms. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (*to* someone *for* something)"), *with id*. at 1299 ("seek" means "to request, ask for"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*") (emphasis added). Likewise, an alien who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") is "seeking admission" to the United States.

past practice does not justify disregard of clear statutory language. *See, e.g., Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 329 (2015). For example, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that were later deemed incompatible with statutory text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court must always interpret the statute "as written," *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). A "nontextual" practice, even longstanding ones, cannot upend plain statutory meaning upon review. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government's prior understanding as "nontextual" and unsupported by any "thorough, reasoned analysis").

Petitioner relies on the Supreme Court's discussion in *Jennings* when arguing that Section 1226—not 1225—applies to Petitioner. Doc. 1 at 15. The Supreme Court described the detention authorities in Section 1225(b) and Section 1226 as follows:

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, 583 U.S. at 289; *see also id*. at 288 (characterizing Section 1226 as applying to aliens "once inside the United States"). Respondents do not view this argument as inconsistent with that language: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of noncitizens who were admitted into the United States (and so are "in the country") but are now removable. *Jennings* refers to noncitizens who are "in and admitted to the United States." 8 U.S.C. § 1227(a). The opinion's reference to noncitizens "present in the country" specifically cites § 1227(a), which covers only *admitted* noncitizens. *See Jennings,* 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority that applies to "aliens already in the country."

Petitioner further asserts that all noncitizens present without admission could not be subject to mandatory detention under section 1225(b)(2)(A) because the recent amendments to Section 1226(c) in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), codified at 8 U.S.C. § 1226(c)(1)(E), would be rendered "superfluous." *See* Doc. 1 at 11. In other words, an overlap in statutory language makes the United States's position untenable. However, "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020) (compiling cases where the Court did not disturb overlapping statutory language). And as the District Court for the Eastern District of Kentucky recently pointed out—"the Laken Riley Act is not to mandate the detention of aliens who otherwise would *not* be subject to mandatory detention, but instead to mandate the *timing* of the detention of certain aliens." *Singh v. Noem*, No. 2:25-cv-00157-SCM, 2026 WL 74558, at *5 (E.D. Ky. Jan. 9, 2026) (original emphasis). Specifically, "the effect of the Laken Riley Act is to require that an unadmitted alien who has been charged with or convicted of certain triggering offenses—like 'burglary, theft, larceny, shoplifting,' or certain violent crimes—must be detained '*when* the alien is released' from custody on the triggering offense. *Id.* (citing to 8 U.S.C. § 1226(c)(1)) (original emphasis).

The Court should decline to adopt Petitioner's proposed standard of statutory review.

II. Petitioner is Appropriately Classified under Section 1225(b)(2).

Petitioner admitted to a CBP Agent that he was a citizen of India and unlawfully entered the United States on or about March 29, 2023. *See* Exhibit A; Exhibit B; INA § 212(a)(6)(A)(i). Because Petitioner entered the United States without inspection, Petitioner is an "applicant for admission" to the United States, i.e., alien present in the United States who has not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress's broad language here is intentional, an undocumented alien

is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Petitioner is "deemed" an applicant for admission based upon 1) the undocumented status and 2) that Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," making detention mandatory under Section 1225. *See* 8 U.S.C. § 1225(b)(2)(A); *Hurtado*, 29 I. & N. Dec. at 220. In short, Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement.

At least eight courts, including one from this district, have adopted this general interpretation in recent months. *See Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005 (D.N.M. Jan. 20, 2026) (finding that petitioner, an alien who had entered the United States without inspection almost two years before his current detention and had filed an asylum application, was "seeking admission" under Section 1225(b)(2)(A) and therefore properly detained under that statute); *Hernandez v. Lyons*, No. 1:25-CV-216-H, 2026 WL 31775 (N.D. Tex. Jan. 6, 2026) (finding petitioner, who illegally crossed into the United States nearly 25 years ago, an "applicant for admission" and therefore subject to Section 1225(b)(2)(A); *see also Montelongo Zuniga v. Lyons*, No. 1:25-CV-221, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025); *Coronado v. Secretary, Dept. of Homeland Security*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (finding that Section 1225(b)(2) applied to petitioner, a foreign national who entered the United States without inspection and resided within the country for several years); *see also Lucero v. Field Office Dir.*, No. 1:25-cv-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550-WBS-JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (denying petitioner's motion for temporary restraining order because petitioner, a foreign national living in the United States for 29 years and taken into ICE custody following a traffic stop, was unlikely to succeed on the merits of his statutory arguments that he was not an "applicant for admission" under Section 1225); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942, at *3 (E.D. Mo.

Nov. 10, 2025) (finding that a foreign national, who had been in the country for approximately forty years but never lawfully "admitted" into the United States, was an "applicant for admission" based on the plain meaning of Section 1225); *see also Suarez v. Noem*, No. 1:25-cv-00202, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding BIA's recent decision in *Matter of Yajure Hurtado* supported by the plain language of the statute, and that such an interpretation does not render Section 1226, nor additions thereto by the Laken Riley Act, superfluous); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding that Section 1225(b) applied despite alien's presence in the country for over ten years, noting "overlap" between Section 1225 and Section 1226 authorities); *Peña v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an "applicant for admission" upon the straightforward application of the statute).

Because Petitioner is appropriately classified under Section 1225(b)(2), he is subject to that statute's mandatory detention provisions. The Court should therefore deny the Petition (Doc. 1).

III. The *Maldonado Bautista* Partial Final Judgment is Not Binding and Does Not Apply to Petitioner.

Petitioner contends that he is a class member in the Central District of California case that "granted nationwide class certification and summary judgment" for individuals like Petitioner and declared such class members as detained under Section 1226(a), rather than Section 1225(b)(2)(A). *See* Doc. 1 at 13-14; *see also Maldonado Bautista v. Santacruz*, et al, 5:25-cv-01873 (C.D. Cal. Nov. 20, 2025) (Sykes, J.). But the December 18, 2025, partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873, 2025 WL 3678485, (C.D. Cal. Dec. 18,

2025), ECF No. 92, is neither binding nor applicable here and presents no basis for granting the petition.

First, the *Bautista* declaratory judgment is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction.[5] That court "set[] aside one policy, but it declined to set aside a broader, independent decision from the Board of Immigration Appeals." *Calderon Lopez v. Lyons*, *1, No. 1:25-CV-226-H, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025). The U.S. Immigration Court is still, as of the filing of this motion, bound to the precedent set by *Hurtado*. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal.[6]

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[5] The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. *First*, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. *Second*, a habeas petitioner must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas relief in a judicial district in which he is not confined, and the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. And a "judgment entered without personal jurisdiction over a defendant is void as to that defendant." *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987). Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. A class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1. Here, the vast majority of *Bautista* "class members" are confined *outside* of the Central District of California by immediate custodians who are also *outside* the Central District of California and have not been named in the lawsuit. Therefore, the *Bautista* court lacked jurisdiction to issue habeas relief to all class members who are confined outside the Central District of California by immediate custodians outside that District, and a court's judgment cannot be binding and preclusive against a party over which it lacked jurisdiction. *Burnham v. Superior Court of Cali.*, 495 U.S. 604, 608 (1990).

[6] Even if the *Bautista* declaratory judgment could have preclusive effect outside the Central District of California, that judgment has been appealed to the Ninth Circuit, *Bautista, et al. v.*

For these reasons, the recent judgment in *Maldonado Bautista* is not binding on this Court and provides no basis upon which to grant Petitioner any relief.

IV. Petitioner's Due Process Rights Have Not Been Violated Because He is Appropriately Classified Under Section 1225(b)(2).

Petitioner's due process rights have not been violated because mandatory detention under Section 1225(b)(2) is constitutionally permissible, and Petitioner is appropriately classified under that section. In addition, Petitioner has been detained for a very short period of time. Specifically, his next immigration hearing is on January 29, 2026, and resolution on his removal proceedings is undoubtedly forthcoming. Petitioner's ample available process in his current removal proceedings demonstrate no lack of Procedural Due Process, nor any deprivation of liberty "sufficiently outrageous" required to establish a Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023). Congress simply made the decision to detain noncitizens like Petitioner pending removal, which is a "constitutionally permissible part of that process." *See Demore v. Kim*, 538 U.S. 510, 531 (2003).

For "more than a century" the Supreme Court has held the rights of such noncitizens are confined exclusively to those granted by Congress. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 131 (2020); *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law"). *Thuraissigiam* dealt with habeas action involving a noncitizen detained under Section 1225(b) who raised Fifth Amendment Due Process challenges. *Thuraissigiam*, 591 U.S. at 106–107. The Supreme Court reiterated that a noncitizen seeking initial entry to the United States has no entitlement to any legal rights, constitutional or otherwise, other

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United States Department of Homeland Security, et al., No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to that judgment or to any underlying legal issues in deciding whether to grant habeas relief in this case.

than those expressly provided by statute. *Id.* at 107 (a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"). Accordingly, Congress may authorize detention and such detention does not deprive Section 1225(b) aliens "of any statutory or constitutional right." *Id*. An alien who enters the country illegally is treated as an "applicant for admission" and has only those rights that Congress has provided by statute. *Thuraissigiam,* 591 U.S. at 140. The due process clause requires "nothing more." *Id*.

Here, the governing statute defining the contours of Petitioner's due process rights is Section 1225(b)(2)(A):

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate). Because Petitioner is an "applicant for admission" and therefore subject to Section 1225, his detention is both authorized and required by that statute. Petitioner's mandatory detention thus comports with due process. *See Thuraissigiam*, 591 U.S. at 140; *see also Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987) (holding that the detention of an alien seeking admission to the United States does not violate the due process clause).

V. Should Section 1226 Apply, Bond Review is the Only Appropriate Remedy.

Should the Court agree with Petitioner's contention that classification under Section 1226, rather than Section 1225, is appropriate, the subsequent relief, if any, would be to return Petitioner to that status: classification under Section 1226 with eligibility for a bond review in the normal course.

For example, in the context of noncitizens detained under Section 1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee's release pending conclusion

of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa. Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request); *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022) ("The only remedy for an alien challenging their mandatory detention is a bond hearing") (citing *Hernandez T. v. Wolf*, 2020 WL 634235, at *3 (D.N.J. Feb. 11, 2020). Thus, even if a bond hearing was an available remedy for Petitioner, granting immediate release is not warranted. This Court should not circumvent the U.S. Immigration Court by ordering release, unilaterally shifting the burden of proof at future proceedings or imposing additional restrictions upon Respondents. The appropriate relief would be an order granting classification under Section 1226, from which the U.S. Immigration Court would then adjudicate as any other Section 1226 case (starting with an evidentiary bond review proceeding).

This position is further supported by the jurisdictional bar of 8 U.S.C. § 1226(e), which strips the Court of jurisdiction to review "discretionary judgment[s] regarding the application of [§1226]. *See* 8 U.S.C. § 1226(e). Section 1226(e) further directs that "[n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien or the revocation or denial of bond or parole." *Id.* Had Respondents initially classified Petitioner as eligible for bond review under Section 1226, the result of that bond review would not be subject to judicial review. It would therefore make little sense for the Court to impose its own judgement on bond (or release) upon the U.S. Immigration Court. The appropriate remedy would be to remand the case back to the U.S. Immigration Court to conduct an evidentiary bond hearing under Section 1226.

VI. Petitioner Should Not be Awarded Attorney Fees and Costs Under the EAJA.

Petitioner should not be awarded attorney fees and costs under the EAJA because the Government's position to mandatorily detain Petitioner is substantially justified. The Government

does not need to establish that it was "justified to a high degree;" instead, it must show that it was "'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) ("[A] position can be justified even though it is not correct, and we believe it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact."). A "genuine dispute" or "if reasonable people could differ" about the appropriateness of the government's positions satisfies this standard. *Id.* at 566 n.2; *Dvorkin v. Gonzales*, 173 F. App'x 420, 424 (6th Cir. 2006) (stating that objective indicia, including "the stage in which the proceedings were resolved and the legal merits of the government's position[,] may be relevant in assessing a district court's determination of reasonableness") (quotation omitted). Here, the Government's position has a reasonable basis in law and fact—arguing that Petitioner's detention is governed by Section 1225(b)(2)(A) is supported by the BIA's precedential decision in the *Matter of Yajure Hurtado*, and other district courts that have also adopted this view.

CONCLUSION

The Court should deny the Petition for Writ of Habeas Corpus (Doc. 1) because Petitioner is appropriately classified under Section 1225 and Petitioner's due process rights have been met as a matter of law. Should the Court agree with Petitioner that Section 1226 applies, the only appropriate remedy is to remand the matter for a Section 1226 evidentiary bond proceeding before the U.S. Immigration Court in the normal course. The Court should also not award Petitioner attorney's fees and costs under the EAJA.

Respectfully submitted,

TODD BLANCHE
Deputy Attorney General
RYAN ELLISON
First Assistant United States Attorney

/s/ Jean M. Trenbeath
JEAN M. TRENBEATH
Assistant United States Attorney
201 Third Street NW, Suite 900
Albuquerque, New Mexico 87102
(505) 346-7274; Fax (505) 346-7205
jean.trenbeath@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 27, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Jean M. Trenbeath
JEAN M. TRENBEATH
Assistant United States Attorney